



CIRCUIT COURT OF THE STATE OF OREGON

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JUDGE

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Chair Kropf, Vice Chair Wallan, and Vice Chair Chotzen, and Members of the Committee;

Thank you for the opportunity to testify. My name is Nan Waller and I am a judge of the Multnomah County Circuit Court and I am testifying today in my own capacity. I am also an amicus judge in the federal Mink/Bowman litigation, and I represent my fellow amicus judges, Judge Jonathan Hill of Tillamook county and Judge Matthew Donohue of Benton county, here today. I also Co-Chair the Chief Justice's Behavioral Health Advisory Committee.

I am here today on behalf of the amicus judges to oppose this measure.

I have served for 6 years as the mental health court judge for the most populated county in Oregon. Part of that job is presiding over a consolidated aid and assist docket.

As you've heard, under Oregon statute, a defendant with a misdemeanor charge can receive restoration services at OSH for up to one year and a defendant with a felony charge can receive restoration services for up to three years.

In the federal Mink/Bowman litigation, time limitations, shorter than the statutory time limitations for commitment to OSH, were imposed by the federal court in 2022 with a goal of getting the state into compliance with the due process requirement that defendants in custody, be transported or transport to OSH within 7 days of being found unable. This is often referred to as the Mosman order, as Judge Mosman was overseeing that litigation. Judge Nelson is now the judge overseeing the case.

Under the current federal order, no non-person misdemeanors can be committed to OSH. The federal order limits commitment to OSH to 90 days for restoration treatment for defendants with person misdemeanors, 6 months of restoration services for felonies, and up to one year for violent felonies. Once a defendant has met that timeline, they are returned to their community, whether restored or not. Since that time, a safety valve has been put in place allowing defendants with the most serious offenses to remain at OSH in 6 month increments up to the 3-year statutory maximum if certain criteria are met.

The other option for restoration of defendants outside the state hospital is called community restoration. That means just how it sounds, the person is receiving restoration services in the community. This can take several shapes, but ideally, the person is placed in the care setting that is indicated for their treatment needs: a secured residential treatment facility, a residential treatment facility, or another group setting.

The person receives restorative mental health treatment and medication in the community and the person meets with a person who can provide legal skills training. Ideally, this continues under supervision of the court until the defendant is restored. There are currently no statutory time limitations on community restoration. Prior to the federal order going into effect there were insufficient community beds for the spectrum of need and public safety risk for defendants found unable and ordered into community restoration.

When the federal orders went into effect limiting how long defendants could be committed to the state hospital and limiting the charges that are committable, the insufficiency in the number of community placement beds increased. All of the community placement beds have long wait lists. Defendants not being committed to OSH are waiting in jail or at the hospital after the court has determined them to be appropriate for community restoration if a placement is available that meets their treatment needs and addresses any public safety concerns.

Even with the resources and money spent in recent years to develop treatment beds, those resources are often not open to aid and assist defendants. For example, there are four SRTF facilities that accept A&A defendants. Between those four facilities, there are 40 beds. There are no openings, there is no waitlist. Meanwhile, 213 beds are available to non-justice involved patients. In addition, no program is required to take defendants found unable and in need of a community placement.

If a defendant cannot receive restoration services in the community, and cannot receive them at OSH, then, most often, the case is dismissed.

