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

Date of Report: December 18, 2023
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 the Neutral Expert in the *Mink/Bowman* matter, 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 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." After submitting my initial reports, 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." In total, I have produced and provided the following reports to the Court in this case:

- First Report, 1/30/22
- Second Report, 6/5/22
- Third Report, 9/15/22
- Fourth Report, 12/21/22
- Fifth Report, 4/17/23
- Sixth Report, 7/24/23
- Seventh Report 10/18/23

On 5/10/23 Judge Mosman issued an Amended Order, followed by his 7/3/23 Second Amended Order in this matter. The Second Amended Order contained the following language:

> *This order shall terminate upon the Neutral Expert reporting to this 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" means within seven days of a State Court order delivered to OSH ordering that the patient be admitted.*

As part of the backdrop to the Second Amended Order, the parties and recognized amici entered into mediation, and a Mediation Final Term Sheet (June 2023) delineated the following:

> *Review of September Order Efficacy. On or before October 2, 2023, OSH, OHA, plaintiffs, and Dr. Pinals will review the efficacy of the September order with regard to achieving compliance, factoring in any unintended negative consequences. OSH will prepare a report of their findings, and Dr. Pinals will incorporate that review and her opinions about the efficacy of the order into a report to the Court on or before November 15, 2023. Amici agree also to submit their perspectives in writing to OSH, OHA, and Dr. Pinals on or before October 2, 2023.*

I provided a report on 10/18/23 that articulated a new set of recommendations that were updated since my Second Report. In addition, in a separate communication with Judge Mosman, the timing of my next report was shifted to December 2023, to allow time to gather and review data that was being collected by the state, and to allow time to begin work on the specific plans developed in my October 2023 report. This Eighth Report now reflects my opinions "about the efficacy of the order", which is set to expire on 12/31/23 unless Judge Mosman extends it.

Background and Summary of the Two Consolidated Cases:

A more detailed background to these cases is reviewed in my prior reports. In summary, state defendants were previously found by the Ninth Circuit (*OAC v. Mink, 2003*) to be out of compliance with Constitutional requirements and were ordered to admit individuals found unable to Aid and Assist in their criminal cases to Oregon State Hospital for restoration within seven (7) days of receipt of an order for their commitment to OSH for restoration. In December 2021, after further litigation, the parties entered an interim settlement agreement that involved the appointment of a Neutral Expert to provide recommendations to help achieve compliance with the Ninth Circuit's seven (7) day admission requirement as outlined above.

In a separate litigation, 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 ordered them to OSH for treatment, without unreasonable delay. After further litigation, The Honorable Marco A. Hernandez, United States District Court Judge, agreed with the defendants that a consolidation of the *Mink* and *Bowman* cases made sense.

In accordance with my First Report recommendations, there is since that time one waitlist for people waiting in jail for a bed at OSH, whether GEI or under the Aid and Assist process. Both those waiting times continue to be tracked as part of this consolidated litigation.

Qualifications to Perform this Work:

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 behavioral health administrative leadership, management, policy and legislative development, clinical treatment, forensic evaluation, and consultative roles across several U.S. jurisdictions. Other details are provided in my First Report.

Sources:

Background court and legal documents for this case upon which I continue to rely include:

1. Mink 0339 COURT Order Consolidating Cases and Appointing Neutral Expert #240, signed 12/21/21;
2. Bowman 1637 COURT Order Consolidating Cases and Appointing Neutral Expert #21, signed 12/21/21;
3. Bowman 1637 COURT Notice of Judicial Reassignment from Judge Hernandez to Judge Mosman #20;
4. *Mink* and *Bowman* Interim Agreement, Filed 12/17/21;
5. *Bowman* 1637 PLD Plaintiffs 1st Amended Complaint #22;
6. *Mink* 0339 Court Order Granting Motion for Stay of Deadlines. Joint Status and 5/9/22 Joint Status Report;
7. Order on Joint Stipulation to Continue Appointment of Neutral Expert, signed by the Honorable Michael W. Mosman, 6/7/22;
8. *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;
9. 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;
10. Case No. 3:02-cv-00339-MO (Lead Case), Case No. 3:21-cv-01637-MO (Member Case), No. 6:22-cv-01460-MO (Member Case) Amended Order to Implement Neutral Expert's Recommendations, signed by The Hon. Michael W. Mosman on 5/10/23;
11. Oregon Advocacy Center et al., v. Mink et al. Case No. 3:02-cv-00339-MO(Lead Case) Mediation Final Term Sheet (June 2023).
12. Case No. 3:02-cv-00339-MO (Lead Case), Case No. 3:21-cv-01637-MO (Member Case), Second Amended Order to Implement Neutral Expert's Recommendations, signed by The Hon. Michael W. Mosman on 7/3/23; and
13. Case No. 3:02-cv-00339-MO (Lead Case), Case No. 3:21-cv-01637-MO (Member Case), Order Determining Supremacy Clause Issues, signed by The Hon. Michael W. Mosman on 9/11/23; and
14. Case No. 3:02-cv-00339-MO (Lead Case), Case No. 3:21-cv-01637-MO (Member Case), Opinion and Order: Defendants' Petition for Expedited Ruling on Supremacy Clause, signed on 10/17/23 by Judge Michael W. Mosman.

Additional documents I reviewed during this period of reporting included:

1. Email summary of written perspectives on the efficacy of the September order, received 10/12/23 from Mr. Keith Garza, along with report entitled: Fitness Findings and New Charges for Defendants After Commitment to the Oregon State Hospital is Terminated, data prepared

9/28/23, produced by Oregon Judicial Department and a draft article by Judge Nan Waller and Ms. Debra Maryanov;
2. Oregon Advocacy Center Et al. v. Mink et al. amici district attorneys written perspectives pursuant to Mediation Final Term Sheet (June 2023), dated 10/16/23 from Kevin Barton, Washington County District Attorney, Paige Clarkson, Marion County District Attorney, John Wentworth, Clackamus County District Attorney;
3. ODAA Proposals to Address the Crisis at OSH and in our communities, dated 3/2/23 from Amanda Dalton on behalf of the OR District Attorneys Association and ODAA Behavioral Health Legislative Subcommittee to Senator Kate Lieber;
4. Marion County HHS Issue Brief regarding Aid and Assist, 12/19/23;
5. Washington County comments, sent via email, 10/4/23;
6. OHA/OSH data and considerations regarding impacts of the Mosman orders;
7. Mink/Bowman Comprehensive Plan drafts;
8. Information to clinicians regarding documentation and charting developed by OSH;
9. OSH Guilty Except for Insanity PowerPoint received 10/27/23;
10. OSH GEI Patient Average Length of Stay Analysis;
11. PSRB-HSD Strategic Roadmap (Plan for 2023-25 biennium);
12. A Mixed Methods Study of Competency Restoration in Oregon, by Program Design and Evaluation Services (PDES) of OHA, September 2023;
13. Community Restoration Manual Draft from OHA;
14. Miscellaneous emails and background information from DA Barton;
15. GEI Flow diagrams and admission to discharge protocol information, updated 12/7/23; and
16. Hospital Level of Care Categories/Stages Post CRR Approval.

