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HOUSE JUDICIARY COMMITTEE  
Representative Janelle Bynum, Chair  
Senate Bill 206-2  
May 14, 2021

Testimony of Harris S. Matarazzo, Attorney at Law

Chair Bynum and Members of the House Judiciary Committee:

As an attorney who has worked closely with the mental health community and individuals under the jurisdiction of the Adult Psychiatric Security Review Board (PSRB) for more than thirty years, I participated in the 2019- 2021 Interim Workgroup on the PSRB. However, I was not involved in the amendments contained in Senate Bill 206-2 which occurred shortly before it was last presented to the Senate Judiciary Committee. I am opposed to portions of this proposed legislation for the reasons set forth below.

In pertinent part, ORS 161.327 currently provides that, following a finding by the trial court that an individual is “Guilty Except for Insanity” in a criminal matter, the Court is to place the person under the jurisdiction of the Psychiatric Security Review Board (PSRB). When this occurs, the Defendant is generally sent to the Oregon State Hospital. However, ORS 161.327 also authorizes the Court to “conditionally release” the person directly to the community upon a finding that “[ ] the person can be adequately controlled with supervision and treatment if conditionally released and that the necessary supervision and treatment are available”. ORS 161.327 (1)(b).

If enacted, the proposed Bill will limit consideration of proposed “conditional releases” to “**a local mental health program designated by the [PSRB].**” (Emphasis Added) This represents a substantial change in the statutory scheme, which will disallow consideration of a release to the care of other programs or private practitioners who can provide identical, or better, services. Included would be those individuals under Board authority who may have successful, pre-existing, treatment relationships with non-PSRB designated providers. An individual who would otherwise meet “conditional release” criteria,

but who was not accepted for any reason, including the absence of an opening within a “designated” program, would then be subject to transfer and commitment to the Oregon State Hospital. This represents a ‘human’ cost, unrelated to community safety.

Financial costs are also important to consider. The cost of care at the Oregon State Hospital, which is already at capacity with a waiting list of individuals mandated for entry, is at least \$28,000 per month. The monthly cost of community care is a small fraction of that. Unnecessarily committing an individual makes no sense, and diverts resources from those who require them, including those awaiting trial as ‘unable to aid and assist’ their attorneys. Upon “conditional release”, PSRB has the authority to modify any plan or, if necessary, “revoke” the person, ie have them committed to the Oregon State Hospital.

Depending upon the underlying crime, when considering “conditional release”, the proposed Bill also provides that the Court “may” or “shall” order a consultation with the designated program. (Proposed Section (2)(b) (A) and (B)). The consultation is to determine “[ ] whether the necessary supervision and treatment for the person are **available in the community and appropriate** [ ]”. (Emphasis Added) **If the consultation determines** that the necessary supervision and treatment are **available in the community and appropriate** for the person, the:

[ ] [P]rogram shall evaluate the person to determine whether the person can be adequately controlled with supervision and treatment if conditionally released, and the program director shall provide to the court and to the board a report of findings resulting from the evaluation and recommendations for treatment. [ ]”.

(Proposed Section (3)(a))

The “consultation” requirement is confusing and without known purpose. As proposed, the designated program consultant is to determine whether appropriate treatment is available in the “community”, not just within its own operation. This seems unworkable, as many mental health agencies exist throughout the State, some with different areas of expertise, and would be unlikely to accept or reject another program’s determination regarding the propriety of a placement there. By removing the “consultation” step, the evaluating program can offer an opinion as to whether an individual is appropriate for release, and whether it has the necessary resources to provide for “conditional release” services there.

Finally, proposed ORS 161,327 (11) provides that the PSRB is to enact rules related to the “standards” for the newly sought consultations and evaluations. I oppose the inclusion of this Section within the statute. Should “standards” be required, they should be included within the statute, and not subject to more easily changed administrative rules which might inadvertently discourage Court-ordered “conditional releases” for those not requiring commitment to the Oregon State Hospital. Including this language within the statute would also provide greater notice to all parties.

Since its enactment, ORS 161.327 has been clear that “conditional release” can be authorized by the Court if “[ ] the person can be adequately controlled with supervision and treatment [ ] and that the necessary supervision and treatment are available”. ORS 161.327 (1)(b). Should PSRB disagree with a Court-ordered “conditional release”, or seek to modify one, the existing statutory scheme allows the Board to so act. Overall, this system has worked well.

My overriding concern is that the cited language within this proposed legislation will create barriers disallowing or discouraging Courts from “conditionally releasing” individuals not requiring hospitalization. The cost is both financial and human. Thank you for the opportunity to address the Committee.