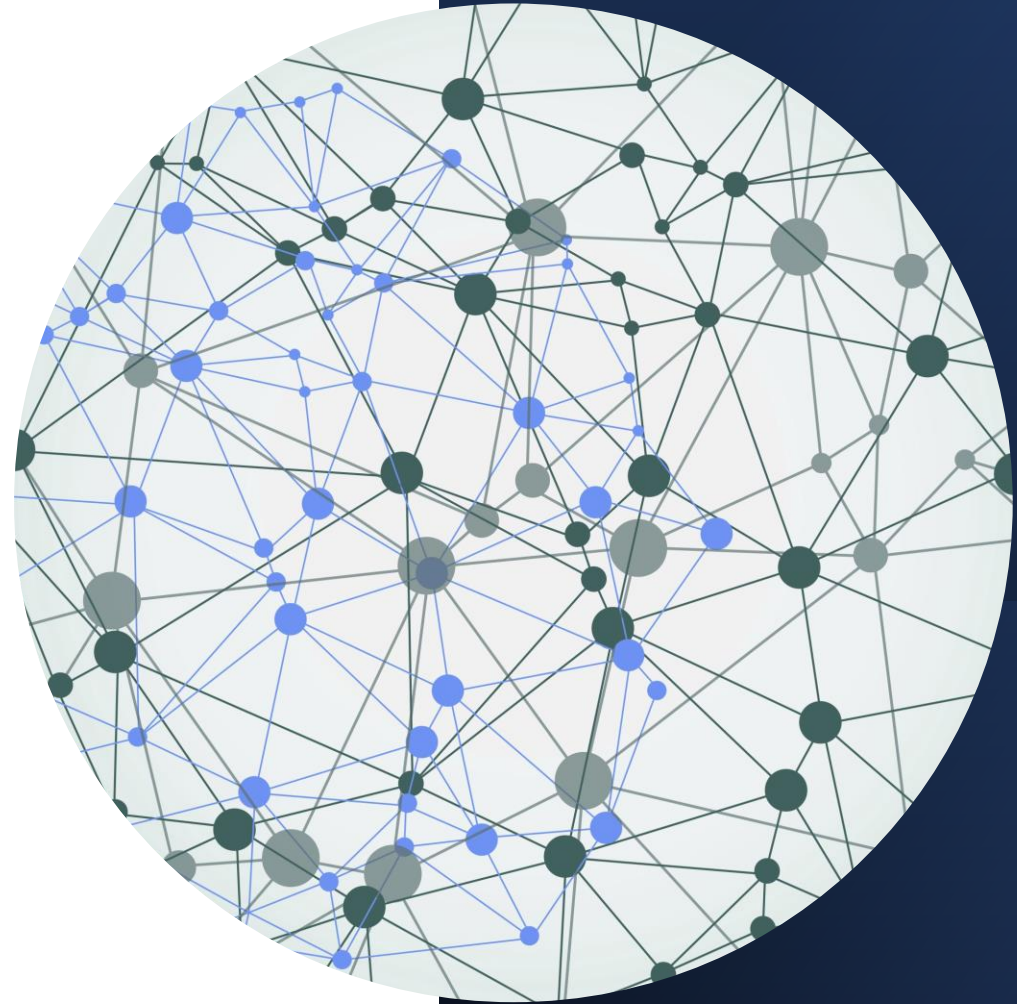


# First Report of the *Mink/Bowman* Neutral Expert

Debra A. Pinals, M.D.

