Portland MERCURY Re: SB 763

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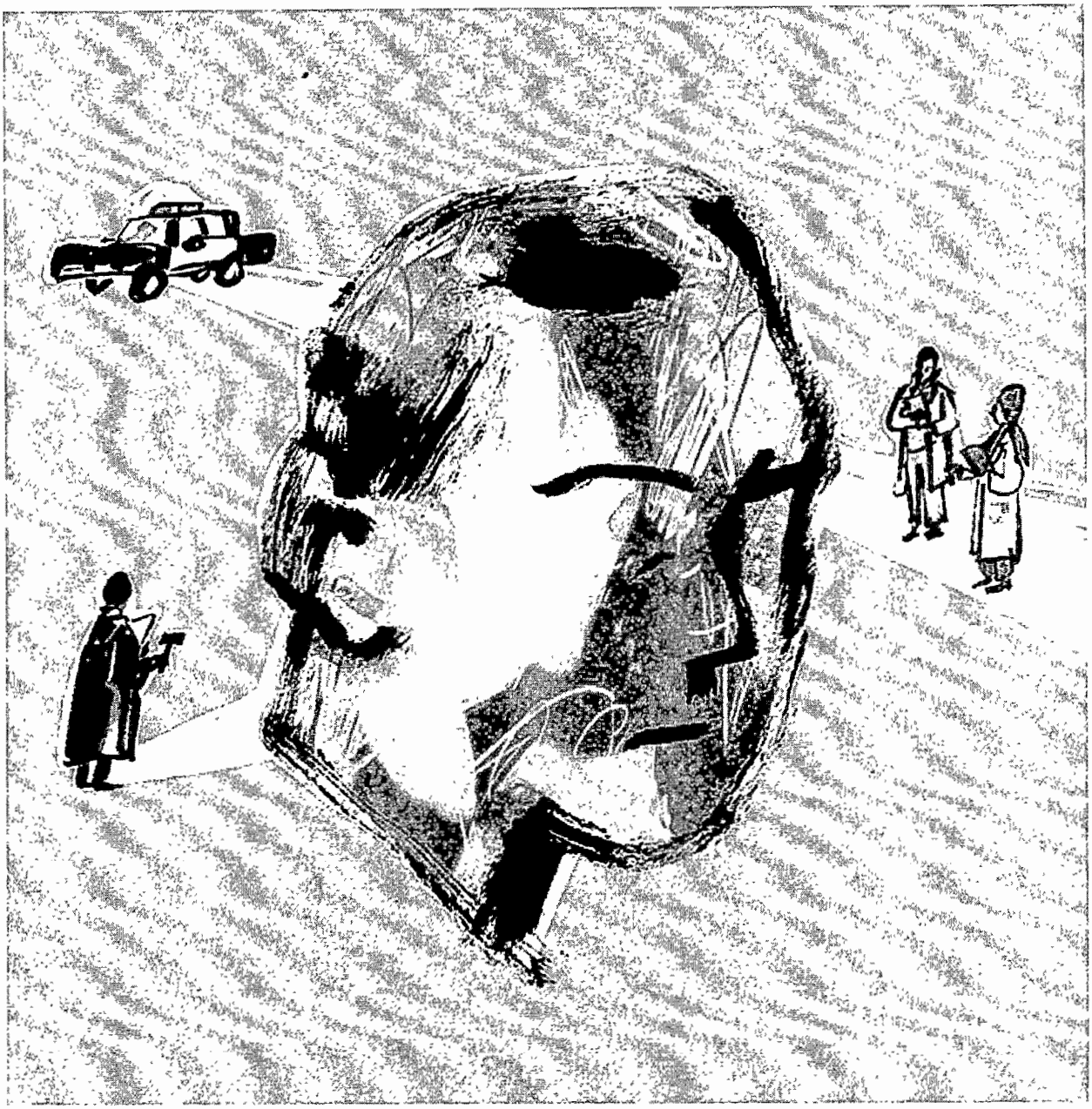
Will a Fix to Oregon's Involuntary Commitment Process Help—or Hurt—Those with Mental Illness?

by Alex Zielinski



GRACEY ZHANG

"Dangerous to self or others."

The interpretation of that single phrase can determine whether a person's mental illness is severe enough that they're forced to undergo psychiatric treatment—or if they're able to walk free.

For nearly 50 years, that phrase, tucked into a state statute, has played a pivotal role in how Oregon treats its citizens with mental illnesses.

But no one knows exactly what it means.

Oregon is one of the few states without a formal legal explanation of this term, leaving its definition entirely up to a judge tasked with evaluating an individual's mental health. A proposed bill in the state legislature, however, is hoping to change that.

Oregonians with mental illnesses who haven't committed a crime are only taken to court when their illnesses have risen to life-threatening levels—like when someone's mental state prompts them to wander through a busy intersection, stop eating, physically attack family members, or attempt suicide. In these cases, police and physicians are allowed to place individuals on a "medical hold," which bars them from leaving a local hospital until a county mental health investigator evaluates their state.