Background documents I reviewed between this report and my prior report include the following:

1. OSH Forensic Admission and Discharge monthly data dashboards November and December 2023 reporting the month prior to production;
2. OSH Forensic Admissions and Discharge Bi-Weekly Reports;
3. Average Wait Time Prior to Admission Progress Metrics for Benchmark Goals, produced by OSH monthly;
4. *Mink & Bowman* Monthly Progress Reports from OHA from November and December 2023; and
5. Miscellaneous media reports.

Relevant meetings during this interim period from my prior report including the following meetings and discussions:

1. Periodic communications with Judge Mosman and Judge Beckerman;
2. Meetings with various OHA and OSH staff, including leadership and forensic evaluators;
3. Regular meetings (mostly biweekly) and several ad hoc 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 included:
        i. Current administrative leaders including Ms. Ebony Sloan Clarke, Director of Behavioral Health, OHA and Mr. Dave Baden, Interim Director of OHA, along with Samantha Byers, Lisa Nichols and Bonnie Cappa from OHA HSD/ISU
        ii. Dolores Matteucci, OSH Superintendent-CEO

iii. Ms. Lindsey Burrows, Deputy General Counsel, Office of Governor Kotek

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
   iii. Melissa M. Chureau, Senior Assistant Attorney General, HHS, General Counsel Division

c. From Disability Rights Oregon (DRO):
   i. Emily Cooper, Legal Director
   ii. Dave Boyer, Managing Attorney

d. From MPD as plaintiff party, Jesse Merrithew of Levi Merrithew Horst PC

4. Monthly meetings with the parties to this case along with Amici representatives and their attorneys including:
   a. Mr. Billy Williams, along with elected Washington County District Attorneys Kevin Barton, and Paige Clarkson;
   b. County Counsel for Washington and Marion Counties, Mr. Thomas Carr and Ms. Jane Vetto, respectively, or their representatives; and
   c. Mr. Keith Garza and Judge Waller, Judge Proctor, and Judge Hill as involved Amici.
5. Meetings on 10/27/23, 11/7/2, and 12/7/23 related to GEI patients attended by Dr. Alison Bort, PSRB Director, Dave Boyer of DRO, OSH and OHA leadership including Dolly Matteucci and Lisa Nichols and other representative staff; and
6. Attendance at the Local Government Advisory Committee for Health and Human Services on 12/15/23.

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
Mosman Order: As of this report, this will refer to the July 3, 2023 Second Amended Order unless otherwise specified
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
PDES: Program Design and Evaluation Services

PSRB: Psychiatric Security Review Board
SHRP: State Hospital Review Panel
SRTF: Secure Residential Treatment Facility

Summary of Activities and Updates During this Reporting Period:

This reporting period was focused on monitoring the state's progress toward compliance with the 7-day admission timeframe requirement and participation in work that helped initiate and advance the recommendations that I delineated in my Seventh Report (10/18/23). I attended meetings and had conversations with the parties as well as members of the amici to gather their perspectives. I also reviewed the feedback received regarding the impact of the Mosman Order and its amendments on compliance and other aspects of the system.

Some of the initiatives that I participated in included discussions on community navigators and competency restoration practices. Specifically, the state has begun several activities of note, including advancing community navigator pilots, selecting pilot sites and developing models for how community navigators might work within the CCBHC framework.

I have also had meetings and discussed community restoration practices in other states and have reviewed initial drafts of a competency restoration program manual for the community. There is also work toward a survey examining community competency restoration practices and an early report regarding the competency population that was produced through PDES. The initial report attempted to address four main questions including: 1) What has happened in the lives of people in competency restoration? 2) What did restoration look like for people? 3) What happened in people's lives after going through the restoration process? and 4) What can be learned from other states about people in competency restoration and their restoration process in general? Although the PDES effort will require more time to fully digest, preliminary summary findings are like observations I have previously made, including a "revolving door" for many people in the competency system and a lack of agreement on the purpose of restoration. The PDES evaluators noted that uneven service delivery across the state making this more complicated. I have discussed with OHA the plan to continue to review this recent report and bring forward any valuable lessons learned.

The focus on the GEI population and increasing efficiencies to reduce reliance upon OSH for beds also began in earnest. Although originally slated to be completed by 12/31/23 in my recommendations, it will now carry over into January and possibly February of 2024, due to scheduling issues and time needed to complete tasks and gather data. That said, the first three meetings occurred, and issues that were discussed ranged from examining the flow of discharge processes between OSH and PSRB to ensuring that community movement is robust to allow for appropriate discharge options from OSH.

I have also been involved in discussions about developing a legislative package that would codify restoration timeframes, and the state is working on a charter to best engage partners in this work. I have reviewed draft plans for this activity, and my understanding is that it will be launched sometime around the new year.

I also was involved in discussions with the Forensic Evaluation Services and OSH Clinical leadership about key aspects of their work together. The first related to medication practices and the ways in which medication can be administered when an individual is objecting, and clarifying practices related to the

"informed consent" and the "*Sell* Order" pathways. There was largely agreement that these decisions and processes could be more efficient and strengthened to ensure that people at OSH are receiving needed medication treatment timely and at proper doses to alleviate symptomatology to the extent possible. This corresponds to the feedback provided by the elected District Attorney amici in this case. At the hospital, this can be a complicated area of practice in psychiatry given that there are not bright lines between treating risky behavior and treating symptoms to the point of rendering an individual fit to proceed, and the legal mechanism of medication administration over objection may be read to only allow for the former and not the latter at times. This is an area that will continue to be discussed and refined. With shorter restoration time periods for some people, and more emphasis on moving through restoration more efficiently, this is an important activity for the state.

Another aspect of my work in this period has included examining the language within the FES evaluations regarding restorability opinions. I have received examples from the elected District Attorneys and had conversations with evaluators and amici judges about how the opinions are formed and what it means for someone to be able to be fit "within the foreseeable future." This topic has come up previously and became a subject of consideration during mediation. The evaluators are currently offering two opinions for relevant cases, one regarding the likelihood of restorability during the OSH commitment period, or within the "foreseeable future" in accordance with statutory language. Work on clarifying these two issues continues.

The state has also been developing a live web-based ldashboard that shows in greater detail where funding has gone and the increased number settings such as SRTFs across the state. This dashboard will be useful for the public to see the product of legislative appropriations and state investments. There has been great growth across the state in these areas, which is a positive, yet concerns about limited resources continue.