Oregon Legislative Sessions

February 17, 2022



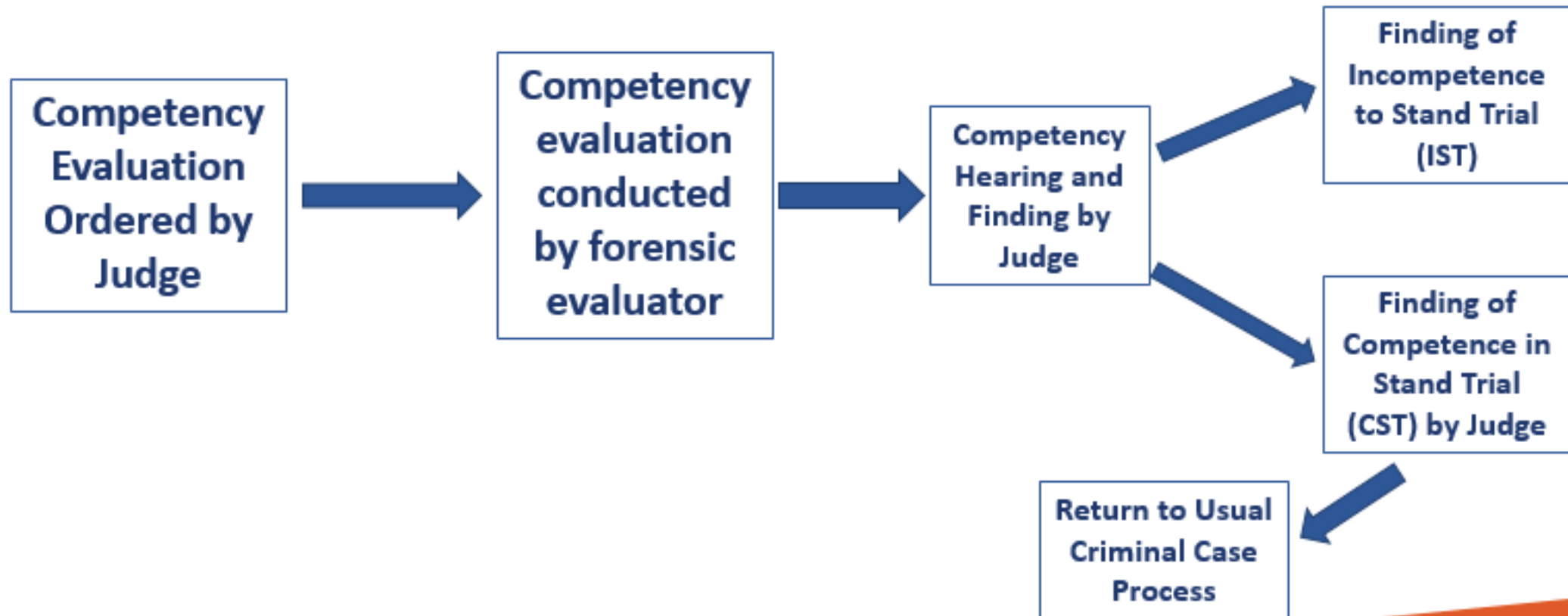
Context:

General Issues and National Trends

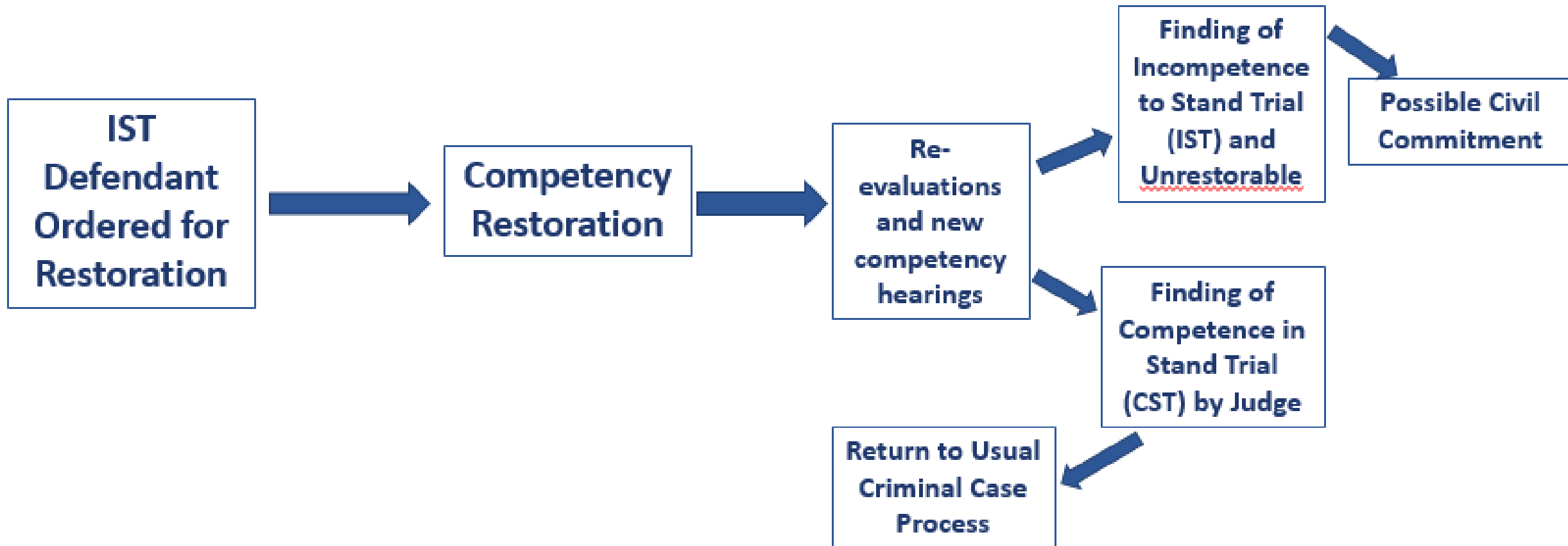
Competence to  
Stand Trial:  
Courts cannot  
try defendants  
who are unable  
to aid and  
assist in their  
defense

