



# **The Oregon State Hospital**

# Presenter

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# Major Take-Away Concepts

- Not everyone w/mental illness needs to go to OSH
- The law keeps changing; don't assume that you already know the law
- People with mental illness are as unique as all of us
- There is no silver bullet for addressing mental health issues
- A robust tool kit is needed so that each person receives the right care in the right place for the right amount of time

# Hospitalization: Not Always Better

- Someone with mental illness at OSH who could be better served in the community may lose:
  - Housing
  - Support (family, friends, pets)
  - Financial benefits
  - School enrollment
  - Employment
  - Mental health care and other therapeutic support
  - Skills & ability to live independently

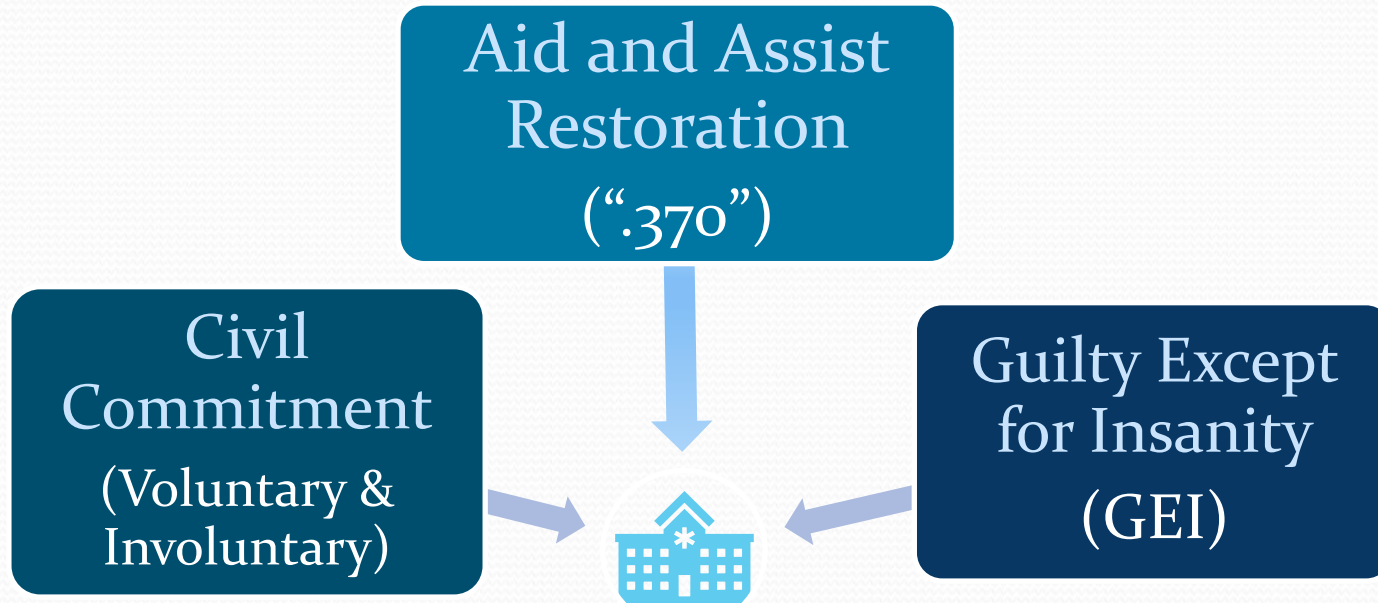
# The Oregon State Hospital: Salem



# The Oregon State Hospital: Junction City



# Different Types of Commitments



OSH also does:

- ▶ Criminal Competency Evaluations
- ▶ Short-term stabilization for OYA and DOC inmates

# The type of commitment is critical

- Different programs and services
- Different lengths of stay
- Different commitment purpose and treatment goals
- Different privileges/freedoms
- Different discharge planning
- Different burden to overcome to medicate
  - **NOTE: OSH CANNOT AUTOMATICALLY MEDICATE ANY PATIENT**



# OSH Patients Retain Their Rights

- Patients' rights include many statutory rights and Constitutional rights, including the right to consent or object to significant procedures, including medications.
- If OSH believes that it has good cause to override a patient's objections to a significant procedure such as psychotropic medication, the patient has a right to a hearing in front of an administrative law judge. (OSH can medicate someone without giving them a hearing if there is an immediate emergency.)