And that's where the undefined phrase comes in. The mental health investigator only brings that patient before a judge if they can confidently prove, based on Oregon law, that the person is "dangerous to self or others." If the judge agrees, then that patient is sent to the Oregon State Hospital for court-mandated psychiatric treatment. Around 600 Oregonians a year are ordered to receive this kind of treatment.

But mental health clinicians, judges, and family members have long argued that the vagueness of Oregon's statute has kept hundreds of people from receiving life-saving treatment or has rerouted them into the criminal justice system.

That's why a group of state lawmakers, physicians, and judges are pushing a bill to define this phrase while still preserving the civil liberties of the mentally ill—a balance that Oregon has failed to strike for more than a century.

In 1883, Oregon began warehousing hundreds of its mentally ill citizens inside Salem's massive Oregon State Hospital (OSH). Like other institutions of its time, OSH prioritized isolating patients from society over providing them with restorative psychiatric treatment. While the hospital was initially cheered as an innovative way to confine Oregon's mentally ill, reports in the 1960s of broad civil rights violations, draconian treatments, and patient neglect forced the state to reconsider its approach.

Those reports launched a movement to deinstitutionalize Oregonians with mental illness. By the 1970s, Oregon lawmakers were funneling federal and state funds into smaller, community-centric programs, as well as creating laws that narrowed the criteria of who could be ordered to the state hospital and how they were treated.

It wasn't a precise solution.

Since 1973, state law has allowed judges to involuntarily commit someone to OSH—an act known as a "civil commitment"—if they've shown "clear and convincing evidence" that they are "dangerous to self or others" or "unable to provide for basic personal needs" due to a mental disorder. But there are no guidelines as to how a court should determine these standards, meaning the interpretation varies by county and judge.

Lawmakers and judges have tweaked parts of Oregon's law over the years, most notably in 2010, when the State Court of Appeals ruled a person could only be committed if their mental disorder created an "imminent" threat to their "near-term survival." Multnomah County interprets "imminent" as within 72 hours.

Even then, the vagaries of the 2010 ruling have made it hard for county courts to assist individuals with severe mental illness. It's difficult for county investigators, even when paired with psychiatrists, to prove to a judge that a person's mental condition could *immediately* lead to their death or cause them to hurt someone else.

"I firmly believe that if people are intercepted in civil systems, they never get into the criminal system."

In Multnomah County, these restrictions mean that only 10 percent of patients placed on a medical holds make it before a judge. The rest, whom county investigators can't prove meet the legal standard for commitment, are ushered out of the hospital where they're being held, often without any guidance on how to treat their mental health or substance abuse issues.

Kathy Shumate, a pre-commitment investigator for Multnomah County, says that means investigators sometimes see the same patient six or seven times, but are never able to connect them to long-term psychiatric care.

"We've had situations when people who have not been committed by a judge would not leave the hospital.... They were clearly still in a state of mental crisis," Shumate says. "That creates this weird situation where that person is bundled up, taken down to the ER, placed on hold, and the cycle starts all over again."

Neal Rotman, the head of Multnomah County's Community Mental Health Program, uses the story of Karen Batts to explain the potentially fatal gaps in the statute's mental-health safety net.

Batts, a 52-year-old Portlander with schizophrenia, died in 2017 from hypothermia she sustained while living outside in sub-freezing temperatures. Records show that while Batts was placed on a mental health hold two months before her death, she didn't meet the standard to be committed.

"It's a clear case of how unrealistically high the bar has been set," says Rotman. "We have an individual that could physically get themselves to a shelter and could get their basic needs met, but behavior-wise, they weren't meeting the mark."

Senate Bill 763 aims to lower that bar. The bill, sponsored by the Senate Judiciary Committee, would amend the state statute to define the phrase "dangerous to self or others" as specifically meaning "likely to inflict serious physical harm upon self or another person within the next 30 days."

SB 763, which would amend Oregon's current statute on chronic mental illnesses, also clarifies what kind of information a judge can consider when determining the likelihood of such harm—another element that's missing from the current statute. That information could include a person's prior or recent threats or attempts to commit suicide or "inflict serious physical harm" upon themselves or another person. The amendment directs judges to consider how recently such behavior occurred, and how frequently someone has previously displayed such behavior.

"If someone threatened suicide once, 15 years ago, it's not very relevant," says Josephine County Judge Pat Wolke, who chairs the state legislative work group, made up of elected officials, physicians, patient advocates, and lawyers, that helped create SB 763. "But if it was within the last month, or the past weeks, or multiple times—that matters."

Wolke created Josephine County's first mental health court in 2009, after growing frustrated with the relentless flow of people moving through his courtroom who were being accused of crimes that seemed precipitated by severe mental illness. Josephine County's mental health court focuses on diverting people from the criminal justice system by linking them to local mental health treatment and mandating frequent status updates.

Wolke is certain that many of the defendants he sees could have avoided the criminal justice system if they were first intercepted by a civil commitment—that is, if the state's commitment criteria were better defined.