- Understanding of charges, verdicts and potential consequences
- Understanding of trial participants and process
- Ability to assist counsel
- Decision-making ability

# What happens for a defendant when their competence to stand trial is questioned?



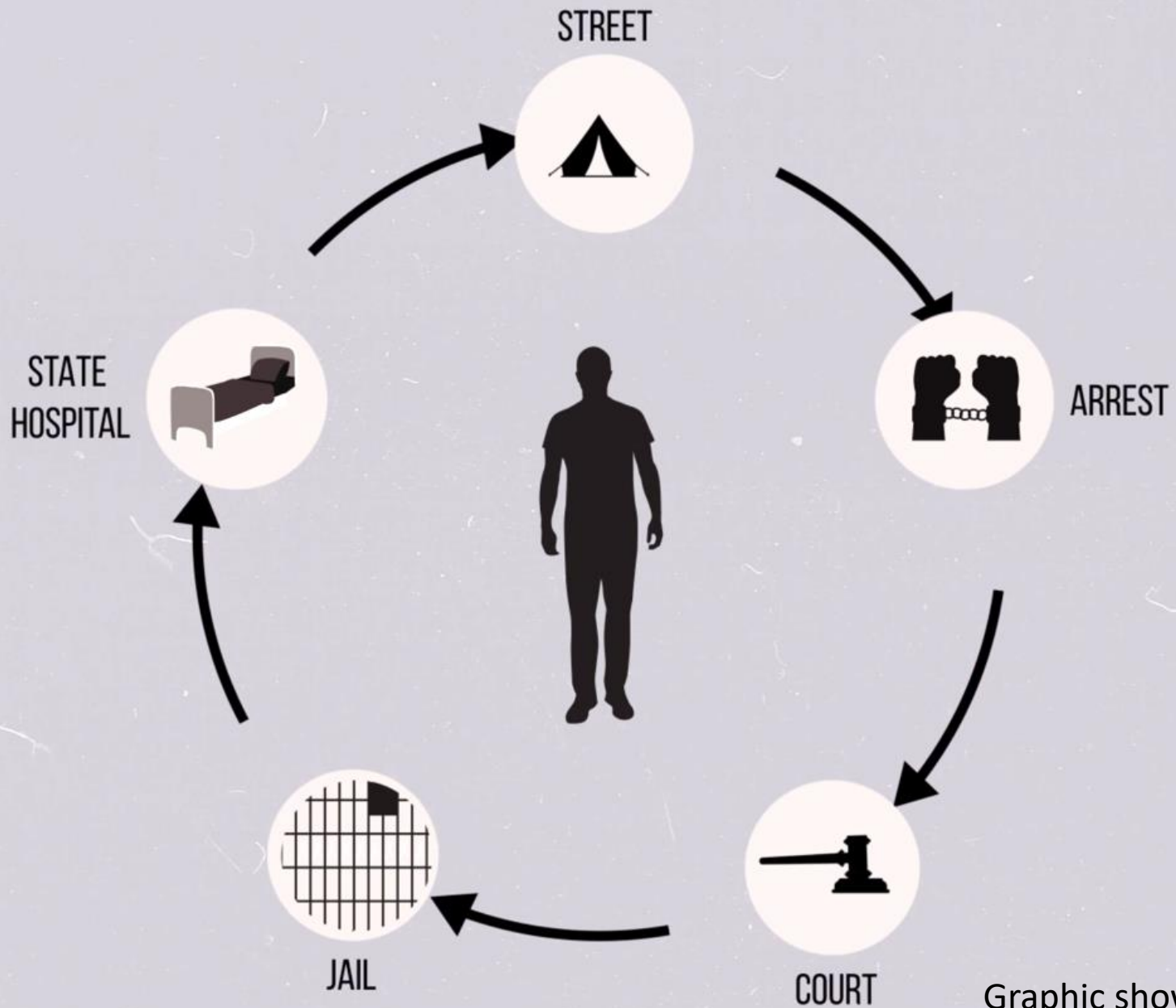
What happens when a defendant is found incompetent to stand trial (IST) (or “Unfit to Aid and Assist”)?



