# ISSUE BRIEF – Data Overview

**HB 3051 -3 Amendment & OSH Proposed Timelines**

**Summary**

House Bill 3051 and the -3 Amendment proposes time limitations for restoration at the Oregon State Hospital (OSH) that are substantially shorter than current Oregon statute. ODAA and OCDLA participated in the Aid and Assist Workgroup, and along with a number of other impacted stakeholders, determined that the timelines proposed in HB 3051 and the -3 Amendment are simply and unquestionably too short, and will have a significant negative impact on the administration of justice in Oregon, public safety and the well-being of defendants committed for restoration. The timelines proposed in HB 3051 and the -3 Amendment were developed with the purpose of reducing the time defendants spend waiting to enter OSH, in response to pending federal litigation. With that narrow goal, HB 3051 and the -3 Amendment fails to take into consideration the significant other interests that are implicated by such modifications to our aid and assist statutes.

ODAA has endeavored to gather as much relevant data as possible, and the data presented here is a mixture of information from OJD, OHA and multiple District Attorney's offices. Additional information may be presented at the upcoming public hearing on this issue.

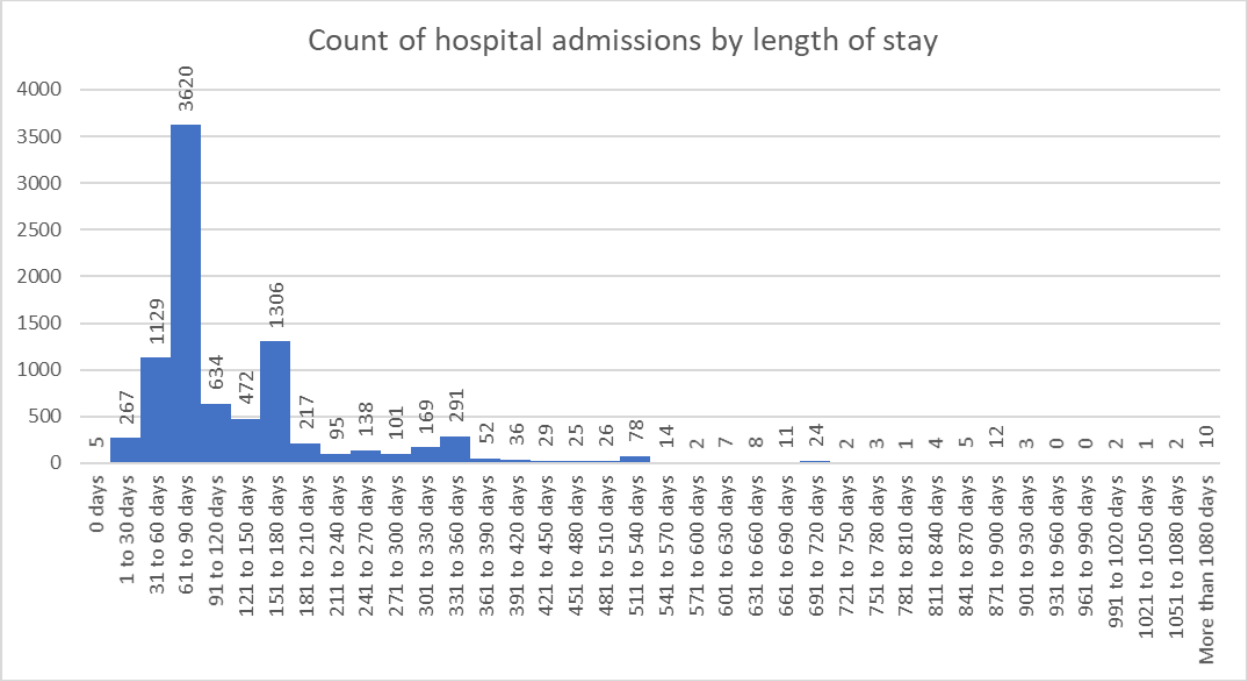
*Disclaimer: It should be noted that gathering such data has been difficult for a number of reasons. Some of the necessary data has only recently been captured. Other data, while available, is questionable in its accuracy or difficult and labor-intensive to verify. Further, keepers of some of the data that would be useful to the conversation are unwilling to share it, citing HIPAA or other provisions. Please also note that this is a compilation of some of the relevant information to be considered and is not a complete articulation of our position.*

