D e b r a A. P i n a l s, M. D.

Board Certified in Psychiatry, Forensic Psychiatry, and Addiction Medicine

Neutral Expert Fourth Report
Regarding the Consolidated *Mink and Bowman* Cases

Date of Report: 12/21/22
Neutral Expert: Debra A. Pinals, M.D.

Background and Context of this Report

On 12/21/21, the Honorable Michael W. Mosman, U.S. District Judge for the United States District Court for the District of Oregon, Portland Division, entered an order appointing me, Dr. Debra Pinals, as a Neutral Expert in granting a Stipulated Motion from defendants at the Oregon Health Authority (OHA) and the Oregon State Hospital (OSH) and plaintiffs Jarrod Bowman, Joshawn Douglas-Simpson, Disability Rights Oregon, Metropolitan Public Defender Services, Inc., and A.J. Madison. The Court's order consolidates two cases, *Bowman et al v. Matteucci* et al (Case Number: 3:21-cv-01637-MO) and *Oregon Advocacy Center et al v. Mink* et al (Case Number: 3:02-cv-00339-MO) and identifies *Mink* as the lead case. Through this consolidation, the *Bowman* case was reassigned from the Honorable Marco A. Hernandez to Judge Mosman.

Judge Mosman's order stipulates further that OHA enter into a contract with the Neutral Expert and provide any needed information to her. The Court ordered that the Neutral Expert should "make recommendations to address capacity issues at the Oregon State Hospital." The order delineates that the first report from the Neutral Expert include "suggested admissions protocol that addresses the admission of patients found unable to aid and assist in their own defense under ORS 161.370 (.370 patients) as well as patients found to be Guilty Except for Insanity (GEI patients)." The Court further ordered a second report by the Neutral Expert to include "a short report and recommendations for a proposed long-term compliance plan for OSH."

I submitted my First Report (dated 1/30/22) and my Second Report (dated 6/5/22) to the Court, with a series of recommendations. On 6/7/22 the Court ordered my ongoing appointment and stated, "Beginning on September 7, 2022, Dr. Pinals will provide brief quarterly reports to update the Court regarding compliance status and any needed additional recommendations to address any barriers to achieving compliance." I submitted my Third Report on 9/15/22. This report represents my Fourth Report as the appointed Neutral Expert in this matter.

Background and Summary of the Two Consolidated Cases

As reviewed in my prior reports, the following background is provided for context in this matter. In 2002, Oregon Advocacy Center, now known as Disability Rights Oregon (DRO) filed a civil rights lawsuit against the state of Oregon alleging that the state was failing to timely admit individuals found incompetent to stand trial (Unable to Aid and Assist) who were ordered to Oregon State Hospital (OSH) for competence to stand trial restoration. The ruling out of the Ninth Circuit (*OAC v. Mink*) found on behalf of plaintiffs that the state was out of compliance and must admit these individuals within seven

(7) days. In June 2019, after the state had fallen out of compliance, the Court compelled the state to get in compliance with *Mink* within 90 days. Although the state met its burden at the time, compliance with became challenging once again with the pandemic creating other barriers. The state filed a motion requesting greater latitude in admitting individuals found Unable to Aid and Assist to mitigate the spread of COVID-19. That motion was granted, and DRO appealed to the Ninth Circuit Court of Appeals. The Ninth Circuit issued an order vacating the modification but also sought review by the District Court Judge. In December 2021, the parties entered an interim settlement agreement that involved the appointment of a Neutral Expert to provide recommendations.

In November 2021, plaintiffs Jarod Bowman and Joshawn Douglas-Simpson brought action against the OSH and Oregon Health Authority (OHA) (plaintiffs were later joined by Metropolitan Public Defender) for failure to timely admit these individuals adjudicated Guilty Except for Insanity (GEI) by the Multnomah County Circuit Court, after the Honorable Nan Waller had ordered them to OSH for treatment, without unreasonable delay. The plaintiffs remained, however at the Multnomah County Detention Center for months (plaintiff Bowman for nearly eight months, and plaintiff Douglas-Simpson for nearly six months) after the commitment order was issued. Plaintiffs alleged a violation of their substantive due process rights and filed a motion for a Temporary Restraining Order asking for plaintiffs to be transported to OSH within seven days of the order. The defendants argued that a lack of space at OSH, in part related to the need to timely admit individuals in the Aid and Assist process, contributed to the delays in admitting the patients. The Court granted the plaintiffs' motion for a Temporary Restraining Order, noting that "The *Mink* injunction does not address the relative priority of aid-and-assist patients and GEI patients…" noting that "any prioritization stems from Defendant's failure to provide the funds, staff, and facilities necessary to satisfy the *constitutional rights* of both groups. When satisfying constitutional guarantees, Defendants cannot rob Peter to pay Paul." In that opinion, The Honorable Marco A. Hernandez, United States District Court Judge, did agree with the defendants that a consolidation of the *Mink* and *Bowman* cases may make sense. As noted above, after the decision about the Temporary Restraining Order regarding the two specific plaintiffs, and at the time of the appointment of the Neutral Expert, the parties entered an interim agreement that no individuals found GEI would wait longer than four months for admission to OSH.

Qualifications to Perform this Consultation

My qualifications to render opinions as the Neutral Expert were described in my first report. In summary of that experience, I have worked for almost twenty-five years as a clinical and academic and forensic psychiatrist, and over twenty years functioning in state and local level administrative leadership, management, policy development, clinical treatment, forensic evaluation, and consultative roles across several U.S. jurisdictions.

Sources

Background documents I have reviewed for this matter include:

1. *Mink* 0339 Court Order Granting Motion for Stay of Deadlines. Joint Status and 5/9/22 Joint Status Report;
2. Mink 0339 COURT Order Consolidating Cases and Appointing Neutral Expert #240, signed 12/21/21;

3. Bowman 1637 COURT Order Consolidating Cases and Appointing Neutral Expert #21, signed 12/21/21;
4. Bowman 1637 COURT Notice of Judicial Reassignment from Judge Hernandez to Judge Mosman #20;
5. *Mink* and *Bowman* Interim Agreement, Filed 12/17/21;
6. *Bowman* 1637 PLD Plaintiffs 1st Amended Complaint #22;
7. Order on Joint Stipulation to Continue Appointment of Neutral Expert, signed by the Honorable Michael W. Mosman, 6/7/22;
8. January 30, 2022, Neutral Expert First Report, dated 1/30/22;
9. June 5, 2022, Neutral Expert Second Report, dated 6/5/22;
10. September 15, 2022, Neutral Expert Third Report, dated 9/15/22;
11. *Bowman* Opinion and Order, Case No. 3:02-cv-00339-MO (Lead Case), Case No. 3:21-cv-01637-MO (Trailing Case), signed by Judge Mosman 8/16/22; and
12. Case No. 3:02-cv-00339-MO (Lead Case), Case No. 3:21-cv-01637-MO (Member Case), Order to Implement Neutral Expert's Recommendations, signed by The Hon. Michael W. Mosman on 9/1/22.

