



August 9, 2023

Federal Order Frequently Asked Questions

Disclaimer: These FAQs are not legal advice and do not constitute legal authority.

On September 1, 2022, Oregon Federal District Court Judge Michael Mosman issued an order (the original “Mosman Order”) intended to bring Oregon State Hospital (OSH) into compliance with the 2002 Mink injunction, which requires OSH to admit defendants under aid and assist orders for competence restoration within seven days. The Mosman Order was sought by Disability Rights Oregon (DRO) and Metropolitan Public Defender (MPD) and is designed to reduce time to admission for people waiting for hospital care while in jail by: (1) prioritizing forensic admissions until the hospital reaches compliance with the Mink injunction, and (2) limiting the length of restoration to ensure restoration services are used for its constitutional purposes.

On July 3, 2023, after extensive mediation sessions with amici state court judges, district attorneys, and counties, Judge Mosman issued an amended order (the “July 3 Mosman Order”) to clarify the original order and to include new provisions concerning admissions and discharges designed to address public safety concerns raised by amici and move further towards compliance with the Mink injunction. The July 3 Mosman Order subsumes the previous Mosman Order and is now the controlling federal order. Below, all references to the Mosman Order are to the July 3 order.

Below is a list of frequently asked questions related to the Mosman Order. This includes questions asked during a virtual townhall held on September 6, 2022, by Oregon Health Authority (OHA) with DRO and MPD during OHA’s regularly scheduled Behavioral Health stakeholder meeting. OHA issued a prior FAQ on September 16, 2022, following that town hall. As the original September 1 Mosman Order has been implemented and amended, additional questions have been raised. OHA provides updated FAQs below, which were compiled in consultation with plaintiffs and the federal court’s neutral expert, Dr. Debra Pinals.

General Provisions of the Mosman Order

1. When may OSH admit defendants whose most serious charge is only a misdemeanor?

The Mosman Order distinguishes between defendants under aid and assist orders whose most serious charge is a person misdemeanor from those whose most serious charge is a non-person misdemeanor.

Person Misdemeanors

The Mosman Order defines “person misdemeanors” as those listed in OAR 213-003-0001(15) and certain punitive contempt cases, including contempt based on a Family Abuse Prevention Act Restraining Order issued under ORS 107.700 et seq., an Elderly Persons and Persons with Disabilities Abuse Prevention Act Restraining Order under ORS 124.005 et seq., a Sexual Abuse Restraining Order under ORS 163.760 et seq., and an Emergency Protection Order under ORS 133.035. Although the Mosman Order cites to state statutes to define person misdemeanors eligible for admission to OSH, the parties’ and expert’s understanding is that the intent of the Order is to treat analogous municipal crimes similarly, such that defendants charged with person crimes under municipal laws are eligible for admission into OSH. Similarly, consistent with the intent of the Mosman Order, contempt based on violation of a no-contact order in a domestic violence case would be considered a person misdemeanor, as the crime is analogous to the violations of restraining order charges listed in the Mosman Order.

For defendants whose most serious charge is a person misdemeanor, the maximum duration of commitment at OSH is the maximum permissible sentence for the underlying offense or 90 days, whichever is shorter. This maximum period of commitment under the Mosman Order is the permissible in-patient length of restoration at the hospital (LOR-H).

Non-Person Misdemeanors

The Mosman Order does not allow OSH to admit for restoration defendants charged only with non-person misdemeanors. These are any misdemeanors that do not meet the definition of “person misdemeanor” described above.

Statutory End of Jurisdiction

Under the aid and assist statutes, defendants with aid and assist orders whose most serious charge was a misdemeanor (whether person or non-person) could remain at OSH for one year or the maximum sentence the court could have imposed if the defendant had been convicted, whichever was shorter. This is referred to as the statutory end of jurisdiction (EOJ).

If the statutory EOJ is shorter than the LOR-H permitted by the Mosman Order, then OSH must discharge the defendant pursuant to the statutory EOJ.

Both before and after the Mosman Order, OSH may discharge defendants under aid and assist orders sooner when they are determined to be either “able” or “never able” to aid and assist in their own defense, or when they are determined not-able but no longer in need of hospital level of care (HLOC) and if the court places them on community restoration or dismisses their charges.

2. What has the Mosman Order changed for defendants under aid and assist orders charged with felonies, Ballot Measure 11 felonies, and “violent felonies?”

For defendants under aid and assist orders who are charged with felonies, the Mosman Order provides that the maximum lengths of inpatient restoration at OSH are as follows:

- 6 months for all non-Ballot Measure 11 felonies;
- 1 year for Ballot Measure 11 felonies (listed in ORS 137.700(2));
- Up to statutory EOJ of 3 years (at 180-day increments) under extremely limited circumstances for “violent felonies.” This is explained further below.

