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I am writing to express my support for Senate Bill 187, which would clarify Oregon's civil commitment statute by providing definitions for the terms "near future" and "danger to self or others."

The addition of these definitions is critical. Although the existing statutes establish the standards for civil commitment for trial courts in every Oregon county, they lack clarity. As a result, the appellate courts have interpreted the statutes, creating precedent which every trial court judge in the state must follow. However, the existing lack of definitions has led to interpretations which create an excessively restrictive standard for civil commitment. The statutes as presently written and interpreted are detrimental to citizens of our state at every level.

My perspective regarding these issues, based upon my personal and professional experience, may be somewhat unique. I view this bill as a patient who, before receiving therapy, struggled with PTSD, resulting in severe depressive and suicidal episodes. I have lost a 16-year-old nephew, a 45-year-old stepbrother, and a close friend to suicide. Additionally, I am a former criminal defense attorney, and I have represented numerous allegedly mentally ill persons (AMIPs) in civil commitment cases, at the both the trial and appellate levels. As a result, I am familiar with the case law which interprets the statutes, and more importantly, with the practical ways in which our present civil commitment statutes do and do not work. My firsthand experience from a variety of perspectives convinces me that Oregon's commitment statutes enable—if not mandate—the denial of critical psychiatric treatment to people who are profoundly unable to make informed, reasoned decisions on their own behalf. This fact is best shown (and really can only be understood) by looking at some of the Court of Appeals' ("COA") recent commitment decisions:

In a 2019 case, the COA reversed the trial judge's order continuing a commitment, which was based upon the trial court's finding that the AMIP ("ZWY") was a danger to others.

ZWY had been diagnosed with schizophrenia which caused him to suffer delusions, and had originally been placed in the state hospital after being charged with violating a restraining order. It was subsequently determined that ZWY would never be able to aid and assist in his own defense.

The testimony at ZWY's hearing was that ZWY was fixated on a particular woman. Before being charged and hospitalized, ZWY had made multiple attempts to contact the woman despite the stalking order. He harassed her repeatedly at her work and maintained persistent delusions that the woman was his girlfriend. He had fantasized about breaking into her house and strangling her, and wanting to protest in front of her house and throw red paint on her. He had acknowledged having "sort of romantic feelings" toward his victim and wanted the stalking order lifted so that he could contact her. He felt that he was "within his rights to contact her, call her, go to her home, go to her workplace." Additionally, ZWY had expressed an interest in firearms, and at one point had gone to his victim's workplace with a duffel bag and threatened to shoot other employees who were present. ZWY wanted to have his victim arrested and prosecuted for perjury regarding statements she had made to get the restraining order. ZYW's treating psychiatrist believed that ZWY's medications had improved his aggressive behavior, but that all of ZWY's symptoms would return and his delusions and anger would worsen if he stopped taking his medication. Indeed, ZWY testified at his hearing that he would stop taking his medications if allowed to leave the hospital.

The appellate court determined that in the absence of specific acts of violence, a finding of "danger to others" is justified only if an AMIP's other past actions, including verbal acts, form a clear foundation for predicting dangerousness. The COA noted that the record of ZWY's hearing contained no evidence that his schizophrenia had ever caused him to be physically violent toward another

person. Ignoring testimony that ZWY remained obsessively focused solely on his victim, the court noted that during his most recent hospitalization, ZWY had not been aggressive toward any patient or hospital staff. While acknowledging that ZWY's interest in guns and his threats to shoot the victim's co-workers were "disturbing," the COA noted that the record contained no indication that ZWY had ever possessed or attempted to obtain a firearm. And despite the evidence that ZWY expressed the delusion that his victim was his "girlfriend" and the evidence regarding ZWY's increased anger and hostility toward her because "he blamed her for him being admitted to the hospital" and his expressed desire to "seek revenge," the appellate court found "no evidence that appellant has persistent thoughts about harming [his victim]." Based on those determinations, the court saw nothing to support an inference that it would be "highly likely" that appellant's behaviors would go further if he were released, and reversed the trial court's commitment order. *State v Z.W.Y.,* 299 Or App 703 (2019). (Despite the court's abysmal and somewhat terrifying reasoning in this case, the court did find evidence to support a continuation of ZWY's commitment in a simultaneously released companion decision).

