TO: **Sen. Floyd Prozanski, Chair**
Sen. Kim Thatcher, Vice Chair
Senate Committee on Judiciary

FR: **Oregon District Attorney's Association**

RE: **OPPPOSE – SB 817**

March 14, 2023

Specialty courts, such as Veterans Courts, Mental Health Courts, Drug courts, Community Courts, and Domestic Violence Courts, are highly structured and collaborative efforts between prosecutors, defense attorneys, the courts, treatment providers, case managers, and probation services. In 2021, ODAA supported adoption of SB 218 (2021) which broaden the opportunities for defendants, who successfully completed a specialty court, to do so without a criminal conviction. Unfortunately, SB 817 would undermine the very intent of SB 218 (2021) by reducing the incentive to participate in specialty courts, introduce inconsistency in pre-plea diversions, create risk to victims and the public, and unnecessarily burden the legal system.

SB 817 – Reduces the efficacy of specialty court programs
SB 817 removes the requirement that a person enter a specialty treatment court to obtain a pre-plea diversion. Specialty courts are intensive programs that are closely monitored and structured for those participating and requires a significant commitment from participants. Pre-plea diversions incentivize participation in specialty courts by offering participants the opportunity to avoid a criminal conviction if they are successful in the program. By removing the treatment court requirement, participants have less incentive to commit to the requirements of specialty courts, and this would negatively impact participation in these programs.

Additionally, specialty court personnel receive extensive training to run a treatment court and identify when pre-plea diversion programs are appropriate, to assure accountability and consistency. Because pre-plea diversion can include violent crimes, such as domestic violence and assault charges, this training it is necessary to address the high-risk offenders. By removing the requirement that programs be in specialty court, individuals without the same training and experience will decide when to grant pre-plea diversions, significantly raising the risk to victims and the community.

SB 817 – Removes the ability for the court to ensure accountability
SB 817 removes the guarantee that persons entering the pre-trial diversion program will be held accountable if they fail the program. Currently, if a defendant enters a pre-plea diversion program, they must agree that they cannot contest the evidence and may be found guilty if they fail. SB 817 would require a mini-trial to determine guilt. This mini-trial would mean that a defendant could enter

a diversion program without taking responsibility for the harm they have caused to the community and victims. This also removes an important incentive for defendants to comply with the terms of their diversion: that if they violate probation, they may be found guilty and sentenced on the underlying charge. SB 817 also removes the ability for the Court to revoke an offender from a pre-plea diversion program if their probation lapses without completion. Currently, the law allows the court to set a hearing to revoke probation or enter a verdict of guilty or to extend probation. SB 817 would only allow the court to dismiss the proceedings or to extend the period of probation, removing the ability for the court to enforce compliance with pre-plea programs, which is the authority they have with any other sort of supervision.

SB 817 – Adds a significant burden to judges, prosecutors, and defense attorneys
SB 817 allows Class C non-person felonies or any misdemeanor, other than DUII, to receive a pre-plea diversion, not just first-time offenders. A person with a significant criminal history would still be eligible for a pre-plea diversion, or additional pre-plea diversions if they've already received one. Because such an outcome is beneficial for defendants, a defense attorney would be constitutionally obligated to argue for pre-plea diversion. Thus, each case will entail a fully litigated hearing as to whether the defendant should receive a pre-plea diversion. At the hearing, each defendant will present mitigation, while the prosecution will lay out all prior convictions, probation history, evidence, and victim statements, and ultimately the judge will decide. Given the number of cases this will affect, there would be a large increase in pre-trial hearings.

Further, SB 817 will not reduce the workload of attorneys or the Court. Where a pre-plea diversion program can be imposed, prosecutors will still have to fully review a case, while defense attorneys must review all evidence and file any appropriate motions. Additionally, because SB 817 will require a mini-trial if a person violates probation, defense attorneys and prosecutors will need to prep a case for trial, potentially years after the case has otherwise been resolved. This would potentially be harmful to victims and the public because it will be difficult to litigate so many older cases that fail out of pre-trial diversion. For example, in a domestic violence case, a defendant who gets pre-plea diversion and fails two years later will have the right to a trial. The victim would have to re-open the memories of trauma, work with the district attorney, and potentially testify. Presenting such cases could be difficult because evidence may be lost and witness memories could be impaired due to the passage of time.

SB 817 – Removes the ability of the prosecutor to monitor who has access to pre-plea diversion programs to ensure community and victim safety
Removing prosecutors as a participant who can object to pre-plea diversion programs poses a risk to victims and the community. Prosecutors can review the entirety of a case file, criminal history, and work with victims to determine the level of risk an offender presents, to determine whether a pretrial diversion program is appropriate for their safety and the community's.

SB 817 – Silent on Supervision
SB 817 does not address who will supervise pre-plea diversions. Some counties will not have funding for supervised probations and judges do not have the time to monitor such a large caseload adequately. Allowing non-treatment court diversion programs will significantly increase the burden on probation offices and judges, whereas specialty courts have this ability and funding.

ODAA urges the committee to oppose SB 817.