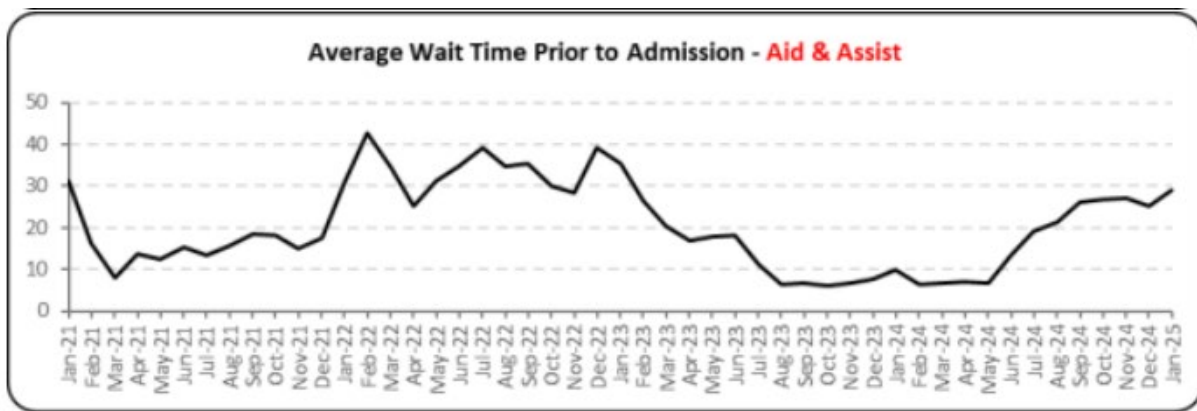
The -3 amendments seek to further restrict not only the timelines for restoration at OSH, but also the timelines for restoration in the community. It does not provide funding for more SRTFs or RTFS, it does not increase housing or medication assistance, it does not recruit workforce, it does not, in any way, make community restoration a viable alternative to OSH.

Without adequate resources in the community that are mandated to care for, house, and treat this population, we will not fix the stagnation and cycle of delays at OSH, and we will make our communities less safe.

The results of the -3 amendments to HB 3051 will be an increased number of cases dismissed and cycling back through the system, an increased number of contested case hearings, an increased number of mentally ill individuals returned to the street, unrestored, and an absolute increase in the number of defendants that the state seeks to send to OSH for restoration services as it is more intensive and has a higher chance of restoration than services in the community on the same timeframe. It will not reduce the wait time for transport to OSH and it will increase the time a defendant spends in limbo while their mental health becomes the source of argument. Much like the Mosman order did not result in reduced wait time for transportation, neither will this amendment result in reduced wait time for transport to OSH.

The -3 amendment takes a very narrow approach to one particular problem: transport times. It may seem logical that if more individuals are moved into the community, more beds will be open at OSH. And if time limits are imposed on those in the community and at OSH, then more people who move through the system. But as we can see from the graph from OHA's dashboard, the last slide of my testimony, that hasn't been the case. Wait times initially went up after the Mosman order went into effect, then dropped. Now, they are steadily climbing back up, with an average length of time for admission at nearly 30 days.

Below is the graph provided by OSH on its website showing the average number of days a defendant waits for transport from jail to OSH.



As the graph shows, the Mosman order had a temporary effect on the transportation timelines, but the state is once again out of compliance with the direction of the federal court.

The problem is that this is not a single issue-it is a system issue. There is no one solution to this problem. If an adjustment is made to community restoration, there must be housing, services, and providers for those defendants. If adjustments are made to OSH, there must be alternatives available.

I could tell you stories that would take all of your committee time about the results of imposing restrictions on how long a person can be at OSH and the effect of returning those individuals to the community with no services to meet their needs. But I believe data will also show you why continuing on this path is not the right answer.

First, our population has grown, and our OSH beds have not. Table 1 shows you a 25% increase in the last 14 years in Oregon's population.

**Table 1: Oregon Population**

<b>2000 (US Census Bureau)</b>	<b>2024 (Portland State University Certified Population Estimate)</b>	<b>Percent Change</b>
<b>3,421,399</b>	<b>4,263,385</b>	<b>+ 25%</b>

Table 2 shows a 13% reduction in bed capacity at OSH during that same time period.

