

PACIFIC NORTHWEST

## Citing 'moral emergency,' attorneys seek contempt as Oregon defies mentally ill defendants' rights

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LC- Staff

The Mark O. Hatfield United States Courthouse, shown on Sep. 13, 2016.

Attorneys in Portland revived a 17-year-old federal court case Friday, saying in new motions that Oregon officials are infringing upon mentally ill defendants' rights in violation of a court order and should be held in contempt.

The 2002 case, Oregon Advocacy Center v. Mink, established that mentally ill people charged with crimes cannot be left in jail indefinitely as they await treatment so they can assist in their defense. They must instead be admitted to the Oregon State Hospital within seven days.

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High ranking state officials, however, have admitted they do not abide by the one-week deadline.

Friday's filings are the latest in a string of motions [asking that state officials be held in contempt](#) for those violations. The other motions, filed in state court, have not yet been ruled upon by a judge.

Still, the federal filings, as well as [hearings conducted in state court](#), have unveiled the depths of Oregon's mental health, addiction and homelessness crises, as well as bureaucrats' inability and legislators' unwillingness to tackle them head-on.

In addition, an investigation published in February by The Oregonian/OregonLive found [more than 200 mentally ill defendants had languished in jail](#) in violation of their constitutional rights, sometimes for months on end.



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Patrick Allen, who as the Oregon Health Authority director is responsible for state hospital administration, has testified that his agency wishes to comply with court orders but cannot due to an insufficient budget, among other limitations.

He has said officials are doing all they can to better the situation.

In [the Mink case](#), the late Judge Owen M. Panner, of the Oregon U.S. District Court, rejected arguments almost identical to Allen's, saying a "lack of funds, staff or facilities cannot justify" the state's failures.

Panner also concluded indefinite imprisonment of mentally ill defendants while they await trial fitness treatment is "unjust." He wrote that there is "no rationalization that passes constitutional muster" for such a practice.

The ruling was [upheld in federal appeals court](#) in 2003, over the objections of Oregon officials. A panel of appeals judges affirmed Panner's decision citing "the undisputed harms" to mentally ill defendants who spend "weeks or months in jail waiting for transfer" to the Oregon State Hospital.



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In Friday's motion, Jesse Merrithew, attorney for Metropolitan Public Defender – a plaintiff in the Mink case – argued inordinate jail stays not only trample defendants' due process rights, they may cause arrestees to suffer brain damage by delaying treatment of psychosis.

Merrithew said the ongoing delays create "a medical and moral emergency" for the people represented by the public defender's office. He asked a federal judge to "act quickly to end the suffering, mitigate the damage, and prevent future violations."

Representatives of Gov. Kate Brown did not return three messages seeking comment Friday.

Allen, the Health Authority director, released a statement: "Oregon State Hospital is facing a capacity crisis. This crisis stems from the increasing criminalization of people who are mentally ill and homeless."

The state was previously in compliance with the Mink decision for many years, Allen added. Officials now need "legislative support" to make lasting change to Oregon's mental health care and housing safety nets, he said.

Indeed, more people than ever are living on Oregon's streets, many of them mentally ill, addicted to drugs or alcohol, or both.

And an ever-increasing number of mentally ill Oregonians, [a majority of them homeless](#), are charged with crimes for both petty and serious offenses.

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The cases have clogged the courts and jails as those defendants await trial fitness treatment – a legal requirement to ensure arrestees can aid their defense before the case proceeds.

-- Gordon R. Friedman

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