



OREGON STATE HOSPITAL
Legal Affairs Department

Kate Brown, Governor

Oregon
Health
Authority

2600 Center Street NE
Salem, OR 97301-2682

Voice: 503-945-2800

Fax: 503-947-2900

osh.oregon.gov

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TO: The Honorable Floyd Prozanski, Chair
Senate Judiciary and Ballot Measure 110 Implementation Committee

FROM: Micky Logan, Legal Affairs Director
Legal Affairs
Oregon State Hospital
Oregon Health Authority
503-947-2937

SUBJECT: SB 295: Relating to fitness to proceed (NO POSITION)

Chair Prozanski, Vice-Chair Thatcher, and members of the committee, I am Micky Logan, Legal Affairs Director at Oregon State Hospital.

On behalf of the Oregon Health Authority, I co-chair the SB 24/295 Aid and Assist Implementation Workgroup. My co-chairs are Gillian Fischer of the Legislative Policy and Research Office and Debra Maryanov of the Judicial Branch.

OHA is committed to making sure the processes outlined in ORS 161.365 and ORS 161.370 work smoothly and effectively and in a way that best serves all people in our care.

Today, the majority of patients at OSH are under Aid and Assist orders. Managing admissions is a daily challenge, even though SB 24 in 2019 accomplished one of the things it was intended to accomplish – reducing the number of defendants sent to OSH for restoration services who do not need hospital-level care.

Across the nation, including Oregon, the number of people being charged with crimes and then found unable to aid and assist in their own defense continues to rise. Data show that Oregon counties are overseeing the restoration of more people under aid and assist orders than ever before. Many of these individuals do not need hospital-level care. Thus, we must quickly build capacity for community restoration – capacity that was largely not



necessary before the dramatic increase in this population since 2012 – capacity that cannot be served and should not be served at the state hospital.

As we build that community capacity and implement the 2019 statutory changes, we are finding that the law and the process require adjustments. The changes in SB 295 are not intended to make it easier to admit people under Aid and Assist orders to OSH. SB 295 retains the expectation that only defendants who need hospital-level care will be committed to OSH.

I want to highlight some of the important changes for the record:

SB 295 provides definitions for key terms in the statutes, such as “hospital level of care.” This is not intended to serve as a change in the law, but rather spells out the intent clearly.

SB 295 clarifies who does what, so that evaluators do what they do well, courts do what they do well, counties do what they do well, etc. For example, SB 295 clarifies that:

- *Evaluators* determine when a hospital level of care is necessary at the initial determination of “unable to aid and assist,” and what services would be necessary for a defendant to be restored in the community. Evaluators do not determine what is present and available in the community, because they won’t know what services are available in each community.
- *Community mental health programs* determine whether “appropriate community restoration services are present and available in the community,” and if they aren’t, the county must “specify those services that are not provided in the community” so stakeholders may better assess what services need to be developed in each community.

SB 295 separates the notices that OSH must file with the court when a patient no longer needs hospital-level care into felony and misdemeanor subsections. Also, OSH is required to give courts information, when OSH sends such a notice, about what services would mitigate risks. OSH does this already by sending its Hospital Level of Care (HLOC) Assessment and LOCUS information and documentation to the court. OSH’s Forensic Evaluation Service also separately sends evaluations to the court.

Under SB 295, courts may request a .365 eval from OSH, but it is not required.

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SB 295 provides another outlet to get defendants out of OSH and into community restoration by authorizing community mental health programs to provide the court with notice that community restoration services are available in the community.

To reiterate, SB 295 is not intended to increase or lengthen commitments to OSH. As you know, courts are committing record numbers of defendants to the hospital due to aid and assist concerns.

With COVID, the OSH bed-crunch is even more acute, because OSH has had to create quarantine units and specialty units to keep its patients and staff safe.

The collaboration on SB 295 demonstrates OHA's continued commitment to implementing and improving the process for our patients.