Violent Felonies

The Mosman Order provides a narrow mechanism for an elected District Attorney to petition (within 30 days of Defendant’s discharge date as set out in OSH’s Notice of Discharge) for an extension of the LOR-H by 180 days. Before issuing an Order to Extend, it is OHA’s understanding that the state court in that county must hold a hearing on such a petition, with an opportunity for the defendant’s position to be heard. At the hearing, the state court may issue a written order to extend the original LOR-H 180 days past the LOR-H discharge date only if it makes the following findings based on clinical evidence presented:

- Defendant is charged with a “violent felony” pursuant to ORS 135.240(5), defined as an offense where there was actual or threatened serious physical injury to the victim, or a felony sexual offense;
- There is clear and convincing evidence of a danger of physical injury or sexual victimization to the victim or a member of the public if Defendant is discharged from OSH;
- Defendant requires hospital level of care due to acuity of symptoms of their qualifying mental health disorder or due to public safety concerns, and appropriate community restoration is not present and available in the community; and
- Based on current/recent evidence, there is a substantial probability that continued commitment at OSH will lead to a finding that Defendant has gained or regained fitness within the 180-day extension.

Consistent with the other timelines in the Mosman Order, OHA’s understanding is that the court must issue an Order to Extend at least five business days prior to the date of discharge, consistent with other timelines set out in the Mosman Order.

State-Court Review of Extension of LOR-H

Beyond the initial one-year commitment and the statutorily required reviews, the court must review any LOR-H extension request every 180 days to determine if another 180-day commitment is appropriate. In no circumstances may the commitment be extended beyond the statutory EOJ. OHA’s understanding is that any additional 180-day extension must be requested by the District Attorney, with current evidence as outlined above, and that the defendant must have an opportunity to object.

Statutory End of Jurisdiction

Under the aid and assist statutes, defendants charged with any felony could be committed for up to three years, or the amount of time equal to the maximum sentence the court could have imposed if the defendant had been convicted, whichever was shorter. This is referred to as the statutory end of jurisdiction (EOJ).

If the statutory EOJ is shorter than the LOR-H allowable under the Mosman order, then OSH must discharge the defendant pursuant to the statutory EOJ.

Both before and after the Mosman Order, OSH may have and still may discharge defendants under aid and assist orders as soon as they are determined to be either “able” or “never able” to aid and assist in their own defense, or when they are determined not-able but no longer in need of hospital level of care and the court places them on community restoration or dismisses their charges.

3. Is the Mosman Order in effect?

Yes. The current Mosman Order is in effect and was issued on July 3, 2023.

4. How long is the Mosman Order in place?

The Mosman Order states that it “shall terminate upon the Neutral Expert reporting to the Court that OSH/OHA has timely admitted A&A and GEI patients for at least three consecutive months, and that the termination of this Order would not cause the Defendants to fall back out of compliance. For purposes of this Order, ‘timely admission’ is in accordance with the Ninth Circuit ruling in Mink and means admission within seven days of a state court order delivered to OSH ordering that the patient be admitted [for restoration].” Otherwise, the Mosman Order will expire on December 31, 2023, unless it is renewed by the federal court.

Notification Process

5. Who receives the discharge notification of a defendant committed for restoration required by the Mosman Order, and how does this happen?

In accordance with the Mosman Order, for any person ordered to OSH for restoration, OSH will electronically file a notification letter in the Oregon Judicial Department’s electronic filing service for the patient’s criminal case 60 days before the required discharge date. The defense attorney and deputy district attorney associated with the criminal case should automatically receive the e-filing at the same time as the court. It is the responsibility of the District Attorney’s office and assigned defense attorneys to properly attach the assigned attorney(s) to the case(s) in the e-court system. OSH will email the notification letter to the county mental health office when it e-files the notification with the court. OSH will email municipal courts 60 days before the required discharge date because they are not part of the Judicial Department’s electronic filing service.



6. When are District Attorneys notified of who will be released, and does OSH/OHA notify victims pending defendants' discharge?

Pursuant to the Mosman Order, OSH is required to notify the committing court of the defendant's impending discharge 60 days before the date on which OSH is required to discharge the defendant. This notification is filed in e-court, which notifies the parties of the impending discharge 60 days prior to discharge.

If the District Attorney's office is properly attached to the defendant's case in the Oregon Judicial Department's e-filing system, that office will receive notice at the same time as the court, when OSH e-files the notice. It is the responsibility of the District Attorney's Office to properly attach itself and the assigned deputy district attorney(s) to the case in e-court.

Victim notification is the responsibility of District Attorneys. Under HIPAA and other federal and state confidentiality laws, OSH/OHA cannot legally provide information about its patients, including discharge information, unless otherwise permitted or required by law. See <https://www.hhs.gov/hipaa/for-professionals/index.html>.

7. Can a defendant be found "able" or "never able" to aid and assist in their own defense after the 60-day notice to discharge from OSH is filed?

Yes. A court can find a defendant "able" or "never able" to aid and assist whether they are at OSH or on community restoration. The 60-day notice is only a notification that the hospital restoration period will be ending. The ability of the defendant to aid and assist in their own defense is an independent finding.