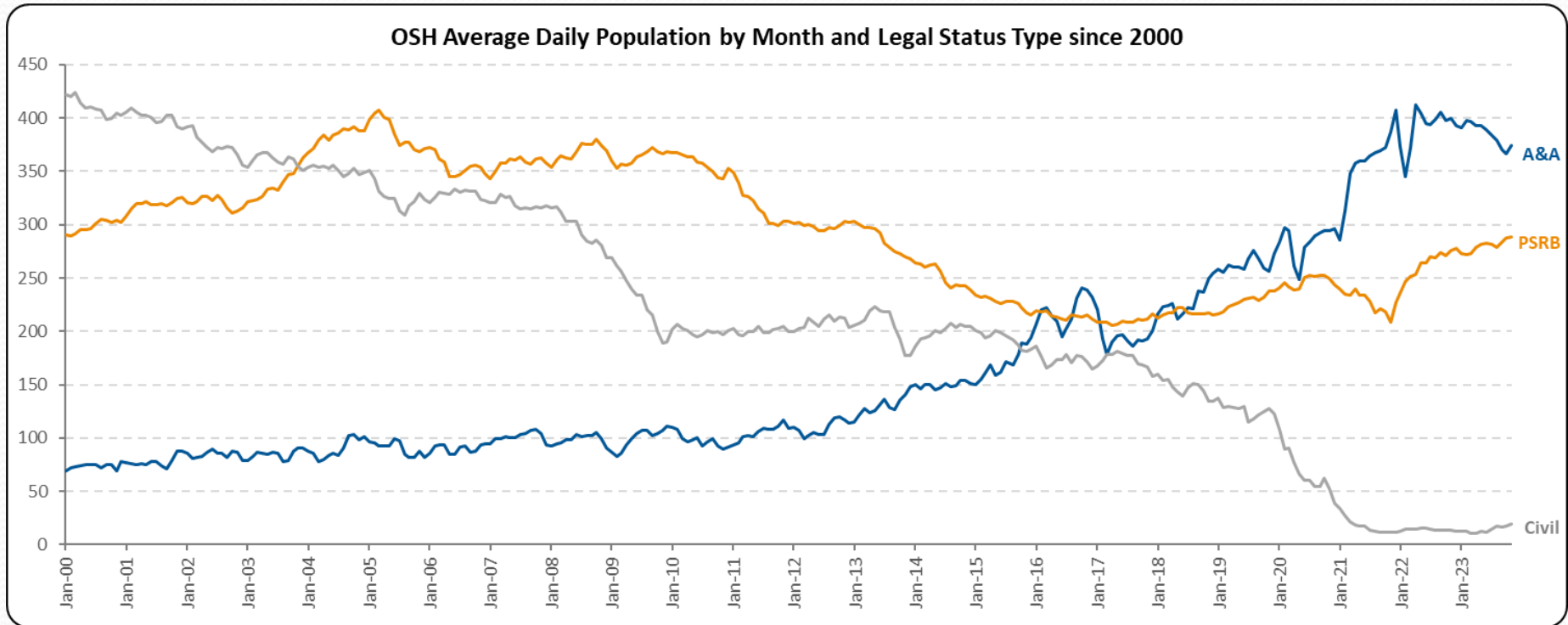
# OSH Census by Commitment Type

(As of November 30, 2023)

