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

FROM: Micky Logan, Legal Affairs Director
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SUBJECT: SB 205, Relating to extremely dangerous persons with mental illness

Chair Prozanski, Vice-Chair Thatcher, and members of the committee, my name is Micky Logan. I am the Legal Affairs Director at the Oregon State Hospital (OSH).

I participated in the PSRB workgroup as a representative of the Oregon Health Authority (OHA) and OSH. OHA and OSH offered feedback to the group about the impacts of the proposed legislation on OSH in particular. As a state agency, OHA does not have a position on the bill, but I would like to share the impact on the state hospital for your information as you consider the bill.

SB 205 proposes to change the extremely dangerous persons with mental illness commitment statute, ORS 426.701, to address the silence in the current statute regarding where such a person should be held before a court holds a commitment hearing.

Specifically, SB 205 as introduced provides in relevant part:

d) Upon receipt of the petition, the court shall **schedule a hearing and shall** appoint an examiner as described in ORS 426.110 to evaluate the person.

(e) The court may order that the person be committed to the custody of the superintendent of a state hospital or the director of a secure mental health facility while the petition is pending.



SB 205 as introduced may result in courts ordering OSH to hold people indefinitely pending hearing. The language in SB 205 as introduced contains no time limits for holding a patient at OSH while the parties prepare for a hearing that may be postponed indefinitely. This raises significant constitutional and capacity issues.

For constitutional reasons, all other types of commitments to OSH are time limited.

It is OHA's understanding that SB 205 will be amended to provide that:

If the person is detained [at OSH or a secure facility] while the hearing is pending, the hearing must commence within 30 days of filing the petition, unless good cause is found by the court. If the court finds good cause, the hearing may commence no later than 60 days after the filing of the petition.

The proposed amendments go on to clarify that:

Commitment to the custody of the superintendent of the state hospital or the director of a secure mental health facility while the hearing is pending may not exceed 60 days. **If it takes longer than 60 days to bring the petition to a hearing**, if the DA dismisses the petition, or if the Court, following a hearing, does not commit the person, **the person shall be returned to the county of responsibility** and the Court shall hold a hearing, if needed, on the petition and any outstanding criminal charges. An alleged extremely dangerous mentally ill person who is returned to a secure facility, including but not limited to a jail or prison, under this section may remain at that placement until the hearing on the matter.

The proposed amendments are helpful and go a long way towards addressing OSH's capacity concerns.

However, even with the proposed amendments, SB 205 could affect OSH in two ways: 1) Increased .701 commitments to OSH and 2) potential litigation related to due process.

SB 205 introduces an additional source of admissions to OSH that will be competing for limited OSH bed capacity.

Given the OSH limited capacity, it is OHA's duty to notify the legislature when any bill may increase admissions or length of stay. Although ".701" commitments are currently a small number of commitments in Oregon, an increase of only a few with a 60-day length of stay would add considerable pressure to OSH capacity.

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Further, it is likely that due process litigation would result if individuals are held for up to 60 days without a hearing.

Thank you for the opportunity to testify. Please let me know if you have any questions.