1. **Projections from OHA are not reliable.**

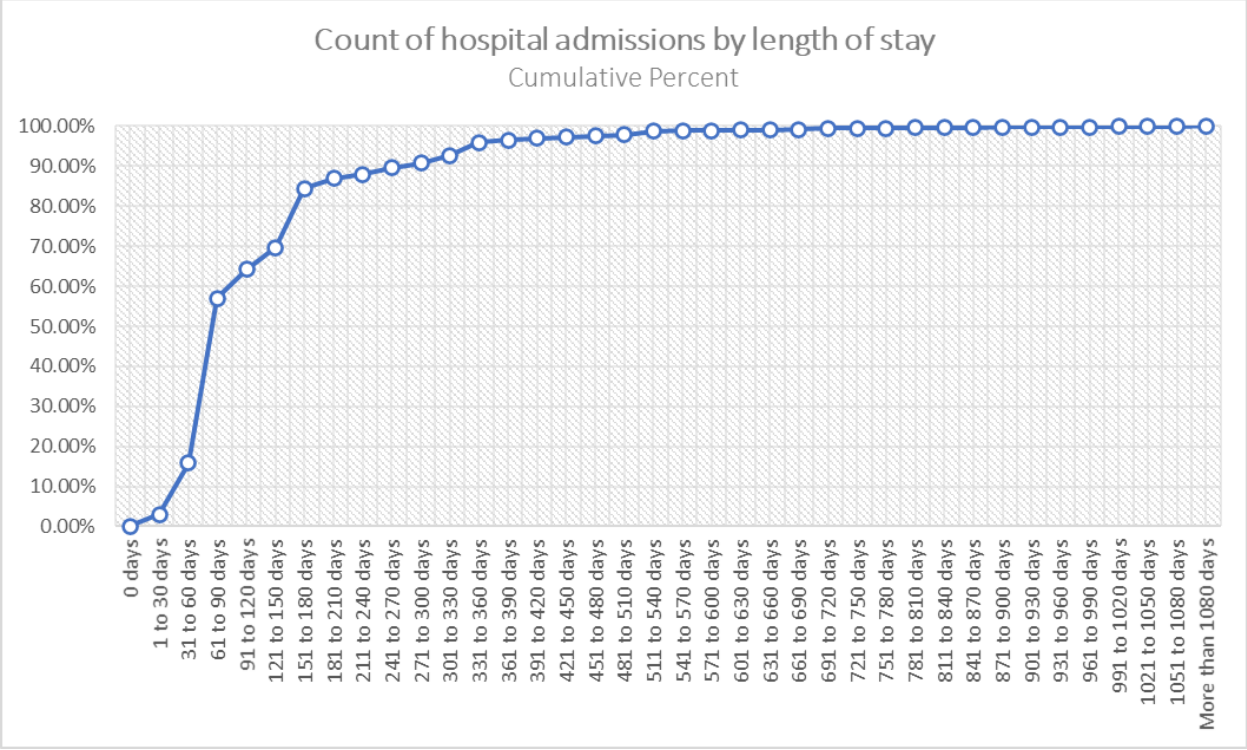
Oregon Health Authority projections related to the impact of aid and assist timelines on the hospital census and compliance with the Federal Court Order are unreliable and should not be the basis of legislative action.

OHA is basing projections on average length of stay (LOS). In calculating the average LOS, they include a large number of outliers, which artificially inflates their averages by at least 17%. Based on an OHA dataset of Oregon State Hospital admissions between 1/1/2012 and 3/10/2025 the average length of stay is 132 days. However, a closer examination of this data shows that 96% of admissions had a length of stay between 1 and 360 days; the remaining admissions (4% of total) had a length of stay between 361 and 2,774 days. Given these numbers it is therefore accurate to conclude that it is rare for patients to remain in the hospital for more than one year. Removing the rare occurrences from the LOS calculation results in an average

LOS of 113 days. Further, projections based on an assumption that all defendants admitted in the future will stay for the entire average LOS are inaccurate and misleading; the *median* LOS for the "average population" (i.e., patients staying in the hospital for less than one year) is 83 days. In other words, half of OSH patients stay for less than 3 months.



