

---

Defendants who are  
Unable to Aid and Assist  
("incompetent" to proceed)

Oregon  
Health  
Authority

---

# Contact Information

**Micky Logan, JD**

**OSH Legal Affairs Director**

**[micky.f.logan@state.or.us](mailto:micky.f.logan@state.or.us)**

**503-947-2937**

# Statutory Doorways into OSH

*Different services, different lengths of stay:*

- **Aid and Assist Restoration**
  - » ORS 161.370
- **Guilty Except for Insanity (GEI)**
  - » ORS 161.295 and 161.327
- **Civil Commitment**
  - » ORS 426.005 and 426.701
- **Forensic Competency Evaluations**
  - » ORS 161.365 and 161.370

# Different types of commitment =

- Different programs and services
- Different lengths of stay
- Different commitment purpose and treatment goals
- Different privileges/freedoms
- Different burden to overcome to medicate
- Different discharge planning

# The truth about the Oregon State Hospital

- 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 fairly short.

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

(For patients discharged over the last 12 months)

Commitment Type / Legal Status	#	Median LOS
<b>Aid &amp; Assist</b>	<b>639</b>	<b>77.0</b>
Court Order (161.370)	632	77.0
Court Order (161.365)	7	26.0
<b>Guilty Except for Insanity (GEI)</b>	<b>76</b>	<b>706.5</b>
GEI - T1 (161.327)	24	1556.0
GEI - T2 (161.327)	20	738.5
GEI - M (161.328)	3	285.0
Revocation of Conditional Release - T1 (161.336)	15	731.0
Revocation of Conditional Release - T2 (161.336)	14	566.5
<b>Civil</b>	<b>324</b>	<b>132.0</b>
Civil Commitment (426.130)	269	126.0
Civil Commitment - PSRB (CCP) (426.701)	1	1025.0
Voluntary by Guardian (426.220)	54	182.5
<b>Other</b>	<b>4</b>	<b>27.0</b>
Corrections - OYA (179.473)	3	25.0
Hospital Hold (426.232)	1	1741.0
<b>Total</b>	<b>1043</b>	<b>106.0</b>

The Neuropsychiatric/Geriatric units include a mix of the commitment types listed above. From these units there were 76 discharges with a median LOS of 158 days.

# The Oregon State Hospital: Salem





# The Oregon State Hospital: Junction City



11/26/2014



# Malingering

Intentional production of false or grossly exaggerated symptoms motivated by external incentives

10-30% of people in legal system malingers

Some criminal defendants malingers so they can go to the state hospital rather than jail or prison

# OSH Census by Commitment Type

Commitment Type / Legal Status	#	%
<b>Aid &amp; Assist</b>	<b>194</b>	<b>33.4%</b>
Court Order (161.370)	190	32.7%
Court Order (161.365)	4	0.7%
<b>Guilty Except for Insanity (GEI)</b>	<b>202</b>	<b>34.8%</b>
GEI - T1 (161.327)	85	14.6%
GEI - T2 (161.327)	48	8.3%
GEI - M (161.328)	2	0.3%
Revocation of Conditional Release - T1 (161.336)	47	8.1%
Revocation of Conditional Release - T2 (161.336)	20	3.4%
<b>Civil</b>	<b>184</b>	<b>31.7%</b>
Civil Commitment (426.130)	135	23.2%
Voluntary by Guardian (426.220)	46	7.9%
Civil Commitment - PSRB (CCP) (426.701)	2	0.3%
Civil Commitment - PSRB (CCP) (426.702)	1	0.2%
<b>Other</b>	<b>1</b>	<b>0.2%</b>
Corrections - DOC (179.473)	1	0.2%
Corrections - OYA (179.473)	0	0.0%
<b>Total</b>	<b>581</b>	<b>100.0%</b>

The Neuropsychiatric/Geriatric units include a mix of the commitment types listed above.  
 These units housed 54 patients on 04/06/2017.