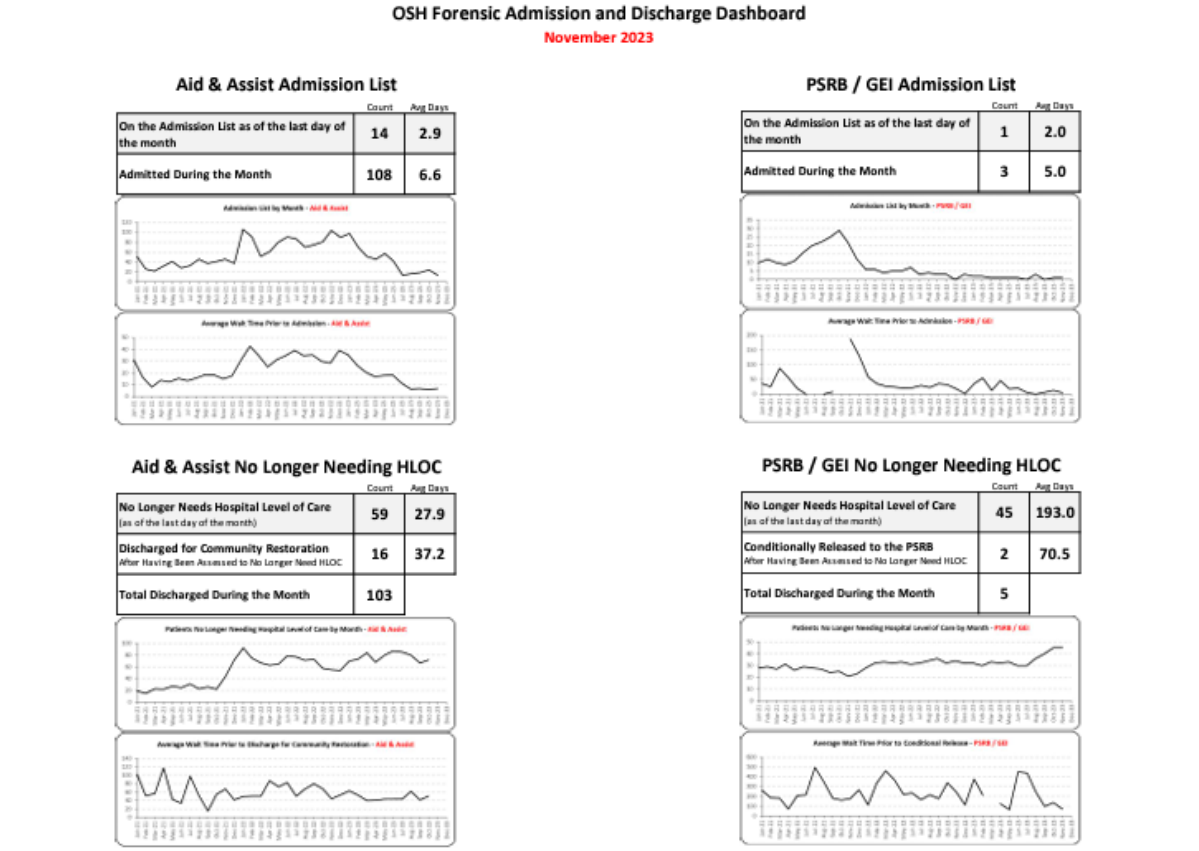
From other meetings and conversations, the plaintiffs and the district attorneys have agreed to resume the idea of developing a training regarding these matters, which appears as another positive step forward. There is data sharing that has begun between OJD and OSH that will be helpful in examining practices across systems. In addition, in my work during this period, OSH/OHA and the Governor's Office have been fully engaged in helping shape system improvements.

Data Summaries

Background Data: Data received shows the state has been maintaining compliance with the 7-day admission since my last report, but the numbers are hovering near non-compliance at times. **Figure 1** and **Table 1** show decreasing numbers of people waiting for admission, with a downward in days waiting. For the average numbers of days people ordered for restoration are waiting, one can see that this was 2.9 days by 11/30/23, 11.1 days by 3/31/23 compared to 21.7 days on 11/30/22. For individuals who were admitted the month prior (which is different from the snapshot average), defendants waited an average of 6.6 days days during this reporting period, as opposed to 28.5 days noted at the end of November 2022. This is remarkable, yet again, 6.6 days is very near to 7 days, and thus it remains to be seen whether compliance can be sustained. The number of people ready to place into the community also decreased, but continues, at 59 people by 11/30/23 on the AA list and 45 people on the GEI list, and with those numbers there is ongoing concern about silting into the hospital people who may not need that resource for their care for their mental illness. It should be noted,

however, that the PSRB has indicated that this metric may have some limitations as it does not consider PSRB decision steps required before someone is ready for discharge.

Figure 1. Data Dashboard Charts Reflecting Progress in *Mink/Bowman* as of November 30, 2023



OSH Forensic Admission and Discharge Dashboard
November 2023

Aid & Assist Admission List

	Count	Avg Days
On the Admission List as of the last day of the month	14	2.9
Admitted During the Month	108	6.6

PSRB / GEI Admission List

	Count	Avg Days
On the Admission List as of the last day of the month	1	2.0
Admitted During the Month	3	5.0

Aid & Assist No Longer Needing HLOC

	Count	Avg Days
No Longer Needs Hospital Level of Care (as of the last day of the month)	59	27.9
Discharged for Community Restoration After Having Been Assessed to No Longer Need HLOC	16	37.2
Total Discharged During the Month	103	

PSRB / GEI No Longer Needing HLOC

	Count	Avg Days
No Longer Needs Hospital Level of Care (as of the last day of the month)	45	193.0
Conditionally Released to the PSRB After Having Been Assessed to No Longer Need HLOC	2	70.5
Total Discharged During the Month	5	

OSH Quality Management – Data and Analysis
'Informing the Pursuit of Excellence'

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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***	***As of 4/1/23***	***As of 7/1/23***	***As of 11/1/23***
Total Number of individuals	46	93*	67	70	104	51	42	24
Average days current individuals have been waiting	15.8 days	22.5 days	16.2 days	19.8 days	20.7 days	11.1 days	9.3 days	3.5 days

Range of Days on waitlist	2-23 days	3-44 days	2-28 days	3-34 days	1-36 days	1-18 days	1-17 days	1-9 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***	***As of 4/1/23***	***As of 7/1/23***	***As of 11/1/23***
Total number of individuals	15	4	3	4	0	1	1	1
Average days waiting	45.6 days	23 days	18 days	13.0 days	N/A	26.0 days	10.0 days	1.0 days
Range of Days on waitlist	1-110 days	17-28 days	12-26 days	3-20 days	N/A	26 days	10 days	1 day

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

Table 2 and **Table 3** show the capacity and census at OSH, which uses an operational active capacity metric and has not shown any significant changes since my prior report. Overall, the hospital is operating at nearly full active capacity at all times.

Table 2: OSH Bed Capacities as of 11/1/23*

Site	Licensed Capacity	Active Capacity
Salem Main Campus HLOC	502	472
Salem Main Campus SRTF	90	87
Salem Main Campus Total	**592**	**559**
Junction City HLOC	76	73
Junction City SRTF	75	72
Junction City Total	151	145
OSH Total	**743**	**704**

* Two Salem HLOC beds are temporarily offline

Table 3. OSH Census as of 11/1/23

Date	Aid & Assist	PSRB	Civil Commitment	Other	Total
9/1/2022	410	275	14	1	700
12/1/2022	396	279	13	0	688
4/1/2023	400	279	11	1	691
7/1/2023	389	281	13	1	684
11/1/2023	366	291	17	1	675

The ongoing high numbers of new orders for restoration continue to be notable, with no real downward trend to date (See **Table 4** and **Figure 2**). GEI admissions do not show significant variability.

