



Marion County
OREGON

Board of Commissioners

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To: Members of the Association of Oregon Counties

BOARD OF COMMISSIONERS

Colm Willis, Chair
Kevin Cameron
Danielle Bethell

CHIEF ADMINISTRATIVE OFFICER

Jan Fritz

Re: Adverse Consequences To Counties Due To The September 1, 2022, Federal Court Order Limiting Admissions To, And Shortening Treatment At The Oregon State Hospital

As many of you know, on September 1, 2022, federal judge Michael Mosman issued an order in a civil rights case requiring defendants Oregon State Hospital (OSH) and the Oregon Health Authority (OHA) to implement recommendations made by a Boston based psychiatrist, Dr. Debra Pinals. Since then, Marion and Washington counties have been very vocal regarding the negative impact this order has on counties. The parties in the case continue to push their agenda limiting OSH admissions, however, with little regard for local input. It is time for AOC and individual counties to consider joining Marion and Washington in advocating for solutions to the additional public safety and community resource problems caused by this order.

Background

Dr Pinals was retained to assist OHA in meeting the seven day federally mandated timeline for admissions to OSH of criminal defendants residing in county jails in need of psychiatric restoration services to aid and assist in their criminal court cases. Oregon statutory law provides that individuals committed to OSH for restoration services may receive those services for a maximum of one year if they are charged with a misdemeanor and a maximum of three years if they are charged with a felony. Dr. Pinals recommended that treatment for aid and assist individuals be drastically shortened; with misdemeanants being automatically discharged after 90 days, individuals with non-Measure 11 felonies after six months and individuals charged with Measure 11 felonies after one year.

Dr Pinals also recommended limiting civil commitments to OSH to only those individuals meeting expedited admission policy; essentially ending all civil commitments to the state hospital and leaving more individuals with untreated behavioral health needs requiring a hospital level of care in our communities. On September 1, 2022, Judge Mosman, relying on the Supremacy Clause, ordered implementation of these recommendations. Immediately thereafter Marion County and Washington County, along with three elected District Attorneys and five Circuit Court judges petitioned and were allowed to appear in lawsuit as amici and provide the court information on the negative impacts his order has on public safety and

local communities. Despite their participation and the concerns they continue to raise, Judge Mosman has kept his September 1, 2022, order in place and is currently considering further limiting restoration services for criminal defendants.

In Marion County, the September 1, 2022, order has impacted public safety and strained resources especially those of the Sheriff's Office and the Health and Human Services Department

Adverse impacts on Sheriff's Office and Public Safety

Individuals released from OSH under the shortened restoration time limits are often not restored but are still returned to jail. If these individuals further decompensate while back in jail, they can become a danger to themselves, other adults in custody and staff. The September 1, 2022, order does not permit the jail to return them to OSH for additional treatment. Consequently, county jails face increased 8th and 14th amendment concerns, risk liability issues and safety concerns due to housing acute psychotic and schizophrenic individuals who require a hospital level of care.

Additionally, in some cases OSH has stopped providing progress reports to the courts when an individual is released under the new restoration time limits. Without a progress report to help determine proper placement, the courts are unwilling to order the sheriff to transport and have issued amended orders prohibiting sheriffs from transporting individuals back to the jail until the court receives an updated report. Disability Rights Oregon (DRO), the Metropolitan Public Defenders Office in Portland and OHA have all asked Judge Mosman to order the Marion County Sheriff, who is not party to the lawsuit, to disregard these circuit court orders. While Marion County has been successful so far in persuading the judge not to take this step, these requests continue, and he is still considering modifying his order. A blanket federal court order requiring county sheriffs to ignore local circuit court orders would place all county sheriffs in unworkable situations.

Additionally, both DRO and the Metropolitan Public Defenders are pushing to have the court order that OSH cannot admit individuals charged with misdemeanor crimes. If these individuals require a hospital level of care but cannot be admitted, their charges likely will not be prosecuted. Many person-on-person crimes are misdemeanors. If ordered, this would create yet one more public safety risk for our communities.

Adverse Impacts on County Health Departments

Marion County Health and Human Services has seen the number of its community restoration cases more than double since September of 2022. This increase is pushing the limit of what staff can accommodate, and the numbers will only continue to grow the longer the September 1, 2022, order remains in place. This is because, unlike commitment to OSH, there is no maximum durational limit for community restoration under current Oregon law. As more individuals are placed in community restoration and as those already in fail to regain fitness to stand trial, eventually the system will be stressed to the point of collapse.

Also, because the individuals currently being placed on community restoration would have previously been treated at OSH, individuals who present a higher-than-normal level of both safety risk and behavioral health concerns are now being placed into community restoration. Not only does this require additional resources on community restoration to keep the individuals and the community safe from harm, but it also poses a significant public safety risk. The community restoration process under Oregon State law is entirely voluntary and individuals placed on restoration have no obligation to remain in residential treatment facilities in which they are placed. As a result, since September of 2022, 17 individuals who have been charged with violent felony offenses and placed on restoration services in

Marion County have simply left their placements. We have significant concerns about the liability counties potentially face if one of these individuals were to harm someone on release.

Potential Solutions

The issues raised here are not unique to Marion County; even if your county is not currently experiencing them, in time they probably will. It is important therefore, that AOC and/or individual counties consider joining Marion and Washington County as amici in the federal lawsuit to provide alternate solutions to the court that work for local communities.

Below are some suggested solutions we continue to seek:

- 1) Permit jails to send individuals who have returned under the shortened timelines back to OSH for further treatment if they decompensate in jail;
- 2) Maximum time limits be placed on how long an individual can remain on community restoration;
- 3) Return individuals in community restoration to OSH for additional treatment if there is a risk to community safety and it is possible that additional treatment may restore their ability to stand trial;
- 4) Require the State to develop a long-term plan which would include providing sufficient secure in-patient restoration services for the anticipated need in the next 20 years;
- 5) Require the State to modify its expedited admissions policy so that more individuals may be admitted under civil commitment;
- 6) Require the state to retain liability for individuals on community restoration if they would not otherwise have been released under state law;
- 7) Include a specific end date the Mosman order;
- 8) Allow for a "safety valve" to allow for longer stays at the state hospital if, upon petition by the district attorney, a trial court finds by clear and convincing evidence that a defendant presents specifically identifiable and significant public safety or victim safety concerns; and
- 9) Continue admission of individuals charged with misdemeanor crimes to OSH.

This list provides some relief to the more onerous aspects of the September 1, 2022, order. Getting traction on them continues to be an uphill battle, however, and more county voices are needed as DRO, Metropolitan Public Defenders, OSH and OHA are aligned in supporting further restrictions on local rights via this federal lawsuit. Again, the issues raised above impact all counties and we ask that you consider joining us so that we can all be heard on this important matter.

Sincerely,



Danielle Bethell, Commissioner
Association of Oregon Counties, 1st Vice President