It is acknowledged that the volume of material reviewed may mean that some more substantive items may have been inadvertently omitted from the list below. Apart from those caveats, to understand the scope of my activities, In addition, documents I have reviewed in the interim between this report and my prior report include (but are not necessarily limited to):

1. OSH Forensic Admissions and Discharge Bi-Weekly Reports;
2. OSH Forensic Admission and Discharge monthly data dashboards September to December 2022;
3. Average Wait Time Prior to Admission Progress Metrics for Benchmark Goals;
4. *Mink & Bowman* Monthly Progress Reports from OHA from October 3, 2022, November 3, 2022, and December 3, 2022;
5. OHA Community Restoration Resources, last updated 1/30/20;
6. Community Restoration Resource List by County, last updated 1/30/20;
7. Slide deck drafts regarding recommendation timeline shifts;
8. Agenda and Minutes from Aid and Assist Workgroups 9/16/22;
    a. Aid and Assist Workgroup Agenda
    b. Aid and Assist Workgroup Minutes from 8/19/22;
    c. OSH Data for A&A Workgroup;
    d. Judge Mosman 9/1/22 Order;
    e. *Mink/Bowman* Neutral Expert Second Report;
9. Aid and Assist workgroup Bike Rack Order Groupings, 5/17/22, and Bike Rack Survey Results April 2022;
10. *State of Oregon v. Givens*, 2022;
11. Amicus Brief Regarding Judicial Authority Filed by Marion and Washington Counties, filed 9/28/22
12. Legacy Emanuel Hospital & Health Center d/b/a Unity Center for Behavioral Health; Legacy Health System; PeaceHealth; and Providence Health & Services- Oregon vs. Patrick Allen, Complaint for Declaratory and Injunctive Relief, filed 9/28/22
13. Motion Intervene by Putative Intervenors, Legacy et al., filed 9/28/22

14. Motion to dissolve the August 16, 2022 Injunction, and Dissolve or modify the September 1, 2022 Injunction, by Intervenors Legacy et al., filed 9/28/22
15. OSH Update PowerPoint 11/15/22
16. “Far From Recovery” report and videos released by DRO 11/16/22;
17. Email from Ms. Emily Cooper to OSH and OHA Leadership dated 11/17/22 with attachments including:
    a. Letter to Governor Brown and Mr. Pat Allen from DRO, 9/27/21;
    b. Email Concerns Communicated from DRO’s Ms. Cooper to OSH and OHA leadership dated 1/20/22;
    c. Letter from KC Lewis to Ms. Micky Logan dated 8/11/22
    d. Letter to KC Lewis from Ms. Micky Logan, 8/15/22;
18. Declarations of Ron Lagergren and Robin Henderson, in Support of Intervenors’ Motion to Dissolve or Modify the September 1, 2022 Injunction, By Intervenors and Plaintiffs Legacy Emanuel Hospital & Health Center d/b/a Unity Center for Behavior Health, Legacy Health System, PeaceHealth, and Providence Health & Services – Oregon for Oral Argument 11/21/22
19. Reply in Support of Motion to Dissolve or Modify the September 1, 2022 Injunction by Intervenors and Plaintiffs Legacy Emanuel Hospital & Health Center d/b/a Unity Center for Behavior Health, Legacy Health System, PeaceHealth, and Providence Health & Services – Oregon for Oral Argument 11/21/22, dated 11/17/22
20. Plaintiffs’ Response in Opposition to Judges’ Motion for Limited Intervention, 10/7/22
21. Plaintiffs’ Response to Counties’ Amicus Brief, 10/11/22;
22. Plaintiffs’ Response in Opposition to Hospitals’ Motion for Intervention, 10/12/22;
23. *Mink/Bowman* Briefing for Governor Kate Brown 10/10/22;
24. Declaration of Derek Wehr, filed 8/26/22;
25. Defendants’ Motion to Consolidate Pursuant to FRCP 42 (consideration of consolidating *Mink* and Legacy cases). Filed by Patrick Allen and Dolores Matteucci, filed 10/14/22;
26. Impacts Grant Program presentation 10/27/22 and OHSU IMPACTS Grantee perspectives presented by the Criminal Justice Commission to the parties and the neutral expert, 10/27/22
27. Aid and Assist RFA slide deck, received 11/3/22
28. Draft training plan submitted by DRO for community training regarding diversion options, dated 11/14/22;
29. Miscellaneous letters between DRO and OHA/OSH leadership 2021 and 2022;
30. GAINS workgroup evaluation models packet, received 11/22/22 from Debra Maryanov, Senior Assistant General Counsel, OJD;
31. Legislative Concept 520, filed by OHA with explanatory notes;
32. Sheriff Pat Garrett Letter to Judge Proctor, 12/2/22;
33. Press release regarding OSH back in “substantial” compliance with CMS, 12/9/22;
34. Funding allocated to community restoration services each year since it was initiated, received 12/7/22;
35. 221206 Order re Fitness Status Hearing and 221129 Order re Unfit to Proceed Engage in Services in Washington County Jail, order signed by Judge Erwin, 11/29/22;
36. Letters from Steve Allen for CHOICE, Civil, and Aid and Assist clarifications;
37. Information on provider fee increases as available at: https://www.oregon.gov/oha/HSD/OHP/Pages/BH-Rate-Increase.aspx

38. *Mink/Bowman* Progress Update Meeting PowerPoint
    a. "12.15.22 Neutral Expert Task Updates – Final Presentation"
    b. "12.15.22 Neutral Expert Task Updates – Final Appendices"
39. Community Navigator Program Comparisons produced by OHA
40. AA Placement analysis sent by OJD to Mr. Gabel, and AA Locus Analysis by OSH.

Regular/semi-regular meetings during this interim period from my prior report including the following meetings and discussions:

1. Periodic meetings with Judge Mosman and Judge Beckerman;
2. Periodic meetings with OHA staff Mr. Cody Gabel for coordination of my activities and with staff from OSH including Mr. Scott Hillier regarding data requests;
3. Weekly or bi-weekly meetings with OHA, OSH, DRO and MPD representatives and leaders both separately and together. In addition, I met with staff from these agencies at various points in this interval period.
    a. From OHA, OSH, the weekly/bi-weekly leadership meetings have largely included:
        i. Steve Allen, Director of Behavioral Health, OHA
        ii. Dawn Jagger, Chief of Staff, OHA
        iii. Dolores Matteucci, OSH Superintendent-CEO
    b. From Oregon Department of Justice (DOJ):
        i. Carla Scott, DOJ Special Litigation Unit Counsel
        ii. Sheila Potter, Deputy Chief Counsel, Special Litigation Unit, Oregon DOJ
    c. From Disability Rights Oregon (DRO), Emily Cooper, Legal Director, and Dave Boyer, recently onboarded at DRO as Managing Attorney
    d. From MPD as plaintiff party, Jesse Merrithew of Levi Merrithew Horst PC
4. Periodic meetings with OJD leadership including:
    a. State Court Administrator Nancy Cozine
    b. Judge Nan Waller, Multnomah County
    c. Debra Maryanov, Senior Assistant General Counsel

I spoke with individuals and participated in meetings regarding a number of topics. Such meetings included:

1. Meeting with Governor Kate Brown and staff on 10/10/22 with Director Pat Allen;
2. Meeting with Forensic Evaluation Services staff 9/14/22;
3. Presentation regarding IMPACTS grants by Kaysea Beck and Ken Sanchagrin from CJC, on 10/27/22;
4. Meeting with OSH Professional staff, 11/1/22;
5. Multnomah County Jail Review lead by Judge Waller, 11/22/22;
6. Legislative testimony presented by OHA and DRO, 12/8/22
7. Meeting organized by Mr. Eric Neiman with representatives from Legacy, PeaceHealth, Unity, St. Charles, and Providence, along with various attorneys who requested to listen to the discussion, 12/13/22;
8. Listening session that included district attorneys for the counties and other stakeholders, 12/14/22;

9. Meeting with Washington County Sheriff and members of the Mental Health Response Team, 12/15/22;

I observed one Court hearing that took place to hear the representations of the private hospitals and the county district attorneys as well as the plaintiffs and the defendants.