<b>A&amp;A Admissions</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017 YTD*</b>
Admits per year	288	282	357	366	428	461	543	623	141
Admits per month	24.0	23.5	29.8	30.5	35.7	38.4	45.3	51.9	47.0

*\*2017 YTD includes data through the end of March 2017*

**OSH Aid & Assist (.370) Patient Census by Month from Jan 2010 - Apr 2017**  
 (Based on census count at the start of each month)



**OSH Guilty Except for Insanity (GEI) Patient Census by Month from Jan 2010 - Apr 2017**  
 (Based on census count at the start of each month)



# Percent change in census, from 1/1/10 to 3/31/17

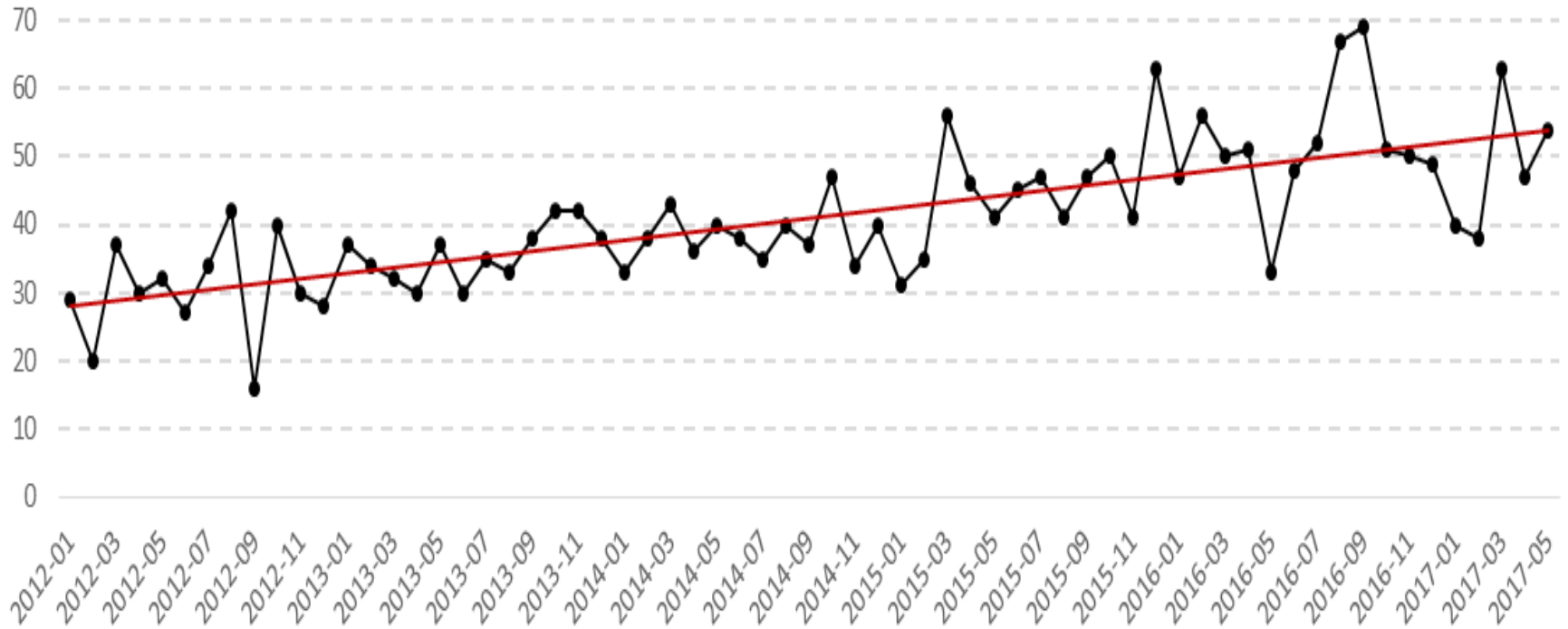
Aid & Assist (ORS 161.370)     **+150.0%**

