



Date February 27, 2019

TO: The Honorable Senator Floyd Prozanski, Chair  
Senate Committee on Judiciary

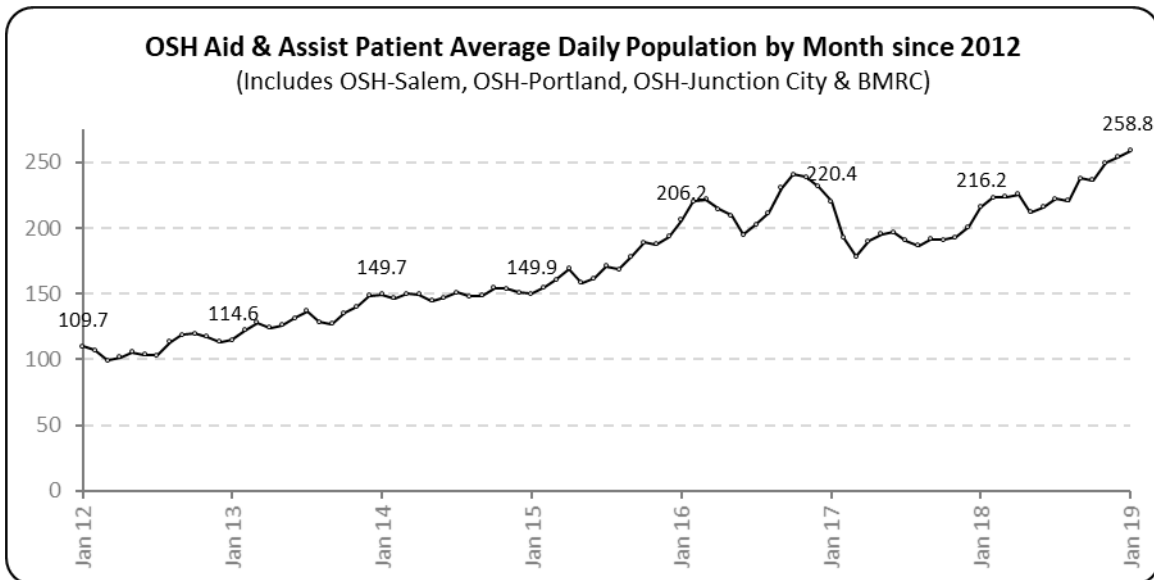
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SUBJECT: Senate Bill 25 – Forensic Evaluation Efficiencies

Chair Senator Floyd Prozanski and members of the committee; I am Dolly Matteucci, Superintendent – CEO of Oregon State Hospital.

### **Aid and Assist Background**

- In Oregon, when people are accused of a crime, and it appears they cannot participate in their case due to the severity of their mental illness, the attorney, the DA, or the judge may request that a certified evaluator conduct an evaluation to determine whether the defendant is able to aid and assist in their own defense.
- If the court determines defendants are not able to aid and assist in their defense, the court may order the defendant to receive restoration services – most often through a commitment to Oregon State Hospital.
- The purpose of the “.370” (named for the statute) commitment is for defendants to be “restored to competency” so they may “aid and assist” in their own defense, which is a constitutional right.
- We use the term “Aid and Assist” to describe the population of people committed under ORS 161.365 and ORS 161.370.
- Since 2012, Oregon has experienced a sharp increase in the number of people under both .365 and .370 commitments, the burden of which has fallen on the hospital.



- Including both people under .370 and .365 commitments, the average daily population (ADP) in January 2012 was 109.7. In January 2019, it was 258.8, which is nearly one and a half times more patients, or an increase of 136%.
- Over the years, the hospital has gradually converted more and more capacity to serve this population, most recently converting a 26-bed unit on the Salem Campus in October 2018 from Civil to Aid and Assist for a total of 236 beds designated for the “Aid and Assist” population.
- There is no one root cause that we can point to as the reason for the influx of patients under Aid and Assist commitments.
- This is a national problem. Several states, including Washington, Colorado, and Utah, have been sued because they have not been able to admit their own Aid and Assist populations to their state hospitals in a timely manner.
- Similarly, Oregon was sued in 2002, which resulted in the United States District Court “Mink” Order, which requires OSH to admit defendants within seven days of the date the judge signs the .370 order.
- Additionally, at roughly \$1,300 per day, hospital beds are expensive. Hospitalization removes people from their support systems like friends and family. They may lose their apartment, their jobs or their pets. Instead of putting people in the hospital who don’t belong there, we should be doing everything we can to provide services where people need them most – their own communities.

