

03/18/19

TESTIMONY

JUDGE PAT WOLKE

Chair Prozanski and Senators:

My name is Pat Wolke and I am a circuit court judge in Josephine County.

Senate Bill 762 and 763 have been submitted at the request of the Workgroup to Decriminalize Mental Illness, of which I was co-chair with Senator Prozanski.

First, I'd like to extend thanks to:

- Senator Prozanski, for allowing and participating in this workgroup.
- This entire committee for its sponsorship of the workgroup.
- Especially Channa Newell. In 42 years of either practicing law or being a judge, I've seen many lawyers. I can tell you that Channa is a very good lawyer. She also took on the burden of organizing our meetings.

My interest in serious mental illness started when our son, in his freshman year at the University of Oregon, developed a serious mental illness. After about two years of struggle, we went through the civil commitment procedure for our son, and by the smallest of margins, he was civilly committed. Because of that, he has engaged in proper services, and is leading a successful life.

In February 2009, I started the Josephine County Mental Health Court and continue to preside over it. I worked for the passage, in 2013, of our statute on Assisted Outpatient Treatment, and I've organized the Oregon Mental Health Judge's Association.

The Workgroup's first meeting was in September of 2017. The last meeting was in January of this year. We had a total of nine meetings – often in this room.

Our membership was open to a wide and diverse group of participants. A copy of the members list has been submitted. We have had a total of 50 members, although not all at the same time.

We had representatives of:

- State agencies – Oregon Health Authority, Department of Justice, Judicial Department and the Oregon State Hospital.
- Medical professionals, at least three psychiatrists.
- Many attorneys interested in this area, including Aaron Knott, Inga Wells from the Appellate Division.
- Our star member was retired Supreme Court Justice David Brewer, who was nice enough to come out of retirement and actively participate. HE was unable to be here today, but his letter has been submitted.
- Interest groups: NAMI (National Alliance on Mental Illness), DRO (Disability Rights of Oregon), ACLU (American Civil Liberties Union), OCDLA (Oregon Criminal Defense Lawyers Association), law enforcement, a peer, OPPA (Oregon Psychiatric Physicians Association), and TAC (Treatment Advocacy Center).

Our focus was on three areas of reform: civil commitment, assisted outpatient treatment, and pre-hearing detention.

Almost every other state in the union defines the criteria for civil commitment within the statute. Oregon does not. We merely say that you can be civilly committed if you have a mental illness and are “a danger to yourself or others.” So what does that really define? Dangerousness is truly a subjective term. What dangerous is to me may be safe to you or slightly reckless to someone else. The current vague criteria are used not just by judges, but by police officers and hospital personnel.

We began our process by reviewing the definitions for civil commitment from all 50 states. We took them home and studied them and discussed them over many meetings. We finally decided to start with the Missouri definition. After more discussion, we added and subtracted from that and ended up with SB 763. In this legislation, we have defined the term dangerousness, the time frame and the evidence that can be considered.

ASSISTED OUTPATIENT TREATMENT

The Workgroup decided to leave the statutory language as it currently is, rather we focused on how we might make this a useful remedy to intercept an SMI individual before the need for civil commitment arises. To that end, six of us traveled to Ohio in October of 2018 to observe two established AOT dockets; one in suburban

Cincinnati and one in Akron. We anticipate that there will be one county in Oregon, hopefully Multnomah, which will set up a high functioning AOT docket.

PRE-HEARING DETENTION

As you probably know, the maximum limit for any involuntary hold in Oregon is up to five days. The problem with that is that people with an SMI, and who are actively psychotic, will not begin to recover in five days even if they immediately start taking the correct antipsychotic medicine. As a result, the individual rarely receives treatment during their hold, and are quickly released back into the community in essentially the same condition to repeat the cycle. Medicine can work in 15 days, which leads to recovery and no civil commitment.

With that brief overview, I would invite any questions you may have.