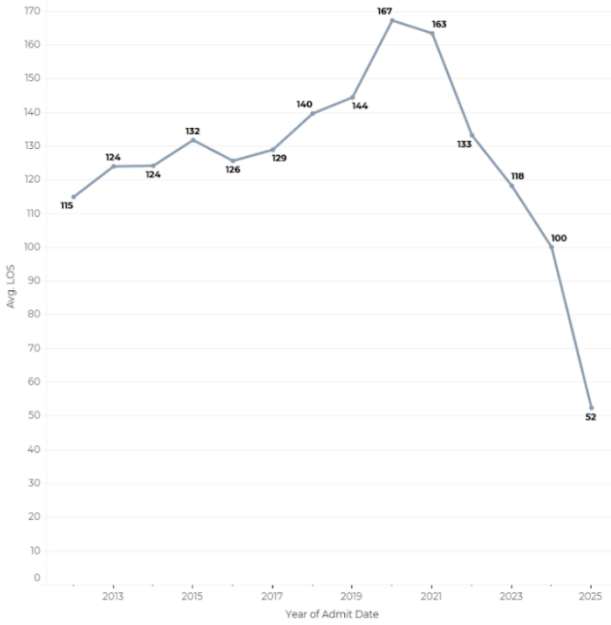

*Source: Oregon Health Authority*




*Source: Oregon Health Authority*

Historical data makes it clear that average LOS is not determinative of how long it takes to get a defendant into the hospital. According to data provided by OHA, the average length of stay has decreased significantly in recent years, with almost no impact on admission wait times.

**Average length of OSH stay per calendar year** | 2012 - 2025
LOS data per stay calculated in the OHA dataset




**Average length of OSH stay per month** | 2012 - 2025
LOS data per stay calculated in the OHA dataset

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Jan 2012 | 72 | Jan 2015 | 120 | Jan 2018 | 94 | Jan 2021 | 147 | Jan 2024 | 110 |
| Feb 2012 | 82 | Feb 2015 | 93 | Feb 2018 | 139 | Feb 2021 | 181 | Feb 2024 | 114 |
| Mar 2012 | 95 | Mar 2015 | 115 | Mar 2018 | 137 | Mar 2021 | 157 | Mar 2024 | 119 |
| Apr 2012 | 90 | Apr 2015 | 97 | Apr 2018 | 129 | Apr 2021 | 164 | Apr 2024 | 95 |
| May 2012 | 140 | May 2015 | 141 | May 2018 | 157 | May 2021 | 173 | May 2024 | 107 |
| Jun 2012 | 193 | Jun 2015 | 108 | Jun 2018 | 111 | Jun 2021 | 197 | Jun 2024 | 106 |
| Jul 2012 | 133 | Jul 2015 | 163 | Jul 2018 | 137 | Jul 2021 | 159 | Jul 2024 | 102 |
| Aug 2012 | 110 | Aug 2015 | 144 | Aug 2018 | 133 | Aug 2021 | 153 | Aug 2024 | 102 |
| Sep 2012 | 73 | Sep 2015 | 182 | Sep 2018 | 158 | Sep 2021 | 163 | Sep 2024 | 95 |
| Oct 2012 | 112 | Oct 2015 | 191 | Oct 2018 | 147 | Oct 2021 | 159 | Oct 2024 | 86 |
| Nov 2012 | 164 | Nov 2015 | 117 | Nov 2018 | 163 | Nov 2021 | 156 | Nov 2024 | 78 |
| Dec 2012 | 93 | Dec 2015 | 105 | Dec 2018 | 167 | Dec 2021 | 139 | Dec 2024 | 69 |
| Jan 2013 | 115 | Jan 2016 | 143 | Jan 2019 | 132 | Jan 2022 | 149 | Jan 2025 | 52 |
| Feb 2013 | 136 | Feb 2016 | 126 | Feb 2019 | 151 | Feb 2022 | 140 | Feb 2025 | |
| Mar 2013 | 112 | Mar 2016 | 125 | Mar 2019 | 140 | Mar 2022 | 163 | Mar 2025 | |
| Apr 2013 | 126 | Apr 2016 | 136 | Apr 2019 | 111 | Apr 2022 | 134 | | |
| May 2013 | 128 | May 2016 | 103 | May 2019 | 146 | May 2022 | 144 | | |
| Jun 2013 | 73 | Jun 2016 | 110 | Jun 2019 | 109 | Jun 2022 | 126 | | |
| Jul 2013 | 95 | Jul 2016 | 167 | Jul 2019 | 162 | Jul 2022 | 138 | | |
| Aug 2013 | 121 | Aug 2016 | 134 | Aug 2019 | 118 | Aug 2022 | 145 | | |
| Sep 2013 | 109 | Sep 2016 | 136 | Sep 2019 | 135 | Sep 2022 | 112 | | |
| Oct 2013 | 152 | Oct 2016 | 108 | Oct 2019 | 167 | Oct 2022 | 107 | | |
| Nov 2013 | 159 | Nov 2016 | 118 | Nov 2019 | 189 | Nov 2022 | 130 | | |
| Dec 2013 | 141 | Dec 2016 | 83 | Dec 2019 | 158 | Dec 2022 | 112 | | |
| Jan 2014 | 148 | Jan 2017 | 115 | Jan 2020 | 146 | Jan 2023 | 125 | | |
| Feb 2014 | 107 | Feb 2017 | 99 | Feb 2020 | 165 | Feb 2023 | 130 | | |
| Mar 2014 | 163 | Mar 2017 | 121 | Mar 2020 | 149 | Mar 2023 | 113 | | |
| Apr 2014 | 114 | Apr 2017 | 134 | Apr 2020 | 149 | Apr 2023 | 115 | | |
| May 2014 | 131 | May 2017 | 179 | May 2020 | 194 | May 2023 | 105 | | |
| Jun 2014 | 121 | Jun 2017 | 141 | Jun 2020 | 188 | Jun 2023 | 116 | | |
| Jul 2014 | 130 | Jul 2017 | 116 | Jul 2020 | 172 | Jul 2023 | 128 | | |
| Aug 2014 | 109 | Aug 2017 | 106 | Aug 2020 | 141 | Aug 2023 | 107 | | |
| Sep 2014 | 96 | Sep 2017 | 131 | Sep 2020 | 170 | Sep 2023 | 109 | | |
| Oct 2014 | 131 | Oct 2017 | 136 | Oct 2020 | 137 | Oct 2023 | 131 | | |
| Nov 2014 | 149 | Nov 2017 | 128 | Nov 2020 | 173 | Nov 2023 | 120 | | |
| Dec 2014 | 92 | Dec 2017 | 129 | Dec 2020 | 198 | Dec 2023 | 118 | | |