8. If the defendant reaches the end of their LOR-H, but OSH has not filed the required 60-day notice, may the defendant remain at OSH until it files the required notice?

No. The Mosman Order sets out the maximum LOR-Hs regardless of whether notice is filed. Notice is a separate requirement. OSH/OHA continues to make every effort to file required notices in every case.

Calculation of Length of In-Patient Restoration at OSH

9. Does the time that defendants are in jail (after the aid and assist order is issued) count towards the LOR-H set out in the Mosman Order?

No. The inpatient length of restoration at OSH set out in the Mosman Order includes only the time that the person is at OSH under a state court order for restoration and does not include time in jail.

10. How is the LOR-H calculated for a defendant when they are committed to OSH under multiple charges? What about multiple cases?

When there are multiple charges in the same case, the defendant's most serious charge determines the defendant's LOR-H. For example, if a defendant is charged with one Class C felony and two Class A misdemeanors, the maximum LOR-H is 6 months based on the Class C felony charge.

The Mosman Order prohibits consecutive periods of inpatient restoration both in the same case and

in different cases unless an initial period of restoration has ended. In other words, if there are several open cases, the LOR-H is determined by the maximum commitment period for the highest charge.

11. Is a defendant who is committed to OSH for restoration subject to the LOR-H limits under the Mosman Order when they are placed in one of the hospital's Secure Residential Treatment Facility (SRTF) units?

Yes. OSH has SRTF units within the hospital. Thus, a person who is admitted to an OSH SRTF unit is subject to the maximum LOR-H under the Mosman Order.

12. For defendants who are 65 and older, or those who have medical complexity, neurocognitive impairment, inability to care for themselves, or limited resources at the end of their LOR-H, is there a plan to avoid return to the streets?

A defendant's age, medical, mental, or cognitive disabilities has never extended maximum lengths of restoration—both prior to and after the Mosman Order. Community Mental Health Providers (CMHPs) and Coordinated Care Organizations (CCOs) will continue to be responsible for locating and connecting appropriate supports for individuals in the community. There may be additional resources through Aging and Persons with Disabilities and/or the Office of Developmental Disability Services.

13. If a defendant is committed to OSH under ORS 161.370, but they do not engage in legal skills training or treatment, does that restart the clock under the Mosman Order?

No. Nothing in the Mosman Order requires the defendant to engage in legal skills training or restoration treatment for the restoration period to have begun. The Mosman Order expressly states that the maximum time from LOR-H runs from the date of admission to OSH.

Recommitment and Commitment on Other Cases

14. If a defendant is discharged from OSH and placed on community restoration, can the court later recommit the defendant to OSH and restart the LOR-H?

No. The Mosman Order limits the maximum LOR-H at OSH to 90 days (person misdemeanors), 6 months (non-BM11 felonies), and 1 year (BM11 felonies). As discussed more fully above in question number 2, there are extremely limited circumstances where an elected DA may petition the court and the court can order a defendant charged with a violent felony to remain at OSH longer, but this would not impact whether a defendant could be returned after being on community restoration. Thus, after the LOR-H at OSH has run, the court may not recommit the person to OSH if they have been continuously on community restoration and are still not competent. Instead, the court could dismiss the case, or place the person in a higher level of community placement for further community restoration. For instance, if the person was in the community, at home, or at a residential treatment home but needed a higher level of care, the court could order the person to continue community restoration at an SRTF, but under the Mosman Order, the court could not recommit them to OSH.



15. When a defendant has reached their LOR-H limit and the court ends their commitment and finds them “able,” if the defendant later decompensates while awaiting trial, and is ordered again to OSH for restoration, does the clock restart for a new LOR-H?

Yes. Where there has been an intervening “able” finding by the court, the Mosman Order allows the defendant to be recommitted for a new inpatient restoration period, provided that the statutory period has not been exceeded.

For example, if a defendant is charged with a person misdemeanor and is committed to OSH, the Mosman Order’s maximum inpatient LOR-H is 90 days. If the defendant is returned to the committing court after that period has been reached, and the court finds them “able,” if the defendant later decompensates pending resolution of the case such that they are no longer able to aid and assist, and the court finds the defendant requires HLOC under ORS 161.370, then the court may recommit them for a period of up to 90 days, provided the defendant has not already exceeded the 1 year statutory period provided in ORS 161.371(5).

If the defendant has met their limit under ORS 161.371(5), under subsection (7) of the statute, the court must dismiss all charges against the defendant and order the defendant discharged, and it may also initiate civil commitment proceedings or appoint a guardian.

16. If a defendant was committed to OSH for restoration and discharged for reaching their LOR-H limit, can a court commit the defendant for restoration on another case?

It depends.

The Mosman Order states, “[f]or purposes of this Order, restoration across multiple charges shall be consolidated and contiguous consecutive periods of restoration should be eliminated unless there are new charges incurred after an initial period of restoration has ended.”