Glossary of Acronyms and Terms Used in this and Prior Reports

A&A or AA: Aid and Assist
CCOs: Coordinated Care Organizations
CCBHCs: Certified Community Behavioral Health Clinics
CFAA: County Financial Assistance Agreements
CMHPs: Community Mental Health Programs
DOJ: Department of Justice Oregon
DRO: Disability Rights Oregon
FES: Forensic Evaluation Services
GEI: Guilty Except for Insanity
HLOC: Hospital Level of Care
IMPACTS: Improving People’s Access to Community-Based Treatment, Supports, and Services
ISU: Intensive Services Unit
MOOVRS: Multi-Occupancy OSH Vacancy Resource & System Improvement Team
MPD: Metropolitan Public Defender
OCBH: Oregon Council for Behavioral Health
OCDLA: Oregon Criminal Defense Lawyers Association
OHA: Oregon Health Authority
ORPA: Oregon Residential Provider Association
OSH: Oregon State Hospital
PSRB: Psychiatric Security Review Board
SHRP: State Hospital Review Panel
SRTF: Secure Residential Treatment Facility

Summary of Activities Since the Third Neutral Expert Report

I have continued to meet with the state and the plaintiffs regularly to discuss progress and the implementation of my recommendations. The state has continued to also produce a monthly progress report to me in this matter. The work since my last report also included monitoring of progress toward the benchmarks set forth in my Second Report in June 2022. To help inform progress toward compliance and my work, I requested and reviewed data regularly. The first section of this report therefore presents some of the data utilized in order provide the Court with some of the information that I have considered.

Data Summaries

Background Data: Data received shows ongoing concern vis a vis compliance. Though certain trend lines appear to show some progress, with increasing orders for restoration to OSH, trends may be headed in a worse direction in the next few months. **Figure 1** and **Table 1** show increasing numbers of people waiting for admission, with a slight trend downward in days waiting, though this may be an immediate

relief due to the 9/1/22 Court Order. There is a slight decrease in OSH bed capacity and census (see **Table 2** and **Table 3**) due to seven beds taken offline to address patient needs temporarily until early 2023. When those beds open additional patients will be able to be admitted. Overall, there are growing concerns about worsening compliance that is forthcoming given the increased demands on admissions (See **Table 4** and **Figure 2**). **Figure 3** shows progress toward benchmarks toward compliance set forth in my June 2022 report. Again, although trends appear to be positive, compliance benchmarks have not been achieved, and increases in admissions will likely result in waitlist trend lines going up in the next few months.

Figure 1. Data Dashboad Charts Reflecting Progress in *Mink/Bowman* as of November 30, 2022

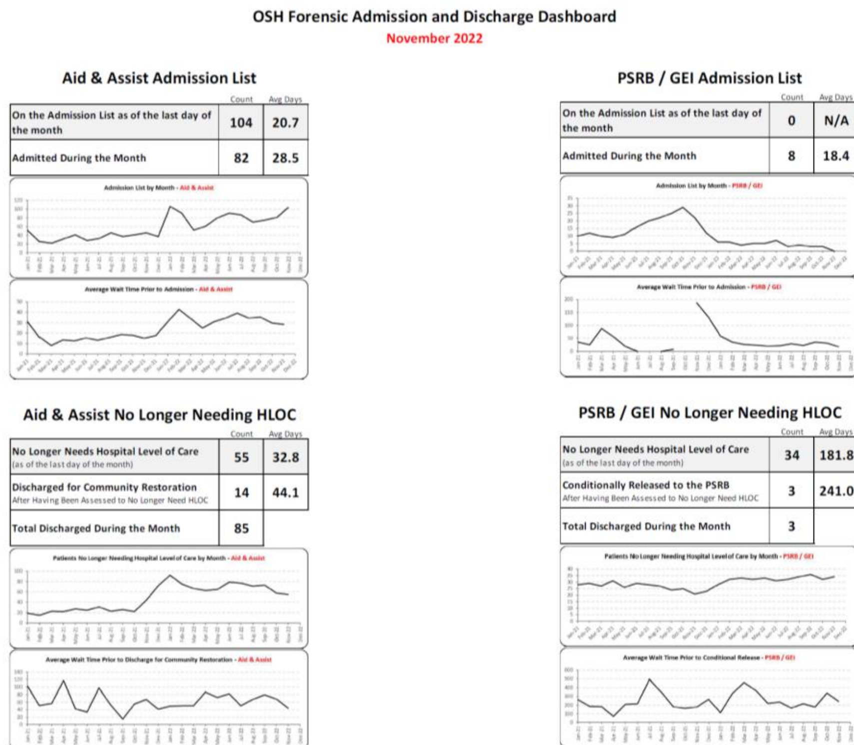

Table 1. Individuals awaiting admission

1. Regarding individuals on OSH admission list with signed and received A&A court order					
	As of 1/5/22	***As of 1/28/22***	***As of 5/1/22***	***As of 9/1/22***	***As of 12/1/22***
Total Number of individuals	46	93*	67	70	104
Average days current individuals have been waiting	15.8 days	22.5 days	16.2 days	19.8 days	20.7

Range of Days on waitlist	2-23 days	3-44 days	2-28 days	3-34 days	1-36 days
2. Regarding individuals found GEI and ordered to OSH					
	As of 1/5/22	***As of 1/28/22***	***As of 5/1/22***	***As of 9/1/22***	***As of 12/1/22***
Total number of individuals	15	4	3	4	0
Average days waiting	45.6 days	23 days	18 days	13.0 days	N/A
Range of Days on waitlist	1-110 days	17-28 days	12-26 days	3-20 days	N/A

*The marked increase in numbers awaiting admission was most likely a residual of the pauses in admissions due to COVID-19

Table 2: OSH Bed Capacities as of 12/1/22*

Site	Licensed Capacity	Active Capacity
Salem Main Campus HLOC	502	467
Salem Main Campus SRTF	90	87
Salem Main Campus Total	**592**	**554**
Junction City HLOC	76	73
Junction City SRTF	75	72
Junction City Total	151	145
OSH Total	**743**	**699**

* Seven Salem HLOC are currently offline until 2023

Table 3. OSH Census as of 12/1/22

Date	Aid & Assist	PSRB	Civil Commitment	Other	Total
9/1/2022	410	275	14	1	700
12/1/2022	396	279	13	0	688

Table 4. Aid and Assist and GEI Orders

Number of Orders Received	Aid & Assist	GEI
December 2021	76	8 (5 standard/ 3 revocations)
January 2022	76	7 (4 standard/ 3 revocations)
February 2022	56	5 (2 standard/ 3 revocations)
March 2022	85	4 (3 standard/ 1 revocation)
April 2022	80	7 (4 standard/ 3 revocations)
May 2022	77	7 (4 standard / 3 revocations)
June 2022	75	6 (4 standard / 2 revocations)
July 2022	65	5 (3 standard / 2 revocations)
August 2022	74	7 (4 standard / 3 revocations)
September 2022	84	6 (5 standard / 1 revocations)