**Table 2: Oregon State Hospital Average Daily Population  
Data Provided by the Oregon State Hospital**

<b>January 2000</b>	<b>January 2025</b>	<b>Percent Change</b>
<b>789.0</b>	<b>685.8</b>	<b>- 13%</b>

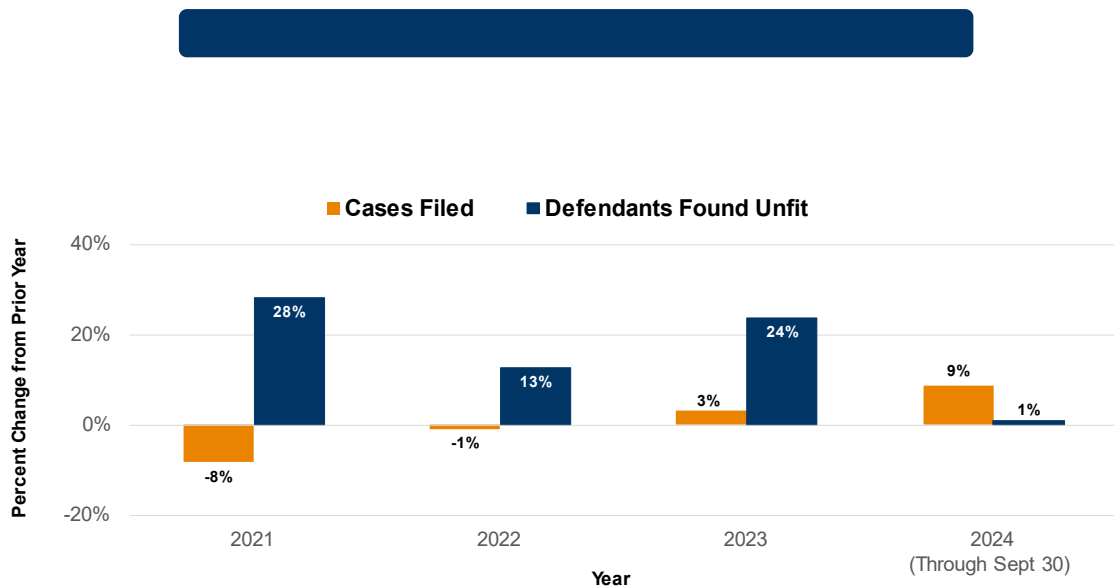
Table 3 shows that as a per capita basis, or the change in number of beds from 2000 to 2025 by 100,000 residents. And the result is that we're lacking nearly 1/3 of the beds that were serving our population 14 years ago.

**Table 3: Oregon State Hospital Average Daily Population Per 100,000 People  
Based on Average Daily Population from the Oregon State Hospital (OSH)  
and Population Data from the US Census Bureau and Portland State  
University Population Research Center**

January 2000	January 2025	Percent Change
23.1	16.1	- 30%

On the court side, for several years overall case filings were down. As Graph 1 shows, they are now slowly increasing. The orange bar is the number of cases filed and the change from the prior year. So, in 2021, there were 8% fewer cases filed than in 2020. But in 2021, 2022, and 2023, there was a significant increase in the number of defendants found unable.

Graph 1:

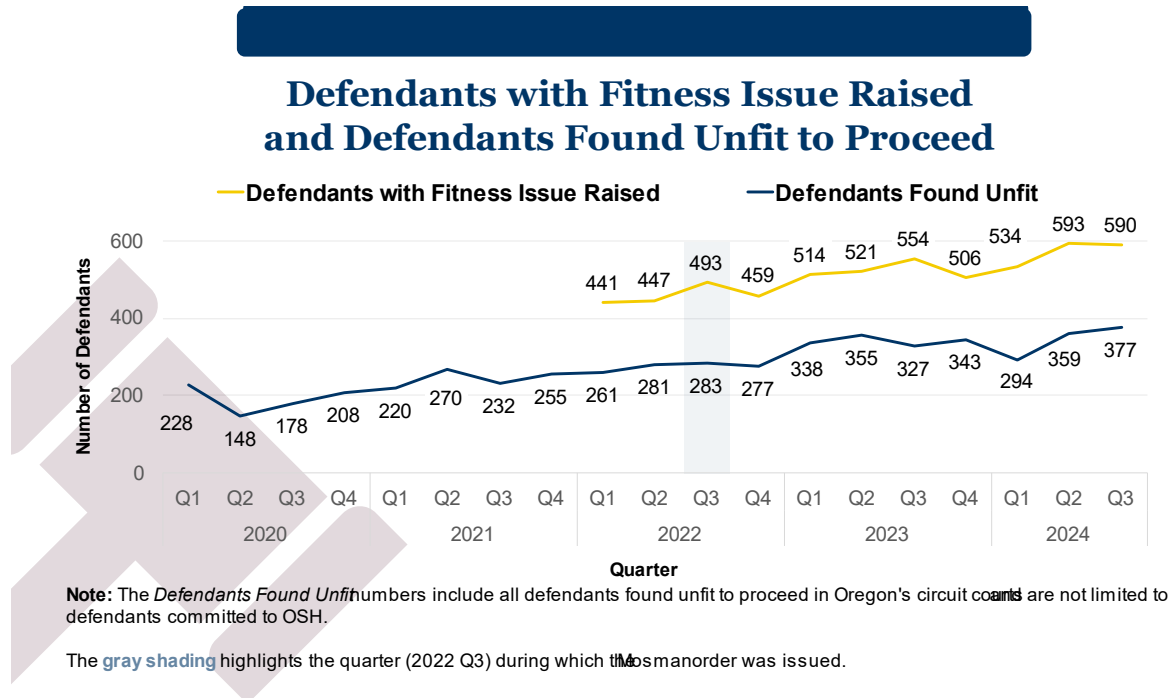


**Note:** The *Defendants Found Unfit* numbers include all defendants found unfit to proceed in Oregon's circuit courts and are not limited to defendants committed to the Oregon State Hospital (OSH).

Even after the Mosman order went into effect, the upward trend of individuals being found unfit has continued. As you can see in Graph 2, the light grey line at Q3 is the

quarter in which the Mosman order, or the restrictions on admission and length of commitment to OSH, went into effect.

Graph 2



As mentioned, there are essentially two placement options for defendants who are unable to aid and assist: OSH or community restoration. Table 4 shows that in the prior 4 years, the percentage of defendants committed to the state hospital has gone down while the numbers of defendants found unable to aid and assist has increased.

Table 4:

Year	Defendants Found Unfit to Proceed	Defendants Whose Initial Placement Was Commitment to the Oregon State Hospital (OSH)	Percent of Defendants Whose Initial Placement Was Commitment to OSH
2020	762	570	75%
2021	977	750	77%
2022	1,102	842	76%
2023	1,362	957	70%
2024*	1,414	949*	67%*

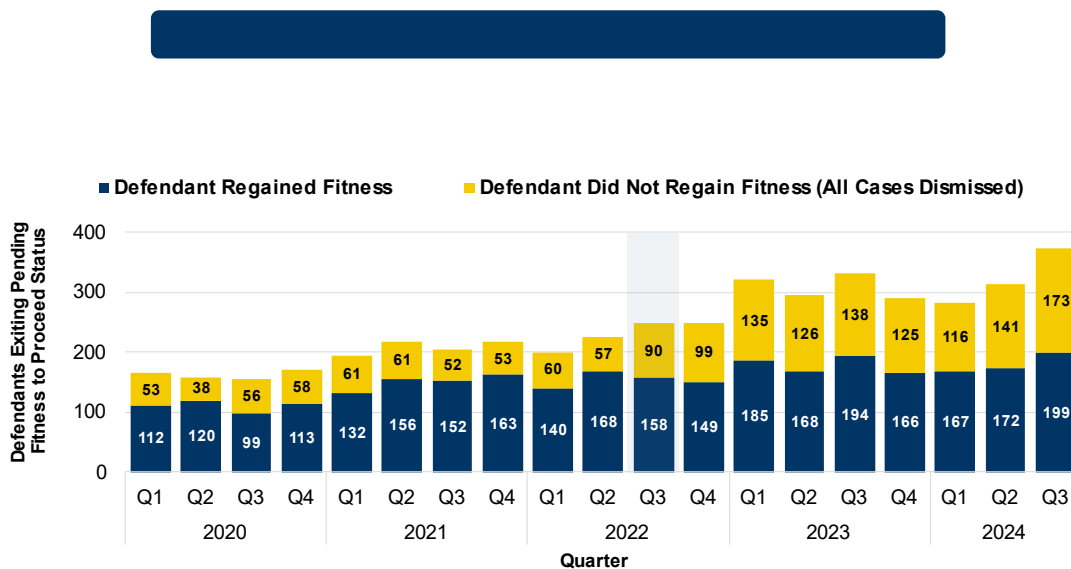
\*Note: Data for 2024 includes only data entered into Odyssey through January 6, 2025. It is possible that additional commitment orders will be entered for defendants who were found unfit at the end of 2024 but for whom the court set over its initial placement decision.

