

EDPMI Issue Primer

Preparing for Rules Advisory Committee

August 26, 2024

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Disclaimers



Nothing presented today should be interpreted as legal advice.



Today's presentation should not be used as a substitute for formal forensic assessment training.



The goal of this presentation is to level set prior to changing the administrative rules.

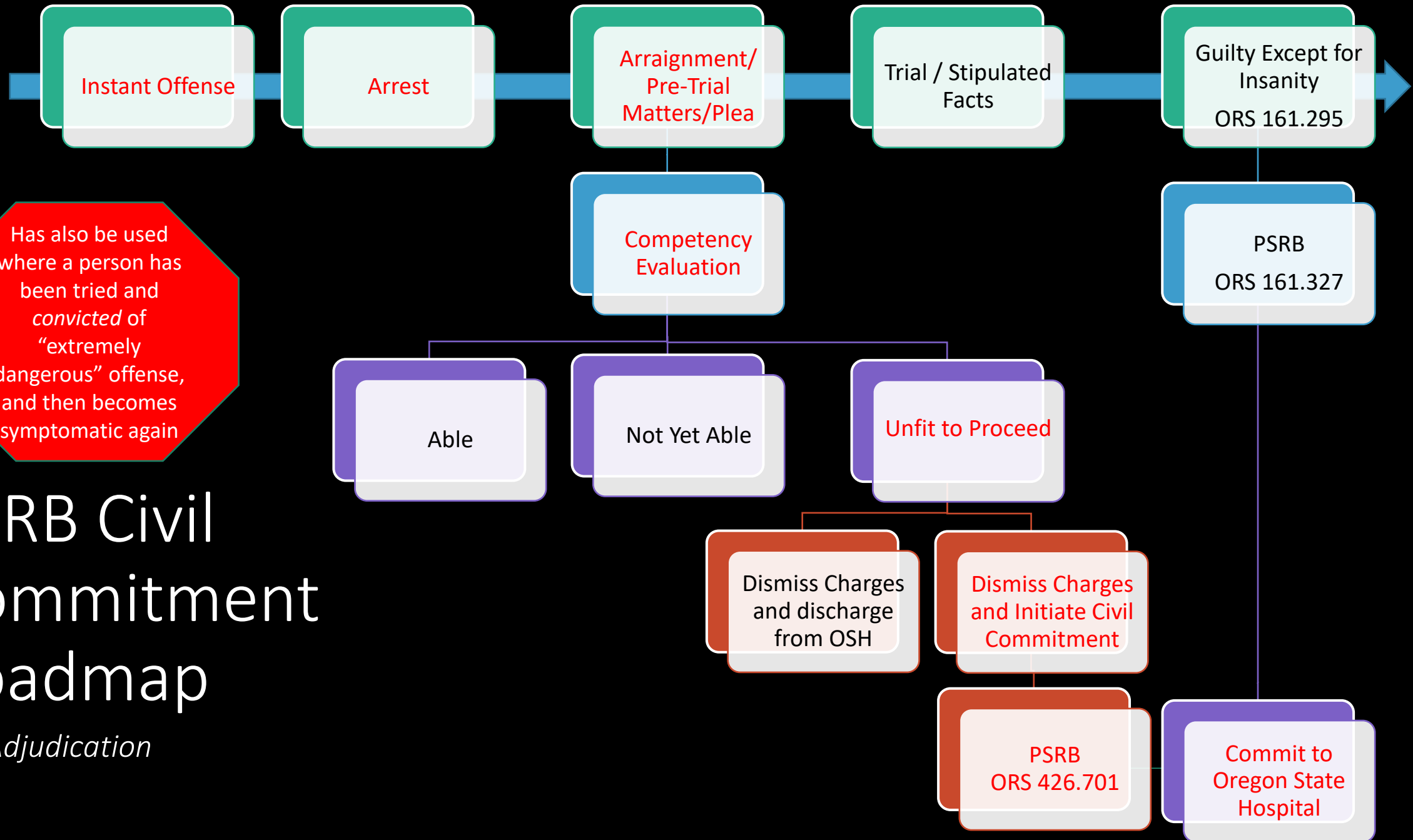


Presentation will be recorded.