October 2022	95	3 (3 standard / 0 revocations)
November 2022	95	6 (2 standard / 4 revocations)

Figure 2. Aid & Assist Admissions/Orders Trends through November 2022

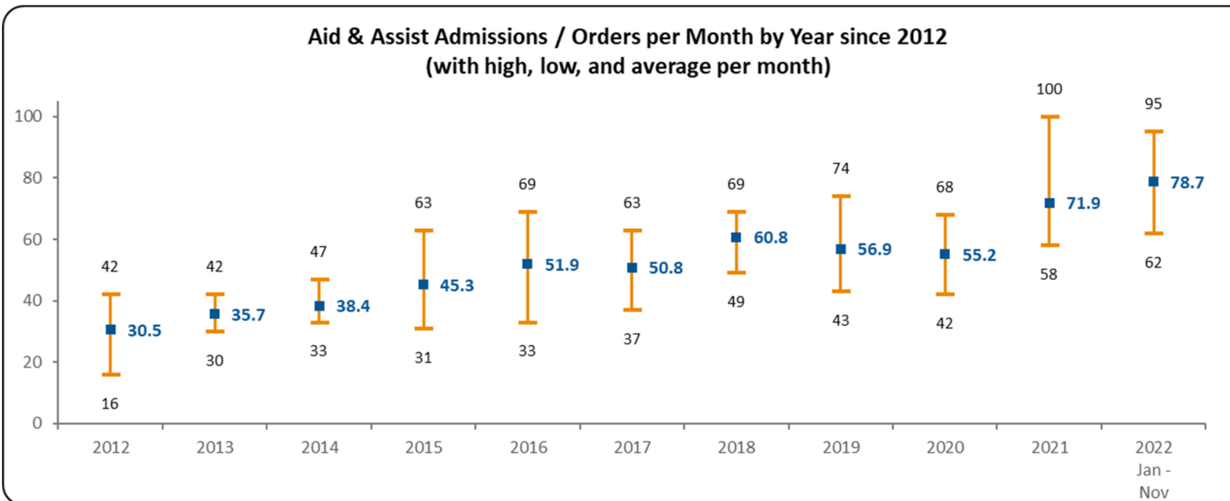

Figure 3. Admission Wait Time Projections Compared to Benchmarks Set in Second Report based on data as of 12/1/22

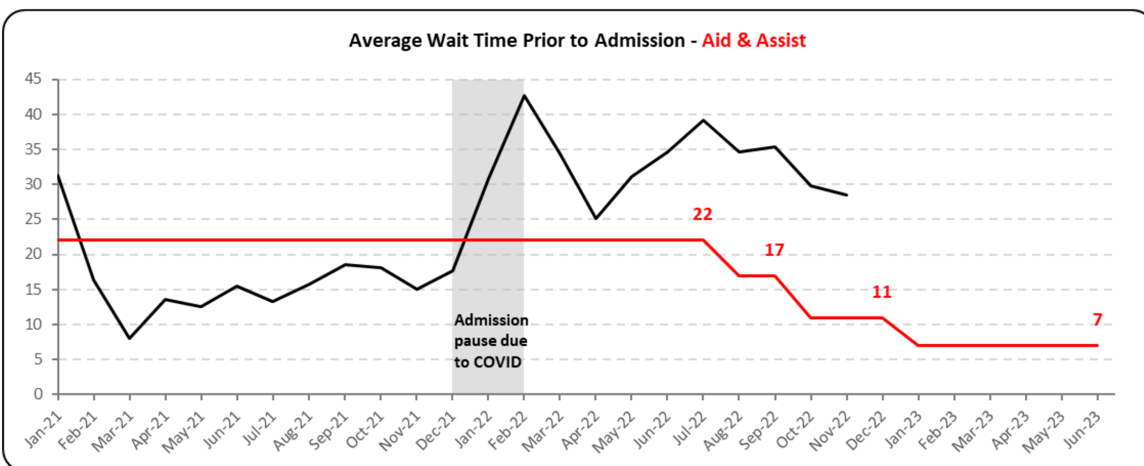

Figure 5 below shows data related to the order by Judge Mosman. Although there are many concerns that the "Mosman Order" is creating massive changes, at this time, only approximately 29 patients have been discharged to places around the state in accordance with the new restoration timelines who might otherwise have waited longer in the hospital for restoration. **Table 5** is data from OJD indicating that the same percentage of individuals found unfit to proceed are being referred to OSH for their initial commitment, but the baseline of referrals has increased. Once admitted for restoration, most hospital discharges are occurring as they have over years, unimpacted by the

"Mosman Order." Also, many of the hospital discharges are being discharged to community restoration (See **Table 6**) , and given my recommendations that total restoration time should be the same for the community and the hospital, this could create further increase demand on community restoration services as well as backlog on discharges from OSH when the system, public safety and clinically the individual defendants may not benefit from further restoration efforts.

Figure 5. Discharge Data Related to the 9/1/22 Order by Judge Mosman

- **Cohort 1:** Patients at OSH at the time of the Federal Court Order
- **Cohort 2:** Patients admitted to OSH after the issuance of the Federal Court Order on 9/1/22

			Restoration Limit Notice Outcomes (total since 9/1/2022)			Discharge Reasons (total since 9/1/2022)							
Cohort 1	At OSH as of 9/1/2022	At OSH as of 12/1/2022	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	End of Statutory Jurisdiction	Other	Total Discharged
Misdemeanor	85	12	51	23	16	18	2	27	7	16	3		73
Felony	217	94	36	13	13	56	12	38	4	13			123
Violent Felony	107	73				20	12		1		1		34
Total	**409**	**179**	**87**	**36**	**29**	**94**	**26**	**65**	**12**	**29**	**4**	**0**	**230**

			Restoration Limit Notice Outcomes (total since 9/1/2022)			Discharge Reasons (total since 9/1/2022)							
Cohort 2	Admitted since 9/1/2022	At OSH as of 12/1/2022	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	End of Statutory Jurisdiction	Other	Total Discharged
Misdemeanor	79	65	15	1		5	1	6	1		1		14
Felony	139	124				12	2	1					15
Violent Felony	29	28				1							1
Total	**247**	**217**	**15**	**1**	**0**	**18**	**3**	**7**	**1**	**0**	**1**	**0**	**30**

Table 5. OJD Data Regarding Number and Percentage of Defendants Referred to OSH for Restoration

Year	Number of Defendants found Unfit to Proceed	% for whom OSH was ordered as initial placement
2020	772	75%
2021	992	77%
2022	1059	77%

Table 6. Legal Status of AA Discharges in November 2022

November 2022 A&A Discharges

Reason	Cohort 1	Cohort 2	**Total**
Able	19	15	**34**
Never Able	7	3	**10**
Community Restoration	14	5	**19**
Dismissed	1	1	**2**
Restoration Limit	19	0	**19**
Total	**60**	**24**	**84**

Table 7 below shows that although the order related to length of restoration has allowed for the increase in discharges, with the actual numbers of admission orders far exceeding those that were

originally projected, the chance of achieving compliance with *Mink*'s seven-day admission provision by March 2023 is much less likely.

