

LC 520: Aid and Assist

The Oregon State Hospital (OSH) serves many people in need of a determination of whether they are competent to aid and assist in their own legal defense. Litigation on this matter (*Mink/Bowman*) led to appointment of a neutral expert to make recommendations. LC 520 implements changes to Aid and Assist statutes pursuant to these recommendations.

Clarification of Transport from the Oregon State Hospital Back to County

The county that sends a defendant to OSH would be required by the court to transport the person back to the county upon notification from OSH that the person is able to proceed or that the person will not be restored within the statutorily allotted time. This ensures that patients committed to OSH are returned to the county that committed them, rather than having to be discharged directly into Salem from the OSH campus.

Increased Cadence of OSH's Forensic Evaluation Service Evaluations with the Court, and Changes to Subsequent Evaluations

OSH's Forensic Evaluation Services (FES) would submit evaluations to the court at least once every 30 days for the first 90 days, followed by at least once every 90 days thereafter. Currently the law requires one report in the first 90 days of commitment, followed by a report every 180 days. This will substantially increase the number of evaluations the FES will need to have conducted and send to the courts and parties.

After the initial report, subsequent evaluations are "progress reports" and may be brief updates regarding the defendant's clinical functioning as it relates to fitness to proceed rather than lengthy reports as currently required. This will allow the increased cadence in FES to be somewhat easier to manage, but additional evaluator and staffing positions will still be needed. The evaluators will still need to interview the patients, review the patients' records, coordinate with defense attorneys, etc., to conduct evaluations.

Reduced Commitment Timeframes for Inpatient and Outpatient Restoration

The time limitations for how long a person may be committed to OSH or the community for aid and assist restoration would be reduced and as follows:

- ▶ Misdemeanors (Highest Charge) – 90 days
- ▶ Non-Violent Felonies – 6 months
- ▶ Violent Felonies (aggravated murder or 137.700(2) felony)) – Up to 1 year

- Initial commitment of 6 months, with a court approved extension at the request of the parties.
- The patient is to be reevaluated and have the evaluator's clinical opinion that the patient is likely to be restored to competency.
- The parties must acknowledge the intent to proceed with the case and the state must be found to have a strong interest in prosecuting the case. The patient must be placed in the least restrictive placement.

The timeframe for restoration must be according to the limitations listed above, or a period of time equal to the maximum sentence the court could have imposed if the defendant was convicted, whichever is shorter.

Being able to discharge and assist patients sooner will allow OSH to admit and assist defendants who are waiting for beds sooner.

"Stacking" of criminal charges would not be permitted. Consolidation of multiple charges under a single commitment would be required with the maximum length of commitment set by the amended restoration timeframes. The patient will be given credit for every day they are committed to engage in community restoration services.

OSH will notify the court of the patient's impending discharge 30 days before the date of discharge.

An average of 70% of OSH's aid and assist patients have historically discharged before these timeframes, so the shortened commitment time frames will have no impact in these cases.

OHA Consultant to Engage with Community Mental Health Providers and Stakeholders for Cost-Sharing Recommendations

No later than December 1, 2023, OHA would retain a consultant to work with Community Mental Health Programs (CMHPs) and other stakeholders to provide recommendations related to cost sharing and incentive agreements between OHA and CMHPs with consideration of potential incentives or credits to offset costs for defendants committed to OSH from each county.

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