# Forensic Systems for Competence to Stand Trial



- Competency restoration is most commonly done in state hospitals
  - New models for community-based restoration
- Restoration includes treatment, but mostly involves helping defendants overcome deficits related to their role as criminal defendants



Graphic showing revolving cycle  
Courtesy: DRO

# Guilty Except for Insanity (GEI)



- Competent defendant pathway results in:
- Acquittal or Guilty finding or...
- Potential Guilty Except for Insanity (GEI)
  - Only a small percentage of defendants overall are found GEI
- If found GEI
  - Typically involves commitment to a state hospital and PSRB oversight
  - Duration can be long
  - More states (including Oregon) are working toward increased community integration of NGRI defendants



# Summary of Consolidated Cases: *Mink*

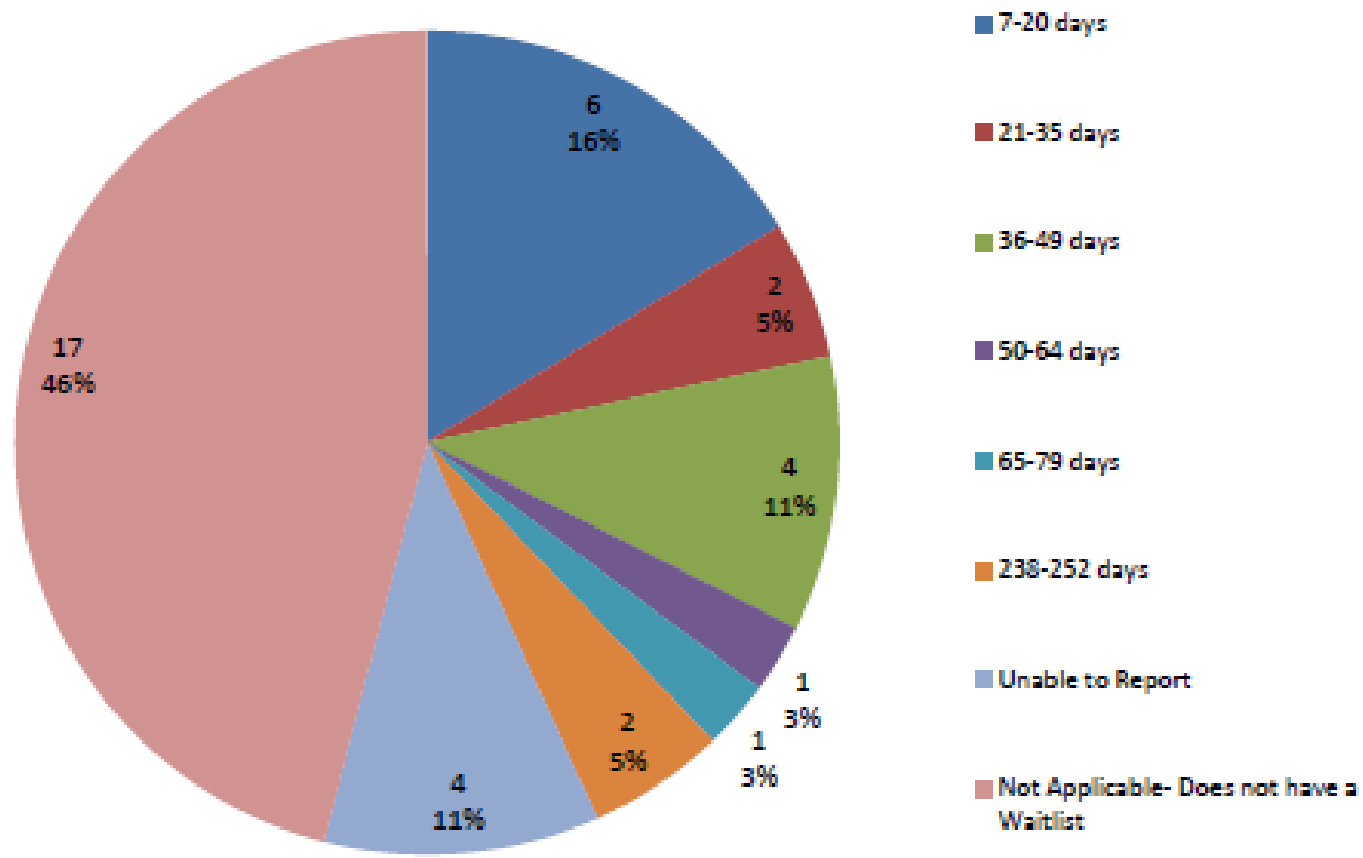
- In 2002 Oregon Advocacy Center (now Disability Rights Oregon) filed civil rights suit regarding waiting times for individuals in the Aid and Assist Process (OAC v. Mink). Ninth Circuit ruled that OSH must accept individuals within 7 days of court order
- Spring 2019, average waits were 26 days
- June 2019 court compelled state to get into compliance regarding admissions within 7 days of order
- COVID-19 and increased demand=delays
- Court proceedings, leading to appointment of neutral expert