Table 4. Aid & Assist and GEI Orders

Number of Orders Received	Aid & Assist	GEI
April 2022	80	7 (4 standard / 3 revocation)
May 2022	77	7 (4 standard / 3 revocation)
June 2022	75	6 (4 standard / 2 revocation)
July 2022	65	5 (3 standard / 2 revocation)
August 2022	74	7 (4 standard / 3 revocation)
September 2022	84	6 (5 standard / 1 revocation)
October 2022	95	3 (3 standard / 0 revocation)
November 2022	95	6 (2 standard / 4 revocation)
December 2022	73	4 (4 standard / 0 revocation)
January 2023	109	3 (3 standard / 0 revocation)
February 2023	74	5 (3 standard / 2 revocation)
March 2023	108	7 (2 standard / 5 revocation)
April 2023	100	5 (2 standard / 3 revocation)
May 2023	95	7 (3 standard / 4 revocation)
June 2023	83	1 (1 standard / 0 revocation)
July 2023	73	3 (0 standard / 3 revocation)
August 2023	103	5 (3 standard / 2 revocation)
September 2023	91	7 (6 standard / 1 revocation)
October 2023	96	3 (2 standard / 1 revocation)

Figure 2. Aid & Assist Admissions/Orders Trends through October 2023

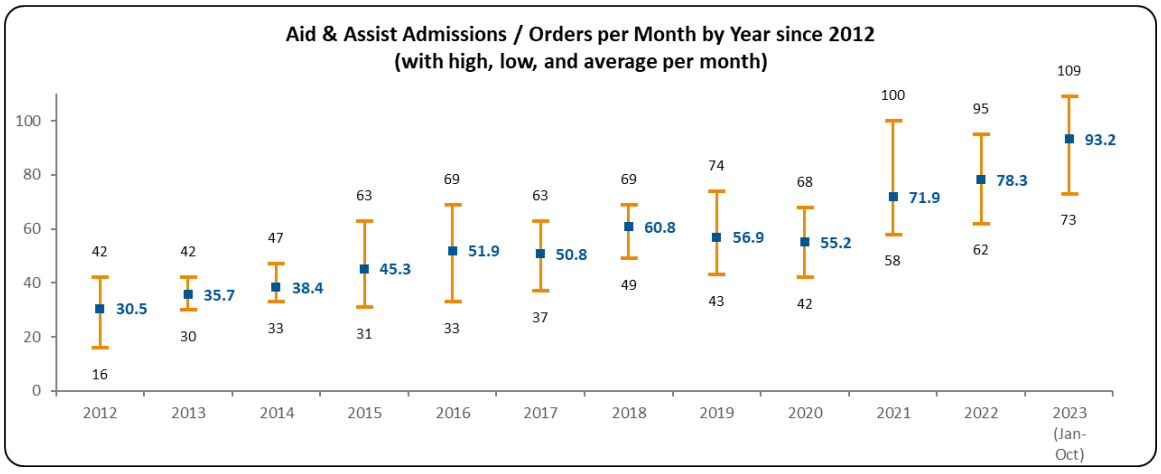

Figure 3 shows progress toward benchmarks set forth in my June 2022 report and more recent compliance with the overarching 7-day admission time as updated through November 2023. Of the 108 admissions in November 2023, 93.5% (101 people) were admitted within the 7-day Mink requirement. Of the 7 people not admitted within 7 days, 5 were due to a county decision (an OSH

bed was offered but the county decided to transport the person on a later date), and the other 2 were due to the order being received late. Although as of this report date, the hospital has been admitting within 7 days except for technical delays, the trend line again is hovering very close to the 7-day mark and appears to be easily able to go above the 7 days depending on order numbers and discharges.

Figure 3. Admission Wait Time Projections Compared to Benchmarks Set in Second Report based on data as of 11/30/23

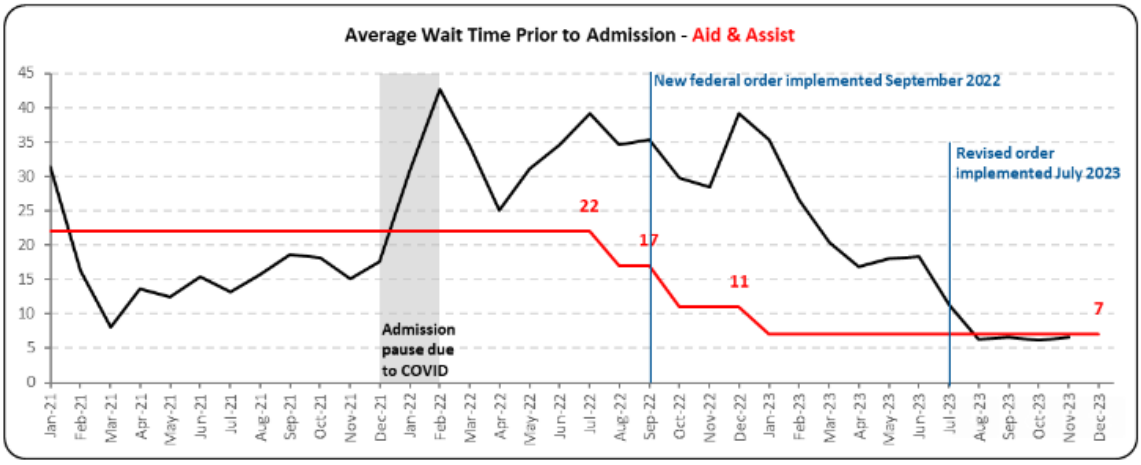

Table 4 below shows data related to the order by Judge Mosman. Of the 409 individuals who were in OSH at the time of the 9/1/22 order (so-called "Cohort 1"), only 8 were in the hospital as of 12/1/23 on their initial restoration order. As can be seen in **Table 4** and **Table 6**, most patients are being discharged after being found able, and many are sent to community restoration. It is my understanding that the data for discharge reasons is such that those discharged prior to the end of restoration as unable and ordered to community restoration are labeled as "community restoration" discharges. As per my prior reports, the demand for community restoration services is a significant issue to be addressed.

Table 4. Discharge Data Related to the 9/1/22 Order by Judge Mosman, compiled as of 12/1/23

- **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

OSH Restoration Limit Report
(data are current as of 12/01/2023)

			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 12/1/2023	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	End of Statutory Jurisdiction	Other	Total Discharged
Misdemeanor	85	0	51	25	26	18	2	29	7	26	3		85
Felony	217	0	100	30	70	68	13	57	9	70			217
Violent Felony	107	8	42	17	17	40	29	6	3	17	2	2	99
Total	**409**	**8**	**193**	**72**	**113**	**126**	**44**	**92**	**19**	**113**	**5**	**2**	**401**

			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 12/1/2023	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	End of Statutory Jurisdiction	Other	Total Discharged
Misdemeanor	487	67	396	177	183	103	25	86	20	183	3		420
Felony	744	195	231	106	95	264	37	128	24	95		1	549
Violent Felony	222	108	23	7	2	93	14	1	1	2	1	2	114
Total	**1453**	**370**	**650**	**290**	**280**	**460**	**76**	**215**	**45**	**280**	**4**	**3**	**1083**

Table 6. Legal Status of AA Discharges in October 2023 based on Hospital Data and Hospital Restoration Limits

October 2023 A&A Discharges

Reason	Cohort 1	Cohort 2	**Total**
Able		38	**38**
Never Able		10	**10**
Community Restoration		13	**13**
Dismissed		9	**9**
End of Statutory Jurisdiction			**0**
Other		1	**1**
Restoration Limit		27	**27**
Total	**0**	**98**	**98**

Note – One of the 98 discharges listed above (in the "Other" category) was a patient who converted from an A&A to a Civil-PSRB (426.701) patient and did not physically discharge from OSH

The numbers of admission orders continue to exceed those that were originally projected upon the initial Mosman Order and as depicted in **Table 7**. This table shows the actual admissions compared to the projected admissions that were calculated making certain assumptions regarding rates of orders that might be received.