Table 7. Projections vs. Actuals Admissions, Discharges, and New Restoration Orders

Projections vs Actuals

	Projected				Actuals			
Month	Discharges	Admissions	New Orders	Admit List	Discharges	Admissions	New Orders	Admit List
Sep-22	67	67	74	77	85	76	84	86
Oct-22	90	90	74	61	90	91	95	90
Nov-22	90	90	74	45	85	81	95	104
Dec-22	95	95	74	24				
Jan-23	97	97	74	10				
Feb-23	97	97	74	10				
Mar-23	107	107	79	10				

The red and green "Admit List" numbers in the "Projected" section indicate compliance with Mink. When we can get the admit list down to the 10-15 range, we should be admitting patients to OSH within 7 days of the signed order.

Restoration in the community is complex and was part of my recommendations in June 2022 in terms of limiting duration of this process. Data shown in **Table 8** shows that 125 community restoration episodes lasted for over one year (873-748), despite the fact that misdemeanant defendants are the ones who are in community restoration.

Table 8. CMHP Reported Completed Community Restoration Data 1/1/2019-6/30/2022

# of Completed Community Restoration Episodes**	875	
# of Days Minimum	0	
# of Days Maximum	1221	
# of Days Mean	201	
# of Days Median	147	
Days in Community Restoration	# of Completed Community Restoration Episodes**	% of Total Completed Community Restoration Episodes**
0-90	270	30.9%
0-180	511	58.4%
0-365	748	85.5%
0-730	861	98.4%
0-1095	873	99.8%

*Missing Curry County Data for 4/1/2022-6/30/2022
** Completed does not reference success of restoration, but rather indicates that the community restoration episode

Updates Since my September 2022 Third Report:

Meeting with Governor Brown:

On 10/10/22 I had a meeting with Governor Kate Brown to discuss issues related to the federal Court Order as well as the *Mink/Bowman* matters generally. It is hoped that from this meeting information about the import of this case will be conveyed to the incoming administration including the Governor-Elect Tina Kotek.

Updates from OHA:

The largest issues looming on the horizon are the impending leadership changes with the transition to a new Governor. Director Pat Allen and Behavioral Health Director Steve Allen have given their notice to depart at the turn of the year and new appointments have not been formally made at the time of this writing. I have appreciated working with both of them and have conveyed the importance of this work continuing across administrations, with which they have agreed. I have been told that efforts to provide briefings on these matters are being attempted.

Some additional highlights include that The Aid and Assist RFA #5389 generated and distributed approximately $15M dollars to reduce the number of individuals found unfit to proceed via diversion efforts and also decrease numbers admitted to OSH for restoration, as well as reduce the lengths of stay for those at OSH. Dollars were allocated to urban, rural and sub-rural/remote regions of the state. Funds were distributed for staff support, client assistance, housing, transportation, and forensic evaluation services. In addition, 17 new beds and approximately 64 staff were brought online through this RFA. Behavioral Health Director Allen's team met with the CMHPs regarding the AA funds through the RFA and reported some positive feedback regarding how the dollars are being spent. The OHA staff have also been able to consider adjustments as needed with the new Federal Order.

I was also told that there is a SAMHSA grant pilot program in Washington County for peers with CADCs for community restoration that may ultimately align closely with community navigators. There will also be a forensic psychiatry fellow now placed at NWRRC to help with treatment provision. OHA staff continue to participate in the Multnomah County Jail review and continue to try to work toward action-oriented case discussions to effect change through that process, which is still evolving.

Several discussions across this quarter centered around activities within community-based settings, including advances in certified community behavioral health clinics, the roll out of increased crisis services, and allocations of funding to address substance use disorder and housing. In addition, specific programs designed to address the behavioral health/justice involved population have been slowly coming online, although with staffing shortages and COVID-19 issues still surfacing this has been a major challenge. In October, letters were written by Behavioral Health Director Steve Allen and Interim Medicaid Director Dana Hittle to Choice Providers to clarify roles and responsibilities including working to "remove barriers and facilitate access to community-based treatment for its clients" including those in the AA process. The OHA team also compiled information about various models that could be explored for community navigators.

Oregon State Hospital Updates:

OSH has increased its pace of admissions and discharges as noted in the data reflected above and in response to the 9/1/22 order by the Court. On a positive note, the hospital administration received word in early December that it was back in "substantial" compliance with CMS after facing several challenges in meeting the federal requirements. The issues from CMS had stemmed from an inquiry into the supervision of a patient who went on unauthorized leave during an outing in Lane County, and then surveyors broadened the scope of their review. Over this last quarter the hospital leadership and staff have been working diligently to remedy the situation and were proud to receive the notification that they had turned the concerns around.

At the same time, an exposé report from DRO was recently released detailing problems within OSH services including concerns about increasing restrictions for patients. With the increased pressures upon the staff, morale has been challenged. That said, it appears from leadership and the professional staff with whom I met that they are committed to their patients and working diligently to expedite admissions and a discussion with OSH leadership ensured a commitment to address the concerns raised by DRO. Recommendations to examine HLOC needs at the 10-day period were piloted. Though data suggested that there were enough people admitted who did not meet the HLOC criteria warranted the continuation of the pilot, there seemed to be a sense that courts would be increasingly challenged by ready to place notices. Nonetheless, it is important that if clinically appropriate, movement toward discharge should be advanced. Over time as staffing is bolstered, there may be additional need to further expedite these reviews and to carefully examine who needs to be in the hospital and to work in partnership with community systems to develop safe plans for more timely discharge when appropriate, which can then be presented to the courts.

During the discussion with the private hospitals, there was concern that no patients were being admitted through civil processes, and that there were policies not allowing a patient to remain at OSH when needed. I was provided information that there were four expedited civil commit admissions in 2021 and eight expedited civil commit admissions in 2022. Also, as clarified by OSH, in the Wehr Declaration, paragraph 7, Mr. Wehr described a case of a problematic discharge and then noted, "in the future, when OSH has facts sufficient to warrant civil commitment and facts satisfying the expedited admissions policy, OSH will take steps to have the patient civilly committed prior to discharge and will cause the patient to remain admitted pursuant to its expedited admission policy."

It should be noted that requests for additional staffing to address growing demand for services in part related to the Court's 9/1/22 order were recently approved.

Funding Updates:

As part of this work and in accordance with prior recommendations, a website was established by OHA to communicate funding advances for the state's behavioral health system. The website is available at: https://www.oregon.gov/oha/HSD/AMH/Pages/index.aspx.

Additional Community Initiatives:

During one of the parties meetings at the end of October we were provided a presentation from the criminal justice commission on the IMPACTS grant program that is administered by the Criminal Justice

Commission. This program was designed to establish evidence-based and tribal-based programs to provide supports for individuals with frequent criminal justice and emergency services involvement. There had been an appropriation of $10M in the 2021-2021 biennium for these grants, and this program has gained interest. Although it was difficult to launch the services in the height of early pandemic context, there is another request for $20M to continue this funding to bolster existing programs and allow for new programs/jurisdictions to pilot other activities. It would be useful for this program to be examined for its alignment with the RFA that distributed money for the AA populations and to see if future work within IMPACTS can track individuals in the AA system as part of their focus.

Community Restoration:

In October, Behavioral Health Director Steve Allen and Interim Medicaid Director Dana Hittle wrote a letter to the CMHPs providing guidance for written assignment orders for individuals both civilly committed and in restoration services.