No matter how many cases are pending at the time, the start date of the LOR-H is the date of admission to OSH.

After the defendant meets their LOR-H on the most serious case and is discharged, if there are new charges in a new case, then the court can commit them on the new case under the Mosman Order.

For example, a defendant was committed on Case #1, and was discharged back to the committing court after reaching their LOR-H, and then is charged with a new crime, the court could commit the person on Case # 2.

By contrast, if a defendant was committed on Case #1 in County A and was discharged back to the committing court after reaching their LOR-H, under the Mosman Order, they could not be committed in Case #2 in County B if Case #2 was pending at the same time as Case #1, even if it was brought after Defendant was committed to OSH in Case #1.

17. If a defendant was committed to and discharged from OSH prior to the September 1, 2022 Mosman Order but met the maximum restoration period, can they be re-committed on the same case(s)?

It depends.

The defendant may not be recommitted on the same case if there has been a continuous restoration period.

However, if there was a court finding of “able” after the defendant discharged, and the defendant has since decompensated, they may be re-committed to OSH, and the restoration clock will restart, provided the person has not exceeded the statutory maximum time allowed for commitment under ORS 161.371(5).

Evaluations

18. What happens when the court receives an evaluation that the defendant is restorable even though the LOR-H has run or is about to run?

A forensic evaluation opining on a defendant’s restorability may impact the maximum LOR-H. In the Mosman Order, if an elected district attorney petitions for an extended period of 180 days for restoration in particular violent offenses enumerated in the order, and the court determines after a hearing that there is a substantial probability that the defendant will be restored within the next 180 days, the commitment may be extended. However, if the evaluator opines the defendant does not have a substantial probability of being restored within the next 180 days at OSH, and this evidence is persuasive to the judge, then in accordance with the Mosman Order, the defendant’s LOR-H must not be extended. Because of this, the evaluators will be issuing an opinion of whether there is substantial probability that the defendant will be restored within the next 180 days (in accordance with the Mosman Order) and within the foreseeable future (in accordance with the statutory language). Prior to the Mosman Order, an evaluation would not have impacted the maximum statutory end of jurisdiction. In either case, if the court receives an evaluation and the court finds the defendant is restorable regardless of the charges, and the allowable LOR-H has been reached, the court may still order the defendant to community restoration.

19. When a defendant has more than one case, with one case that is eligible for admission to OSH under the Mosman Order, but another case that has only non-person misdemeanors and is ineligible for commitment at OSH, may the court rely on the competency evaluation from the eligible case and apply it to the ineligible non-person-misdemeanor case?

Courts will need to determine whether they can extend a competency evaluation in one case to another.

20. When a defendant is admitted in one case but is ineligible for admission in another case under the Mosman Order, may a court order community restoration (CR) in the ineligible case and order OSH to evaluate the defendant in the CR case?



While a court may order a defendant to engage in community restoration in the “ineligible” case (e.g., a nonperson misdemeanor case that is ineligible for OSH admission under the Mosman Order) concurrent to the case in which a defendant is admitted to OSH, if the court orders OSH to conduct the evaluation in the ineligible case as part of community restoration, the timing of the evaluation will be prioritized scheduled according to the current prioritization policy outlined below. This may result in an evaluation in the CR case being conducted and filed significantly later than the evaluation in the case in which Defendant is admitted to OSH.

OSH Prioritization of Competency Evaluations:

OSH will conduct evaluations after OSH patient evaluations are completed, in the following order of priority:

- Defendants in jail with ORS 161.370 orders;
- Defendants in jail with ORS 161.365 orders;
- Defendants in jail with ORS 161.315 orders;
- Defendants in the community with ORS 161.370 orders;
- Defendants in the community with ORS 161.365 orders.

Thus, if a defendant is admitted on a felony charge, with an LOR-H limit of six months but is not admitted on a nonperson misdemeanor case but ordered to CR on the nonperson misdemeanor case, OSH will evaluate and file the report on the felony case within 90 days of admission to OSH, pursuant to ORS 161.371. The evaluation on the nonperson misdemeanor case will be scheduled only after all inpatient and jail evaluations have been completed.

21. Does OHA have any plans to assist with community-based evaluations to determine whether defendants discharged to community restoration are being restored?

OHA has provided funds to CMHPs to coordinate periodic assessments of capacity to aid and assist with the appropriate court. In addition, OSH’s Forensic Evaluation Service (FES) assists with community evaluations by conducting hundreds of community restoration evaluations every year.

Medication

22. If OSH has said that a defendant cannot be restored unless they are involuntarily medicated (“med never”), will OSH keep the defendant past the maximum LOR-H if the Sell (involuntary medication) hearing results in court-ordered medications?

No. A Sell Order does not impact the length of inpatient restoration limits set out in the Mosman Order.

23. What are the types of “involuntary medication” orders, and how do they impact a defendant’s ability to be placed in the community?

