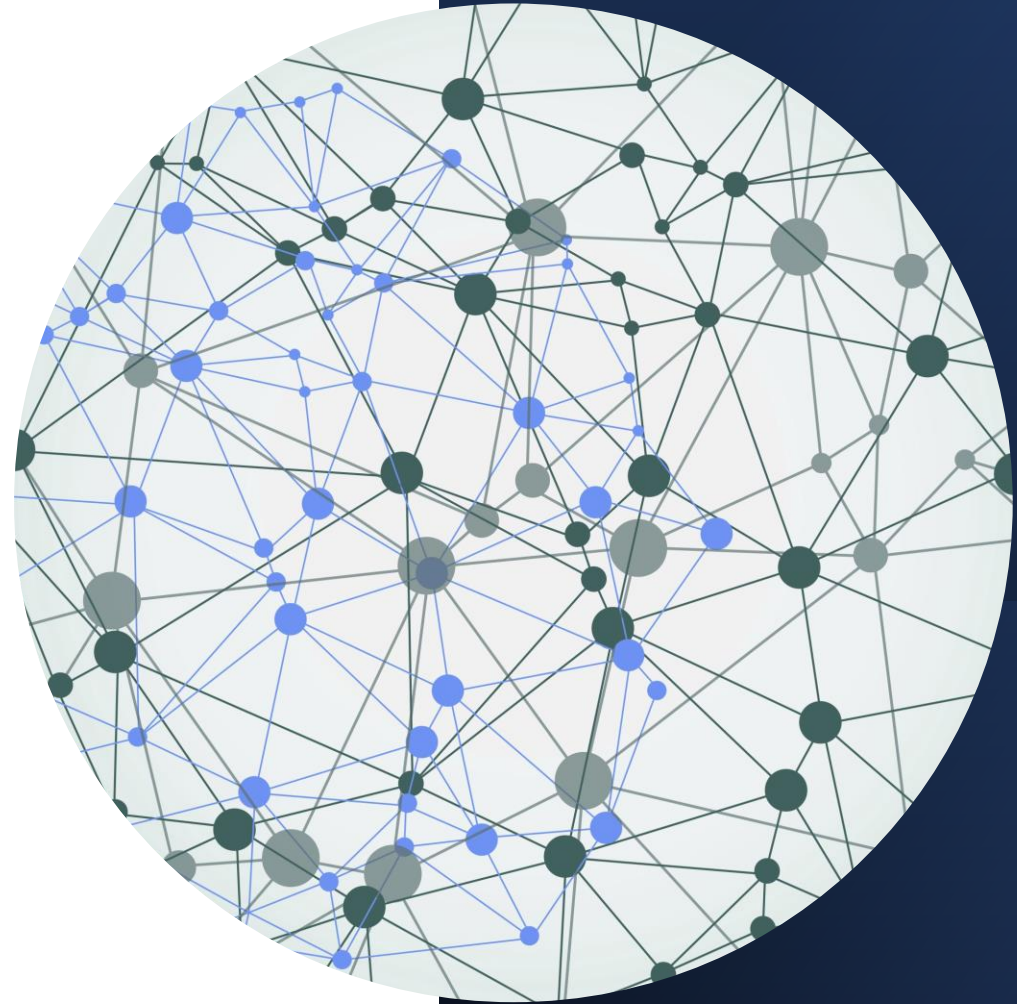


# Updates from the *Mink/Bowman* Neutral Expert

Debra A. Pinals, M.D.