In *State v. Givens*, the Court of Appeals noted that charges are not required to be dismissed pursuant to ORS 161.370(13) solely because a defendant remains unfit for trial and had been previously committed for the maximum period of time allowable under ORS 161.370(10). This ruling therefore essentially can leave a defendant in indefinite commitment in the community for restoration purposes, even for minor charges. As seen in the data produced by OHA, this is happening, requiring resources for restoration in the community, which further has the potential to create backlogs in referrals from the hospital to the community. In essence, without a shift in the duration of community restoration, the backlog for discharges may worsen. As noted in my Second Report, I recommended restoration periods the equivalent for the community and the hospital, with the total restoration period across both systems being the same. This has generated much discussion and pushback particularly from prosecutors.

Community restoration also has raised questions about the role of jails. Washington County Judge Andrew Erwin ordered a defendant deemed still unfit to proceed into restoration services at the Washington County Jail in collaboration with the CMHP (so called "Gear Order"). In Washington County, Sheriff Garratt responded with a letter indicating his concern that restoration of fitness within a jail is "unsupported by statute." He noted "It is difficult to reconcile the above statutory language requiring the court to release the defendant for community restoration services [underlined] with an order for the defendant to remain in custody to receive restoration services that the jail cannot provide." The Sheriff further cited the *Givens* case as well as the *Mink* decision itself in this matter to indicate that jails would not be the appropriate venue for restoration.

In testimony with Judge Mosman, there was also a question about some of the FAQs related to how the state will respond to the Court Order. One of the FAQ questions and responses reads as follows:

> 24**. If someone is released and placed on community restoration and ends up needing to go back up again to a higher level of care does the clock restart**? No. The federal court order limits the maximum lengths of inpatient restoration at OSH to 90 days (misdemeanors), 6 months (non-BM 11 felonies), and 1 year (B M11 felonies). Thus, after that length of inpatient restoration at OSH has run, the court may not recommit the person to OSH. Instead, the court could place the person in a higher level of community placement. 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 place the person at an SRTF.
(see https://www.oregon.gov/oha/OSH/Documents/OSH-mink-mosman-FAQ.pdf)

In the Judge Mosman order of 9/1/22 there is language that states, "For 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." It appears there are different interpretations of what is allowable for total restoration across community and hospital stays. For example, if someone recompensates and is restored, and then decompensates, that would not be “contiguous”, but if someone remains unfit, then in my opinion, returns to the hospital would represent a means of allowing longer OSH stays than permitted by the Federal Order.

Input from Private Hospital Representatives:

On 12/13/22 I was able to meet with representatives from private hospitals that included PeaceHealth, St. Charles, Unity Center for Behavioral Health (UCBH) Portland, Legacy Health System and Providence Health & Services, Oregon. I appreciated Mr. Eric Neiman’s help in facilitating that meeting. The following describes some of the themes, generally written generically so as to not ascribe a statement to a particular program or hospital.

There was a robust discussion in explaining my role and asking for input on how these hospitals are experiencing the impact of the 9/1/22 order. Themes that emerged from their perspectives included issues that began in 2019 when OSH changed its policy to meet the demand for services to AA patients to shift admissions away from civil commitment and toward moving people out of jail. Many noted that there have been longstanding challenges with getting civil commitment patients admitted. There were statements that “no civil hospital patient has been admitted since 2019.” (See contradictory data provided above in the OSH update section). They noted that in September 2020 there were exceptions made during the fires in Oregon when 10 patients had to be moved from hospital affected by the fire. When I asked for further clarifications, others stated that the issue was more about the challenges of the expedited admission protocol that they felt required too high of a bar to get patients admitted. They discussed extreme workforce shortages and felt that the community hospitals “have had to absorb people the state hospital has not had to take.” They described that “people stay in our care for months.” They described the difficulty providing long term care when they were set up for shorter term lengths of stays (about a week on average). They described patients found Never Able being admitted with a Magistrate hold. They spoke about boarding in the emergency departments, having to downsize capacity due to staffing limitations. They described changes in 2020 related to payment structures by the CCOs that causes them to lose money and “use profit in other areas to prop up behavioral health services.” There had been meetings with state leadership prior to 2020, but those were felt not to be fruitful so the people I spoke with indicated they did not feel they were needed at that time. There were issues with counties assigning patients to the hospitals, and “higher recidivism” of patients discharged from the acute system with several hospitals speaking about discharging and re-admitting patients repeatedly increasingly (dozens if not more times), though even prior to any of the changes in the competency restoration timeframes.

In addition in the Legacy Reply Brief, the statement “Each year, more than 500 civilly committed individuals require treatment in Oregon….these patients suffer ongoing constitutional harm, as do the

community hospitals that are forced by the State to care for those patients. In short, the Oregon Health Authority ("OHA") has been civilly committing these patients to involuntary detention and treatment, but refusing to transfer them to the Oregon State Hospital…" A similar statement was made during the court hearing before Judge Mosman. However, in further discussion with the private hospitals, the hospitals clarified that not all civilly committed patients at private hospitals are referred for admission to OSH. Although they stated that referrals are down because there is "no point" referring if people will not be admitted, even when admissions were at their height, only a very small percentage of patients admitted to private hospitals were referred to OSH. Also, they agreed that they are licensed/certified to care for civilly committed patients in their facilities. There was no clear explanation of the Constitutional issues as mentioned in the briefs to the Court. Two patients were described who were physically deteriorating after a long length of stay at the private hospital, designed for short-term care. Mr. Neiman indicated that he might be able to describe the Constitutional concerns at a later meeting.

It was clear the private hospital system is under strain related to staffing and heightened demand (one hospital had received money from OHA to shore up staffing). Yet in my discussion, the direct link of the various issues related to recidivism were broad in scope and explanation and pre-date the Court's 9/1/22 order. Much of the issues seem tied to staffing across both community and hospital systems, even if some of the issues were related to the change in policy in 2019 at OSH. At that time, there was a system shift in 2019 to expedite admissions from jails as non-therapeutic settings. Still, with the number of ties to the broader system, re-engaging in conversations with leadership at OHA and OSH separate from *Mink/Bowman* would be beneficial.

Of note, it is my understanding that the state will be filing a motion to dismiss the Legacy case, and either way the Federal Court will determine their standing in the multiple matters before the Court.

Forensic Evaluation Models:

According to OJD leadership, the GAINS workgroup continues to consider models for forensic evaluation services in Oregon. They have indicated that in response to my prior report more formal recommendations are still under consideration and will likely be available after January 2023.

Input from Stakeholders including Prosecutors:

In my last two reports I recommended that DRO work with the defendants to help develop and deliver a training regarding alternatives to hospitalization especially for restoration related to individuals charged with misdemeanants. That training was postponed twice upon conferring with me. It appeared the system was still adjusting to the 9/1/22 Order. Instead, I held a listening session in which individuals, such as Mr. Billy Williams were able to speak about some of their concerns and ask questions. It was clear that the idea of shorter community restoration time frames for prosecution brings up public safety concerns. I suggested that stakeholders examine the language of OHA's submitted legislative concept and offer amendments to it to allow the legislative process to play out. I would also welcome further suggestions from stakeholders about remedies to achieve compliance with *Mink*.