There are two different types of “involuntary medication” orders. One is the result of an administrative process where the defendant lacks legal capacity to consent to psychiatric medications, or to address grave disability and dangerousness, and is not for the purpose of

restoring a defendant's ability to aid and assist. The second is a Sell order, requested by the DA and ordered by a circuit court after a hearing, and is for the purpose of restoring a defendant's ability to aid and assist.

The first type of order, more appropriately called an "informed consent" order, is issued pursuant to an administrative process known as a Harper proceeding. In these cases, a neutral decision maker (an administrative law judge) decides whether there is good cause for OSH to medicate a defendant who lacks the capacity to provide informed consent to agree to take a psychiatric medication, and for the purpose of addressing a grave disability and dangerousness. This process cannot legally be used to restore a defendant's ability to aid in their own defense. The neutral decision maker cannot order involuntary medication if the defendant has capacity to provide informed consent to the medications recommended by OSH, which is a substantially lower legal standard than whether someone can aid and assist in their own defense.

An order issued pursuant to a Harper proceeding does not necessarily mean the defendant is unwilling to take medications. OSH is legally required to initiate the hearing if the defendant lacks the ability to provide legal informed consent to psychiatric medications. Many defendants are willing to take psychiatric medications but are under an informed consent order based on their lack of capacity to give informed consent. Thus, the term "involuntary medication" order is a misnomer because the defendant may be willing to take medications but lack legal capacity to consent. Because defendants may be willing to take their prescribed medications in the community, an informed consent order should not be a bar to placing them in the community. However, where there is concern that a defendant is unwilling to continue to take prescribed medications in the community, a guardianship is the best option to provide substitute informed consent of prescribed medications in the community.

An "involuntary medication" order is a Sell Order, where the District Attorney must request that the court order OSH to administer psychiatric medications specifically to restore the defendant's capacity. While there are several criteria that must be met for the court to issue a Sell order, the ability to provide informed consent is not a legal prerequisite to a Sell Order, nor is there a prerequisite that the person have a grave disability or be dangerous.

Discharges and Discharge Practices

24. How many people have been discharged because of the Mosman Order limits on inpatient restoration at OSH?

Prior to the September, 2022 Order, OSH projected 70% of individuals under aid and assist orders would discharge based on competency findings ("able," "never able"), or because of moving to community restoration (because the person no longer is in need of HLOC), or because the court would have dismissed the charges; and that the remaining approximately 30% would discharge for reaching the LOR-H limit set out in the Mosman Order.

As of the end of June 2023, the percentages have been: 74.1% of individuals under aid and assist orders were discharged based on competency findings or because the court ordered community

restoration or dismissed the charges, and 25.9% discharged because they reached the end of the restoration limit. See the below Restoration Limit Report for more detail.

OSH Restoration Limit Report (data current as of 08/01/23)

Cohort 1			Restoration Limit Notice Outcomes (total since 9/1/2022)			Discharge Reasons (total since 9/1/2022)						
	At OSH as of 9/1/2022	At OSH as of 8/1/2023	30-Day RL Notices Sent	Discharged Prior to Meeting 30-Day RL Notice Period	Discharged After Meeting 30-Day RL Notice Period	Found Able	Found Never Able	Community Restoration	Charges Dismissed or Released	Discharged After Meeting 30-Day RL Notice Period	Jurisdiction Statutory End of	Total Discharged
Misdemeanor	85	0	51	25	26	18	2	29	7	26	3	85
Felony	217	1	100	30	69	68	13	56	10	69		216
Violent Felony	107	14	41	14	15	39	29	5	2	15	2	93
Total	409	15	192	69	110	125	44	90	19	110	5	394

Cohort 2			Restoration Limit Notice Outcomes (total since 9/1/2022)			Discharge Reasons (total since 9/1/2022)						
	Admitted since 9/1/2022	At OSH as of 8/1/2023	30-Day RL Notices Sent	Discharged Prior to Meeting 30-Day RL Notice Period	Discharged After Meeting 30-Day RL Notice Period	Found Able	Found Never Able	Community Restoration	Charges Dismissed or Released	Discharged After Meeting 30-Day RL Notice Period	Jurisdiction Statutory End of	Total Discharged
Misdemeanor	369	93	278	93	123	64	18	56	12	123	3	276
Felony	526	202	144	42	48	165	22	78	11	48		324
Violent Felony	161	87	5		1	61	10	1		1	1	74
Total	1056	382	427	135	172	290	50	135	23	172	4	674

25. Has the Mosman Order caused an increase in readmissions to OSH?

No. Out of the 250 patients under aid and assist orders who have been discharged for reaching the LOR-H limit between September 1, 2022, and June 30, 2023, only seven individuals (2.8%) were readmitted within 90 days. The data indicates that the 90-day readmission rate has declined, with the overall 90-day readmission rate at 3.6% over that same time period. See the below tables for more detail.