Commitment Type / Legal Status	#	%
<b>Aid &amp; Assist</b>	<b>370</b>	<b>54.3%</b>
Court Order (161.370)	370	54.3%
<b>PSRB</b>	<b>289</b>	<b>42.4%</b>
GEI - T1 (161.327)	110	16.1%
GEI - T2 (161.327)	70	10.3%
Revocation of Conditional Release - T1 (161.336)	58	8.5%
Revocation of Conditional Release - T2 (161.336)	20	2.9%
Civil Commitment - PSRB (CCP) (426.701)	16	2.3%
Civil Commitment - PSRB (CCP) (426.702)	14	2.1%
Juvenile PSRB (419C.530)	1	0.1%
<b>Civil</b>	<b>22</b>	<b>3.2%</b>
Civil Commitment (426.130)	15	2.2%
Voluntary by Guardian (426.220)	7	1.0%
<b>Other</b>	<b>1</b>	<b>0.1%</b>
Corrections - OYA (179.473)	1	0.1%
<b>Total</b>	<b>682</b>	<b>100.0%</b>

The Neuropsychiatric/Geriatric units include a mix of the commitment types listed above. These units housed 65 patients on 11/30/23.

# OSH Average Daily Population



## Percent change in census, 1/1/12 to 12/1/23

- Aid & Assist (ORS 161.370) **+241.1%\***

- *From 1/1/12 through 11/30/23*

***36.3%*** of all new Aid & Assist admissions were patients charged with crimes no higher than ***misdemeanors***

- Guilty Except for Insanity **-4.1%**

\* numerous reasons for this increase and no simple solution

# Many Myths about OSH and its Patients

- OSH is designed like a college campus – not a prison.
- OSH only secludes or restrains a patient on rare occasions where all other efforts have failed. And the seclusion or restraint is only for the duration of the emergency.
- OSH patients do not live at OSH for the rest of their lives. In fact, the median length of stay for OSH patients is relatively short.
- Counties do not pay the costs of an OSH commitment

# OSH Median Length of Stay (Days) by Commitment Type

(For patients discharged over the last 12 months) (updated 12/1/23)

Commitment Type / Legal Status	#	Median LOS
<b>Aid &amp; Assist</b>	<b>1223</b>	<b>88.0</b>
Court Order (161.370)	1222	88.0
Juvenile Unfit to Proceed (419C.378)	1	108.0
<b>Psychiatric State Review Board (PSRB)</b>	<b>49</b>	<b>776.0</b>
GEI - T1 (161.327)	17	853.0
GEI - T2 (161.327)	14	1118.5
Revocation of Conditional Release - T1 (161.336)	11	544.0
Revocation of Conditional Release - T2 (161.336)	5	470.0
Civil Commitment - PSRB (CCP) (426.702)	2	1586.5
<b>Civil</b>	<b>7</b>	<b>405.0</b>
Civil Commitment (426.130)	2	247.0
Voluntary by Guardian (426.220)	5	405.0
<b>Other</b>	<b>1</b>	<b>21.0</b>
Corrections - OYA (179.473)	1	21.0
<b>Total</b>	<b>1280</b>	<b>89.0</b>

The Neuropsychiatric/Geriatric units discharged 129 people with a median LOS of 86 days.  
 LOS data from 12/1/22 to 11/30/23.

# Hospitals are very different from jails

- People at OSH are *patients*, not inmates
- OSH patients have not been convicted and they retain their rights
- Hospital Licensing laws apply
- Health Information Confidentiality laws apply
- Cannot lock people up or restrain them except for immediate emergency
- Overseen by CMS, Joint Commission, USDOJ, DRO
- Olmstead/ADA requires that every person with a disability (including mental disability) must be placed in the **least restrictive setting appropriate to their needs**

# **Aid and Assist**

(aka “.370”)

(aka “unfit” to proceed)

(aka “incompetent” to proceed)