*Data obtained from Oregon Health Authority*

The timelines proposed in HB 3051 and the -3 Amendment come recommended by Dr. Debra Pinals, in the context of the federal litigation to bring OHS into compliance with mandates to admit defendants found GEI or unable to aid and assist within 7 days of a committing court order. Dr. Pinals first recommended the proposed aid and assist timelines in her Second Report, dated June 5, 2022. At that time, benchmarks were established, which if accurate, would have seen the state in compliance with the Federal Court Order by February 14, 2023. However, in her third report, dated September 15, 2022, Dr. Pinals made it clear that the goals towards compliance would not be met for the foreseeable future and that more drastic intervention was necessary. The federal order limiting restoration to the limits proposed in HB 3051 and the -3 Amendment went into effect on September 1, 2022.

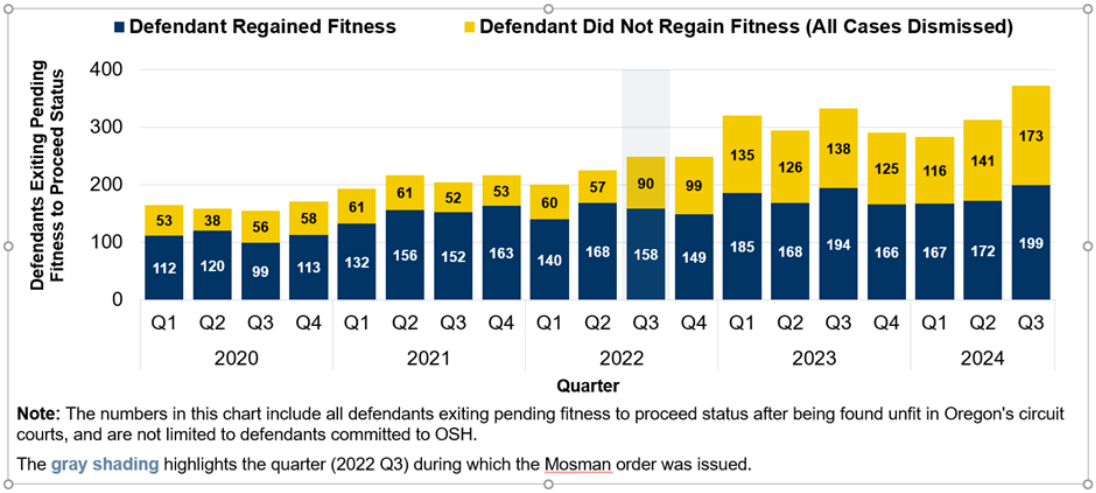
As of September 1, 2022, when the recommendations were ordered into effect, there were 70 individuals on the OSH admission list with signed and received aid and assist orders. They were waiting an average of 19.8 days to be admitted to the hospital. There were also 71 patients on OSH's "ready to place" list. The OHA data dashboard for the week of February 3-16, 2025, which is the most recent data available on the OHA website, shows that as of February 17, 2025, there are 80 individuals currently on the admission list. There are 94 on the list of individuals who the hospital has determined no longer need a hospital level of care, or "ready to place." It is beyond dispute that the timelines put in place by the federal court order in September of 2022 have not worked to remedy violation of the admission waitlist requirements, and the state still faces a possible contempt finding by the federal court. These are the same timelines that are proposed in HB 3051 and the -3 Amendment.