Has also be used where a person has been tried and convicted of "extremely dangerous" offense, and then becomes symptomatic again

PSRB Civil Commitment Roadmap

Pre-Adjudication



Competency 101

Defendants have a constitutional right to understand the criminal proceedings against them and to assist in their own defense.

Sometimes a person may not be able to participate in their trial because of the severity of their mental illness.

No matter how clear the evidence of guilt is, a person cannot be convicted unless the person is competent, fit to proceed, or able to aid and assist with the trial.

OSH Competency Restoration: Time Limited!

- Aid and Assist evaluations have three outcomes:
 - The person is “ABLE,” meaning competent to stand trial.
 - The patient is “NOT YET ABLE,” meaning not competent yet, but may regain capacity to aid and assist in the foreseeable future.
 - The patient is “NEVER ABLE,” meaning its unlikely the person will regain capacity to aid and assist in the foreseeable future.
- Competency restoration at the Oregon State Hospital is TIME LIMITED
 - Pre-Mosman OSH Restoration no more than 3 years
 - Post-Mosman (2022)-OSH Fact Sheet
 - Misdemeanor max 90 days
 - Felony max is 6 months
 - “violent felony” under ORS 137.700(2) is one year.
 - 2023: Mosman added limited exceptions to the 1-year max for violent felonies, up to the statutory max of 3 years.

Problem

- Pre 2013, if competence could not be restored by the time limit, the court had 2 options:
 - Dismiss charges and discharge the person from custody
 - Dismiss charges and initiate civil commitment

Solution:

ORS 426.701

- SB 421 (2013)
- Initial case involved the killing of a police officer by an individual who was affected by Schizophrenia who could not aid and assist in their defense and was deemed to not be restorable within the statutory confines of the law at that time (3 years).

Why we need this statute

Prosecutorial Tool

- Provides an alternative to dismissal or traditional civil commitment on the most severe charges.
- Allows “pause” on the prosecution of the most severe charges with ability to later resurrect the charges.
- Judicial notice of findings of underlying act.
- Provides right to competency evaluation should the person no longer meet commitment criteria.

Clinical Tool

- Supports recovery for individuals who were otherwise “stuck” in competency treatment.
- Conditional release provisions
- Right to hearing at 6 months
- Right to protest further commitment
- Right to defense

Victim-Centered

- Increased the length of time between certification hearings from 6 months to 24 months
- Victim notification provisions
- Victim impact statement permitted

Accomplishments!

- SB 205 (2021)
 - Authorizes stay at OSH while petition pending
 - Enhances due process by establishing timeline for protest hearings
 - Clarifies venue for initial petition and commitments
 - Permits remote appearances

