From ODAA & OCDLA:

In 2024, the Oregon Supreme decided *State v. Meiser*, 372 Or 438, (*Meiser IV)* which was the fourth in a series of cases involving a defendant who asserted the GEI defense, but who had a co-occurring personality disorder.

The Court concluded that the legislature "did not intend to impose a quantitative requirement on the connection between a defendant's mental disease or defect and their lack of capacity."

ODAA introduced HB 2471 in response to *Meiser IV*. ODAA proposed that the qualifying mental disorder be "independently sufficient by itself to cause the incapacity." OCDLA indicated their opposition to the bill – to the language itself and the need for a change – advocating to delay the change until data could be collected.

At the Public Stakeholders Workgroup, Chair Kropf questioned whether it would be an appropriate use of the PSRB resources for certain defendants, and asked ODAA and OCDLA to explore the but-for analysis in *Meiser IV*. Chair Kropf also indicated that he would like a standard that evaluators would find workable.

Under that direction, ODAA and OCDLA convened a table to negotiate with certified forensic evaluators, to ensure that whatever standard was ultimately proposed was workable for evaluators, as well as prosecutors and defense attorneys. We did so collaboratively, meeting and consulting with a team of evaluators who were selected by both ODAA and OCDLA, and comprised of evaluators who work for the Oregon State Hospital Forensic Evaluation Services and also independent evaluators.

The language in 2471-A is the result of those meetings and negotiation. There are a few items that we'd like to jointly place on the record regarding the intent:

1- By its terms, ORS 161.295(1) requires a connection between the person's lack of capacity and the person's qualifying mental disorder. The lack of capacity must be "a result of" the qualifying mental disorder. House Bill 2471-1 does not use the term "as a result of" in its drafting, but rather lists the causal requirements for the defense. This was a drafting choice by LC and is not intended to do away with the nexus requirement.
2- The intent of the legislation is to create a but-for standard of causation, understanding that there may be more than one but-for cause of the lack of capacity. Subsection (b) is in place because, while there may be more than one but-for cause of the lack of capacity, in order for the GEI defense to be asserted, a non-qualifying mental disorder cannot be the primary cause of the lack of capacity. The interplay of these two provisions will allow defendants who have both qualifying and non-qualifying mental disorders to assert the defense when appropriate, but will ensure that a non-qualifying disorder is not the primary cause of the incapacity. The existence and contribution of a non-qualifying disorder does not automatically disqualify a person from the defense as long and (a) and (b) are satisfied.
3- Subsection (c), which requires that the lack of substantial capacity cannot be a result of voluntary intoxication with other qualifying and non-qualifying mental disorders, is intended to codify the legal standard announced in *State v. Pevereri*, 192 Or App 229. *Pevereri* was a 2004 case that held that the GEI statute "does not provide that the defense is available upon proof of a lack of capacity as a result of mental disease or defect in combination with other factors such as voluntary alcohol consumption." The intent is that the voluntary intoxication cannot combine

with other qualifying or non-qualifying disorders to produce the lack of substantial capacity that is the basis of a GEI defense. But the use or presence of intoxicating substances in a person's system does not per se make the defense unavailable. There may be cases where a certified evaluator finds that the intoxication is not a causal contributor to the lack of substantial capacity, and that person would still be able to argue that they were guilty except for insanity. This codification of the *Pevereri* standard does not change how evaluators make an opinion about the role of controlled substances. In other words, the way the role of controlled substances are evaluated should be the same as before the *Meiser* line of cases was decided. This legal standard has been applied for more than two decades without issue, and is what the language of House Bill 2471-A is intended to codify.

4- The changes to House Bill 2471-A do not change or impact what constitutes a qualifying mental disorder or a non-qualifying disorder. Since the enactment of our GEI statute in 1971, there has been substantial caselaw that helps evaluators and legal practitioners understand what is a qualifying mental disorder as opposed to non-qualifying. Nothing about House Bill 2471-A is intended to disturb that case law in any way. It is expected that things like personality disorders, pedophilias, paraphilias, sexual conduct disorders, compulsive behavior disorders, alcohol and drug dependency disorders, substance-induced psychosis, and borderline personality disorder would be non-qualifying disorders. This is not an exhaustive list, but to the extent that there may be any question in the future about whether this bill changed the state of the law as it relates to what constitutes a qualifying mental disorder, it does not.

Thank you for your time, and we are happy to answer any questions.