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

	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	92	77	73	90
Jan-23	97	97	74	10	93	101	109	98
Feb-23	97	97	74	10	94	107	74	70
Mar-23	107	107	79	10	129	128	108	51
Apr-23	89	89	79	10	108	107	100	46
May-23	89	89	79	10	88	87	95	57
Jun-23	89	89	79	10	101	97	83	42
Jul-23	87	87	79	10	103	104	73	14
Aug-23	87	87	79	10	112	100	103	17
Sep-23	90	90	84	10	102	95	91	19
Oct-23	91	91	84	10	97	93	96	24

Community restoration is depicted in **Table 8,** showing that community restoration episodes for the first six months of 2023 numbered 274, compared to a total of 375 throughout 2022. If the trend were to continue, then there would be 548 community restoration episodes in 2023 (274x2). Of the total community restoration episodes, 174 have lasted for over one year (1345-1171=174), with 30 of those in 2023's first six months compared with 46 for 2022. Thus, trends for increased numbers of community restoration episodes are clear, and longer duration may also be occurring for some number of individuals. Because elements of the data lack specificity and given that it is hand collected in many ways, the data is not as readily conclusive as hospital restoration data.

Table 8. CMHP Reported Completed Community Restoration Data 1/1/2019-6/30/2023

CMHP Reported Completed Community Restoration Data												
	2019		2020		2021		2022		2023 (January-June Only)*		2019-2023	
# of Completed Community Restoration Episodes*	173		247		277		375		274		1350	
# of Days Minimum	1		0		0		0		2		0	
# of Days Maximum	1056		840		931		1399		1161		1399	
# of Days Mean	166		210		201		205		182		196	
# of Days Median	126		162		142		152		120		145	
Days in Community Restoration	# of Completed Community Restoration Episodes**	% of Total Completed Community Restoration Episodes**	# of Completed Community Restoration Episodes**	% of Total Completed Community Restoration Episodes**	# of Completed Community Restoration Episodes**	% of Total Completed Community Restoration Episodes**	# of Completed Community Restoration Episodes**	% of Total Completed Community Restoration Episodes**	# of Completed Community Restoration Episodes**	% of Total Completed Community Restoration Episodes**	# of Completed Community Restoration Episodes**	% of Total Completed Community Restoration Episodes**
0-90	64	37.00%	65	26.30%	90	32.50%	108	28.80%	100	36.50%	428	31.70%
0-180	116	67.10%	132	53.40%	167	60.30%	214	57.10%	186	67.90%	818	60.60%
0-365	160	92.50%	207	83.80%	233	84.10%	325	86.70%	243	88.70%	1171	86.70%
0-730	172	99.40%	242	98.00%	274	98.90%	365	97.30%	267	97.40%	1324	98.10%
0-1095	173	100.00%	247	100.00%	277	100.00%	371	98.90%	273	99.60%	1345	99.60%
*Missing data from Curry, Malheur, Multnomah, Polk and Wallawa Counties from 1/1/23-3/31/21; Missing data from Baker, Benton, Curry, Multnomah, Polk and Wallawa Counties for 4/1/23-6/30/23)												
**Completed does not reference success of restoration, but rather indicates that the community restoration episode ended.												

Forensic Evaluation data continues to show high numbers of evaluations conducted by FES staff, including requests for evaluations of individuals outside of OSH. **Table 9** shows recent data on active cases for which FES has been assigned to evaluate, 361 of which are not currently at OSH.

Table 9. Number of Active FES Cases as of 11/1/23

Type of Evaluation and Location	Number
.370 Evaluations at OSH	366
.370 Evaluations not at OSH	277
.365 Evaluations not at OSH	62
.315 Evaluations not at OSH	22
Total Cases	727

Additional Data to Inform this Report:

For this report examining any larger impacts of the orders and amendments by Judge Mosman, I asked for specific additional data. In addition, OHA/OSH produced their report to me about their views of the impact of these orders. Data was provided at my request, for example, related to SB295 and discharges. OHA was able to provide a one-week snapshot of hand counted information. **Table 10** shows this information illustrating various reasons for SB295 barriers and placement/discharge challenges. For example, higher locus scores show barriers to placement. In addition, during the week of data examined, 17 placement requests were not responded to by counties. Often there is more than one RTP notice being sent. In 7 cases, clients did not agree to the placement conditions. Cross system placement was an issue for one case. Medication compliance related issues were barriers in two of the cases.

Table 10. One Week Snapshot on Ready to Place Issues 10/23/23-10/27/23

RTP Case Data Snapshot (10/23/2023-10/27/2023)	
One or More RTP Notice	73
Client Refusal to Conditions	7
County Seeking Civil Commitment	0
Cross System Placement Needed	1
Lack of Appropriate Placement	7
Lack of Appropriate Placement - SRTF*	8
No Referrals Made	11
No Response from County	17
Court Continued Commitment**	10

*Locus Scores for Cases Lacking SRTF Placement	
6	0
5	8
4	3

**Reasons for Court Continued Commitment	
Involuntary Medications	1
Lack of appropriate Placement	3
Lack of SRTF*	3
Medication Compliance	1
No Placmement Idenfied	3
No Placmement Idenfied/Waitlisted	2
Symptoms/Behavior	1

The mediation that resulted in the Second Amended order from 7/3/23 offered exceptions to the original restoration duration limits. From 8/1/23 to 11/1/23 there were seven requests and all of those were granted (see **Table 11**). As of 11/1/23, those 180-day extended cases accounted for 349 additional bed days used at the hospital, and the 30-day extension cases accounted for an additional 229 OSH bed days.

Table 11. **Number of 180-day and 30-day Requests to Extend Restoration Duration**

Data 8/1/23-11/1/23	Number of Requests	Number of Granted Requests
180-day violent felony extension requests	7	7
30-day discharge-related extension requests	11	11*

*Only 6 of the 11 cases for which the extension were granted met the criteria delineated by the mediation term sheet and Judge Mosman's order, per DOJ.

In addition, civil expedited admission requests and admissions were also examined. The data produced by OSH indicated is in **Table 12**.