Capacity-Boosting Solutions and Other Suggestions by the Counties:

In the amicus brief filed by Marion and Washington counties, there were several suggestions made about less restrictive alternatives to the Judge Mosman order. It is important for the Court to be aware

that the solutions offered by the counties were either embedded already in recommendations or, in my opinion, not feasible given current circumstances. Also, most of the feasible remedies will take time. The 9/1/22 order has a chance of addressing a remedy sooner, unless the admission orders continue to rise significantly.

As for particular aspects of this amicus brief, it is also important to note that capacity at OSH was initially expanded at the outset of my recommendations with regard to fully utilizing the campuses available to the state, and with no longer pausing admissions due to COVID-19. It is further my understanding that there is not a legislative appetite (or has not been historically) for supporting the build of additional state hospital bed capacity, though Director Pat Allen suggested this might be a remedy in his legislative testimony in December. As noted above, additional SRTF beds, and additional slots at programs like Northwest Regional Reentry Center have been slowly made available, at the same time staffing shortages have created barriers to functionally increasing numbers of people served. I should note also that in discussions with plaintiffs and defendants there were considerations for whether a slot purchasing of beds with acute hospitals. This was ruled out given the pressures already faced by the private hospitals and challenges in taking on a court-involved population. Furthermore, the brief outlined a lack of housing opportunities- with the new 1115 Waiver centered on housing expansion, and the incoming Governor focused on housing, it is my understanding that this will be prioritized to make progress.

Information from Progress Reports to the Neutral Expert

Progress reports are submitted to me on a monthly basis, pursuant to the Court's order. A meeting to go over progress to date took place on 12/15/22. The state indicated they have completed 28 of the 75 recommendations from my Second Report. The information from October, November and December 2022 provides an overview of activities by the State. Below I provide some highlights:

- Completed items on or around September 15, 2022 through this report period:
  - Inventory of Competency Restoration Programs presented to Neutral Expert and DRO 8/15/22
  - Meeting with representatives from HSD and OSH to discuss tools for discharge assessments in addition to LOCUS to decrease reliance on LOCUS score-task listed as completed on 8/31/22
  - Development of a public facing *Mink/Bowman* website to inform stakeholders and provide public access to case related activities (recommendation I.A.4)- completed 9/16/22
- Ongoing Items Listed in Progress Reports Included:
  - OHA restructuring of CFAA to increase accountability over the next 3 to 5 years-status "remains on hold" due to other behavioral health new investment priorities
  - PDES research study underway related to Aid and Assist- data sharing agreements achieved with research underway
  - Review of contracts with CCOs and CMHPs to focus on AA and GEI population responsibilities (I.B.11 Pinals June 2022 Report)- reviews being finalized
  - OHA should ensure ongoing CCO enrollment for eligible individuals under AA for the past 2 years (II.6 Pinals June 2022 Report)- Intensive Services staff meeting with Medicaid and CCO partners to better coordinate for AA clients, and awaiting 1115

waiver approval. If that goes through, language will be added to the CCO contract to ensure engagement;

- Communication including an annual report related to outpatient competency restoration programs- status "in progress" with Intensive Services Unit staff reviewing this task
- Expansion of SRTF bed capacity- update from 10/19/22 from ColumbiaCare includes some expansion has occurred with increased capacity by late January, but workforce shortages may be a barrier
- HSD continuing to coordinate with CMHPs related to discharge and engagement expectations- letter sent out from OHA to CMHPs regarding "expectations related to coordination of care, discharge planning, and engagement expectations. Contract specialists from the intensive services team meet regularly with CMHPs to discuss ongoing needs and barriers."
- General Counsel for OSH will continue to support compliance through targeted communications with defense and prosecutors and MPD will make itself available to intervene as needed with defense lawyers to support adherence to SB 295 (1.B.9.a Pinals June 2022 report)- this work continues, however a barrier identified includes difficulty general counsel has in accessing certain records to intervene especially for Municipal Court and that "many parties/courts will still find Hospital Level of Care solely based on lack of placement."
- DOJ will continue to evaluate cases on a state-wide basis for legal intervention when it appears SB 295 is not being followed (1.B.9.b Pinals June 2022 Report)- Progress noted that as of 10/26/22 131 cases were evaluated for intervention, with 42 cases resulting in pleadings and 18 cases leading to conferring with counsel. DOJ filed motions to intervene in 19 cases, for which 10 were granted, four (4) were denied, and one was pending as of 11/3/22; work on this activity slowed in September due to efforts on the 9/1/22 order by Judge Mosman, though this intervention work resumed in mid-October.
- OHA to engage with Multnomah County Stakeholders to discuss feasibility of a jail population and 9(b) review committee- this was part of the Interim Settlement Agreement also between the parties and is reported as continuing with meetings every two weeks, and more recently includes individuals expected to be at End of Jurisdiction due to the 9/1/22 order by Judge Mosman, as well as individuals at risk of going to OSH
- Regular meetings with the parties are continuing
- Work with OJD and the Intensive Services Unit on pause related to implementation of the 9/1/22 Judge Mosman order, awaiting further data on its results
- By October 2023, OHA should enhance Outpatient Competency Restoration data reporting (II.3.b. Pinals June 2022 report)- efforts paused until June 2023, with plan for advocating for funding for this during legislative session 2023
- Discharge work related to OARs applicable to AA Ready-to-Place defendants (I.B.9.c- Pinals June 2022 Report)- not yet started but new OHA/HSD team member assigned to review
- Outpatient competency restoration program manual development- status reported that this would begin in December 2023 instead of October 2023 related to the new Court ruling
- Educational outreach to stakeholders delayed until 12/5/22 due to the implementation of the Judge Mosman order of 9/1/22

- Development of recommendations regarding evaluation practices (I.B.10 Pinals June 2022 Report)-meetings have been taking place spearheaded by OJD. A survey was administered to stakeholders that closed on 10/25/22. Work continues through OJD, and they have indicated this will now likely be done by the end of December.

Several of the recommendations were noted as "paused." These included:

- Meeting with the Office of Developmental Disabilities Services in order to assess the impact of the Federal Order
- Enhance community restoration program data reporting, paused until June 2023 with need to advocate for funding for data enhancements
- OHA exploration of means to access resources for community providers to prepare timely discharge plan development for GEI patients including evaluations by CMHPs- this work will be paused until March 2023 to account for time with the Federal Order
- Foster best practices in Community restoration paused to begin CROP manual development first in December 2023

Legislative Activity:

OHA filed a legislative concept LC 520 pursuant to my prior recommendations that modifies timing of progress notes for AA defendants and establishes maximum time periods authorized for restoration of defendants. The concept also directs OHA to work toward restoration services and establish recommendations regarding financial liability for defendants who lack fitness to proceed. The legislative concept also addresses issues of transportation back to court.

Recommendations and Comments

The parties continue to work tirelessly to meet and coordinate and to review potential strategies to help the state achieve compliance, yet, to be clear, compliance has not been achieved, benchmarks have not been reached, and more people are awaiting admission in jail than were identified in prior reports.