Similarly, in a 2020 "danger to others" case, the COA reversed the commitment order on the basis that the record contained insufficient evidence to support a "dangerousness" finding.

The AMIP ("HM") was diagnosed with schizoaffective disorder, bipolar type, and with methamphetamine use disorder. He had been hospitalized for mental health reasons multiple times, including three times within the preceding year. HM may have been taken into custody as many as 23 times--possibly in 2017 and 2018 alone. A counselor who had worked with HM for six years testified that without medication, HM is delusional, lacks awareness of time and space, and cannot answer simple questions. For five years, the counselor had seen HM cycle off his medication, ending up in jail or the hospital before returning to his medication regime.

HM had a long history of violence, particularly in regard to his father, with known violent incidents in 2009 and 2017. Both HM's sister and father had restraining orders against him stemming from an incident which had occurred over a year earlier, where HM reacted to his father's apparently benign comment by grabbing his father by the neck, choking him, and hitting him with a spoon. HM then hit his sister with the spoon. Additionally, HM had at least two convictions each for fourth-degree assault and for menacing.

While hospitalized for an unstated reason, HM was placed on a physician's hold. HM's treating psychiatrist testified that during his current hospitalization, HM had been overtly psychotic, extremely paranoid, largely nonverbal, and uncooperative regarding discussion of his mental health, although he had accepted medication. Based on HM's history, the psychiatrist believed that if discharged, HM would not be in a structured environment where he could be monitored and treated, would fail to take medication, and would be a danger to others. Additionally, the psychiatrist testified that HM used controlled substances, particularly methamphetamine, which exacerbated his psychiatric issues and could cause HM to become more violent. HM's two examiners expressed concern that HM's insight and judgment were so impaired that he could not even remember assaulting his own father, a person for whom he cared deeply. Despite his long history of cycling on and off medications, HM stated that he intended to take his medication if released.

The COA iterated that a trial court must find "current evidence" to link an AMIP's past behavior to a current serious and highly probable threat of harm. However, even when viewing HM's longstanding history of violent behavior in combination with his recent overt psychosis, extreme paranoia and methamphetamine use, the COA could find no such current evidence. Additionally, a finding of future dangerousness requires a factual foundation to predict "highly likely" actual future violence within a "narrow range of serious and highly probable threats of harm." However, the COA found the evidence insufficient to support the trial court's determination that appellant was dangerous to others at the time of the commitment hearing, because no evidence had been presented that HM had been violent toward anyone for "at least some months," and possibly a year. The COA concluded that commitment had been improperly based "solely on HM's history of having several violent

incidents in his past while off medication." That conclusion disregarded testimony about both HM's ongoing "cycling behavior" which in the past had led to violent behavior and frequent jailing and hospitalizations; likewise, the court disregarded testimony regarding the exacerbating effect of HM's untreated methamphetamine use. Instead, the court stated, "[i]n our view, the civil commitment statutes do not permit a finding of dangerousness to others as predicate to taking away someone's liberty *based solely on past history without more*. (Emphasis added). Accordingly, the COA reversed the commitment, stating that "the evidence [was] insufficient to support the trial court's determination that [HM] was dangerous to others at the time of the commitment hearing." *State v H.M.,* 307 Or App 246 (2020).

And in January 2021, the Court of Appeals ("COA") reversed a commitment order involving an AMIP identified as "EJJ" after the trial court found him to be both a danger to others and unable to provide for his basic needs.

EJJ was diagnosed with schizoaffective disorder, bipolar type, and had a 20-year mental health history of going off his medications, causing behavioral issues that had resulted in repeated psychiatric hospitalizations. Recently, EJJ had again refused to take his medication, mirroring "a familiar pattern" that EJJ's mother had "seen repeatedly over the last 15 years." However, the COA determined that the state failed to establish the required "causal connection" between EJJ's mental disorder and his subsequent behavior.

