Dear Program Committee:

Although it is clear that juveniles have a right to raise a mental disease and defect defense in a delinquency proceeding, see, In the Matter of LJ, 26 Or App 461 (1976), there is no procedure to follow if the court allows this defense. In the past, courts have either amending the delinquency petition to a dependency petition and put the youth in the custody of SCF or have used ORS 419C.507 to try to fashion a remedy. However, both the State and juvenile judges have also expressed great reluctance to use either of these approaches as neither approach provides a constant and consistent procedure for monitoring youth who have allegedly committed an act which would be a serious crime if committed by an adult and who suffered from a mental disease and defect at the time of the alleged incident. Defense attorneys have also expressed a reluctance to raise the defense as there is no clear remedy for successfully raising the defense, making it difficult (if not impossible) to discuss the defense with the youth and the youth’s family.

Therefore, it is possible that youth who could have and should have been able to avail themselves of a mental disease and defect defense have been adjudicated in juvenile court on delinquency proceedings in the same manner and with the same results as a youth who is not suffering from a mental disease or defect. It is also possible that these youth with severe mental health problems, who could have been diverted from the juvenile justice system, are currently among the number of very troubled youth in the Oregon Youth Authority close custody system. Oregon Youth Authority (OYA) has acknowledged that it is ill-equipped to treat youth offenders with severe mental illnesses, even though the number of those youth in the OYA close custody system has been increasing.

Prior to the 2001 legislative session, a group was formed at the request of Senator Kate Brown to discuss whether a PSRB system could be added to the juvenile system. This group was chaired by Mary Claire Buckley, director of the PSRB and included members of the Multnomah County District Attorney’s office, Juvenile Rights Project, the Oregon Criminal Defense Lawyers’ Association, OYA, SCF, Mental Health, The Oregon Advocacy Center and community members. This group did a tremendous amount of work, but it was clear that the discussions needed to continue past the 2001 legislative session.
While this group all agreed that some process was needed to clarify what should happen to youth who were suffering from a mental disease or defect at the time of the alleged delinquent act, there still needs to be further discussion about whether a PSRB-type process would be the best fit with the juvenile system. If a PSRB-type process should be developed, the next steps then are drafting the rules and procedures for such a system within the juvenile system as well as discussing the nuts and bolts realities of such a system, such as who should be responsible for the community placements within such a system. Therefore, the scope of this project could be quite broad and sweeping, depending upon the proposals suggested by the workgroup.

This is a good subject for the Oregon Law Commission because all of the members of the workgroup are working on the Juvenile Code Revision workgroup and such a system would have a far-reaching effect in the juvenile system. This has been a significant gap in the juvenile justice system for a very long time, yet no person or group has previously stepped up to deal with this complicated problem.

The project participants should include all of the members of the prior workgroup. It is important for Mary Claire Buckley to continue to chair this project. It would be helpful for more legislative members to be added to the group, as any proposal coming out of this workgroup will need legislative support to be successful.

Thank you for your consideration of this proposal.

Kathie Osborn

Page 2 of 2