## 2. Fewer Defendants Are Being Restored Under the Reduced Timelines.

Oregon courts and counties continue to struggle with the repercussions of the September 2022 federal court order. The number of cases being dismissed because a defendant was unable to aid and assist has skyrocketed as individuals were discharged from the Oregon State Hospital due to timeline restrictions rather than based on a finding that they were able, permanently unable or ready for community restoration.

OJD data shows that, following the federal court order, the number of cases dismissed without fitness restoration more than tripled.

### Defendants Exiting Pending Fitness to Proceed Status, by Whether the Defendant Regained Fitness

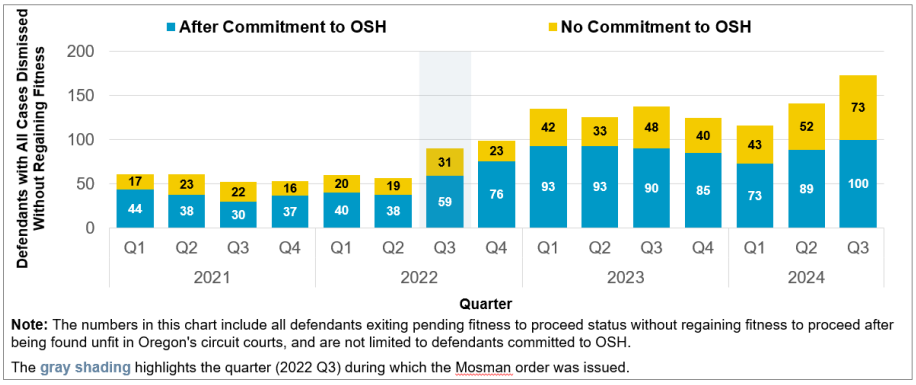



**Note:** The numbers in this chart include all defendants exiting pending fitness to proceed status after being found unfit in Oregon's circuit courts, and are not limited to defendants committed to OSH.

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

Further, the data reflects that the number of defendants not regaining fitness went up for both defendants who were treated at OSH and those who were not.

### Defendants Who Did Not Regain Fitness and Had Their Cases Dismissed, By Whether Defendant Had Been Committed to OSH

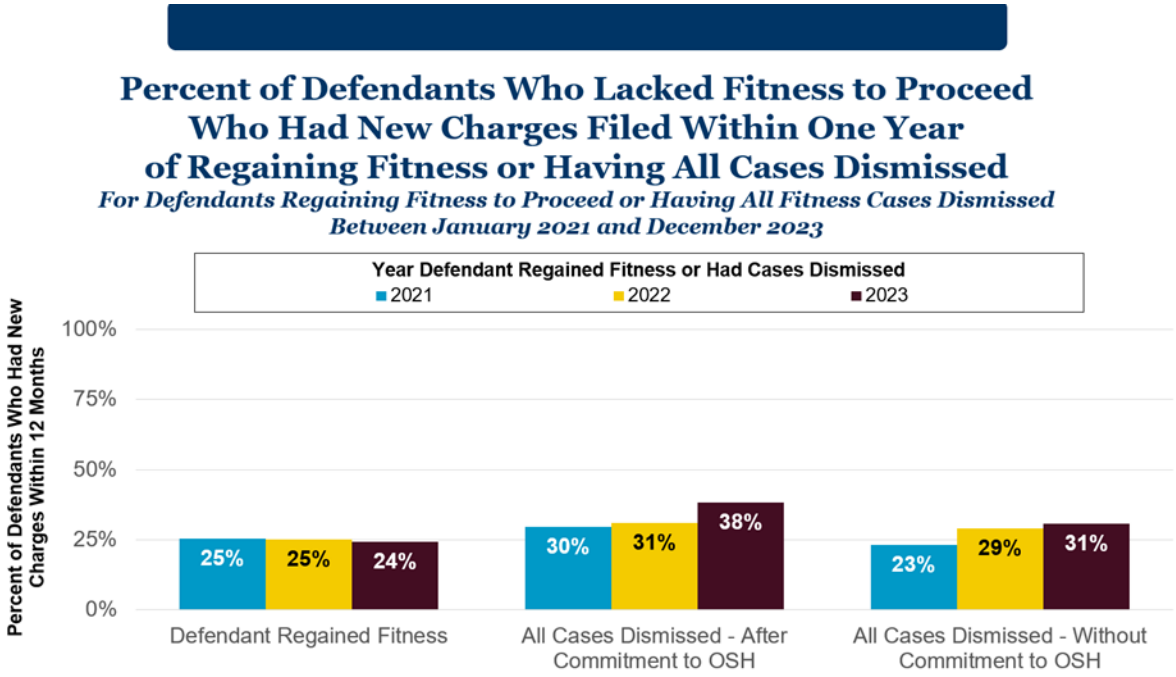



**Note:** The numbers in this chart include all defendants exiting pending fitness to proceed status without regaining fitness to proceed after being found unfit in Oregon's circuit courts, and are not limited to defendants committed to OSH.