*From 1/1/12 through 3/31/17*

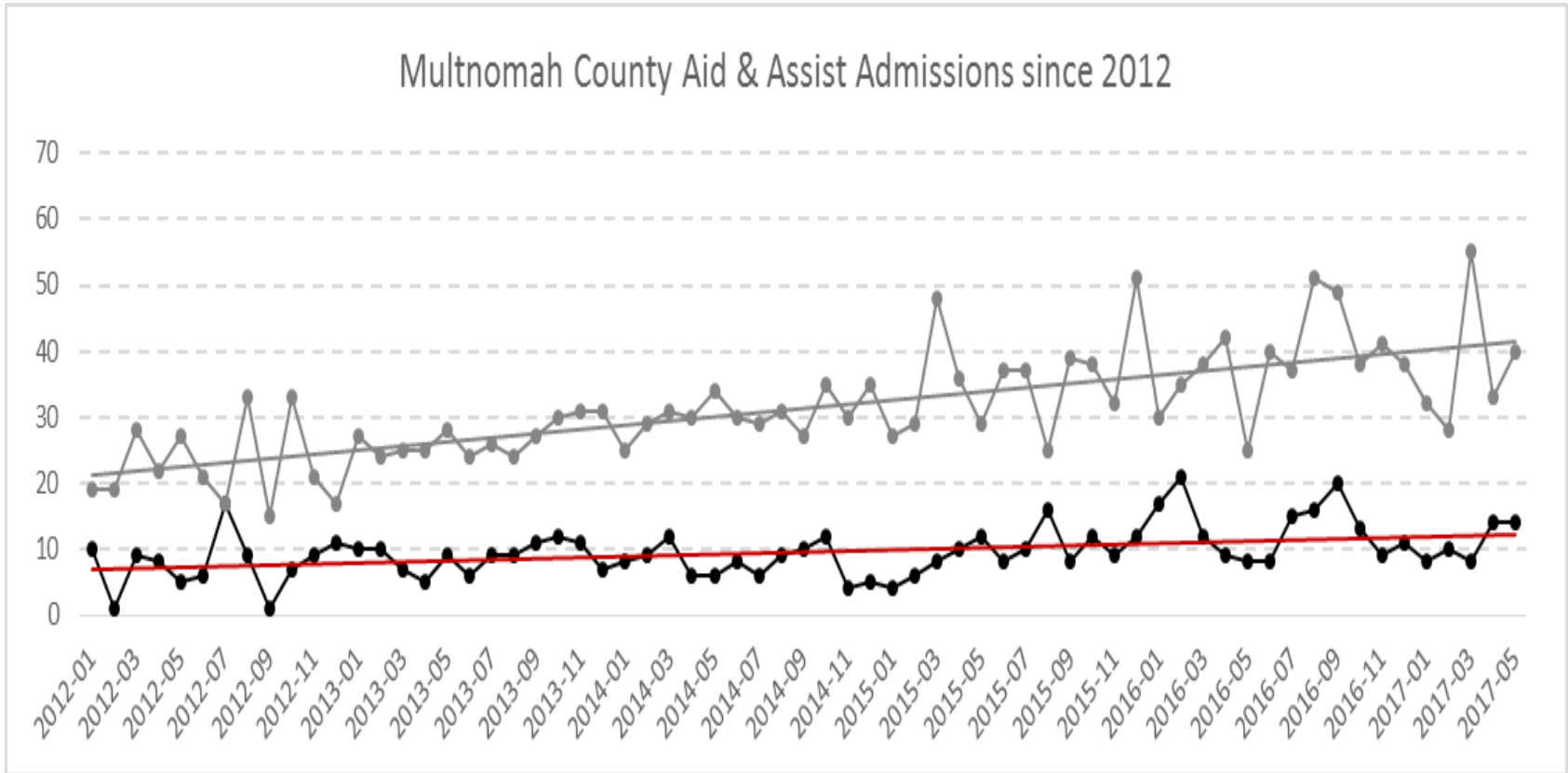
**40.7%** of all new Aid & Assist admissions  
were patients charged with crimes no  
higher than **misdemeanors**