Presentation to Oregon Legislative  
Convening

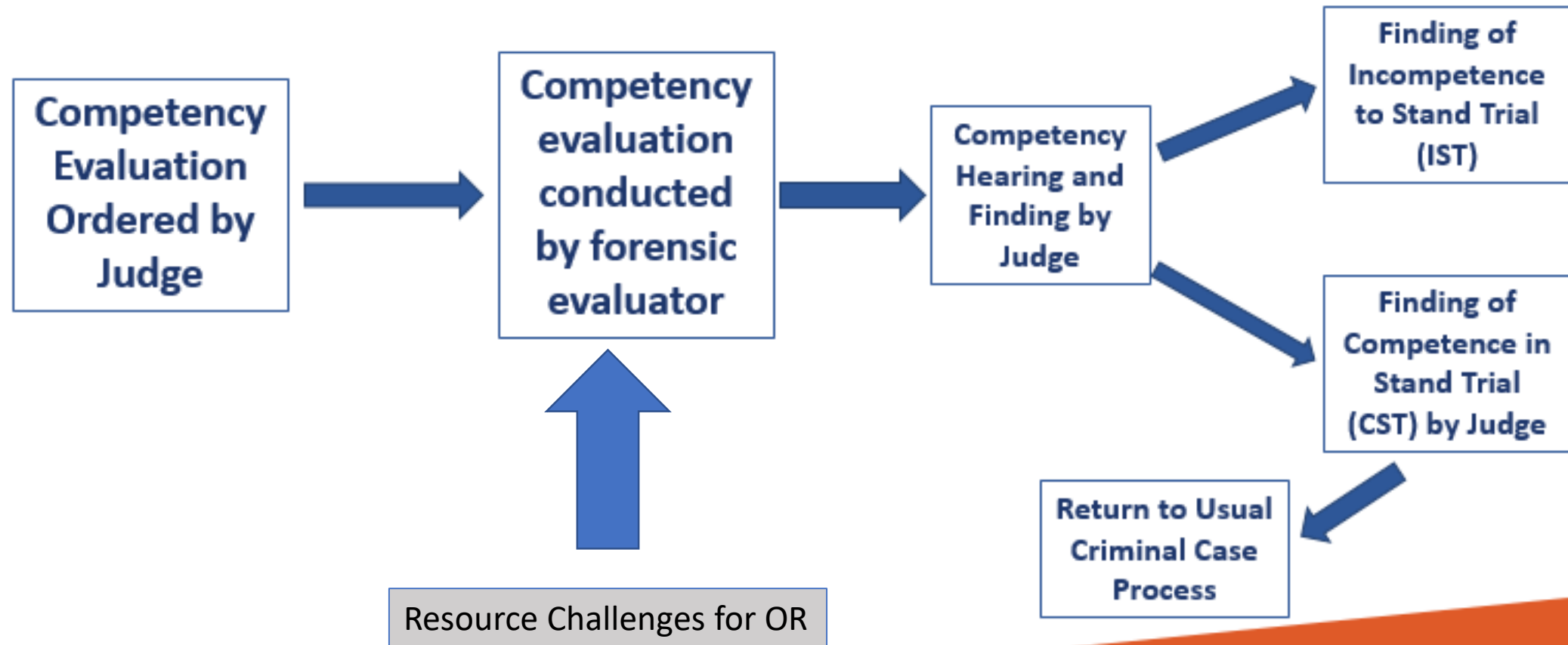
September 22, 2022



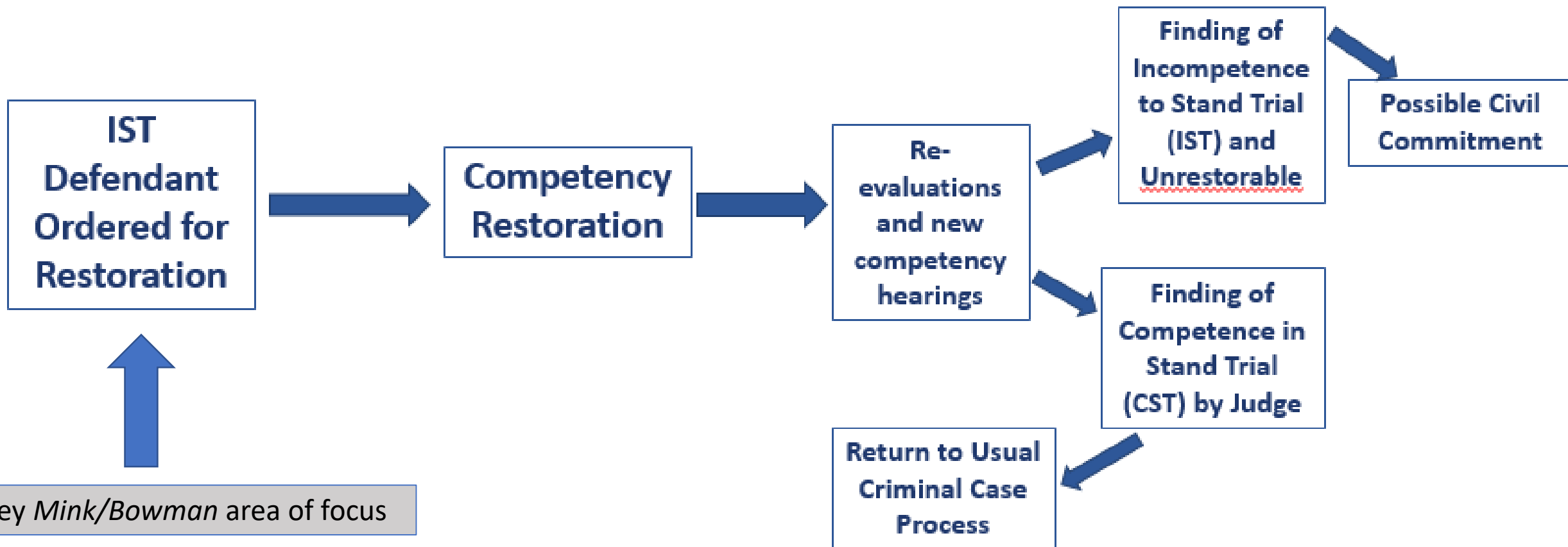
Context:

General Issues and National Trends

# 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”)?



# 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

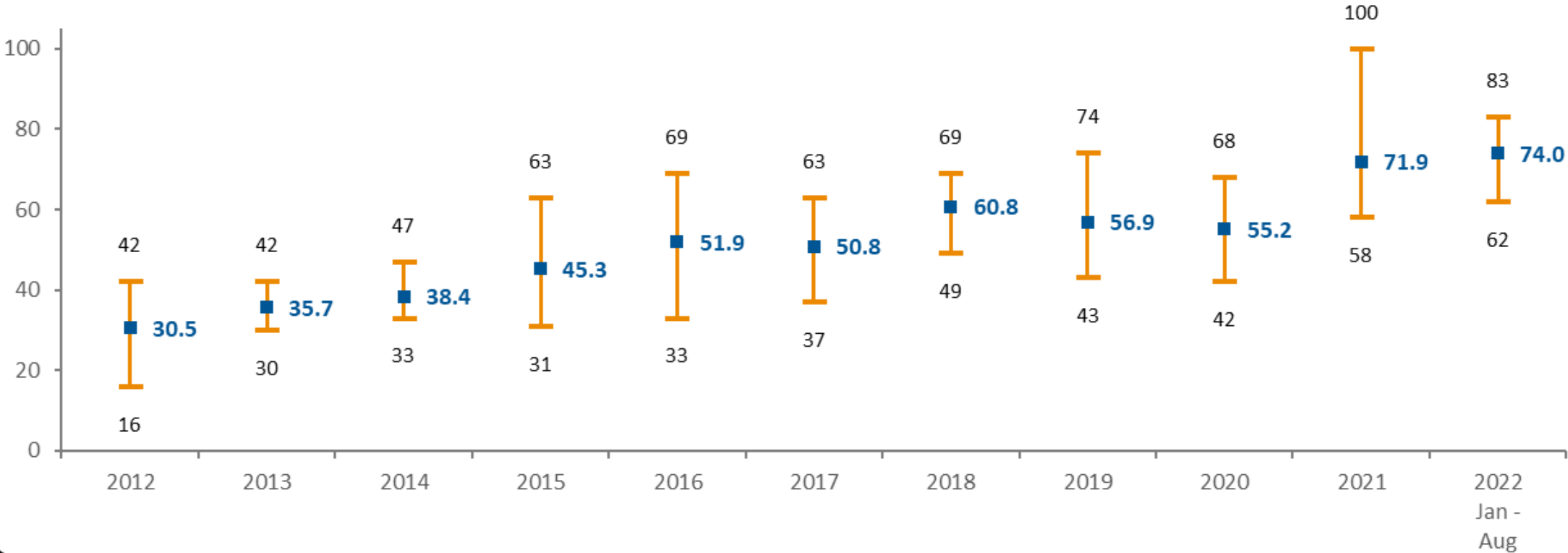
# Context of the Neutral Expert Role

- *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

# Data Findings

# Aid and Assist Orders Per Month

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



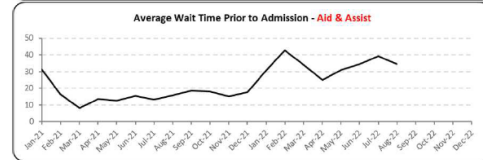
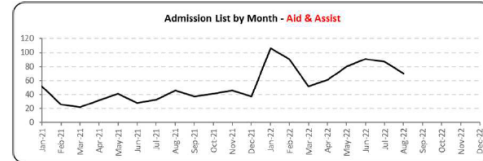