# When Is Someone Unfit to Proceed?

- ORS 161.360 defines incompetency
- ORS 161.360: A defendant may be found incapacitated if, as a result of a “qualifying mental disorder,” the defendant is unable to:
  - understand the nature of the proceedings;
  - assist and cooperate with their counsel; or
  - participate in the defense of the defendant

# “Able”, “Not Able” & “Never Able”

When a certified forensic evaluator conducts an evaluation to determine whether a defendant is able to aid and assist in their own defense, they may reach different conclusions:

- “Able” means that they are able to...\*
- “Not able” means that they are currently not able to...\*
- “Never able” means that they will never be able to...\*
- “Not within the restoration period” means not during the time allotted by court order or statute

\*...meet ORS 161.360 criteria (understand, assist and cooperate with counsel, etc.)

# “Med Never”

A “Medication Never” opinion indicates that

- 1) a defendant does not meet criteria for involuntary/emergency medication administration (i.e., they do not present as an imminent risk of harm or danger to themselves or others and/or they do not present with grave disability to attend to their basic needs) **and**
- 2) there is no substantial probability that their mental health symptoms will spontaneously remit without the use of psychiatric medications. As such, the defendant remains unable to Aid and Assist due to their ongoing mental health symptoms

# Incompetency is not....

- Dangerousness is not a reason for incompetence even if dangerousness is due to a qualifying mental disorder
- Severe symptoms do not automatically render a person incompetent to proceed
- Lack of factual knowledge does not mean incompetence and must be due to qualifying mental disorder;
- Hospitalization for incompetency: not the same as Guilty Except for Insanity commitment

# What Is Excluded?

- Incompetency must be a result of a “qualifying mental disorder”
- Generally taken to exclude (if solely):
  - antisocial conduct
  - personality disorders
  - substance-induced disorders
  - disorders of sexual behavior

# Litigation Against OHA/OSH

- May 2002 - Federal injunction (Mink order) issued requiring OSH to admit every aid and assist patient within 7 days of circuit court order
- April 2019 to present - 74 contempt actions brought against OSH from various Oregon counties
- May 2020 - Mink order modified to permit OSH to slow down admissions to implement Covid restrictions
- Nov. 2021 - Bowman (Guilty Except for Insanity) case consolidated with Mink case
- Dec. 2021- Covid modification to Mink order lifted
- Sept. 2022 – Federal court in Mink case orders OSH to discharge aid and assist patients within specific time-frames

# How Long is a .370 patient committed?

**On Sept 1, 2022, a federal court ordered, among other things, that OSH must discharge its aid and assist patients no later than:**

- For patients whose most serious charge is a **misdemeanor**, the lesser of the maximum permissible sentence for the offense or 90 days.
- For patients whose most serious charge is a **felony**, 6 months, unless the felony meets the definition of a “**violent felony**” under ORS 137.700(2), in which case the maximum duration of commitment shall be one year.

# Intent of Federal Court Order

- Designed to reduce time to admission for people waiting for hospital care while in jail by
  - Prioritizing forensic admissions until the hospital reaches compliance with *Mink/Bowman*
  - Limits length of restoration in alignment with national data and clinical averages for restoration timelines.