Guilty Except for Insanity     **-42.1%**

### OSH Aid & Assist Admissions since 2012

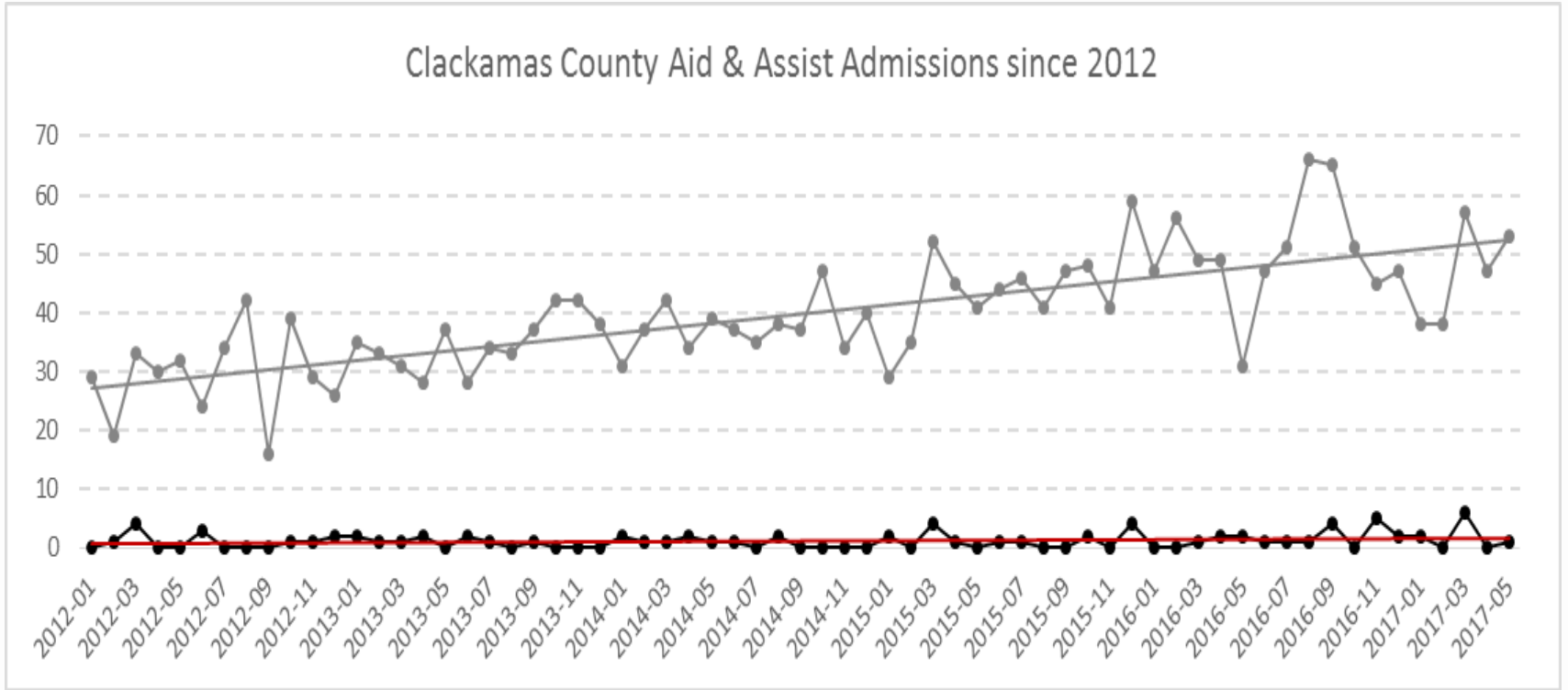


## Multnomah County Aid & Assist Admissions since 2012

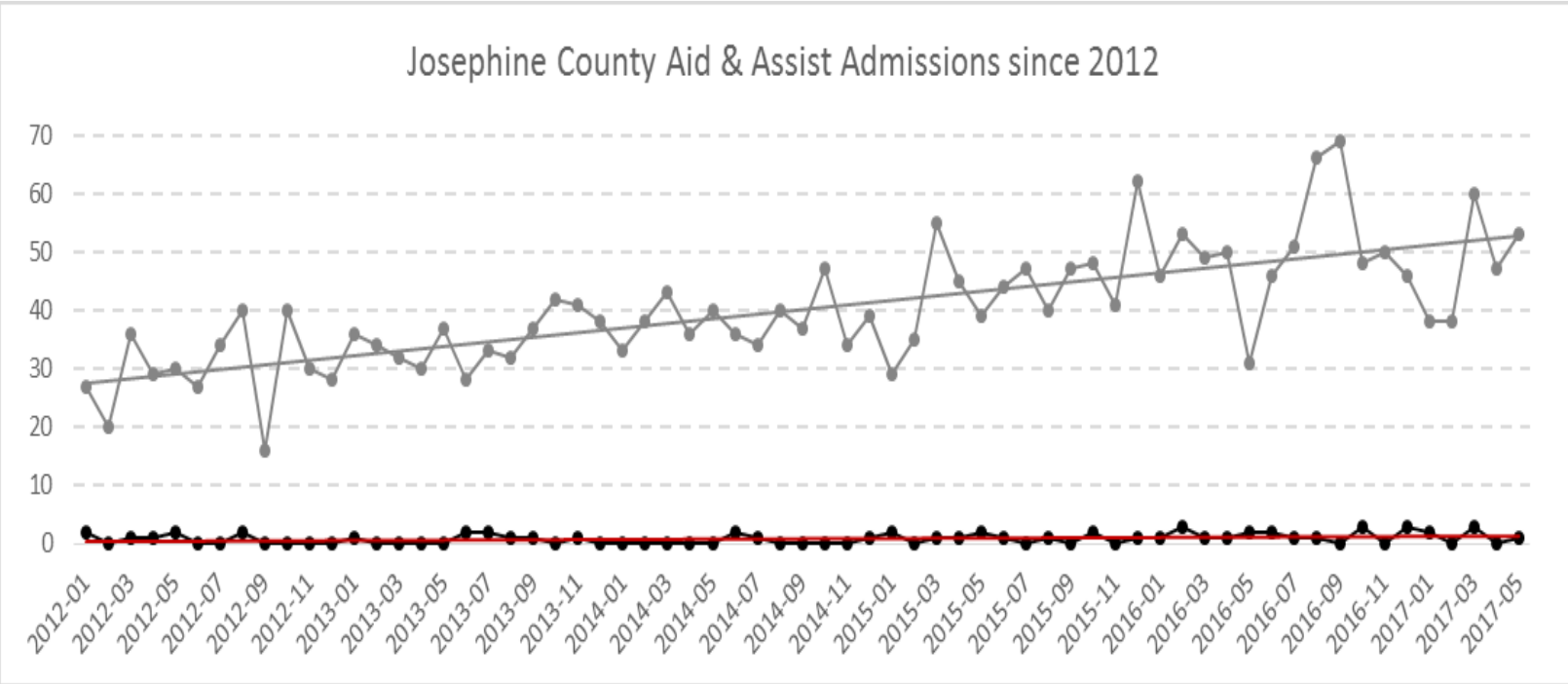