Table 12. Civil Expedited Admissions 9/1/22 to 11/1/22

OSH Civil Expedited Admissions 9/1/22 to 11/1/23	
Number of requests	19
Number of Denials	8
Number Accepted	11

Information Obtained from OSH/OHA Regarding the Impacts of the Mosman Order

I consulted with OHA and OSH to ask specific questions related to the impact of the federal orders, and received their report that included data elements noted above as well as what is described in this section. A summary of their report findings is included.

Regarding data comparing percentage found able, never able, med. never, or left prior to a finding, both pre and post the new federal order:

- *Prior to the federal order (2021 data), a little under a third of A&A patients admitted to OSH were discharged prior to receiving a "dischargeable finding" (Able, Never Able, Med. Never)*
    - *Discharged prior to reaching a dischargeable finding – 31.3%*
    - *Found Able at the time of discharge – 56.9%*
    - *Found Never Able at the time of discharge – 8.1%*
    - *Found Med. Never at the time of discharge – 3.7%*

- *Since the implementation of the federal order (Sep 2022 through Oct 2023), a little over half of A&A patients admitted to OSH have been discharged prior to receiving a dischargeable finding (Able, Never Able, Med. Never)*
    - *Discharged prior to reaching a dischargeable finding – 52.6%*
    - *Found Able at the time of discharge – 39.4%*
    - *Found Never Able at the time of discharge – 5.4%*
    - *Found Med. Never at the time of discharge – 2.6%*

According to the OHA/OSH report, "prior to the federal order, the reasons for leaving OSH prior to receiving a dischargeable finding were for the patient to continue restoration in the community, the patient's charges were dropped or the case dismissed, or the patient reached the end of their jurisdiction" and "since the implementation of the federal order, the reasons for leaving OSH prior to receiving a dischargeable finding are the same as before with the addition of leaving due to reaching the end of a restoration limit." The defendant report goes on to state, "without the restoration limits, and the increase in patients leaving OSH prior to receiving a dischargeable finding, OSH would most likely not have been able to get back into compliance with Mink."

Analyses by OSH indicated that barriers to findings of able/not able or non-dischargeable findings included persons at OSH "not meeting criteria for involuntary medications and therefore not being able to be started on medication prior to the evaluation", "Lack of discussion/documentation around delusions related to the specific legal charges/situation, hence lack of improvement in those symptoms", "people just needing more time for treatments to reach maximum benefit and fully manage symptoms that are impeding capacity to stand trial." There was also a comment that more people were leaving the hospital prior to being restored rather than reaching a finding of Never Able, in part because, "a finding of Never Able typically takes either a lot of historical information or consistent charting over a longer period of time to show that there will never be improvement." As a result, it appeared that many people are being ordered to community restoration due to reaching their restoration limit prior to being found able, certainly many more than prior to the federal order."

Given that medication issues continued to arise in my reviews and discussion, I asked for OHA/OSH to include information about specific aspects of medication administration in their report to me. They produced the following information:

- *Sell Orders*
    - *Prior to the federal order (Nov 21 – Aug 22), Sell orders were being received at a rate of 0.018 per admission (13 orders out of 728 admissions)*
    - *Since the federal order (Sep 22 – Oct 23), Sell orders are being received at a rate of 0.017 per admission (23 orders out of 1,344 admissions)*
    - *The 0.001 per admission difference represents a 5.6% decrease*
        - *In other words, the rate at which OSH is receiving Sell orders has decreased slightly since the federal order was implemented*
- *Involuntary Medications*
    - *Prior to the federal order (Jan 22 – Aug 22), Involuntary Med requests (submissions of Form 1B) were being received at a rate of 0.691 per admission (388 requests out of 561 admissions)*

    - *Since the federal order (Sep 22 – Oct 23), Involuntary Med requests (submissions of Form 1B) are being received at a rate of 0.519 per admission (698 requests out of 1,344 admissions)*
    - *The 0.172 per admission difference represents a 25.0% decrease*
        - *In other words, the rate at which OSH is receiving Involuntary Med requests has decreased by a quarter since the federal order was implemented*
- *Med. Never Findings*
    - *Prior to the federal order (Aug 21 – Aug 22), Med. Never findings accounted for 5.2% (34 out of 654) of all dischargeable findings (Able, Never Able, Med. Never)*
    - *Since the federal order (Sep 22 – Sep 23), Med. Never findings have accounted for 7.1% (47 out of 666) of all dischargeable findings (Able, Never Able, Med. Never)*
    - *The 1.9% difference represents a 36.4% increase*
        - *In other words, the percentage of dischargeable findings that result in a Med. Never finding has increased by a little over a third since the federal order was implemented*

I asked OHA/OSH to produce findings in their report indicating their views of any serious adverse outcomes, or the so-called "parade of horribles" as referenced by Judge Mosman in an earlier hearing as something he would want to review. The OHA/OSH report indicated that they did not view the outcomes as a "parade of horribles" though the above findings showed some significant impacts. They summarized their views as follows:

- *OSH has not seen a significant percentage of A&A patients discharge solely for reaching their restoration limit*
    - *Prior to the implementation of the restoration limits, OSH estimated no more than 30% of the A&A population would be impacted*
    - *Through October 2023, the actual percentage of patients who have discharged solely for reaching a restoration limit has been 26.6%*
- *OSH has not seen a significant number of patients readmit to OSH after being discharged for reaching their restoration limit*
    - *The overall readmit rate for A&A patients at OSH has gone down since the federal order was signed*
        - *Prior to the federal order the OSH A&A readmit rate within 90 days was 5.1%*
        - *Since the federal order restoration limits went into effect, and through October 2023, the OSH A&A readmit rate within 90 days has been 3.9%*
    - *Specifically related to the patients who discharged due to reaching their restoration limit, the readmit rate has been 2.7%*
        - *Through October 2023, out of 367 patients discharged for reaching their restoration limit, 10 have been readmitted within 90 days*

Finally, I asked that OHA/OSH include in their report their views of what might happen if the federal order is lifted. The below summarizes their response to me:

- *With both the federal order restoration limits based on the patient's highest charge and the admission restrictions for patients with only non-person misdemeanors crimes in place, OSH has*

seen the average number of discharges and new admissions per month increase from around 70 per month to roughly 97 per month
    - *The limits and restrictions imposed by the federal order have worked to increase the flow of Aid & Assist patients in and out of OSH more quickly*
- *The difference of +27 more discharges/admissions per month has allowed OSH to slightly outpace the rate at which new orders are being received (which has increased from 74.0 per month to 91.4 per month since the federal order was implemented)*
- *With discharges and admissions slightly outpacing the rate at which new orders are being received, OSH has been able to decrease the number of patients on the admission list waiting to be admitted from 75 to 24, and decrease the average waitlist time from 35.3 days to 6.2 days*
    - *Both of which have allowed OSH to finally get back into compliance with the 7-day admission requirement of Mink (as of July 20, 2023)*
- *As a result of the federal order limits and restrictions OSH has also seen the Aid & Assist patient average length of stay decrease from 161.9 days to 95.5 days (based on Cohort 2)*
- *If the federal order limits and restrictions were to end, OSH would be projected to see the Aid & Assist patient average length of stay return to the pre-federal order average of about 162 days per patient*
- *With the limited number of OSH beds being occupied for roughly 66 more days per patient (on average), this would decrease the number of discharges and new admissions per month from the current 97 per month back to the pre-federal order averages of about 70 per month*
- *Assuming the rate at which new orders are being received would not suddenly start to decrease at the same time the federal order limits and restrictions were rescinded, this would result in a difference of about 22 more new orders per month than could be admitted, which would result in an instant increase in the number of people on the admission list and the wait times they endure*
- *With the current admission list count at 24, and the current average wait time at 6.2 days, it is projected OSH would fall back out of compliance with the 7-day admission requirement of Mink within one month of the federal order limits and restrictions being rescinded*