Since the Mosman Order, the number of defendants who have had their cases dismissed because they did not regain fitness to proceed has increased.

Graph 4 shows in blue the number of defendants who regained fitness (and so left the aid and assist docket) and the number of defendants who did not regain fitness, and whose cases were dismissed because there were no further options for restoration.

Note that in the quarter that the Mosman order went into effect, there was a significant jump in the number of defendants returned without regaining fitness and that number has continued to increase.

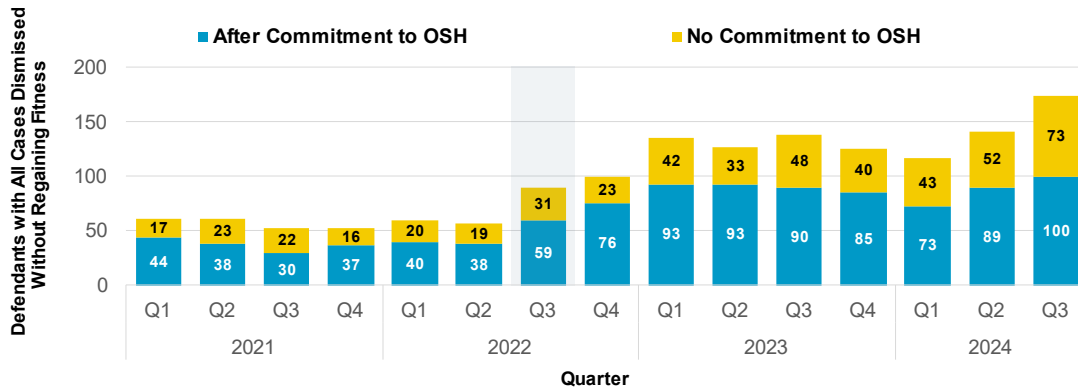
Graph 4



**Note:** The numbers in this chart include all defendants exiting pending fitness to proceed status after being found unfit in Oregon's courts and are not limited to defendants committed to OSH.

The gray shading highlights the quarter (2022 Q3) during which the Mosman order was issued.

Graph 5 shows the breakdown of defendants who were not restored to fitness and whose cases were dismissed. The yellow shows those who were either dismissed early in the case or who had gone into community restoration. The blue bars show the defendants who were committed to OSH and were subsequently returned without regaining fitness and cases dismissed. Again, in both categories, but particularly pronounced, are the dismissals after commitment from OSH following the Mosman orders.



**Note:** The numbers in this chart include all defendants exiting pending fitness to proceed status without regaining fitness to proceed a being found unfit in Oregon's circuit courts and are not limited to defendants committed to OSH.

The gray shading highlights the quarter (2022 Q3) during which the Mosman order was issued.