## OSH Forensic Admission and Discharge Dashboard

August 2022

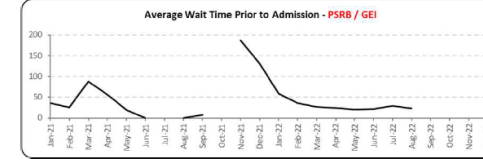
### Aid & Assist Admission List

	Count	Avg Days
<b>Currently on the Admission List</b> <small>(as of the last day of the month)</small>	<b>70</b>	<b>19.8</b>
<b>Admitted During the Month</b>	<b>97</b>	<b>34.6</b>



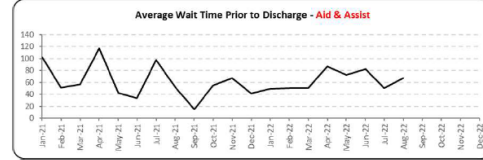
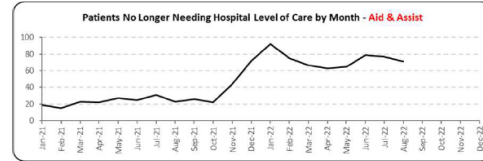
### PSRB / GEI Admission List

	Count	Avg Days
<b>Currently on the Admission List</b> <small>(as of the last day of the month)</small>	<b>4</b>	<b>13.0</b>
<b>Admitted During the Month</b>	<b>8</b>	<b>23.1</b>



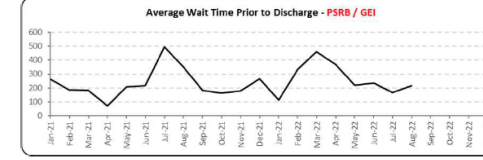
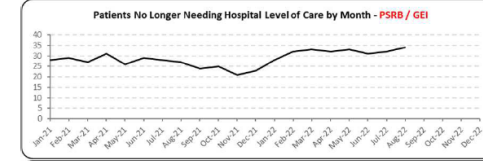
### Aid & Assist No Longer Needing HLOC

	Count	Avg Days
<b>No Longer Needs Hospital Level of Care</b> <small>(as of the last day of the month)</small>	<b>71</b>	<b>52.0</b>
<b>Discharged After Having Been Assessed to No Longer Need Hospital Level of Care</b>	<b>19</b>	<b>67.3</b>