- OHA and OSH have been meeting with stakeholders for the past several months to develop legislation to address the increasing Aid and Assist population.
- There are two bills we hope to bring before you this session – SB 24 and SB 25 – that will help address this issue by encouraging community restoration when appropriate and improving efficiencies.
- SB 24 includes several tactics, such as involving community mental health in the process and diverting people away from the hospital who do not need hospital-level care. Potential amendments are still being discussed, and we hope to bring that bill before you soon.
- Today, SB 25 is before you. This bill is more procedural in nature. Through the changes sought in this bill, we can work toward getting defendants into the hospital more quickly for evaluations and to conduct those evaluations as efficiently as possible.

**SB 25: Focused on a more efficient process**

- Preliminary evaluations to determine whether the defendant is able to aid and assist are called “.365” evaluations, because they are ordered pursuant to ORS 161.365.
- Those evaluations are usually conducted by certified psychiatrists and psychologists within Oregon State Hospital’s Forensic Evaluation Service (FES).
- In addition to “.365” evaluations, when a defendant is committed to the hospital as unable to aid and assist pursuant to ORS 161.370, FES must regularly conduct “.370” evaluations.

- In 2010, FES conducted 615 total evaluations, in comparison to 2018, when FES conducted 1,517 evaluations.

| Year | Total Evaluations | Evaluations per Month | .365 Evaluations | % .365 Evaluations |
|------|-------------------|-----------------------|------------------|--------------------|
| 2010 | 615               | 51.3                  | 125              | 20.3%              |
| 2011 | 727               | 60.6                  | 134              | 18.4%              |
| 2012 | 801               | 66.8                  | 160              | 20.0%              |
| 2013 | 844               | 70.3                  | 177              | 21.0%              |
| 2014 | 1026              | 85.5                  | 179              | 17.4%              |
| 2015 | 1045              | 87.1                  | 192              | 18.4%              |
| 2016 | 1345              | 112.1                 | 250              | 18.6%              |
| 2017 | 1341              | 111.8                 | 306              | 22.8%              |
| 2018 | 1517              | 126.4                 | 399              | 26.3%              |

- SB 25 contains several fixes to address inefficiencies in the process:
  - First, evaluators benefit from access to extensive records to render informed opinions. Organizations and people may refuse to provide records to FES without a signed release of information (ROI), even when explicitly authorized by a court order. Obtaining ROIs from defendants is time-consuming, and many defendants refuse to sign releases. SB 25 proposes to amend the statutes to explicitly require that records be shared with the court-ordered evaluator.
    - We are proposing amendments to our initial language regarding this issue of obtaining timely records to address logistical concerns raised by the Department of Corrections and the Oregon Youth Authority.
  - Second, courts do not have a standardized procedure to send orders to OSH, resulting in delayed admissions. This also results in some defendants not being admitted within the required timeframe. SB 25 would amend ORS 161.365 and ORS 161.370 to make explicit the court’s responsibility to ensure the order is sent to OSH within one judicial day.
  - Third, the statutes contain either vague or outdated language regarding how the evaluations may be provided to the court and parties. SB 25 amends the statutes to permit OSH to file its evaluations electronically in the Judicial Department’s electronic system.
  - Fourth, SB 25 reinforces the confidentiality of the defendant’s forensic evaluation while allowing the court and parties to receive and utilize it.

- Finally, stakeholders told us that they want SB 25 to have an emergency clause so that these efficiencies may take place as soon as possible.