



March 14, 2023

Chair Prozanski, Vice-Chair Thatcher, and Members of the Senate Committee on Judiciary

My name is Charlie Peirson. I'm a public defender in Portland in my 8th year, and I am Vice President and PAC Chair of AFSCME Council 75. I encourage you each to support Senate Bill 817. It is a common-sense adjustment to an under-utilized means of resolving criminal cases. It will increase efficiency and allow public defenders to offer the required level of service to more people, it will increase equity by reducing disparities in plea resolutions, and it will empower courts to properly balance the interests of accountability and restorative justice.

I know that many in this room are already invested in projects to restructure public defense in ways that we all hope will produce a system that meets Oregon's Sixth Amendment obligations to all our residents. Respectfully, we cannot wait.

**SB 817 will create a fast lane for resolving a large number of the most inefficient cases.** Any practitioner can tell you that the DUII Diversion system saves huge amounts of resources for defense providers, courts, prosecutors, and the police and other witnesses involved. As with DUII Diversion, we should expect SB 817's pre-plea probation system to reduce burdens in every quarter. Those accepted will necessarily be those with little to no prior involvement in the legal system whose cases would likely resolve with probation - *even after a trial*. The only incentive those Oregonians have to not take their cases to trial is a reduction in charges or an outright dismissal. SB 817 acknowledges that reality and codifies an option: any eligible person can take their case before a judge and, with input from prosecutors and victims (if any), resolve the case in a way that encourages defendants to take prompt accountability for their actions and to make meaningful amends by completing probation terms set by the court. Such cases could likely be resolved within weeks of issuance instead of months, as we have seen with DUII Diversion and previous experiments with community courts and drug courts. *If a court can offer people a better deal in exchange for early accountability and lasting change, many defendants will take it.*

**SB 817 will empower courts to consider pre-plea probation for any eligible case, even without creating a specialty court.** Current law makes pre-plea probation available only with a prosecutor's consent, and only if the defendant has already been accepted into an existing specialty court. This is too narrow a path. Requiring the existence of a specialty court, and providing prosecutors the absolute authority on entry



locks large numbers of low-level offenders out of this system. Multnomah County doesn't have any specialty courts for people charged with misdemeanors, so instead every one of those cases has to be negotiated on an individual basis. Often the only incentive not to take misdemeanors to trial is the time cost to the defendant. *SB 817 provides for input and objections from prosecutors, makes pre-plea probation available to defendants in counties without applicable specialty courts, and moves the final decisions about the availability and terms of pre-plea probation to the bench, where they belong.*

**SB 817 will reduce inequity by freeing up public defenders and removing roadblocks for non-citizens.** It is well established that BIPOC members of our communities rely on public defenders more than white ones. While any failure to provide for sufficient services is likely to affect minority community members more, it also seems clear that the people most directly being harmed today - those in and out of custody waiting indefinitely for an attorney - are also disproportionately members of minority communities. Another equity problem under the current version of the law is that even with a prosecutor's consent *and* an existing specialty court a whole swath of minority Oregonians cannot participate: those who are not citizens. A guilty plea, even one followed by a dismissal, can and frequently does serve as a bar to entering or remaining in the United States, obtaining visas, obtaining permanent residency, or becoming a citizen. *SB 817 includes a simple technical fix that waives a defendant's right to a trial but does not affect their immigration rights or status: it will prevent deportations and enable rapid resolutions for cases that often involve expensive, time consuming, and complex negotiations.*

**SB 817 won't create new work for prosecutors or defense attorneys.** The entry hearings that happen under SB 817's pre-plea probation structure will require the defense to offer reasons why the court should accept this resolution which will often include what we call *mitigation* work - reasons why this particular resolution is appropriate for this particular case. Prosecutors who object will want to present their reasons for objecting, which will likely include *aggravation* information - reasons why this resolution is not appropriate to this particular case. While these hearings will accelerate the process for both sides, it's important to understand that all of this work is already being done by both sides in every case. It typically comes out in lengthy plea negotiations or in sentencing hearings after a trial, but every competent attorney on either side is gathering this information even before charges are issued. There will also be some opportunities for litigation on failed pre-plea probations, but the prosecution will



never be required to put on additional evidence. The purpose of that provision is to ensure that no conviction happens that is not supported by *legally sufficient facts*. This is important to protect the sanctity of the conviction and to establish a just basis for the finality of that result. While all this may result in attorneys on both sides doing more work up front to resolve cases quickly, it will save tremendous time and resources in those cases overall, freeing attorneys up to handle more cases more professionally.

**SB 817 will encourage parties to prepare to resolve simple cases even if a court denies pre-plea probation.** So much of plea negotiation comes down to mitigation and aggravation. By creating a mechanism to be heard by a court on the record on a motion for pre-plea probation, SB 817 will invite prosecutors and defense attorneys to meet in person, prepared to discuss the pros and cons of their cases. Even if a court does not find that pre-plea probation is an appropriate resolution, savvy practitioners will have come to these hearings equipped to resolve the case - weeks after charging instead of months later.

SB 817 will make fast, fair, reasonable resolutions available to all eligible Oregonians. Yes, those people will benefit, both from speedy accountability and from the opportunity to earn the dismissal of their charges. But it will also benefit the victims of crime, who suffer unnecessarily from delays, and who mostly tell me that what they want is an acknowledgement of what happened and a reason to think it won't happen again. SB 817's adjustments to the existing pre-plea probation system will do just that, and in the process will ease burdens on public defenders, prosecutors, police, courts, and civilian witnesses.

Please vote YES on SB 817.