EJJ's best friend testified that in the two months before the hearing, EJJ's behavior had become "full blown, crisis level." He was delusional, asking his friend to fix his computers because the government had infiltrated them and was using them to spy on him. He was aggressive and threatening in response to his friend's questions; he seized a knife and approached his friend, speaking unintelligibly while raising the knife and gesturing toward his friend's face, possibly repeatedly. Additionally, EJJ was facing eviction due to the extremely unsanitary conditions of his apartment. EJJ's girlfriend went to his apartment to help him clean to avoid eviction. At some point EJJ began making repeated sexual advances toward her, and she repeatedly discouraged him. She agreed to spend the night but told EJJ that she was not interested in sex. Nevertheless, EJJ persisted and engaged in nonconsensual sexual activity with her before she stopped him again. EJJ's actions, if proven, would constitute the crimes of harassment and sex abuse in the second degree (a felony), yet the appellate court found that his behavior constituted "insufficient evidence" to establish the requisite "high likelihood" of actual future violence.[1] Despite EJJ's recent threatening and criminal behavior, the COA stated that the trial court needed more than "merely past isolated incidents" to predict future dangerousness, and reversed the trial court's commitment order. *State v E.J.J.*, 306 Or App 603 (2021).[2]

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[1] The COA's willingness to disregard EJJ's actions is noteworthy not only for the lack of concern it shows for potential victims of crimes committed by people who suffer severe mental illness, but also for the lack of concern it demonstrates for mentally ill individuals themselves. A conviction for sex abuse in the second degree is a C felony, punishable by up to 5 years in prison. Any person convicted of such an offense would be designated as a sex offender, required to register as a sex offender, and such a conviction could not be expunged. Additionally, it is often a very small step from such a sex crime to a major sex crime which falls under the mandatory sentencing provisions of Measure 11. Sex crimes designated under the Measure 11 statutes can result in a mandatory minimum sentence of up to 300 months in prison.

[2] The appellate courts have applied similar tortured logic in interpreting other prongs of the commitment statutes. In a 2019 "basic needs" decision, a "fully naked" woman was found harassing customers outside a bar. She "basically had no hair" but her head exhibited multiple cuts, and she appeared (both when contacted by police and at her subsequent hearing) not to know where she was. She spoke in a "nonsensical" manner, clearly exhibited delusional behavior and had recently been struggling to obtain adequate food. The examiner reported that MB presented "diagnostic impressions of psychosis," possibly methamphetamine-induced.

Recent appellate cases reveal a pattern and practice of interpreting the commitment statutes so narrowly that a civil commitment can be almost impossible to obtain, even in the most dire circumstances. As interpreted, the statutes are so restrictive as to disregard the nature of both mental illness and of currently available therapies. The legal reasoning frequently defies common sense.

The civil commitment statutes as now written harm society's most vulnerable by denying treatment to people who are incapable of making informed, reasoned judgments regarding their own best interests and by allowing potentially treatable mental conditions to go untreated. The law allows the severely mentally ill to go homeless, increases their susceptibility to addiction issues, and permits them to exist in a state which renders them easy prey for others. It places mentally ill individuals at risk of serious and perhaps deadly altercations with law enforcement. By making civil commitment a practical impossibility in most circumstances, the statutes render people powerless to aid friends or family who suffer from severe mental Illness. The refusal to compel appropriate psychiatric treatment is a significant cause of crime, allowing many Oregonians to become victims, while allowing people with severe mental illnesses to commit crimes with potentially dire consequences for their own futures. It generates significant financial costs to our communities in place of providing more cost-effective treatment which might improve both the lives of people with severe mental illness and the quality of life of our communities as a whole. As currently written and interpreted, commitment law is

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Another witness testified that MB was "clearly still psychotic to the point that she would be at grave risk if discharged due to being unable to care for her basic needs." Nevertheless, the COA determined that MB did not meet the statutory standard for a basic needs commitment because the state failed to show that she was at risk of "serious physical harm" --the state had failed to show that she was at a medically dangerous weight, and no evidence was presented to show that she was unable to access shelters or soup kitchens or to replace the identification she needed to obtain food stamps. The COA saw no danger in "the risk [] inherent in a woman with a mental disorder wandering naked in public" because "there [was] no evidence that appellant made a regular habit of public nudity or of a non-speculative risk of harm to appellant specifically." *State v M.B.,* 300 Or App 522, 452 P3d 1006 (2019).