Over this last approximately three months, the state has faced enormous pressures related to a growing demand for competency restoration admissions, increasing forensic evaluation demands, amidst staffing challenges in community and hospital settings. The hospital has been under pressure to retool elements of care to meet CMS requirements. Numerous legal challenges related to access to OSH and issues pertaining to the plaintiffs' motion that led to the 9/1/22 Court order have required constant review and responsiveness to inquiries, motions and replies. Furthermore, barriers to progress, in my opinion, have included the number of cross litigation strategies attempted by stakeholders, which has led to the curtailment of dialogue and collaborative problem solving. Even the Aid & Assist workgroup has cancelled several meetings, with emails sent with debate and acrimonious communications. In my opinion, a major barrier is that there is not agreement despite a roadmap being set forth for the state. Yet the issues upon which there is no "consensus" have not changed (such as community restoration timelines) and many of the problems are being labeled as related to the new 9/1/22 order. It is too soon to see how that order will play out, as to date and over the future, most patients will continue to be discharged as they have over many years. To date as of the last data report, only 29 people were directly

discharged pursuant to the timelines in the Federal Order. Despite this low number, the concerns about what this might mean to the system have been voiced by many stakeholders.

Interestingly, many states continue to press forward to limit restoration of misdemeanants (Virginia and Ohio, for example, with Ohio eliminating restoration altogether for individuals charged with low level misdemeanor offenses, without discretion). Timelines for restoration are often shorter (60 days, for example, in Michigan and Ohio) for individuals with low level offenses, and community restoration is typically also time limited. Yet in Oregon, as noted in the data listed above, these cases continue to flow into OSH as the prioritized option available, despite the fact that on arrival, many individuals do not even meet hospital level of care. Once there, however, processes take place that require further waits for discharge.

Thus, in my opinion, the motion by the plaintiffs and subsequent order by the Court to limit hospital restoration time frames in accordance with prior recommendations was a well-considered reasonable approach to more expeditiously remedy the situation of individuals awaiting time in jail to access OSH and help the state achieve compliance. I agree with the state's data analytics that this order has helped expedite discharges, but the unanticipated increase in orders to admit is likely to counter the progress and will continue to do so until the community system becomes more stabilized. Much of the build out of the services that the funding increases will develop have yet to be implemented. Stakeholders have been concerned that it took time for dollars to move from the state into the community system, but this seems now to be moving in a better direction. Increases in pay are happening as are approvals for staffing at OSH. But staff availability remains a critical barrier. Other remedies laid out in my Second report will continue to take time, though it will be very important that the state continue to move toward the package of recommendations as a roadmap developed in my second report.

In speaking to various people during these last few months, it is clearly notable to see the devotion to the care of persons with mental illness and other serious conditions, despite the extreme strains across systems. The many issues raised by the private hospitals, in my opinion, reflect years of underfunding a behavioral health system in dire need of support, a lack of parity in reimbursement for services, and the impact of the pandemic and other social drivers that have contributed to the substance use crisis across the United States only make the need for funding even more critical. Funding allocations provided to date are a start, but attention to housing and additional services and supports will be necessary to restabilize. Efforts to shift the landscape are underway, but they will take time to get programs and services to meet growing demand, given the complex interplay of issues. There is undoubtedly some overlap of people in the Aid and Assist process and the civil commitment process, but this also could relate to circumstances of their arrests (for example, individuals are at times arrested out of inpatient care and emergency departments (see DRO report cited in prior Neutral Expert reports). Regardless, it is my understanding that the Constitutional issue in this case is about individuals waiting in jail for access to a hospital level of care. Whether the Court determines the arguments of the private hospitals have merit remains to be seen, but it is clear that jails are not hospitals and cannot provide the same therapeutic type of environment as a hospital or a community care setting. As such, in working toward compliance with the *Mink* provisions for admissions from jails within 7 days of a restoration order, I will highlight a few comments for consideration.

1. **Ensure situational awareness of new leadership of the Mink*/Bowman* case**. I would strongly recommend that there be active discussions in the transition meetings for the new administration up to and including the Governor's transition team to quickly be informed about this case, and its pivotal role as a key driver of behavioral health system dynamics.
2. **Ongoing meetings of the parties**. It will be important with the impending leadership transitions to not lose track of ongoing meetings between the parties and the Neutral Expert to review data and to monitor progress toward the prior recommendations, as well as to develop any new recommendations as new information unfolds.
3. **Community Restoration timelines**: In my opinion, the potentially indefinite period of community restoration represents an ironic and challenging problem for the state, with over-reliance of competency services rather than other parts of the system, when that is not what restoration is intended to achieve. My recommendations about total restoration period of community and hospital restoration were laid out in my Second Report as a package. As it currently stands, defendants can spend their maximum time in hospital-based restoration, only to be discharged to indefinite community restoration, taking up slots for other individuals for whom community restoration would prove more useful. Furthermore, in my opinion, the use of the hospital for more time with a hiatus of community restoration if the individual has remained unable to aid and assist contiguously is problematic and could result in a system "work around" the Court's imposed time limits. To that end the Court may wish to consider a clarification of the order and/or an examination by the parties of community restoration as it impacts *Mink* compliance.
4. **Restoration placement determinations**: the Court may wish to attend to recent state court case ordering restoration in a jail setting, which raises significant concerns regarding the federal requirements of the *Mink* order as well as other potential risks for defendants unable to assist in their own defense.
5. **Legislative remedies**: the parties should continue to pursue legislative remedies as laid out in the LC 520 and in my prior recommendations.
6. **Focus on discharges**: Every effort should be made to examine discharge practices for both GEI and AA patients to expedite timely and safe processes. Prior recommendations covered remedies for this and these should be highlighted for more expeditious implementation (some have lead to pauses). This should be discussed further with the parties.
7. **Civil Admissions**: Although the *Mink/Bowman* case centers around Aid and Assist and GEI patients currently, for improved efficiencies and factual reporting, once the litigation is resolved, the state may wish to invite the private hospitals to begin meeting again to determine if there are improvements that can be made through collective strategic planning. With the looming number of contempt hearings and litigation toward the state, these conversations have been limited.
8. **Reconceptualization of trainings to promote diversion**: The previously recommended training has been indefinitely paused. The parties should continue to discuss what trainings or open forums might be helpful for information sharing that promotes diversion from arrest, diversion from the competency system, and diversion when appropriate from OSH and into community restoration when appropriate.
9. **Ongoing data collection and review of system dynamics**: the state should continue to review data with the plaintiffs and in joint discussions with the neutral expert pertaining to outcomes of

the 9/1/22 Federal Court Order. This information should be shared widely to inform the public and be refined to report back to the Court for the upcoming hearing in April 2023.

I would again like to acknowledge the many individuals whose perspectives and input have been invaluable in shaping my contributions to the Oregon behavioral health AA and GEI efforts and the broader behavioral health system, and whose work is laudable even under circumstances that require extra effort with strained resources and at times contentious conversations.

I would like to commend the parties again especially for their firm commitment to work together with me to help the many individuals inappropriately waiting for placements in jails and OSH when they need more timely access to the less restrictive services they deserve. I greatly appreciate the help of the leadership and staff at OHA, OSH, DRO, MPD, OJD, and the PSRB in this work. I would like to acknowledge the leaders who will be transitioning on for their public service and acknowledge the new leaders who will be onboarding to carry on the work of remedying this decades-old matter. I also acknowledge with gratitude Mr. Cody Gabel who again assisted me in coordinating meetings and tracking information I requested, and to the OSH team, including Mr. Scott Hillier for his data support used to inform these recommendations.

Respectfully Submitted,

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