

March 15, 2021

RE: SB 187

Chair Prozanski, Vice Chair Thatcher, and distinguished committee members,

I am an attorney in Clatsop County, handling a caseload that is almost entirely court appointed criminal defense, along with civil commitment representation. I am also the defense representative for our county's Mental Health Treatment Court, and I serve as the president of NAMI Clatsop County, the local affiliate of the National Alliance on Mental Illness. I have dedicated my career to defending the rights and liberties of my clients, whether they be criminal defendants or persons alleged to be mentally ill. I have also been given a front-row seat to the way our state, and our country, treats those with mental illness and substance abuse issues. I can say without equivocation that we fail these populations on a daily basis, and our civil commitment process plays a significant role in that failure. I support SB 187 as a reasonable extension and clarification of the commitment process, despite my trepidation with any loss of liberties by vulnerable populations.

There is a large hole in the safety net that stops people from catastrophe, and that is the inability of mental health providers to compel treatment of those who are a danger to themselves or others, or unable to care for their basic needs, due to mental illness. SB 187 tries to shrink that hole by giving a clear and accessible definition to what it means to be a danger to yourself or others, allowing the legislature to give guidance to the courts, which have construed that term narrowly in deference to civil liberties, as the courts should in the absence of clear legislative intent. It also gives much-needed guidance to mental health providers and courts on what evidence should be considered in these decisions.

Too often those that suffer from mental illness are poorly served in our communities, and it is especially challenging when their illness prevents them from engaging in services. It is not uncommon for symptoms of mental illness to lead to public disturbances and contact with community mental health providers and law enforcement. If a person refuses or is unable to engage with mental health providers, the default becomes to let police handle the matter, leading to a revolving door in and out of jail, further destabilizing people mentally, financially, and legally. Our jails are not trained, staffed, funded, or qualified to handle those with mental illness, but they are the last resort and end up housing many people who should be under medical and psychological care. And in my experience community mental health providers are all too eager to wash their hands of these cases once the person enters the criminal justice system, abandoning the civil commitment process and letting the jails, district attorneys, and judges deal with the fallout.

I would like to illustrate this by telling the story of a recent client of mine. This person has been in the court system for years, first in the juvenile dependency system as a victim of childhood abuse and neglect. Then, in the last five years, this client has been through the civil commitment process five times.

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Those commitment proceedings resulted in withdrawals by the community mental health provider in four of those proceedings, and an order for assisted outpatient treatment in the earliest one. Those withdrawals are common in commitment proceedings, because the standard is so high that, by the time the person approaches a hearing, they often do not meet the stringent commitment criteria, even though they still have significant mental health issues. But that does not mean that this client was out of the system after the commitments were withdrawn. Instead, after two failed commitments in 2020, police began citing this person with crimes like disorderly conduct, trespassing, and theft in the hope that the courts would force them to engage with treatment, despite the fact that the police and the district attorney's office know full well that it is a mental illness that is causing these behaviors.

By the time this client came into my hands through the criminal system they have decompensated so severely, and are so unable to follow pretrial release conditions, that there are now a dozen open criminal cases and a significant trail of arrests and incarcerations. Eventually, after the repeated cycle of trauma of jail, release, arrest, and jail, I am forced to file a motion to find them unable to aid and assist and send them to the Oregon State Hospital for restoration services. After a minimum of three months at the hospital I expect this client to come back to our community, and have the state push for criminal convictions so that my client can then be referred to the mental health court for intensive community supervision. This is not an isolated case, as I can point to several people on my caseload right now with similar stories, and I know other defense attorneys can as well.

This cycle could be avoided if commitment criteria were clear and comprehensive, and SB 187 is a step in that direction. As things are currently, the case law is complex, often confusing, and inaccessible to non-lawyer partners in the system, such as community mental health providers and law enforcement. This lack of clarity then leads to an abdication of responsibility by the community mental health authority, as they either do not believe they have the power to compel treatment for those who need immediate help, or they are unsure of what authority they have. The single biggest frustration for me then comes when these people are arrested, and as a result mental health authorities step away and let the jails and courts handle things. I have had, on numerous occasions, mental health or jail staff tell me that I should "do an aid and assist," despite the fact that the criteria for such a motion by defense counsel is very specific and has a high ethical bar for attorneys. Too often it feels as if people are left to decompensate until they fall to this lowest ebb and defense counsel and judges are left to pick up the pieces.

People who suffer from mental illness should not have to be incarcerated to get help. As much as it may seem counter-intuitive for someone in my position to advocate for broader power to commit someone against their will, a failure to exercise this power where appropriate too often ends up with these people in jail, convicted of crimes, or harmed by police. SB 187 begins to shrink a hole in the safety net to stop people from hitting that brick wall.

Thank you,

Kirk Wintermute, Attorney at Law