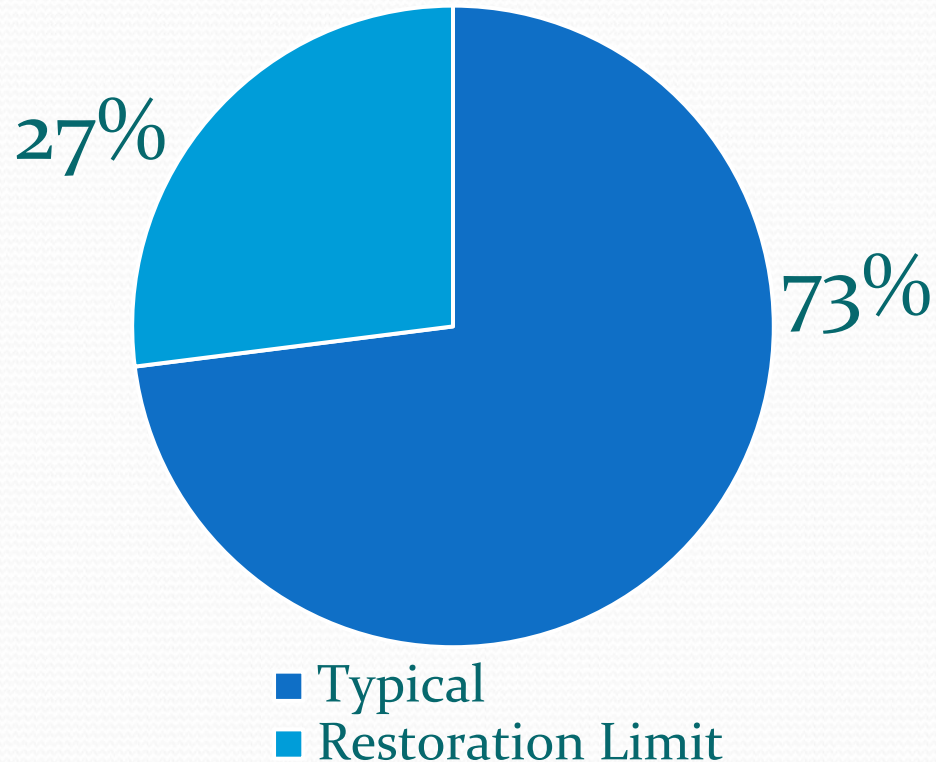


# Federal Order Impact

- Approximately 27% of patients discharged because they reached the court-ordered time limit and approximately 73% discharged via the usual process
- Of the 367 patients discharged due to restoration limits, fewer than 3% came back in within 90 days
- Patient flow into and out of OSH has increased by 39%
- OSH reduced its Aid and Assist admission list by 68%
- Average wait time for an Aid and Assist admission decreased by 82%

# Patient Discharge Impact

## Discharge Reasons



# Discharge Process

## **Discharges occur as usual for:**

- People found able or never able to aid and assist
- People found to no longer need hospital level of care
- People with their charges dismissed

## **New Clinical progress update:**

- Added per July 3, 2023, amended federal order
- Submitted to the court for all ready to place, and end of commitment discharges to assist courts in making placement and support decisions.
- Documentation focused on defendants' clinical presentation from previous 30 days.

# Complex Case Management

- Conducting regular meetings with OSH, HSD and community partners to identify discharge needs early, allowing ample time for planning, barrier removal and coordination
- Conducting ongoing coordination meetings with local CHOICE programs which allow patients to be integrated into the larger mental health system
- Leveraging increased aid and assist funding given to CMHP's to locate additional resources to help remove discharge barriers

# Aid and Assist Extension Motions/Petitions

July 3, 2023, Judge Mosman issued an amended order:

- 30- day extension for individuals with misdemeanor charges if:
  - The CMHP has made a referral to an identified placement, and the placement has accepted them with an admission date;
  - OSH determines that the defendant is reasonably expected to be placed; and
  - Court order for the extension must be received.
- Extension of restoration time frames for any individual charged with a violent felony if:
  - District Attorney files a petition to extend commitment 30 days prior to the expiration of the defendant's original length of restoration;
  - Committing court finds that there is clear and convincing evidence of a danger of physical injury or sexual victimization to the victim or member of the public if the defendant is discharged;
  - Defendant requires a hospital level of care due to the acuity of symptoms of the qualifying mental health disorder; and
  - There is a substantial probability that ongoing commitment will lead to a finding.

# What happens when the patient no longer needs a hospital level of care?

- The Oregon State Hospital files notice with the courts when a determination is made that a patient does not require a hospital level, and their highest charge is either a misdemeanor or a felony C that is not classified as a person crime.
- If the court approves community restoration, the patient can discharge with services, supports, and benefits directly to the community.