Readmission of Individuals under Aid and Assist Order: Average Per Month

Year	Average per Month		
	90-Day Readmits	Discharges	Readmission Rate
2017	3.1	52.2	5.9%
2018	4.3	56.0	7.7%
2019	3.2	55.8	5.7%
2020	2.3	51.1	4.6%
2021	2.9	63.3	4.6%
2022	3.3	75.4	4.4%
2023 (Jan-Jun)	3.8	102.2	3.7%

Readmission of Individuals under Aid and Assist Order: Average Per Month

Pre and Post September 2022 Order

New Federal Order Impact	Average per Month		
	90-Day Readmits	Discharges	Readmission Rate
Pre (Jan 2017 - Aug 2022)	3.2	57.3	5.6%
Post (Sep 2022 - Jun 2023)	3.5	96.5	3.6%

26. Will OSH provide clinical documentation of the defendant's clinical progress and needs for every defendant discharged under the Mosman Order?

Yes. In addition to statutorily required evaluations and aid and assist progress reports, OSH provides the following:

OSH provides clinical information concerning each defendant to CMHP's on admission, and at days 14 and 30, and then every 30 days after for the length of a patients' stay. The CMHP is responsible for collaborating on discharge with the OSH social work department, and OARs require that a CMHP have contact with the OSH social worker or defendant monthly. Prosecutors, defense lawyers, and the committing courts are encouraged to work with their local CMHPs as early as possible to identify each defendant's needs and barriers to discharge, to identify appropriate community resources and/or placements for those patients who will be returning to the community.

If OSH has determined a defendant no longer requires HLOC, OSH will notify the CMHP, parties, and court of that determination by filing a notice with the court. The notice includes a LOCUS

assessment that identifies the appropriate level of placement as well as supports that may be needed. If OSH has not made an HLOC determination before a defendant's LOR-H expires, OSH will complete and submit a competency evaluation as required by statute.

In addition, as of the Mosman Order, OSH will now file Clinical Progress Updates with HLOC determinations for those individuals assessed as Ready to Place, and 30 days prior to discharge for all defendants. These clinical progress updates will contain the following information:

- Current clinical status;
- Restoration services provided at OSH (which includes medication and group/individual therapy approaches);
- Risk behaviors observed during the last 30 days of hospital stay; and
- Support and service recommendations for the community.

As of the Mosman Order, OSH will now also file a Continuing Care Discharge Plan (CCDP) with the committing court at discharge. The CCDP provides information about medication and other treatment provided to the defendant, current symptoms, risk behaviors observed, and recommendations for supports and services in the community. This information is already provided routinely at discharge to the county mental health program and the county jail medical personnel.

27. When defendants are discharged, will they come with a “never able” or “able” finding? Will defendants be discharged with a “not able” finding?

When the defendant is committed to OSH under ORS 161.370, they are evaluated by an OSH evaluator. That evaluation is not altered by the Mosman Order. Evaluations will be completed and filed pursuant to the statutory timelines set out in ORS 161.370. In other words, the evaluator will still opine that the defendant is “able,” “not able,” “never able” or “never able without medications.” That remains unchanged. However, the Mosman Order clarified that for defendants subject to a district attorney petition for an extended LOR-H beyond the one-year time frame, evaluators will opine two things: 1) For purposes of determining further restoration at OSH, whether there is a substantial probability that defendant will gain or regain competency within the allowable additional 180-day commitment period for restoration and 2) For purposes of community restoration, whether there is a substantial probability that in the foreseeable future the defendant will gain or regain competency.

28. How long does a defendant have to gain or regain fitness at OSH? How do forensic evaluators determine if there is a substantial probability in the foreseeable future that the defendant will gain or regain fitness?

The applicable LOR-H is the time period in which the defendant has to gain or regain fitness while at OSH. The Mosman Order now clarifies that for defendants subject to a district attorney petition for an extended LOR-H beyond the one-year time frame, evaluators will opine two things:

- For purposes of determining further restoration at OSH, whether there is a substantial probability that defendant will gain or regain competency within the allowable additional 180-day commitment period for restoration and,

- For purposes of community restoration, whether there is a substantial probability that in the foreseeable future the defendant will gain or regain competency. Evaluators rely on clinical information of how a defendant has responded to treatment in the past and how they are presenting clinically at the time of their evaluation, among other factors, to render their opinions.

29. Will discharged defendants be returned to their originating county?

Consistent with prior practice, Defendants are returned to the county that committed them to OSH.

30. Where will a defendant be released if their committing county does not have any SRTF capacity?

Not every person who is appropriate for community restoration requires an SRTF level of care. If, upon return to the committing county, the court determines that the person is still unfit but restorable in a community restoration placement, and an SRTF is the appropriate level of care, but there is not an SRTF bed available, the court may determine the appropriate action under ORS 161.370(2)(c): Place the person in community restoration, with the CMHPs locating the most appropriate placement and, if necessary, wrap-around supports; initiate civil commitment; appoint a guardian; or dismiss the charges.

This is the same process that occurred under ORS 161.370 and 161.371 when someone reached statutory EOJ and still required an SRTF. If the District Attorney determines that the person fits the criteria for an extremely dangerous person commitment under ORS 426.701, they may also petition for that commitment to OSH.

