CIRCUIT COURT OF THE STATE OF OREGON
For Josephine County

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Senate Judiciary Committee Testimony

March 15, 2021; concerning SB 187 and SB 189

Chair Prozanski

Vice Chair Thatcher

and Committee Members:

My name is Pat Wolke, I am a Circuit Court Judge in Josephine County, and have been since 2004. In 2009, I started the Josephine County Mental Health Court, and continue to preside over it. In 2012, I worked with others for the passage of Oregon's Assisted Outpatient Treatment law, which is ORS 426.133. I currently serve on the Chief Justices Behavioral Health Advisory Committee, and chair the Subcommittee on Civil Commitment and Assisted Outpatient Treatment. In 2017, Chair Prozanski allowed us to start The Work Group to Decriminalize Mental Illness. He and I are the cochairs of this work group. Until COVID-19, the work group met in Salem approximately every 6 weeks to 2 months thereafter. Two years ago, I appeared before this committee testifying in favor of SB 763, which is the same as SB 187, which I will be testifying about today.

The Work Group to Decriminalize Mental Illness is a remarkable collection of individuals all interested in the better treatment for those with serious mental illness in the criminal justice system. In fact, our goal is very simple and that is to develop legislation that might keep such people from ever entering the criminal justice system. We have been focusing on Oregon's only two civil remedies to accomplish that: civil commitment and assisted outpatient treatment. There are approximately 40 members in the work group, including psychiatrists, mental health professionals, lawyers, law enforcement, and peers. There are representatives from many interest groups, including but not limited to The National Alliance on Mental Illness, the ACLU, The Oregon Criminal Defense Lawyers Association, the Oregon Sheriff's Association, the Oregon District Attorneys Association, The Oregon State Hospital, Oregon Health Authority, the Department of Justice, and Oregon Judicial Department. We include those people and groups with opposite views on involuntary treatment, such as The Treatment Advocacy Center, which supports involuntary

treatment, to members of the "lived experiences" subcommittee of the work group, who you will hear from today, and who emphatically oppose it.

SB 187

As mentioned, SB 187 is exactly the same legislation which was labeled as SB 763 in the 2019 legislative session. It is a bill which would add language into the civil commitment statute, to objectively and understandably define what is meant by the term "Dangerous to self or others", which is one criteria for civil commitment and is set forth in ORS 426.005 [1] [f] [A]. You may recall that in 2019, SB 763 was passed out of this committee with a "Do Pass" recommendation. Simultaneously a fiscal impact statement was attached and therefore referred to the Ways and Means committee where it stalled.

Maybe the best way to explain why this legislation is so needed, is to give you an example of how it is really applied on a day-to-day basis for people, such as police officers, emergency room personnel, precommitment investigators, and judges who actually have to work with this definition of "dangerousness". On January 6, this year the Oregon Court of Appeals handed down a ruling in the case of State v. M. T.. M.T. is a woman who suffers from bipolar disorder and lived in a group home. Prior to the hearing, she had done the following: left the group home and had six or seven police contacts; refused to come out of her room for meals, yelled at night that people are being murdered and the staff was raping people, intimidated staff members, muttered that she was going to: "kill her and kill myself"; deliberately bumped into staff members and slammed herself against the wall. At the hearing, the Mental Health Examiner testified that: "I do believe that she is dangerous to herself and that she will put herself in harm's way imminently, ….-due to her disorganization, mania, and psychosis." The Circuit Court Judge committed her, and her commitment was reversed by the Court of Appeals.

In their Opinion, the Court of Appeals imported requirements for a "danger to self" type of commitment that are not mentioned in the statute. For example, they said that M.T. could not be committed because the threat of danger was not "imminent"; because the danger was not "life-threatening, or involving some inherently dangerous activity"; and the conduct did not demonstrate a "highly probable risk of harm". If you look for these additional requirements within the statute, you will not find them. That is what makes the current statute worthless, a statute that does more harm than good. Most people, in evaluating M.T.'s conduct would classify it as "dangerous", but they would not be put on notice about these additional requirements, unless they had access to Court of Appeals Opinions, and carefully read them through the years. The current statute does nothing but mislead people who must rely on it as to what is actually required for civil commitment.

SB 187 would add to the current term "dangerous to self or others" would define the type of harm required [serious physical harm]; the timeframe [within the next 30 days] and the type of evidence the court could consider [past behavior-how often, how serious, how recent]; the type of harm to self [threats or attempts to commit suicide or inflict serious physical harm upon self]; the type of harm to others [threats to inflict serious physical harm on others, so long as a reasonable person would consider them so]

SB 189

The trial visit statute is ORS 426.273. This bill would insert one paragraph to the existing statute to list considerations and efforts that should be made before a person who is been civilly committed, is released from an inpatient setting to a outpatient trial visit.

First, some context. Civil commitment in Oregon is extremely rare. Less than 600 people are civilly committed in Oregon in a given year. Of those folks, only a minority be released on a trial visit. As a general rule, trial visits are competently handled by mental health workers, but there are some exceptions wherein a mentally ill person is released without any support or game plan, which often leads to repeated rehospitalizations. The added paragraph to ORS 426.273 would require that the mental health agency releasing the person on trial visit, inform that person about available housing, designate and connect the person to outpatient mental health and medical services, help the person apply or reapply for benefits that they may be entitled to, such as SSI, Oregon Health Plan, substance-abuse treatment if called for, and information about executing a declaration For Mental Health Treatment per ORS 127.702. All these requirements are meant to assist people in maintaining stability while on a trial visit.

Thank you for conducting this hearing. I will be happy to answer any questions you might have.

Pat Wolke
Circuit Court Judge