



LPRO: Legislative Policy and Research Office

MENTALLY ILL IN PRISONS AND JAILS

BACKGROUND BRIEF

Since the late 1970s, the number of mentally ill persons in the nation's jails and prisons has increased to a level not seen since the 19th century. At the same time, the number of persons committed to mental hospitals has dropped dramatically. In 1958, Oregon had over 5,000 people committed to the State Hospital; that number has dropped to a current patient level of 790. An additional 500 beds are available for community-based mental health programs and are used for short-term commitments.

Over the last 25 years, significant medical advancements have allowed for the better management of mentally ill individuals, many of whom can live and work in the community with proper medication and support. With these medical advancements, treatment of the mentally ill shifted from state institutions to community-based programs. Consequently, Oregon significantly reduced the number of beds within the state hospital system with the intent of shifting resources to community-based programs. Many mental health advocates, however, contend that adequate resources were never shifted.

One study, using prison and mental health census data from 18 European countries,

found an inverse relationship between prison and mental health hospital populations. The study concluded that if one of these forms of confinement was reduced, the need for the other increased. Accordingly, where prison populations are extensive, mental hospital populations should be small. If mental health resources are reduced, involvement with the criminal courts will increase.

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Currently, Oregon's prison population was over 15,000, comprised of 13,380 men and 1,350 women.¹ Nearly 60 percent of the overall prison population needs mental health treatment. Of male

offenders, 37 percent identify as benefiting from mental health treatment, needing moderate treatment or having severe mental health problems, while 21 percent are identified as having the highest level of treatment needs. Of female offenders, 63 identify as benefiting from mental health treatment, needing moderate treatment, or having severe mental health problems, while 11 percent are identified as having the highest level of treatment needs. Overall, 74 percent of female offenders and 58 percent of male

¹ See August 2016 Prison Census:
https://www.oregon.gov/doc/RESRCH/docs/inmate_profile_201609.pdf.



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offenders identify as needing some form of mental health services.

HOW THE MENTALLY ILL ENTER OREGON STATE HOSPITAL

There are three potential routes to the state hospital:

- Civil commitment²;
- Being found “incapacitated” or unable to assist in one’s own defense to a criminal charge³; or,
- Being found guilty of a crime, but insane.⁴

CIVIL COMMITMENT

To be civilly committed, a person must be found “mentally ill.” This means that the person is:

- A danger to self or others;
- Unable to provide for basic personal needs that are necessary to avoid serious physical harm in the near future and is not receiving such care as to avoid harm or,
- Someone who:
 - Is chronically mentally ill;
 - Has been placed in a hospital or inpatient facility for mental illness within the previous three years;
 - Is exhibiting symptoms or behaviors substantially similar to those that preceded or led to previous hospitalizations or inpatient placements; and,

- Will continue to deteriorate physically r mentally if untreated.

UNABLE TO ASSIST

A person charged with a crime may be found incapacitated if, as a result of mental disease or defect, the person is unable to:

- Understand the nature of the proceedings;
- Assist and cooperate with his or her attorney; and,
- Participate in his or her defense.

If a person is found to be incapacitated, then the criminal proceedings are suspended, and the person is admitted to the State Hospital until such time as they are determined to be capable to proceed.

GUILTY EXCEPT FOR INSANITY

A person charged with a crime can be found “guilty except for insanity” if the person, as a result of mental disease or defect, at the time of engaging in criminal conduct lacks the substantial capacity to understand what he or she was doing or was unable to control his or her conduct.

Mental disease or defect does not include antisocial behavior. If a court finds a person “guilty except for insanity,” they are given over to the care and custody of the Psychiatric Security Review Board, who may then place the individual in either the State Hospital or under supervised treatment in the community.

The Department of Corrections and the Oregon Youth Authority may transfer inmates

² ORS Chapter 426.
https://www.oregonlegislature.gov/bills_laws/ors/ors426.html.

³ ORS 161.360

⁴ ORS 161.295.



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to a hospital if they are severely mentally ill. If a person is transferred, they are entitled to a hearing similar to those provided for civilly-committed persons including the right to a hearing every 180 days.

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