31. Are there any circumstances where the LOR-H may be extended?

Yes. Provided that a defendant's statutory end of jurisdiction has not run, a defendant who has reached their LOR-H limit may remain under two narrow circumstances only if all criteria below are met:

A) For an additional maximum of 30 days past the LOR-H for purposes of care coordination and discharge planning to an identified community placement where the following criteria have been met:

- The CMHP has made a referral to an identified community placement, and the placement has accepted them with an admission date within 30 days of the expiration of the LOR-H;
- OSH determines that the defendant is reasonably expected to be placed in the identified placement within 30 days of the expiration of the defendant's LOR-H; and
- A court order to extend for 30 days is issued and received by OSH at least 5 days prior to the end of Defendant's LOR-H.

B) For an additional 180 days past the original LOR-H, and subject to renewal, for certain defendants charged with violent felonies where the following criteria have been met:

- The elected DA files a petition to extend commitment 30 days prior to the expiration of the defendant's original LOR-H;

- Defendant is charged with a “violent felony” pursuant to ORS 135.240(5), defined as an offense where there was actual or threatened serious physical injury to the victim, or a felony sexual offense;
- The committing court finds that there is clear and convincing evidence of a danger of physical injury or sexual victimization to the victim or member of the public if Defendant is discharged from OSH;
- Defendant requires hospital level of care due to acuity of symptoms of their qualifying mental health disorder or public safety concerns, and appropriate community restoration is not present and available in the community; and
- There is a substantial probability that continued commitment at OSH will lead to a finding that Defendant has gained or regained fitness within the 180-day extension;
- The court orders the extension of commitment based on the above findings;

The committing court must review the extension every 180 days and may order an additional 180 days if it makes the above findings, and defendant has not exceeded statutory end of jurisdiction. OHA understands that the court will review the evaluation report completed at the end of the LOR-H to make a determination regarding the probability of restoration within the 180 period, through a hearing in which the defense has an opportunity to contest the extension.

32. Can the 30-day and 180-day extension be applied retroactively, after the defendant has been discharged from OSH and their LOR-H has expired?

No. As of August 3, 2023 (30 days after entry of the Mosman Order), these extensions are available only when the defendant is still at OSH, and their LOR-H has not yet expired.

33. Will OSH discharge defendants to the street?

OSH will continue its practice of discharging defendants back to the committing county. The reason the defendant is returned to the county is because the court will still need to make findings under ORS 161.370(2) for those who have reached the LOR-H at OSH, and ORS 161.371(3) and (4) for defendants whom OSH has determined are “ready to place” and no longer need a hospital level of care. If the defendant is discharged based solely on the end of LOR-H set out in the Mosman Order, the court will still need to follow ORS 161.370(2)(c) and determine whether the defendant should be placed on community restoration, civilly committed, appointed a guardian, or that the case should be dismissed – except that pursuant to the Mosman Order, it may not recommit the defendant.

The only time OSH is required to discharge someone directly to the street is when the court dismisses the charges without first returning the defendant to the committing county for a warm hand-off to the CMHP. To avoid discharging defendants straight to the street, it is important that the parties request, and the court issue, orders of dismissal upon return to the county. Note that effective January 1, 2023, HB 2405-A requires return to the committing county where all charges are being dismissed.

34. What will happen to defendants who are not stable when the LOR-H under the Mosman Order expires?

The same process will be followed that occurred prior to the Mosman Order. When a defendant reaches their maximum length of in-patient restoration at OSH pursuant to the Mosman Order, they are returned to the committing court. The court then makes a determination under ORS 161.370(2)(c), which can include initiation of civil commitment where the person poses a risk to themselves or others or is unable to provide for their own basic needs, or the court may appoint a guardian who may also assist with placement and care. The court may also place the defendant in community restoration with wrap-around supports. Finally, the court may dismiss the charges if it finds this is in the interest of justice. See ORS 161.370(2). A remaining option is available for District Attorneys who have determined that the defendant meets extremely dangerous person criteria pursuant to ORS 426.701. If they make this determination, they can file a petition for an Extremely Dangerous Person (EDP) commitment.

35. If an individual charged with a Ballot Measure 11 crime is discharged from OSH upon meeting the maximum LOR-H under the Mosman Order, will their charges be dismissed similar to a never able finding, or will they be ordered to participate in community restoration?

Once a defendant meets their maximum LOR-H based on their highest charge, the court has the same actions available under ORS 161.370(2)(c) such as community restoration, civil commitment, guardianship, or dismissal of charges. If the prosecuting attorney has assessed that the person meets criteria for commitment of an extremely dangerous person under ORS 426.701, the attorney may file a petition for this type of commitment.

36. If a defendant reaches their LOR-H limit under the Mosman Order, will OHA make treatment available in the jails?

No, neither the Mosman Order nor Oregon law require OHA/OSH to make treatment available in jails. The court may order the defendant to be placed on community restoration.