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

### 3. Recidivism Among the Aid and Assist Population is Up.

The OJD data demonstrates the impact of the proposed OHA timelines on cases in Oregon. Defendants are restored at significantly lower rates, both in the hospital and in the community, and cases are being dismissed. The data shows that when this occurs, recidivism rates rise. In both 2022 and 2023, there was an increase in the number of defendants who had new charges filed against them within one year of either regaining fitness or having their cases dismissed. This coincides with implementation of the shortened timelines as a result of the federal court order in 2022.



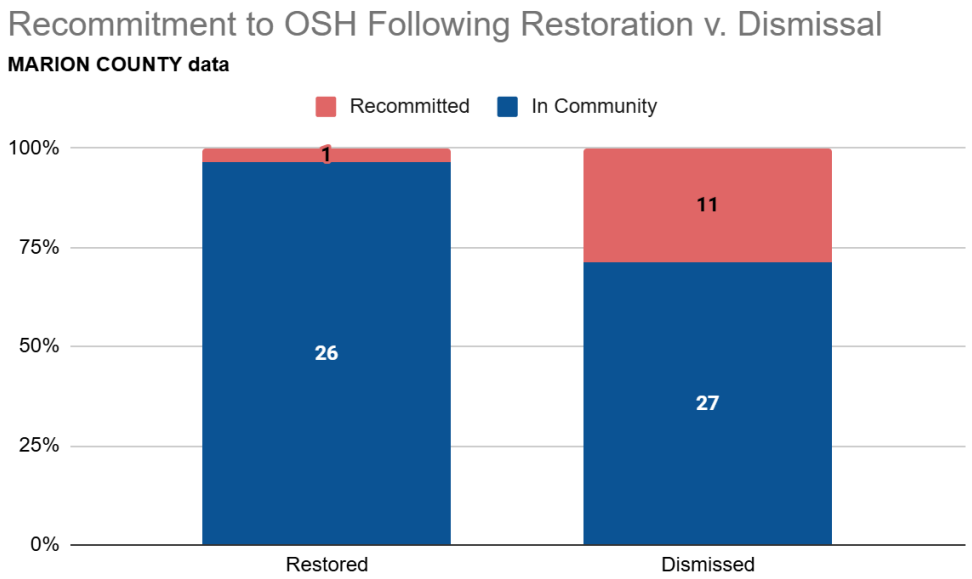

Recidivism among the aid and assist population will increase demand for OSH services, a fact that does not appear to be accounted for in the OHA projections.

In addition to the OJD data cited above, we looked at the defendants in Marion County who were discharged from OSH due to the federal order time limitations and who were subsequently placed in community restoration. Of the defendants whose cases have since resolved (either through case resolution or dismissal), we see the following:

- 28 Defendants were restored to competency in community restoration.
    - Of the 28 restored to competency, 26 are in the community. Two were sentenced to prison.
    - Of the 26 who are currently in the community, 4 have been charged with new crimes (15%).
    - Of the 4 defendants who reoffended, only one has been returned to OSH (3%).
- 38 Defendants had their cases dismissed. Of those, 8 defendants were determined to be unable to aid and assist with no substantial likelihood of restoration in the

foreseeable future. The remaining 30 defendants had their cases dismissed because there wasn't an appropriate level of care available following discharge from OSH. Of the 38 with cases dismissed:

- 13 have new charges (34%)
- 11 have returned to OSH (28%)
- 2 have active warrants for their arrest