Summary of  
Consolidated  
Cases:  
*Bowman and  
Douglas  
Simpson*

- In November 2021, two plaintiffs (Jarod Bowman and Joshawn Douglas-Simpson) with Disability Rights Oregon and Metropolitan Public Defender Services, Inc. and A.J. Madison filed action against OSH and OHA for failure to timely admit them as persons found GEI in Multnomah County.
- After 8 and 6 months waiting in jail for OSH admission, plaintiffs alleged a violation of substantive due process rights, and filed a motion to be transported to OSH within 7 days
- State defense is that Mink case admissions requirements limits ability to timely admit GEI patients
- Court finds “The Mink injunction does not address the relative priority of aid-and-assist patients and GEI patients”
- Interim agreement that no individual found GEI would wait longer than 4 months in jail prior to admission

# Graph 9: Duration of Time Forensic Patients are on State Psychiatric Hospital Waitlists for Admittance for Inpatient Competency Evaluations, 2016

Based on the 37 Responding States

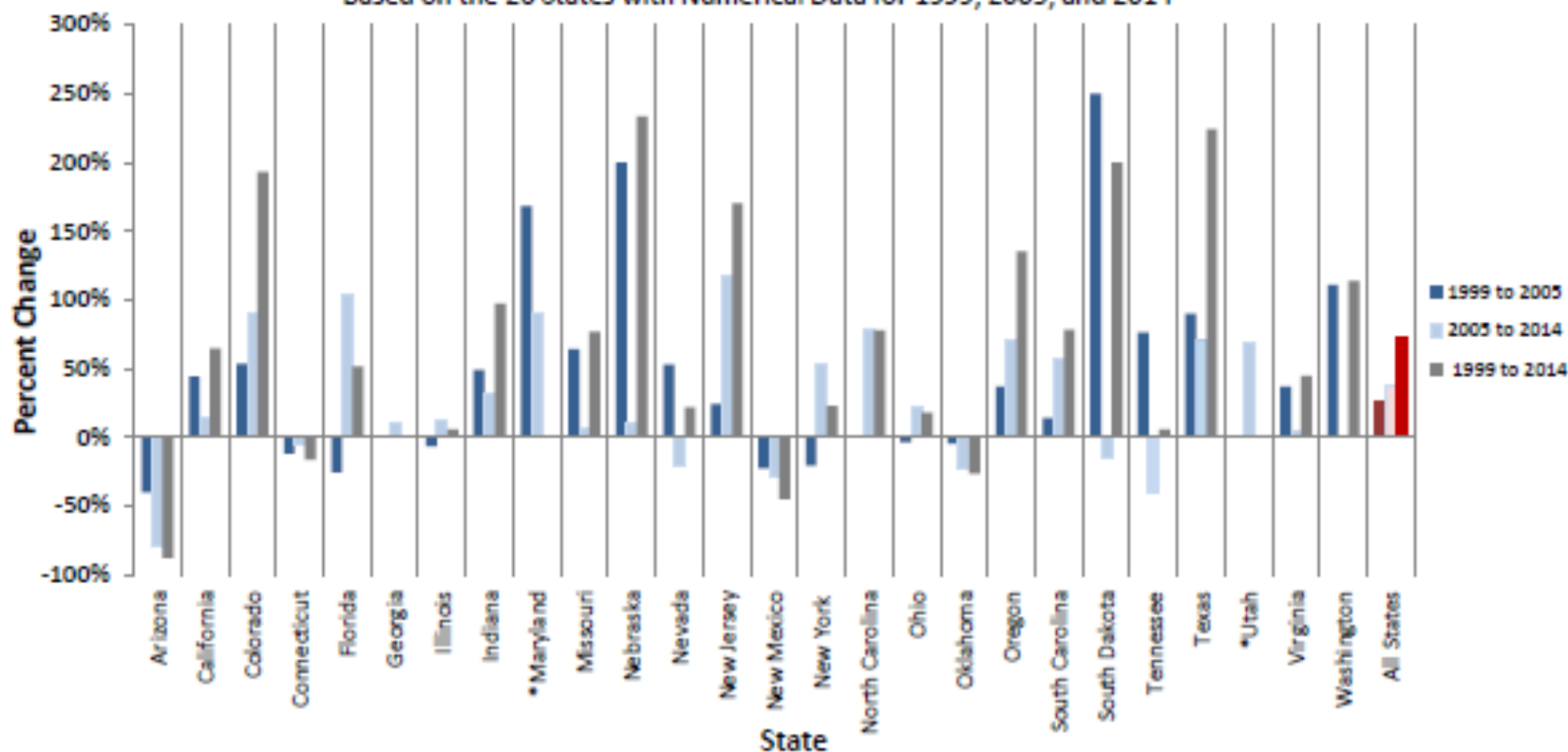


Sources: 2017 NRI Inpatient Forensic Services Study

- Wik, et al 2017, NASMHPD; Ava at <https://www.nasmhpd.org/>

## Graph 18: Percent Change in Inpatient Incompetent to Stand Trial Population, 1999-2014

Based on the 26 States with Numerical Data for 1999, 2005, and 2014



\*Notes: 27 states had numerical data. However, NH was removed since it had 0 IST patients for 1999, 2005, and 2014.

GA had a percent change of 302% for 1999-2005 and 344% for 1999-2014.

MD had a percent change of 409% for 1999-2014.

UT had a percent change of 629% for 1999-2005 and 1129% for 1999-2014.

Sources: 2017 NRI Inpatient Forensic Services Study, and 1995-2015 State Mental Health Agency Profiling System

