



## ALEX CUYLER

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DATE: February 25, 2020  
TO: House Committee on Rules  
RE: SB 1575, relating to fitness to proceed

Chair Holvey and members of the Committee:

Lane County offers its support for SB 1575A. We ask that the Committee move this measure to the House floor with a DO PASS recommendation.

SB 1575A represents the combined work of many stakeholders that have come together to hone the procedures which surround a defendant who has appeared in court and may be unable to aid and assist in their own defense due to an underlying behavioral or mental health issue. ORS 161.370 provides that a court may order a commitment for such an individual so that they may gain or regain fitness to proceed through treatment referred to as “restoration”. SB 1575A outlines how and where such commitments occur.

This work was informed by SB 24, passed during the 2019 Legislative Assembly, the budget note workgroup established by SB 5525 which examined mandated caseload forecasting, and the SB 24 implementation workgroup initiated and lead by Judiciary Committee staff. The number of stakeholders involved in getting this bill introduced and amended point to something it is imperative this Committee understands; that is, this complex but highly important function of the criminal justice system surrounds the defendant with a variety of public services all of which must function perfectly in concert and in every case. SB 1575A establishes more clearly each entities role and thus is an improvement over SB 24 (2019).

Under Oregon Law (Chapter 430) and subject to the availability of funds, counties may establish themselves as the Local Mental Health Authority and operate a Community Mental Health Program. In that structure, the Community Mental Health Program Director (or designee) plays a role in the “mandated” commitments which include Aid and Assist, Civil, and Guilty Except for Insanity.

Lane County has been termed a “high-sending” county, meaning that the courts which operate in our County have historically frequently committed defendants to the Oregon State Hospital. SB 1575A represents one piece of a larger effort aimed at reducing the number of commitments to the State Hospital. That work has also included additional investments into ensuring a physical infrastructure for community based treatment is sufficient as well as appropriately tailored. It is important for this Committee to understand that counties in and of themselves cannot control how many individuals are committed to the State Hospital or into community-based treatment. That is a function of each communities’ specific demographics, local policing and charging practices, and the how each court case evolves.

Lane County supports SB 1575A because it provides added clarity that:

- Each court case where a defendant's fitness is called into question will receive a recommendation from the Community Mental Health Program regarding capacity and appropriateness of restoration services which may exist for any given defendant.
- The Community Mental Health Program is responsible for care coordination for the defendant, but is not supervising that defendant while they are in the community.

This bill should not be considered the final policy necessary to perfect these procedures. That work will continue amongst the stakeholders. For our part, Lane County continues to contemplate appropriate future policy for the following details:

- We note that pretrial services may or may not be the proper provider of supervision, but importantly they do bring with them clear authority from the court, and for instance can enforce a violation of a pre-trial agreement. When supervision becomes part of statute again, it must have a very clear definition about who can sanction a defendant. It must not be the Community Mental Health Program, as it is this entity that is working to secure the trust of the defendant, a key element in providing any kind of treatment. That trust would be impinged if the defendant were continually aware of that kind of power imbalance.
- The Community Mental Health Program's work in this arena functions through funding certain Service Elements within County Financial Assistance Agreements. County counsel's regularly review these agreements and are increasingly aware of the potential for litigation that has already impacted Lane County. To avoid future contract complications, the Legislature must address the topic of immunity. Counties already have statutory protections or enhanced insurance access within statutes concerning both Guilty Except for Insanity and Civil Commitment procedures. These could be amended to include the services provided by County Mental Health Programs at ORS 161.370.
- There remains the issue of what happens to a defendant when they are deemed never able to regain fitness, or if their presumptive sentence is completed. Treatment and community supports may end, but that also may simply create a new revolving door for these individuals, as the likelihood is high that they may simply be discharged to the streets, where their challenges may land them once again into a criminal situation.

ELECTRONICALLY SUBMITTED BY ALEX CUYLER