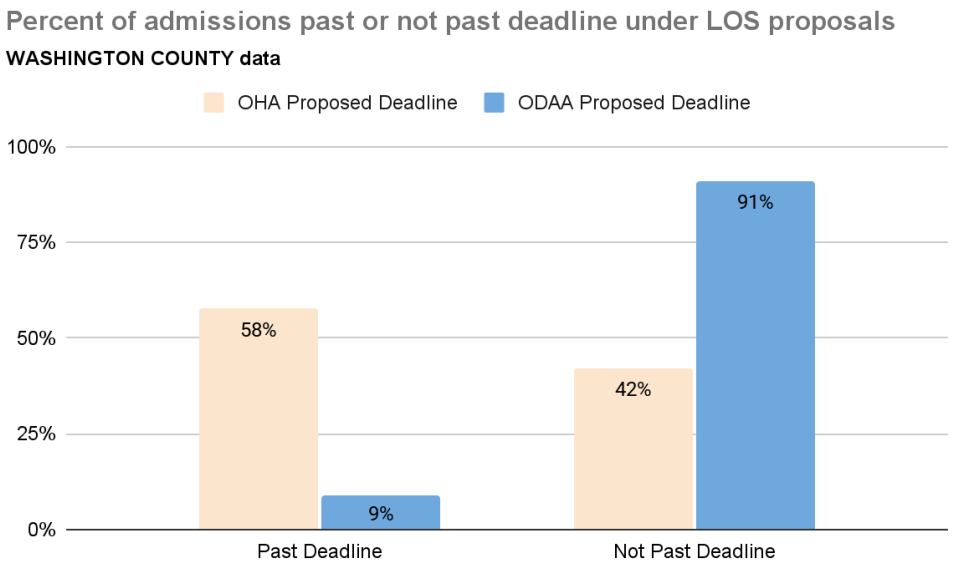

Thus, in Marion County, of the 28 defendants restored to competency, only 3% have returned to OSH on subsequent aid and assist orders, compared to 28% of the defendants whose cases were dismissed without being restored to competency.

The negative consequences of spending significant resources, both at OSH and in community restoration, on defendants who ultimately time-out rather than achieve either restoration or a finding that there is not a substantial likelihood of restoration in the foreseeable future are significant. The premature discharge of defendants from the aid and assist process will continue to lead to recidivism, and given that this is a population with a history of incapacity, that recidivism will increase the demand for services both at OSH and in the communities.

4. **Timelines proposed in HB 3051 and the -3 Amendment will continue to increase the number of individuals who are not restored to competency.**

The fact of the matter is that applying the timelines proposed under HB 3051 and the -3 Amendment will reduce the number of individual defendants found able. We looked at Washington County data related to aid and assist defendants whose cases were resolved in the period between January 1, 2023 and December 31, 2024. For all defendants during that time period who were found to be able to aid and assist, *at least* 58% of them would have been past the timelines contemplated by HB 3051 and the -3 Amendment. These aren't projections. They are cases that actually resulted in "able" findings that would have otherwise been dismissed. In

reality, the number of these defendants who would be past the OHA restoration limit is likely significantly higher than 58% because HB 3051 and the -3 Amendment counts pre-commitment jail time against total restoration limits. Thus, were we to go through case by case and reduce the number of days that each defendant was permitted to be at OSH based on days spent in jail, the percentage of cases that would have been dismissed would be higher.




Under HB 3051 and the -3 Amendment, defendants undergoing community restoration would also time-out. For example, in Marion County there are currently 44 individuals undergoing community restoration. Of those, *at least* 30 defendants would be past the OHA restoration time limits included in HB 3051 and the -3 Amendment (68%). And again, in reality the number of defendants who would be past the OHA restoration limit is likely significantly higher because the HB 3051 and the -3 Amendment counts jail and OSH time against total restoration limits, including community restoration limits.

**5. It is critical that longer restoration timelines are available when needed.**

OHA has repeatedly indicated that longer timelines are unnecessary because the majority of defendants are restored quickly. However, any defendants who are restored quickly will not be impacted by whether the timelines imposed are the OHA timelines or the ODAA/OCDLA negotiated timelines. The fact that some defendants, or even the majority of defendants, are restored relatively quickly does not negate the need for lengthier services for other defendants who have more complex clinical presentations or for whom there is concern for malingering.