37. May a court hold a defendant in custody where the defendant has been discharged under the Mosman Order with a hearing every seven days awaiting community placement?

OHA/OSH does not have authority to respond on behalf of the courts on this matter. There is no statutory provision requiring courts to hold hearings every seven days. OHA/OSH does not take a position on the constitutionality of this practice.

38. Has the number of “extremely dangerous persons” commitments increased since implementation of the Mosman Order?

The number of commitments under ORS 426.701 has not increased since the implementation of the Mosman Order.



Funding and Community Resources

39. Is OHA considering opening a new hospital to increase capacity?

No. The Legislature would have to approve the building of another hospital to create more state hospital beds.

40. When will the additional SRTF Cottage beds at the Junction City campus be opened?

Columbia Care has opened each of the three eight-bed SRTF cottages on the Junction City campus:

- First cottage opened: 6/17/2019;
- Second cottage opened: 9/6/2022;
- Third cottage opened: 3/13/2023.

These SRTF cottages are separate and distinct from OSH SRTF beds.

41. What is OHA doing to increase community placement availability?

OHA continues to actively seek providers to serve the aid and assist population through the current housing grant application process (RFGA). There has been significant progress in increasing community placement capacity for defendants under aid and assist orders in 2023. The below table shows the increase in community placement beds, including SRTFs, Residential Treatment Facilities (RTFs), and Residential Treatment Homes (RTHs).

Program	Program Type	Increase in Number of Beds
NWRRRC	CR housing	5
Madrone Ridge	SRTF	8
Manzanita Ridge	SRTF	8
Respite and Shelter Beds	Respite and Shelter	19
Respite	RTH	1
Alta House	RTH	5
SRTF Class 1	SRTF	16
CHI Mercy Acute Hospital Beds	Hospital	12

In addition to the above increase in the number of community beds for patients under aid and assist orders, there has also been an increase of 28 beds in the community for patients who are civilly committed.

42. Has OHA sought and obtained additional funding from the Legislature in 2023 for community restoration programs and to expand community services?

Yes. OHA sought and obtained additional funding from the 2023 legislature, including the following three investments:

- Transition case management services for patients released from OSH: \$6 million to ensure more effective community-based placements that help more OSH patients leave the state hospital sooner after they no longer need hospital-level-of-care and provides better support to live safely and independently in the community.
- Community Mental Health Programs to support civil commitment: \$7 million to expand community-based treatment for people with severe psychiatric illness or those requiring civil commitment services.
- Jail Diversion through Community Mental Health Programs: \$6.5 million to ensure more people with mental health disorders receive treatment in the community instead of being held in jail.
- Increased capacity for Substance Use Disorder treatment: \$15 million to increase capacity for SUD treatment, intended to divert persons from the aid and assist system and offer more appropriate and effective treatment for this population's particular needs.
- Increased Mobile Crisis Services: Starting in January 2024, tax funds specifically earmarked for crisis hotline and mobile crisis services are anticipated to be \$26 million in the first year.

43. Has there been equitable distribution of the funds between metropolitan and rural areas where there are typically limited resources?

Yes. All jail diversion funds awarded in the 2023 legislative session, at a total of \$5.4 million, are allocated to jail diversion in 7 rural and frontier communities. Additionally, another \$15 million went to 32 counties for additional supports and treatment options, including rural, suburban, and urban areas.

Other / Miscellaneous

44. Does the Mosman Order address bail?

No.

45. Will OHA offer any form of indemnification to CMHPs and/or providers for the potential liability of supervising defendants on community restoration?

No. OHA/OSH is not responsible for supervising defendants on community restoration or who are otherwise released into the community after criminal charges have been dismissed. OHA/OSH continues to work with CMHPs and CCOs to ensure appropriate resources are provided to individuals discharged from OSH to the committing county in order for them to provide appropriate care.



46. Will there be more OSH bed availability for civilly committed patients?

Yes. The Mosman Order has been amended to allow admission of civilly committed patients and those who have been voluntarily admitted by guardians, when they meet the revised expedited admission criteria posted on OHA's Mink/Bowman website here:

<https://www.oregon.gov/oha/osh/legal/pages/expeditedadmissions.aspx>.

The Mosman Order continues to allow OSH to admit civilly committed persons who meet expedited admission criteria.

47. If there are open OSH beds available in the future, would the Mosman Order need to be modified to admit people under civil commitment?

Yes. Until the Mosman Order is further modified or terminated, individuals who are under a civil commitment order or who have a guardian may only be admitted to OSH if they meet expedited criteria, as that is set out in policy, available on OHA's website at <https://www.oregon.gov/oha/OSH/LEGAL/Documents/Expedited-Admission-for-Patients-Under-CIVIL-Status-2023.05.05.pdf>



[oregon.gov/oha/OSH/Pages/mink-bowman.aspx](https://www.oregon.gov/oha/OSH/Pages/mink-bowman.aspx)