

SB 198 A STAFF MEASURE SUMMARY

Senate Committee On Judiciary and Ballot Measure 110 Implementation

Action Date: 04/13/21

Action: Do pass with amendments and requesting referral to Ways and Means. (Printed A-Engrossed.)

Vote: 4-2-1-0

Yeas: 4 - Dembrow, Gelser, Manning Jr, Prozanski

Nays: 2 - Linthicum, Thatcher

Exc: 1 - Heard

Fiscal: Fiscal impact issued

Revenue: Revenue impact issued

Prepared By: Channa Newell, Counsel

Meeting Dates: 4/6, 4/12, 4/13

WHAT THE MEASURE DOES:

Specifies that a person providing services to restore fitness to proceed or community restoration under contract with the state is considered a state officer, employee, or agent for purpose of defense and indemnity within the Oregon Tort Claims Act.

ISSUES DISCUSSED:

- Increase in community restoration services
- Reduced use of Oregon State Hospital for misdemeanor defendants found unable to aid and assist in own defense
- Balance of county and state responsibility
- Indemnification through Oregon Tort Claims Act
- Increased utilization of State Risk Pool at Department of Administrative Services

EFFECT OF AMENDMENT:

Replaces the measure.

BACKGROUND:

Recent changes to Oregon's laws and practices when a person is found unable to aid and assist in their own defense has reduced the utilization of the Oregon State Hospital by those charged with misdemeanor crimes. Instead, for the majority of defendants charged with a misdemeanor and found unable to aid and assist, services to restore competency are provided in the community by community mental health programs. The state contracts with counties for these services, and the counties in turn contract with care providers. Within these contracts, liability shifts from the state, to the counties, to the community mental health programs and care providers. Many claims against the state and county are capped by the Oregon Tort Claims Act and state employees or agents receive indemnity and defense provided by the Department of Justice for the claims. Community mental health programs do not receive indemnification and defense. As a result, some counties and community mental health programs have been unable to agree to terms of a contract to provide services because of the uncertainty produced by the liability exposure.

Senate Bill 198 A specifies that a person providing services to restore fitness to proceed or community restoration under contract with the state is considered a state officer, employee, or agent for purpose of defense and indemnity within the Oregon Tort Claims Act.