# Commitment Type Impacts Discharge Planning

(For patients discharged over the last 12 months) (updated 12/1/23)

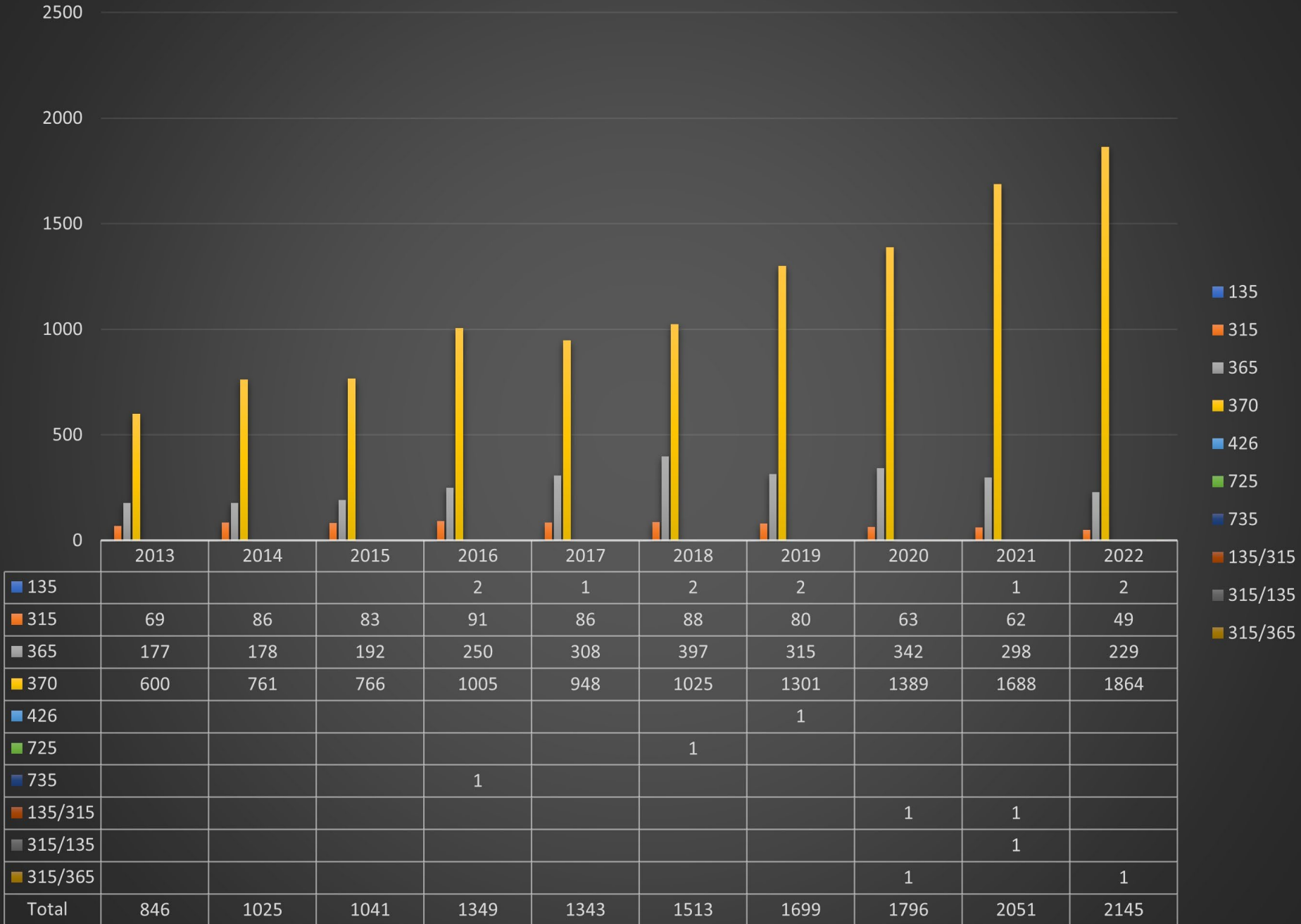
Commitment Type / Discharge Location	#	%
<b>Aid &amp; Assist</b>	<b>1223</b>	<b>95.5%</b>
Jail	973	76.0%
Residential Treatment Facility	54	4.2%
Other	74	5.8%
Secure Residential Treatment Facility	38	3.0%
Independent	26	2.0%
Adult Foster Home	14	1.1%
Supported Housing	20	1.6%
Residential Treatment Home	17	1.3%
Enhanced Care Facility	4	0.3%
Enhanced Care Facility	3	0.2%
<b>PSRB</b>	<b>49</b>	<b>3.8%</b>
Secure Residential Treatment Facility	17	1.3%
Residential Treatment Facility	11	0.9%
Residential Treatment Home	9	0.7%
Independent	5	0.4%
Nursing Facility	1	0.1%
Other	3	0.2%
Other	2	0.2%
Jail	1	0.1%
<b>Civil</b>	<b>7</b>	<b>0.5%</b>
Secure Residential Treatment Facility	3	0.2%
Enhanced Care Facility	2	0.2%
Residential Treatment Facility	1	0.1%
Other	1	0.1%
<b>Other</b>	<b>1</b>	<b>0.1%</b>
Other	1	0.1%
<b>Grand Total</b>	<b>1280</b>	<b>100.0%</b>