Comments from the Amici Judges Regarding the Impact of the Mosman Order:

According to the amici Judges,

> *"…while it is good that defendants found unable to aid and assist are committed to OSH are no longer waiting more than seven days for transport, the consequences of the actions ordered to achieve this outcome are significant. The orders currently in place have created more pinch points and delays in the competency process. The lack of appropriate housing and treatment for individuals in need of community restoration has only been further stretched as the federal orders have restricted the use of OSH. This outcome was predictable given that the restrictions for use of OSH were not accompanied by an adequate increase in community resources. We hope that steps will be taken at the state and local levels to rectify the criminal justice being the primary "reprieve" for people with mental illness in our communities and for providing those individuals with appropriate care while they are there…"*

In addition, OJD produced data that showed (a) outcomes upon termination of an aid and assist commitment in the year before the September 2022 order and the year after, and (b) the number of new criminal cases filed against defendants within six months after termination of an aid and assist

commitment, also in the year before and the year after entry of the first remedial order (See **Figure 4** and **Table 13).**

Figure 4. Fitness Findings and New Charges per OJD Data

Fitness Findings and New Charges for Defendants After Commitment to the Oregon State Hospital Is Terminated
Oregon Judicial Department

This document shows circuit court data on the number of defendants found fit to proceed when commitment to the Oregon State Hospital (OSH) is terminated, and the number of new criminal cases filed within six months of commitment, for the twelve months before and after Judge Michael Mosman's remedial order in the federal *Mink/Bowman* case.

Comparing data from September 2021 through August 2022 with data from September 2022 through August 2023 shows that, in the latter period:

- The percent of defendants who were found fit at the end their commitment to OSH decreased from 59% to 39%
- The number of defendants with commitment terminated without regaining fitness more than doubled (from 334 to 695)
- The number of new felony cases filed within six months of a defendant's commitment being terminated increased 15% (from 66 to 76)
- The number of new misdemeanor cases filed within six months of a defendant's commitment being terminated increased 46% (from 125 to 182)

Table 13. A&A State Hospital Commitments Terminated in Oregon Circuit Courts (9/1/21 to 8/31/23)

Table 1: Aid & Assist State Hospital Commitments Terminated
In Oregon Circuit Courts
Between September 1, 2021 through August 31, 2023

	Commitment Termination Date		Change
	September 2021 – August 2022	September 2022 – August 2023	
Total Commitments Terminated	817	1148	**+41%**
Commitments Terminated - Defendant Found Fit	483	453	**-6%**
Commitments Terminated - Defendant Not Found Fit	334	695	**+108%**
Commitments Terminated - Percent of Defendants Found Fit	59%	39%	**-20 percentage points**

The amici judges also requested some data dashboard improvements regarding specific county data showing the number of instances in which a defendant has been held longer than seven days after the commitment order before admission to OSH.

Perspectives of the District Attorney Amici Regarding the Mosman Order:

I received reports from the District Attorney amici that also informed this analysis. Their report included an acknowledgement for positive work and an "atmosphere of collaboration" amongst the participants in the litigation and the amici. That said, they expressed ongoing frustration "at the current failure of Oregon's mental health system." Although they recognized that compliance has been achieved, they noted that this has come at a "great cost to defendants/patients, victims of crimes, and local communities."

Based on those considerations, they noted several areas that require ongoing attention, including: civil commitment; multiple charges challenges (disagreeing with concurrent restoration periods for all circumstances), increased capacity needs at "all levels, including OSH, SRTFs, and local community capacity"; reexamination to expand the ORS 426.701 Extremely Dangerous Person statute limitations; jail-based restoration; *Sell* order limitations; increased numbers of people discharging from OSH as unrestored, the growing demand for community restoration and difficulties with its implementation (along with a recommendation to individually determine when someone could return to OSH for restoration), and the need for increased resources at "all levels," including funding rapid and dedicated fitness to proceed dockets.

Regarding medications, the comments included the idea that an individual should be allowed to return to OSH if the *Sell* order is unable to be enforced in the community.

Specific ideas related to community restoration included the perspective that the push to move people through OSH has resulted in a "burden to local communities that are ill-equipped to manage the numbers." The report stated,

> *Challenges include lack of community restoration time limits, inadequate tools to require compliance with community restoration program rules, insufficient community resources and funding, excessive wait times for .365 evaluations completed by the OSH, addressing multiple co-occurring issues of homelessness, mental health, and addiction, and lack of treatment infrastructure (including secure treatment settings) for patients/defendants, and a total lack of consequences for defendants who simply refuse to engage.*

In a memorandum to Senator Lieber dated 3/2/23, proposals by the Oregon District Attorneys Association were delineated. These suggestions included, among many ideas, increased funding for certified forensic evaluators, increased pay for OSH staff to improve treatment, increasing funding for the Office of the Public Guardian with special funding earmarked for the AA population. They also recommended increased SRTF capacity with new programs for individuals who present a public safety risk or will not adhere to medications. They also proposed legislation to require OSH to provide .365 and .370 evaluations in the community, as well as improving the content of evaluations. Other legislative strategies included codifying that restoration within the foreseeable future would be based on treatment prognosis, that commitment statutes for people with IDD be allowed to improve diversion options out of the AA process, and expanding capacity at OSH.

Perspectives of the Counties:

Washington County comments: There were comments regarding SRTFs in Junction City not taking people who were prescribed more than one antipsychotic medication, which was seen as an important issue since those SRTFs were a key resource for the competency restoration community beds. There was a comment also about CMHPs needing access to OSH electronic medical records to facilitate discharge planning. It was also recommended that there be a significant increase in access to state-licensed residential programs for individuals in community restoration, and that there be a change in how the housing continuum is managed and maintained. For example, the licensed mental health treatment homes (SRTF's, RTFs, and RTHs) were on the "residential wiki" but that website "rarely shows any vacancies." There were also access barriers as many beds were saved for individuals under PSRB supervision. Movement through residential placements was identified as slow. There was a suggestion that OHA develop a "residential oversight team", modeled after the Extended Care Management Unit (ECMU) that existed in the early 2000s to maintain efficiencies in placement and residential program length of stay. The idea was that the team would collaborate with CCOs, providers, clients, and CMHPs to identify appropriate residential program openings. As an alternative, Washington County suggested providing funding to CMHPs to do the work of tracking and collaborating for these efficiencies. Finally, there was a recommendation that there be meaningful court hearings "to discuss all five (5) possible "actions" when a defendant is considered "unable" (dismissal, CR, civil commitment, guardianship, OSH) and there is disagreement as to the best path forward. By default, the person is sent to OSH."

