TO: **Rep. Jason Kropf, Chair**
Members of House Judiciary Committee

FR: **Melissa Marrero**
On behalf of OR District Attorneys Association

RE: **OPPOSITION OF HB 3051-3**

Thank you for the opportunity to provide testimony from the Oregon District Attorneys Association in opposition to House Bill 3051-3.

ODAA is strongly opposed to House Bill 3051, including the -3 amendment, and view it as a strong step in the opposite direction of identifying solutions to Oregon's behavioral health crisis and further away from a public safety led solution. We have been very active participants in the Aid & Assist workgroup, and appreciate the convening of that table. We have approached those conversations with a solution-oriented lens and have sought compromise where appropriate and modifications that can both help relieve the stress at the Oregon State Hospital, but also continue to protect communities and the mentally ill defendants who are cycling through our jails. HB 3051-3 disregards the work of that group and the significant concerns that have been raised over the past few months. It is short-sighted and disregards the reality of what is happening in our courtrooms and communities, and it places the communities, victims and defendants at risk.

We have a number of major concerns with the bill and the -3 amendments. We have shared these concerns in the workgroup, and its unfortunate none of them are addressed in the amendment before you today. Some of our most significant concerns include:

First, HB 3051 -3 limits competency restoration at the Oregon State Hospital, consistent with the current federal court order. Under HB 3051-3, a defendant charged with an A misdemeanor or contempt charge may only spend 90 days at OSH. A person charged with a felony may only receive treatment at the hospital for 6 months and on a murder case, a defendant may only spend 360 days at the hospital. These timelines are simply too short. In both the OHA

workgroup that met last summer and in the current aid and assist workgroup, stakeholders have largely agreed that these timelines are not appropriate. Under the federal court order, which the HB 3051-3 time limits mirror, the data shows and practitioners have observed that individuals are being restored at lower rates than before. More cases are being dismissed. Dangerous individuals are being released into our communities and new crimes are occurring. Defendants are cycling in and out of the jails, with little to no improvement. And new victims are being created. None of this is working to solve the capacity issues at the State Hospital. We are more than two years into the limits placed on Oregon by the federal court order and the Oregon State Hospital is still not in compliance. These timelines are not the fix for this issue. They are, however, compromising public safety.

Additionally, HB 3051-3 gives credit for days spent in jail prior to commitment to OSH and for time treating in the community, and caps restoration time at that which a defendant could face if convicted in all non-M11, non-murder charges. This effectively negates the ability to restore defendants at all if they've spent any time in custody prior to going to the hospital. Further, those who are not being released from the jails pending trial are often our most dangerous individuals, so HB 3051-3 effectively negates our ability to restore some of most dangerous individuals.

It may help to demonstrate how this works in the context of an actual case: Imagine that you have a defendant who is charged with domestic violence assault IV. Although DV cases often have significant lethality factors and victims who are at significant risk, DV Assault IV is a misdemeanor. Under the limitations proposed in the -3 amendment, a defendant would be limited to 90 days at OSH. If a judge had determined that there were significant safety risks in releasing this defendant and thus, he was held in jail pending trial, and if after 75 days in jail (receiving no treatment), defense counsel raised competency concerns and this defendant was deemed unable to aid and assist, those 75 days spent in custody would count against the 90-day max and there would be no real ability to even attempt to restore the person. The state would then be faced with the completely unacceptable options of either releasing a dangerous DV defendant to the community, placing his victim at risk, or facing a dismissal motion for the case because we are unable to restore them in the jail. These simply cannot be our only choices.

To the extent that there is a carve-out for M11 and murder cases in the proposed bill, indicating that jail time and community restoration time do not count against M11 or murder cases, that carve-out is insufficient. DV assault, felony assault III, sexual abuse II and III, violations of restraining orders (which also indicate high lethality), stalking, menacing, coercion, and attempted crimes such as attempted rape, attempted kidnapping, and attempted sex abuse would not fall under the proposed carve out. We have raised these concerns several times within the workgroup and its unfortunate they have not been addressed in the -3 amendments.

Another major concern we have with this bill is that HB 3051-3 creates community restoration limits (or time limits on the amount of time an individual can spend in community treatment and not the state hospital) that are too short and with no guardrails to ensure the functionality

of those programs. There are no provisions to protect those timelines from a defendant who refuses to participate or who would fail to appear for treatment, medication or a subsequent evaluation. Passage of this bill would limit our ability to hold offenders accountable, and at the same time would create incentive for defendants to not participate in their restoration efforts. Under the proposed scheme, a defendant could earn a dismissal by simply riding out the clock. We have seen defendants state as much in open court already.

Further, HB 3051-3 directs forensic evaluators to opine on whether a person is substantially likely to be found competent within the timelines allowed in statute, as opposed to within the foreseeable future. The aid and assist workgroup discussed this extensively, and concerns about this were raised not only by prosecutors, but by mental health professional and judges as well. Such a modification would be based on arbitrary timelines without clinical significance and would result in defendants being found unable with no likelihood of restoration, when in reality, there is a substantial likelihood of restoration. It would lead to significant additional litigation and would disincentivize reliance on historical data. And critically, it would undercut district attorneys' ability to utilize the extreme danger civil commitment option for the most dangerous defendants because it would significantly reduce, if not eliminate, the ability to prove that a qualifying mental disorder is "resistant to treatment." In order to meet that standard, we must demonstrate that all reasonable psychiatric treatment was exhausted. Under HB 3051-3, we would be unable to do so in many cases where there exists an extreme risk to the public.

Finally, and of critical importance, HB 3051-3 does not preserve the "safety valve exception" that currently exists under the federal court order. Under that exception, the state can petition the court to extend the available restoration time at OSH on cases involving violent felonies when there is danger to the public or a victim, the statutory requirements for hospital commitment are met and there is a substantial probability that additional time in the hospital will lead to restoration. That safety valve is nonexistent in this bill. District attorneys and many courts would detail how detrimental the federal court order has been to the administration of justice and to our ability to simply do the right thing in these cases. Unfortunately, HB 3051 and the -3 amendment is worse.

HB 3051 would be devastating to the state's ability to restore incompetent defendants and to keep the community safe. With that said, we've spent hours upon hours discussing these issues and brainstorming solutions within the workgroup. We've also met separately with representatives of OCDLA to discuss common-sense solutions that work for Oregon. And while we're not at agreement yet, we're working in earnest to get there.

We've also proposed solutions through our own bill, House Bill 2470, some of which have broad support within the workgroup and some of which would require some difficult discussions and decisions, but that we believe would move Oregon in the right direction. These include:

- Expanding capacity to treat defendants in inpatient settings, both at the hospital and in communities, recognizing that not all defendants who do not need a hospital level of care can be treated in the community;

- Allowing the treatment of defendants in the jails so that individuals do not languish while awaiting transport to the hospital and so that individuals do not decompensate when returned to the jails after being found able;
- Expansion of the Oregon Public Guardian program to specifically address the aid and assist population. They've had incredible success in connecting aid and assist defendants with services and reducing, if not eliminating, recidivism for those who come under their guardianship. There is consensus among the workgroup members for this concept;
- Improved information sharing so that we can make critical decisions with better information and under appropriate timelines.

I want to assure the Committee that we're working in earnest to find common-sense solutions that will actually work for Oregon. Codifying the federal court recommendations through HB 3051 is not the right solution. It would detrimental to public safety and it would be detrimental to the well-being of many defendants. It would run against the very hard work being done within the workgroup, for which we're very thankful.

We respectfully request that you oppose House Bill 3051-3 and look forward to further engagement on these issues.