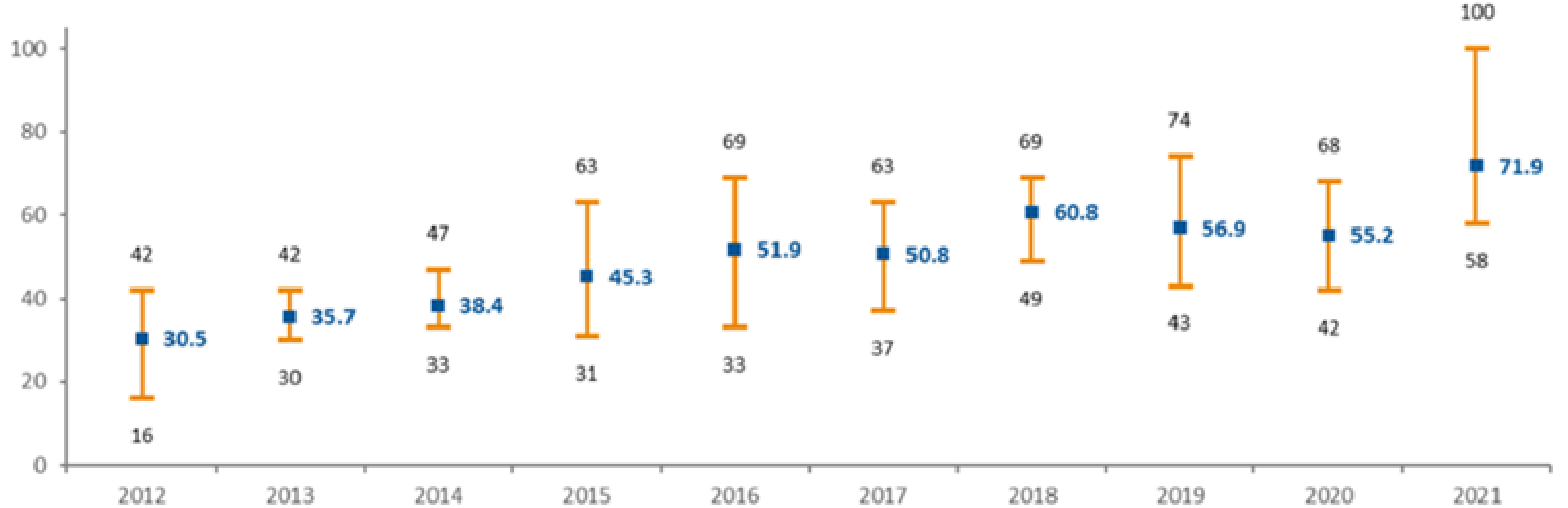
## Context of the Report

- *Mink/Bowman* cases consolidated
- Assistance from expert sought separately by the parties, resolved by joint agreement for neutral expert
- Appointment of Neutral Expert 12/21/21 by The Honorable Michael W. Mosman
- Work begins
  - Document reviews
  - Conversations and meetings with OHA, OSH, patients at OSH, individuals from across stakeholder groups, and knowledgeable court representatives

# Report Findings

# Oregon Data from OHA

## Aid & Assist Admissions / Orders per Month by Year since 2012 (with high, low, and average per month)



Oregon Data from OHA

<b>1. Regarding individuals on OSH admission list with signed and received A&amp;A court order</b>		
	<i>As of 1/5/22</i>	<i>As of 1/28/22</i>
Total Number of individuals	46	93*
Average days waiting	15.8 days	22.5 days
Range of Days on waitlist	2-23 days	3-44 days
Average days waited for admissions in December 2021	15.4 days (range 11-20 days)	15.4 days (range 11-20 days)
<b>2. Regarding individuals found GEI and ordered to OSH</b>		
	<i>As of 1/5/22</i>	<i>As of 1/28/22</i>
Total number of individuals	15	4
Average days waiting	45.6 days	23 days
Range of Days on waitlist	1-110 days	17-28 days
Average days waited for admissions in December 2021	150.2 days (range 41-203 days)	150.2 days (range 41-203)



# Contextual Factors

## OSH

- COVID-19: operations related admission pauses
- Staffing challenges
- Increased referrals
- Delayed discharges for multiple reasons, creating Olmstead issues if individuals are not in least restrictive settings

## Community Context

- Workforce challenges
- General/National challenge of working with justice-involved individuals with behavioral health needs
- Substance use disorders co-occurring with mental illness and difficulties with repeat admissions and relapses
- Complex structures with certain silos

# OHA Progress to Date per January and February 2022 Reports

- Opened two Junction City Units (Nov '21, Jan '22)