Also instructive, and also in 2019, the COA addressed another "basic needs" case in which the 61-year-old AMIP ("CK") suffered from a depressive disorder as well as memory issues and "declining executive function." CK also suffered numerous physical issues, including untreated hepatitis C, chronic kidney disease, chronic pain from a hip injury and (due to a surgery that had removed a part of her bowel) CK had an ostomy site–an opening in the skin that allowed feces to be collected in a bag outside her body. CK's ostomy site had been infected in the days before the hearing, but had improved (presumably due to medical care) while waiting for the hearing.

One of CK's doctors testified that it appeared that CK was unable to care for the site by herself—that she was unable to keep the site sanitary or to keep it from becoming inflamed, in part because she tended to poke at it, including with foreign objects. Her doctor noted that CK frequently forgot to take her medications or to properly attend to the ostomy site, which he attributed largely to her mental state, referencing both the depression and the neurocognitive disorder. He predicted that if released, CK would stop taking her medications due to her cognitive deficits within "no more than a week," and would become unable to obtain food "even if she might wish to eat," with potential consequences that could become "very, very serious." The doctor also indicated that if released, CK would likely drink alcohol, which worsen both her depression and her limited ability to care for her medical needs. In addition to her profound medical issues, at the time of hearing CK had no residence and would need to stay in a motel if released.

The appellate court affirmed CK's commitment on the basis of her inability to provide for her basic needs—but astonishingly, commented that the facts presented merely "a close case" and that the case was" a close call"—one in which the evidence merely hovered in a near balance for commitment. *State v C.K.*, 300 Or App. 313 (2019).

virtually useless to address the needs of either the severely mentally ill or of the larger community. It is inhumane, and offends the basic humanity of people who suffer from severe mental illness.

The proposed changes to the commitment statutes would alter existing law by broadening the current definition of "dangerous to self or others" to allow the courts to consider an AMIP's propensity to inflict serious physical harm, upon the AMIP or upon or another person, within the 30 days following a commitment hearing. Additionally, the proposed amendment would expand the statute by allowing a trial court judge faced with a decision regarding an AMIP's potential dangerousness to self or others to consider 1) an AMIP's threats or attempts to commit suicide or inflict serious physical harm upon self: 2) an AMIP's threats or attempts to inflict serious physical harm upon another person, if the threats or attempts would place a reasonable person in fear of imminent serious physical harm; and 3) an AMIP's past behavior which caused physical harm to the AMIP or to another person. Finally, the proposed amendments would require a trial court judge to consider the recency, the frequency, and the severity of an AMIP's past behavior. Had the proposed amendments been in effect when the "danger to self or others" cases summarized above were decided, those amendments may well have led to a different and more appropriate outcome. The COA may have affirmed the underlying commitment orders.

I have experienced the mental torture of surviving intensely suicidal states, when hospitalization may have been a far better option. I've lost friends and family members to suicide. I've been the criminal defense attorney, ethically obligated to zealously defend severely mentally ill clients who objected to hospitalization, even when it was apparent that hospitalization was in a client's best interest and possibly a matter of life and death.

Under the commitment statutes as they presently exist, it is certainly not difficult to successfully defend a mental commitment case. As a result, I have also had the experience of defeating an attempted commitment in court as ethically required, only to immediately sit down with the same client to convince her to undergo voluntary hospitalization because she was in no way capable of surviving on the streets. I find it ludicrous that our commitment statutes, as presently written, are such that it falls to a defense attorney to see that a vulnerable person receives appropriate psychiatric services because the statutes themselves cannot compel it.

My personal experience as a patient, my work as a defense attorney, and my own strong advocacy of civil liberties might suggest that I would favor a very restrictive commitment statute that would preclude civil commitment in all but the most extreme cases. To the contrary, I find it inhumane and fundamentally dishonest to cloak arguments against broadening the standards for commitment in terms of "civil liberties" when we are talking about people who are, in practical terms, incapable of making the most basic decisions for their own medical care and treatment.

For all of the above reasons, I am writing to urge passage of Senate Bill 187. I believe that it represents critical and necessary changes to the commitment statutes, which will benefit severely mentally ill individuals and our communities alike.

Very truly yours,

Anne Morrison
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