### Clackamas County Aid & Assist Admissions since 2012



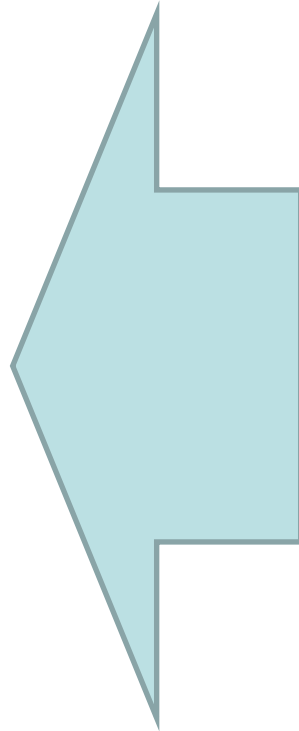
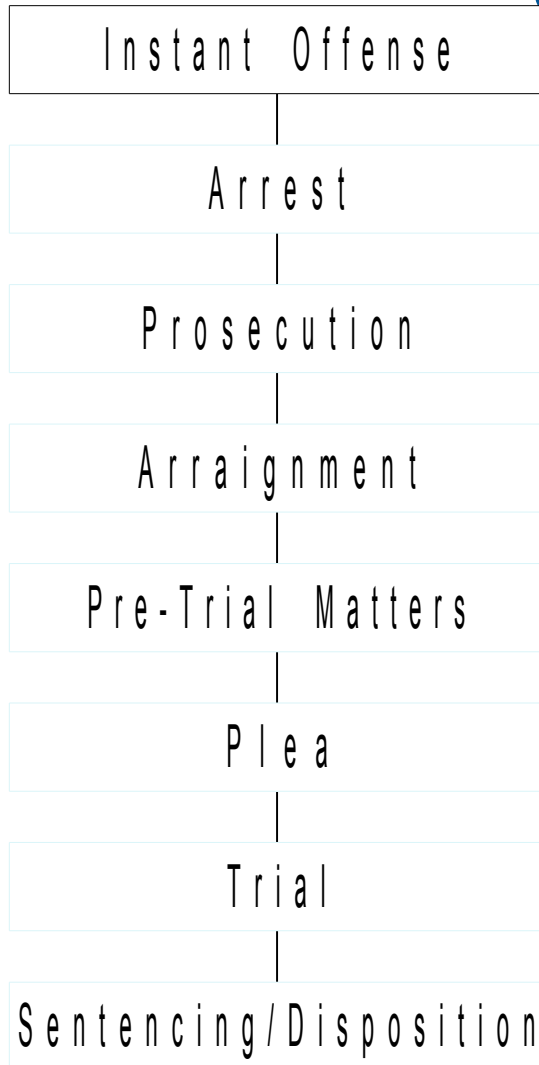
Josephine County Aid & Assist Admissions since 2012