Table 5 that shows the monthly average of before the Mosman order and after the Mosman order. Since the Mosman order went into effect, there has been a 5% reduction in the number of defendants found fit, on a monthly average. And an 18% reduction in total between the defendants found fit before Mosman and after. Before Mosman, 59% of defendants regained fitness. After Mosman, only 41% of defendants do.

At the same time, there has been a 100% increase in the number of defendants who are not fit and their time at OSH is terminated. Short timelines for restoration mean that defendants do not have enough time to be restored.

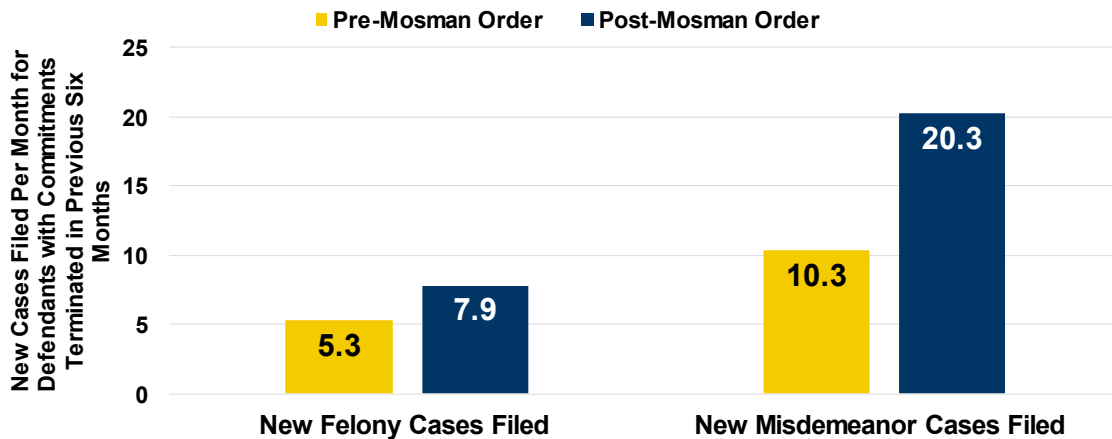
	Commitment Termination Date		Change
	September 2021 – August 2022	September 2022 – December 2024	
<b>Total Commitments Terminated, Per Month</b>	68.1	94.0	+38%
<b>Commitments Terminated - Defendant Found Fit, Per Month</b>	40.3	38.3	-5%
<b>Commitments Terminated - Defendant Not Found Fit, Per Month</b>	27.8	55.7	+100%
<b>Commitments Terminated - Percent of Defendants Found Fit</b>	59%	41%	-18 percentage points



And of those cases that are dismissed, we have seen an abrupt increase in the number of new cases filed. Defendants who are not restored have cycled through the system and are charged with new crimes at a higher rate after the Mosman order.

Graph 6

### New Cases Filed Per Month For Defendants with Commitment Terminated in Previous Six Months



**Pre-Mosman Order:** New Cases Filed Between 9/1/2021 and 8/31/2022  
**Post-Mosman Order:** New Cases Filed Between 9/1/2022 and 12/31/2024

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In summary, the data shows:

- Oregon's population has grown but its capacity at OSH has not.
- More defendants are found unfit to proceed than ever before.
- Since the Mosman Order, the number of defendants who have had their cases dismissed because they did not regain fitness to proceed has increased.
- Shorter timelines for restoration mean that defendants do not have enough time to be restored.
- Defendants who are not restored have cycled through the system and are charged with new crimes at a higher rate after the Mosman order.
- Defendants' rights are still being violated, even with the shortened timelines proposed by OHA.

In addition to being an amicus judge, I have been a participant in the workgroup mentioned here.

I believe the workgroup product will deliver a holistic approach to solving this issue. It will take time, and it will take money, but we will be able to increase the services in our community to keep people out of the criminal justice pathway, and to increase their options when they do land in court. This will improve our public safety and protect the constitutional rights of defendants. I look forward to presenting on this topic to you in the near future. But for now, I urge you to reject HB 3051 and the -3 amendments.