

Subject: Public Comment on OAR 859-030-0010, HB 2471, and 14th Amendment Compliance

I am submitting this comment regarding the proposed permanent adoption of changes to **OAR 859-030-0010**, as well as recent legislative changes under **House Bill 2471 (2025)**. While the Board's intention to clarify jurisdictional criteria in response to evolving case law (*Rinne v. PSRB*, 326 Or App 777 (2023) and *State v. Meiser*, 372 Or 438 (2024)) is understood, the current language of the rule and recent statutory amendments under HB 2471 raise significant constitutional concerns, particularly regarding the Fourteenth Amendment.

Under *Rinne*, the Oregon Court of Appeals emphasized the necessity of a direct causal link between a qualifying mental disorder and dangerousness to justify continued jurisdiction by the PSRB. Although *Meiser* and HB 2471 subsequently altered some legal standards, the removal of a clear causal nexus between mental disorder and danger from the jurisdictional criteria risks indefinite and potentially unconstitutional detention of individuals whose dangerousness is not demonstrably tied to their mental disorder.

The Supreme Court in *Foucha v. Louisiana*, 504 U.S. 71 (1992), firmly established that continued commitment requires clear evidence of both mental illness and **current** dangerousness due to that illness. The current rule, which allows dangerousness to be established through a combination of qualifying and non-qualifying conditions, potentially dilutes this constitutional standard. Additionally, the amendments introduced by HB 2471, particularly the changes to ORS 161.295, further complicate this issue by allowing for broader interpretations of causation that may infringe on constitutional protections.

To comply fully with constitutional due process protections, the rule must clearly articulate that the dangerousness which justifies continued PSRB jurisdiction must directly arise from the qualifying mental disorder itself, and not from non-qualifying conditions or general risk factors.

To address these constitutional concerns, I propose amending the language to explicitly require evidence of a substantial and direct causal relationship between a qualifying mental disorder and an individual's dangerousness. Such language ensures compliance with the Fourteenth Amendment and aligns Oregon administrative rules with established constitutional precedents.

Thank you for your consideration.

Respectfully,

Preston J. Berman



Mental Patient Advocate

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