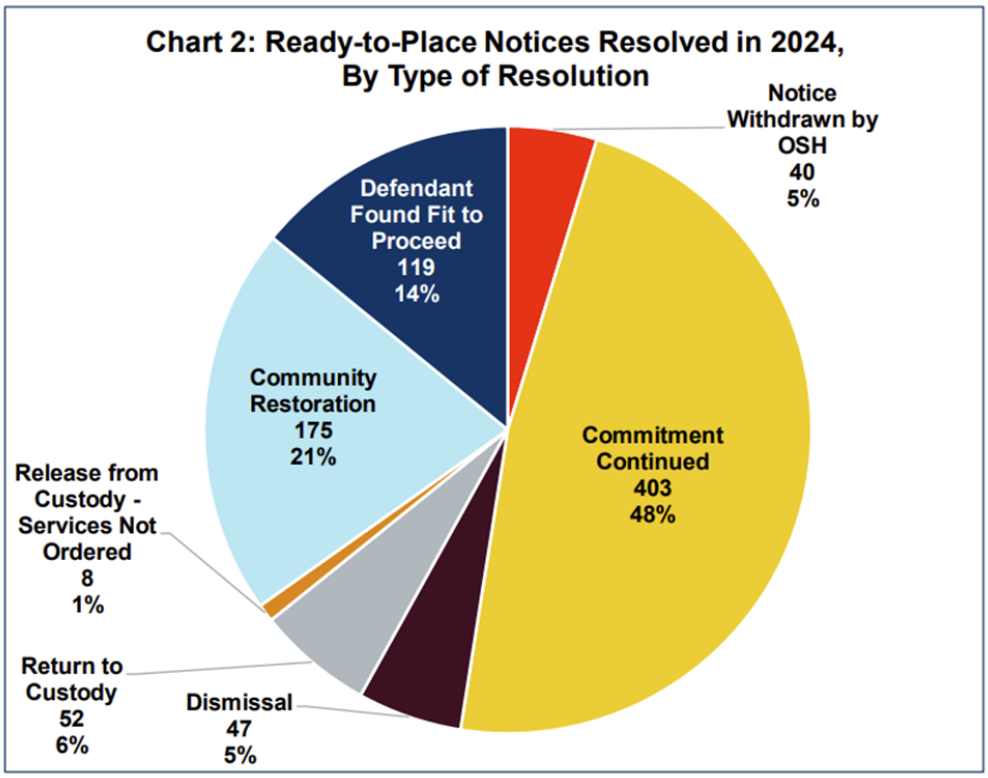
ORS 161.371 states that OSH must immediately notify the committing court if, at any time, a defendant gains or regains fitness to proceed or if there is no substantial probability that, within the foreseeable future, the defendant will gain or regain fitness. OSH must also notify the court if court-ordered involuntary medication is necessary for competence restoration. Thus, there is already a mechanism to notify the court and end a commitment earlier than the

statutory maximum if OSH believes that there is not a substantial probability of restoration. A significant shortening of available restoration time is not necessary.

Having reasonable maximum restoration limits with the possibility of extension when necessary, like those agreed upon by ODAA and OCDLA, and supported by numerous other stakeholders makes sense. Having longer restoration limits does not mean that every person committed to OSH or to community restoration will stay for the average length of stay. Rather, it ensures that if folks are restorable, that we actually have sufficient time restore them. This will reduce recidivism and re-admittance to OSH and reduce the untenable strain that has been placed on Community Mental health Providers (CMHPs). To treat defendants for only a short time and then release them unrestored is a waste of critical resources, both at OSH and in the communities.

6. **Release of defendants on OSH's "Ready to Place List" is not an easy fix for achieving compliance with the federal mandates.**

There has been significant discussion about the "ready to place" list, and difficulty getting defendants discharged once placed on the list. OHA has indicated that this is impacting their ability to admit new patients and is touted as a justification for exceptionally short community restoration limits proposed in HB 3051 and the -3 Amendment. There is a severe disconnect, however, between OHA and the courts as it relates to the ready to place list. Data provided by OJD indicates that fifty-three percent of defendants with ready to place notices resolved in 2024 remained committed to OSH, either due to the court continuing the commitment (48%) or to OSH withdrawing the RTP notice (5%). The disconnect relates to the standards applied by the hospital compared to the standards applied by the courts in determining whether a particular defendant requires a hospital level of care.




Legislative clarification would be helpful here, but it is incorrect to state that the admission crisis will be solved by simply dismissing community restoration cases. According to OJD's data, only 21% of ready to place notices resolved in 2024 were resolved by placing the defendants on community restoration.

Further, even Dr. Pinals acknowledges challenges with community restoration. In her Tenth Report, she states, "Recidivism of the population remains too high, and the effectiveness of community restoration remains uncertain overall."

**Summary**

The timelines proposed under HB 3051 and the -3 Amendment aren't right for Oregon. They will result in fewer defendants being found able to aid and assist and will result in higher rates of case dismissal without adequate resolution. Recidivism will continue to rise and readmissions to OSH will continue to increase the number of patients needing services. To the extent that there is concern over a contempt finding, the data reveals that the timelines proposed by Dr. Pinals, and those which HB 3051 and the -3 Amendment attempt to codify, have failed since September of 2022 to bring the state into compliance. OHA projections are unreliable. The ODAA/OCDLA proposal is a common sense solution that takes into account the needs of the courts and communities, in addition to the need to reduce the hospital population.