"I firmly believe that if people are intercepted in civil systems, they never get into the criminal system," Wolke says. "We'd save so much money in police costs, jail costs... which amount to taxpayer costs."

Like those who have been civilly committed, criminal defendants with mental illnesses are regularly sent to the state hospital, but under different circumstances. As of December 2018, 245 of OSH's 692 patients had been charged with crimes but were considered not mentally fit enough to face their accusations by a judge. In these cases, judges order defendants to get treatment at OSH until they are deemed fit to return to court and able to "aid and assist" in their own defense.

"People shouldn't have to have criminal charges to get mental health care."

These "aid and assist" patients are only hospitalized until the state believes they can stand trial, after which they're sent back to court without continuing health care. Many will go on to languish in a state prison, where nearly 60 percent of all inmates have a mental illness.

Those who've been civilly committed can stay at OSH for up to six months, during which time doctors work with them to create a treatment plan with the explicit goal of returning that person to their own community to receive outpatient mental health care.

In recent years, the number of "aid and assist" patients housed in OSH has skyrocketed, while the hospital's civil commitment population has declined.

"People shouldn't have to have criminal charges to get mental health care," says Chris Bouneff, director of NAMI Oregon, a nonprofit that advocates for people affected by mental illness. Though Bouneff supports SB 763, he also stresses it's not a standalone solution.

"You can create as many civil commitment bills as you want, but if the state doesn't figure out how to organize its mental health system, this bill is for naught," Bouneff says. He wants to see more state dollars being spent on early-intervention programs that catch signs of mental illness *before* someone requires state intervention.

Wolke agrees.

"My belief is, if you can intercept a mentally ill person at beginning of treatment, you have a good chance of saving their life and making their life meaningful and good," Wolke says. "If you take a hands-off approach, and you wait and wait and wait... it's very hard to help them."

At such a late stage, it's often law enforcement who are sent to intervene in the welfare of a person with mental illness. And those encounters can easily turn fatal.

In 2010, Portland police officers fatally shot Keaton Otis after the 25-year-old fired a handgun at an officer during a traffic stop. Shortly after his death, Otis' parents, Felesia and Joseph, released a statement explaining that they had unsuccessfully tried to get Otis civilly committed for a chronic "mood disorder."

"We want to bring light to the limited options and restrictive laws preventing families from intervening earlier," the Otises wrote. "In the future we want to expand the law's definition of harm to self or others for a civil commitment to include additional significant symptoms."

After Portland cops shot and killed Sam Rice, a 30-year-old with paranoid schizophrenia, in October 2018, his past health providers shared stories with the *Mercury* of their failed attempts to have Rice civilly committed.

"He was placed on medical hold once but was released—without any notification to us—in just three days," said Ken Hanson, who offered behavioral health support to Rice through an organization called SL Start Oregon. "It was so frustrating."

Two months ago, 36-year-old Andre Gladen was fatally shot by a Portland officer hours after Gladen left Adventist Medical Center, where he had visited the emergency room seeking mental health treatment. It's still unknown under what circumstances he was discharged, but Gladen, who had previously been diagnosed with schizophrenia, was still wearing his hospital gown and ID bracelet when he was shot.

Other mental health advocates fear SB 763 will impact the civil rights of those forced to trust the state with their mental health care.

"Civil commitment has the appeal of being a simple fix, but the courts don't have a crystal ball."

Disability Rights Oregon (DRO) plans on testifying against the bill. Sarah Radcliffe, DRO's managing attorney, says the legislation ignores the inevitable uncertainty that comes with each person's individual case.

"Mental health is complex. People are complex," says Radcliffe. "What each person needs is different, and you can't fix mental health across the board by just fixing a statute."

Radcliffe also doesn't believe courts can effectively predict if someone will be violent in the future and worries that categorizing people with such sweeping assumptions could jeopardize their civil liberties.

"Civil commitment has the appeal of being a simple fix, but the courts don't have a crystal ball," Radcliffe says. "I think generally codifying case law is a good idea—it makes sure everyone is on the same page. I doubt that's a likely outcome here."

Radcliffe sees more promise in legislation that prioritizes community-centric programs, like House Bill 2831, which would create three peer-run health centers for those "experiencing acute distress, anxiety, or emotional pain that may lead to the need for inpatient hospital services." Staff at these facilities, one of which would be in Portland, would provide voluntary support to people in crisis.

"Every community needs a non-hospital, non-jail crisis-respite option," says Radcliffe.

Multnomah County Commissioner Sharon Meieran, an emergency-room physician, supports both SB 763 and HB 2831 and sees the bills working in tandem to improve the state's entire mental health system. In her view, the two bills could effectively dovetail with the county's plans to open a mental health and addiction resource center in downtown Portland.

"What we really need is a continuum of services that are available in our community," says Meieran. "The bills may seem like a small shift. But any incremental change in this area is quite significant and can have repercussions for rest of the system."

Alex Zielinski

Alex Zielinski is the News Editor for the *Portland Mercury*. She's here to tell stories about economic inequities, cops, civil rights, and weird city politics that you should probably be paying attention to.

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