Maron County comments: Marion County noted in its Health and Human Services Aid & Assist document that there was a need to look at behavioral health system capacity issues. This brief noted the significant burden on providers now in the counties. They remarked that "many outpatient providers are closed for referrals or dealing with high caseloads and staffing shortages." This results in the need for crisis services to support individuals. The brief also included information about the problems with the number of people being assessed as needing level 5 or 6 residential supports, meaning still needing a hospital or an SRTF, and yet the county indicated that there is insufficient capacity to meet that demand. Because of this, the county felt it puts providers at greater risk for negative outcomes as they serve people in settings that do not provide the level of support needed. The county also raised concerns about how this could compromise staff safety in the community. At the time of the briefing, they noted they had 8 individuals waiting for an SRTF level of care. This required additional staff to support each other in going to meet with those clients who were not at the right level of care needed.

Marion County also reported needing more housing supports, though the County increased its bed capacity for transitional beds to 35 total, but this was much lower than the number needed for individuals on community restoration. They also were concerned about mixing populations when someone in the AA process needed a higher level of care that might include 24-hour staffing or medication administration. The report noted that there is insufficient residential capacity across the state, and that providers are not properly funded for these services, resulting in disincentives to developing and maintaining these levels of care.

Finally, the brief noted that there is a limited pool of certified forensic evaluators that can assure timely decisions are made about fitness to proceed. Long waitlists for evaluations create delays that significantly impact the community. They gave as an example an individual who will need to wait 9 months for an evaluation, especially as the priority of the FES is to evaluate people at OSH. There was a suggestion of increasing the efficiencies and tighter timelines for the evaluations.

Conclusions and Recommendations:

In summarizing my conclusions and recommendations, it is important to acknowledge the incredibly difficult and tireless work of the defendants within OHA and OSH, the Governor's Office, the plaintiffs, as well as the amici District Attorneys, Judges and County officials, the PSRB staff, the CMHPs, the providers, the residential programs, and countless others, who are daily facing increasing pressures and ongoing demands that this Mink/Bowman situation reflects. Their contributions are to be commended even for just trying to make their respective pieces of the puzzle function better for the many people served with mental illnesses, intellectual and other developmental disabilities, substance use challenges and other conditions, along with criminal legal involvement. The work is also to be commended in the collaborative engagement and dialogue I have seen in these last several months, even when collaboration seems fraught.

Regarding the impact of the Mosman Order, in my opinion, it is meeting its intended purpose-- to help the state achieve compliance with a 7-day admission rule. Whether the 7-day admission rule is the "right" rule, is not under consideration at this time, as Constitutional issues were considered in developing that rule, and this has been the flagship metric for this case. Although the order has been "working" for compliance since mid-July 2023, there have been downstream consequences that are significant. It appears that fewer people are being restored in the hospital, and people are silting up in the community restoration system from OSH. This has put increasing strain on community systems, and raised concerns for judges, prosecutors and counties, albeit different types of concerns. Although these are very significant issues, in my opinion, more time is needed for the system to adjust, rebuild itself after the pandemic, and equilibrate to the Mosman order to understand whether these downstream effects can be improved. To go backwards and rescind the order now would create even more disruption, and run the risk of putting the state further back from compliance rather than continuing the momentum toward system expansion/refinement. Furthermore, since the large majority of people entering OSH are still leaving as restored, the system is overall still continuing to work. Remedies for addressing what problems are now more apparent have begun to be addressed

With that in mind, in my role as the Neutral Expert in this matter, I offer the following recommendations considering the impact of the Mosman Order.

1) The Mosman Order should be extended for another year, unless something significant shifts in the trends of restoration orders or GEI population needs or OSH discharge efficiencies. This continuation should take place in the context of ongoing dialogue and discussion for any further pivots that might be needed. Again, in my opinion the Order in its most recent form is and has been necessary for the state to maintain or come close to compliance. Even with the Order in place, compliance appears to be hovering in the balance with just a few higher orders potentially tipping the state out of compliance.

2) With more people leaving OSH unrestored, community restoration time limits and delineated components and processes are increasingly critical to reduce the system's reliance on restoration as an avenue to treatment, and to reduce the likelihood of community restoration beds being filled with people who may benefit more from other services. I noted in my Second Report that both hospital and community restoration should be limited in duration, and I provided parameters for this. This recommendation was raised in several other reports as well. The feedback was consistent that the strains on the community are ongoing and heightened

with more restoration taking place in community settings. Limits to restoration services would serve the public, with the understanding that more general mental health services increasingly are available. The state's legislative strategy for this important activity will be critical in moving this forward.

3) There is a need to continue to examine the treatment practices at OSH with regard to medication of individuals found unable to Aid and Assist to maximize efficiencies of decisions and engagement in medication adherence, and the use of legal mechanisms for medication over objection when needed to increase the likelihood that individuals can be restored whenever possible. There should also be ongoing exploration of medication issues (e.g., individual consent, voluntariness, orders that remain from OSH at the time of community placement, and multiple medications such as was raised about the Junction City beds) and their impact on community restoration issues as well, to ensure that residents are receiving proper care and admission criteria are not too restrictive.

4) The State's efforts to increase the infrastructure of behavioral health supports generally, as well as build out system structures outlined in my October 2023 report are imperative to help further the system's ability to support individual in forensic processes. Almost every representative of the amici group recognized the need for more services at all levels of care. In my view, a focus on strengthening and expanding community settings and placements is the most critical over and above more beds at OSH. In addition, the projected initiatives and recommendations refined in my October 2023 report should continue in earnest.

5) Efforts to examine utilization management of all community resources, including those for GEIs and AA, need to continue and increase in earnest. There should also be exploration of how to ensure record sharing and even access to the OSH EMR for community programs taking people out of OSH. Record sharing can help foster this utilization management goal.

6) Amici and the parties have discussed and agreed to resume an initiative to help train partners in diversion efforts and processes to increase efficiencies across the AA system and reduce reliance on restoration as a wholistic "treatment" option. This is an important endeavor and the timing appears ripe at this moment.

7) Data dashboards should include numbers of people who waited beyond the 7-day limit, and should re-examine the GEI metric of "ready to place" as currently depicted.

8) There should be strong consideration for taking on more community forensic competency evaluations and expanding staff at OSH to do so. Evaluations for community restoration should consider language that indicates likely timing of restorability that is more specific than in the "foreseeable future", which for the community could mean at any time in the future.

9) There should continue to be regular meetings with amici and others as needed to inform ongoing review of the AA and GEI processes, including any future recommendations for revisions of future court orders. At the same time, rather than emphasizing federal court remedies, each of the amici and the parties have offered suggestions about system reform, legislative changes and other matters with many consistent themes. Their suggestions have

been quite helpful and should continue to be discussed at the amici/all party meetings and in other venues.

I again commend the work of all the people reflected in this report and recognize how much more growth across the system has occurred over the last year. I encourage the partners in these efforts to continue to be hopeful that together their work can improve outcomes for those class members at the intersection of behavioral health and criminal systems.

Respectfully Submitted,

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Neutral Expert, *Mink/Bowman*