**OSH's  
Forensic Evaluation Service  
(FES)**



# FES Evaluations by Type 2013-2022




According to the Oregon Judicial Department, the numbers of aid and assist cases have nearly doubled since 2020, and more than 90% of evaluations of people found unfit have been conducted by FES.

Beginning June 5, 2023, FES has prioritized evaluations of forensic patients who reside at OSH.

After OSH patient evaluations are completed, FES conducts evaluations in the following order of priority:

- Defendants in jail with ORS 161.370 orders;
- Defendants in jail with ORS 161.365 orders;
- Defendants in jail with ORS 161.315 orders;
- Defendants in the community with ORS 161.370 orders;
- Defendants in the community with ORS 161.365 orders.



Because FES evaluation slots are hard to get, we appreciate continued clear communication about:

- when folks are declining transport for 365 evaluations
- when remote capabilities are or are not available for evaluations

# Resources:

- Oregon State Hospital Legal Affairs website:  
<http://www.oregon.gov/oha/amh/osh/fls/Pages/index.aspx>
- Sample order templates
- Important Oregon court decisions in fitness to proceed and GEI issues
- Links to other sites

# Federal Court Order FAQs site

- OHA/OSH prepared an FAQ related to Oregon State Hospital capacity and the recent federal court order:

<https://www.oregon.gov/oha/OSH/Documents/OSH-mink-mosman-FAQ.pdf>

- You can find more information on OHA's website, including a copy of the court order and copies of the reports submitted by the neutral expert in the federal case:

<https://www.oregon.gov/oha/OSH/Pages/mink.aspx>

# Administrative Rules

- Addictions and Mental Health: Mental Health Evaluators  
– OAR 309-090
- Oregon State Hospital's Informed Consent – OAR 309-114
- Placement of Defendants Who Lack Fitness to Proceed –  
OAR 309 -088
- Psychiatric Security Review Board (PSRB) – OAR 859

# More Resources

- Oregon Statutes:  
[https://www.oregonlegislature.gov/bills\\_laws/Pages/ORS.aspx](https://www.oregonlegislature.gov/bills_laws/Pages/ORS.aspx)
- The Oregon Center on Behavioral Health and Justice Integration: <http://www.ocbhji.org/about/>
- DRO Website: <https://www.droregon.org/>
- DRO Aid and Assist video:  
<https://www.youtube.com/watch?v=xfLfdU8Nu9s>



Questions?