



LANE COUNTY BOARD OF COMMISSIONERS

Joe Berney
Jay Bozievich
Heather Buch
Pat Farr
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DATE: March 4, 2021
TO: Senate Committee on Judiciary
RE: SB 295, relating to fitness to proceed

Chair Prozanski and Members of the Committee:

I want to first thank you for holding a public hearing on this important topic. Lane County recognizes the imperative that fitness to proceed procedures work seamlessly. I want to recognize the myriad of people who have come together year after year to work on this issue and produced SB 295; the staff and Judges of the Judicial Department, the Oregon Health Authority and State Hospital, the Public Defenders and Oregon's District Attorney's, the municipal court Judges, the myriad of mental health advocates, and the Association of Oregon Community Mental Health Programs.

The Board of County Commissioners is well aware of the enhanced legal risk we assume when our facilities or services involve individuals with behavioral health issues. Through contracts we sign with the state of Oregon for mental health and behavioral health services, the state passes its risk to Lane County. Where possible, we then pass this risk to contractors via those contracts, but where we directly provide services, the county bears the inherent risk. This risk is significant, and costly. However, what bothers me most is that our service delivery is thus impacted, that is to say that we are now asking our behavioral health staff to provide treatment but within the lens of litigation avoidance. This outcome must be changed, and the Legislature is the place where that can and should occur.

Our staff, both directly and through our membership in the Association of Oregon Community Mental Health Programs asked that this issue be prioritized within the workgroup. Ultimately the Judicial Department told us that what we asked for (immunity) would not be within SB 295. I note the Judicial Department is largely protected via the common law rule of judicial immunity.

This is not to say the workgroup did nothing, and we very much appreciate that SB 295 does remove the term "supervision" in favor of "care coordination" as the more accurate role that our staff play when it comes to community restoration services. Nor do I want the Committee to take from this testimony that each and every one of these defendants will violently offend. In this particular arena, the vast majority of those that we treat gain or regain fitness to proceed. Since April of 2019, Lane County has provided 325 consultations to local courts, resulting in 129 community restoration Orders, of which 71 were able to complete their obligation to the court by participation in their own defense.

Ultimately, the Board of Commissioners cannot lend its full support to this measure unless it is amended to better address the issues of risk. We seek:

- Language that caps the length of time a defendant will remain in community restoration.
- A procedure to quickly notify the court that a defendant has absconded or is otherwise in violation of restoration policies with an acknowledgement of same by the court.
- More certainty with respect to the conditions the defendant will comply with in the court's Order into community restoration.

Sincerely,

Pat Farr, Vice Chair, Lane County Board of Commissioners