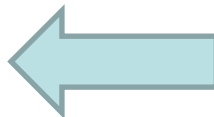
## **Percent change in average monthly OSH “aid and assist” admissions from the first 12 months (Jan 2012 – Dec 2012) to the last 12 months (Jun 2016 – May 2017):**

- All Counties – +72.0% (from 30.4 average admissions per month to 52.3)
- Multnomah – +56.4% (from 7.8 average admissions per month to 12.2)
- Clackamas – +90.0% (from 1.0 average admissions per month to 1.9)
- Josephine – +85.7% (from 0.7 average admissions per month to 1.3)

# Pathway Into Criminal Commitment



Difficulty in jail  
→ Judge declares incompetent to proceed w/case → Usually sent to hospital → Back to jail → Finish case



Guilty Except for Insanity

# Fitness To Proceed Statutes (current mental state)

- ORS 161.360
  - Defines fitness to proceed, applies to all criminal fitness evaluations
- ORS 161.365
  - Defines process for **initial** court-ordered evaluations
- ORS 161.370
  - Defines process for **subsequent** court-ordered evaluations and how defendants are restored

# When Is Someone Unfit to Proceed (“incompetent” or “unable to aid and assist”)?

ORS 161.360: A defendant may be found incapacitated if, *as a result of mental disease or defect*, the defendant is unable to:

- understand the nature of the proceedings
- assist and cooperate with their counsel
- participate in the defense of the defendant



# Incompetency is not....

Dangerousness is not a reason for incompetence even if dangerousness is due to a mental disease or defect

Severe symptoms do not automatically render a person incompetent to proceed

Lack of factual knowledge does not mean incompetence

Hospitalization for incompetency: not the same as Guilty Except for Insanity commitment

# What Is Excluded?

Incompetency must be a result of a “mental disease or defect”

Generally taken to exclude:

- antisocial conduct
- personality disorders
- substance-induced disorders
- disorders of sexual behavior

# Goals of Competency Treatment

Treatment **only** until competency restored

Can only keep in hospital for:

- Reasonable period of time necessary to determine whether there is a substantial probability that defendant/client will gain/regain the capacity in foreseeable future
- Must discharge as soon as fit or as soon as it is determined that there is not a substantial probability that defendant/client will become fit

**There is usually no placement to step-down environment (they are usually discharged to jail)**

# How Long?

Regardless of the number of charges with which the defendant is accused, “in no event shall the defendant be committed for longer than whichever of the following is shorter:

- Three years; or
- A period of time equal to the maximum sentence the court could have imposed if the defendant had been convicted.”

ORS 161.370

# Restorative services in community?

Essential for attorneys and judges to communicate with community mental health to find out whether a particular client can be restored in the community (HB 2420) (2015)

If the community can support a particular client, jail time would likely be reduced

Sometimes OSH cannot medicate unfit defendants

# HB 2420 (2015)

Took effect January 1, 2016

Amends ORS 161.365:

Community mental health program director or director's designee *shall* consult with criminal defendant found unfit to proceed, prior to decision on commitment, to determine availability of treatment in community



# Questions?