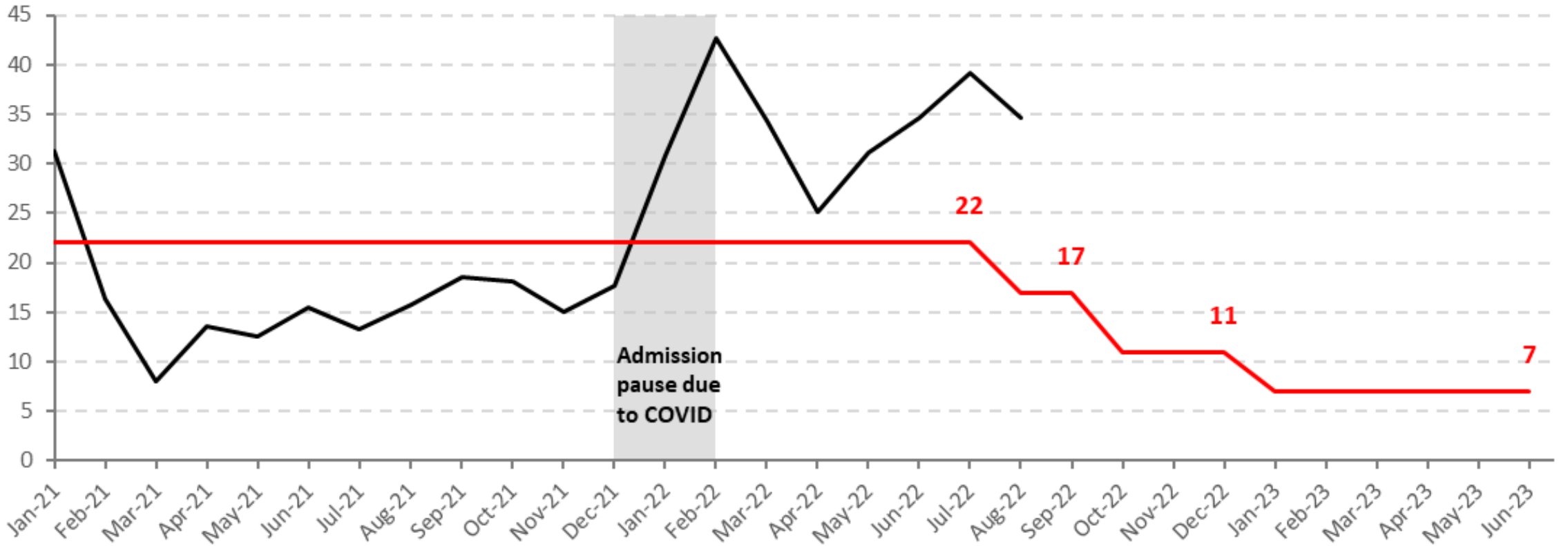
### PSRB / GEI No Longer Needing HLOC

	Count	Avg Days
<b>No Longer Needs Hospital Level of Care</b> <small>(as of the last day of the month)</small>	<b>34</b>	<b>192.0</b>
<b>Discharged After Having Been Assessed to No Longer Need Hospital Level of Care</b>	<b>3</b>	<b>217.7</b>



# Benchmark Crosswalk

## Average Wait Time Prior to Admission - Aid & Assist



## Major Updates

- Unopposed motion to Judge Mosman to:
  - Implement shorter restoration timelines
  - Prioritize use of OSH for clinically necessary admissions and AA/GEI populations (summary)
- Two Orders issued: 8/16/22 and 9/1/22
- Rapid implementation planning underway by OHA and OSH

# Reports to the Federal Court

## First Report: Jan 2022

## Second Report: June 2022

- Issued several recommendations including those that OHA and OSH could realize and those that required legislative approval

## Third Report: Sept 2022

- Judge Mosman Order Implementation
- Need to examine prior recommendation timelines
- Workforce challenges continue

# First Report 1/30/22: 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

# Second Report 6/5/22: Longer-Term Recommendations

## Data and Information Sharing with Stakeholders

- Utilize the data Dashboard
- Continue to partner with OJD to examine data
- Develop a website for information sharing

## Streamline and Improve Processes and Contract Revisions

- Review discharge assessment processes
- Court notification practice modifications
- OSH Utilization management through early evaluations when indicated
- Multidisciplinary training especially about misdemeanor defendants
- Coordination with ODDS
- Community Navigator development
- Expedited admission/consultation improvements
- Improvements for GEI placements
- Discharge process improvements
- Forensic evaluation service efficiencies
- Contractual requirements for CCOHs and CMHPs to refine expectations
- 1115 Waiver exploration
- SUD treatments
- Community Restoration access

# Second Report 6/5/22: Longer-Term Recommendations

## Legislative/Rulemaking/Federal Authorities

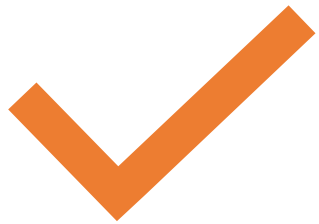
- Finances regarding OSH utilization through risk/incentive models across various entities
- Shorten maximum duration of competence restoration periods for both inpatient and community restoration
  - Up to 90 days or maximum sentence for misdemeanor defendants
  - Up to 6 months or maximum sentence for certain felony defendants
  - Up to 1 year or maximum sentence for certain violent felony defendants
- Consider several clinical aspects to the above recommendations regarding update reports, situations when restoration is not likely, etc.
- Community restoration program refinements
- Alternative pathways for misdemeanor defendants
- Funding OSH for patient care improvements and community engagement
- CCO enrollment continuity

# Third Report 9/15/22 Comments

1. There should be ongoing monitoring of the impact of Judge Mosman's order
2. Ongoing work through the parties
3. Continue to monitor and produce data to inform future activities
4. Staffing should be prioritized across the system
5. Work with FES around forensic evaluator recommendations especially related to “never able” findings
6. Training for stakeholders by Plaintiffs (10/3 training postponed in light of Judge Mosman's order)
7. OHA Website now has FAQs and other information to keep the public informed
8. Encouraged by State continuing to respond to queries and data requests



# Next Steps and Thank you.



Much is happening daily but there remain challenges



Alignment between branches of government has potential to help move toward recommendations and compliance with the *Mink Order*