- OSH Managed COVID-19 with no serious negative patient outcomes to date
- Expanded “Ready-to-Place list” and activities especially related to SB 295 to increase use of community-based restoration placements
- Facilitated work with discharge processes
- Efforts to enhance infrastructure in community through RFPs

# Recommendations and Short-Term Actions

# Recommendations Regarding Capacity at OSH

- Discharge process improvements
  - Potential legislation that requires county fiscal responsibility for individuals who do not need hospital level of care
  - Enhanced SB 295 processes
  - Refinement of discharge policies and practices
- Examine barriers to preventing unnecessary admissions
- Consider evaluation order trends to build greater efficiencies and reduce wait times to assist with compliance
- Adopt OSH staffing request
- Continue meetings between with plaintiffs, OHA, neutral expert
- Regular meetings with OJD

# Recommendations Regarding Admissions Protocols

- Coordinate admissions between GEI and Aid and Assist to reduce overall waits for both
- Utilize new Junction City Unit for safe transfers to then include GEI admissions to OSH Discharge process improvements
- Develop data infrastructure improvements to help monitor compliance
  - Admissions data
  - Discharge/Ready to Place data

# Short-Term Actions as Agreed Upon by the Parties

## Policy/Protocol Actions

- Data Dashboard
- Utilize Junction City Units, admit GEI patients and level waiting times between GEI and Aid and Assist populations
- Discharge Process improvements
- Focus on reduced admissions and enhanced community supports

## Legislative Actions

- County financial risk sharing proposed legislation/stakeholder engagement
- OSH staffing request

## Court Case Specific Actions

- Focused efforts on system wide adherence to SB 295 through education, support, advocacy and tracking

# Next Steps and Thank you.



Project management for  
short term actions



Ongoing meetings to  
continue to discuss current  
and future recommendations