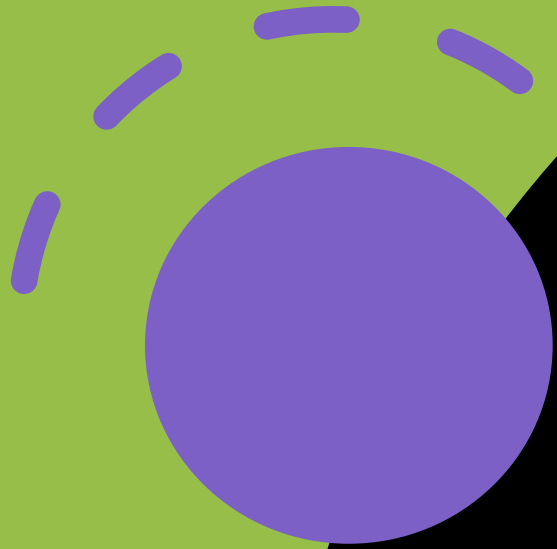
Why RAC Necessary

Complex and Confusing
Definitions

Confusing Hearing
Procedures

Indefinite Commitment

Lack of Training or
Standards for Experts



Challenge 1: Complex and Confusing Definitions

ORS 426.701

Jurisdictional Criteria

1. Is at least **18 years** of age;
2. Is exhibiting symptoms or behaviors of a **qualifying mental disorder substantially similar** to those that preceded the **dangerous act**;
 - homicide,
 - serious physical injury with a weapon, or injury with a gun/explosive,
 - sexual offense against child, or forcible sex offense,
 - arson
3. Because of a **qualifying mental disorder**:
 - **Presents a serious danger to the safety of other persons by reason of an extreme risk that the person will inflict grave or potentially lethal physical injury on other persons; and**
 - Unless committed, will continue to represent an **extreme risk** to the safety of other persons in the **foreseeable future**.
4. **Qualifying mental disorder** is **resistant to treatment**.

ORS
426.701(1)(c)
*Resistance to
Treatment*

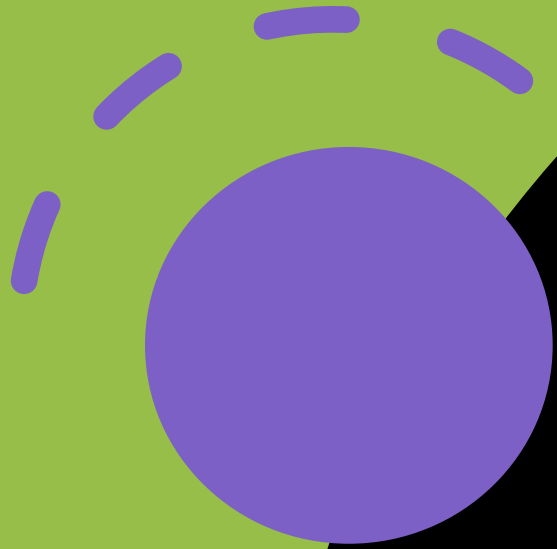
- Are other LMPs permitted?

- A qualifying mental disorder is "resistant to treatment" if
 - after **receiving** care from a licensed psychiatrist and **exhausting** all reasonable psychiatric treatment, or
 - after **refusing** psychiatric treatment,
- the person continues to be significantly impaired in the person's ability to make competent decisions and to be aware of and control extremely dangerous behavior.

- How do you define "ability to make competent decisions?"
- How is "ability to make competent decisions" different from "competency to stand trial?"

based on a judicial finding that a person was

- What does it mean to be aware of and have control over your extremely dangerous behavior?
- Does that require that you are able to accomplish this without the commitment?
 - How is this measured?



Challenge 2: Confusing Hearing Procedures

Month 0
Term 1 Begins

Month 6-7

Any Time

Month 20

Months 19-24

Month 24*

Circuit Court Hearing

PSRB Initial Hearing (Full)

Supervisor Requested Hearing (Full unless Mod)

PSRB Requests Prescriber's Opinion

Certification Hearing

If Certifying, Statement of Rights

Circuit Court Hearing

Commitment established in the county of residence or where act occurred

Discharge, Conditional Release, Modifications

Discharge, Conditional Release, Modifications

Jurisdictional Report

PSRB determines whether to recommend another period of commitment

Sent to client, social worker and attorney

Client protests, then full hearing in Circuit Court within 60 days

Client does not protest, then Circuit Court typically grants a new term of commitment without a hearing

Requires an "examination" report
Court grants commitment and jurisdiction transfers to PSRB

Jurisdictional Report
If PSRB discharges,

Jurisdictional Report
If PSRB discharges,

Provider Endorses, Administrative Review
Provider Opposes, DA may Opt for Full Hearing
If PSRB does not certify, client discharged at the end of the term

Review and return within 14 days
PSRB submits certification and statement of rights to Circuit Court

Remote or In Person
Circuit Court denies/grants a new term of commitment
Term 2 begins the day after Term 1 expires.

Hearings Overview

Remember Victims?
More hearings than
you might think!

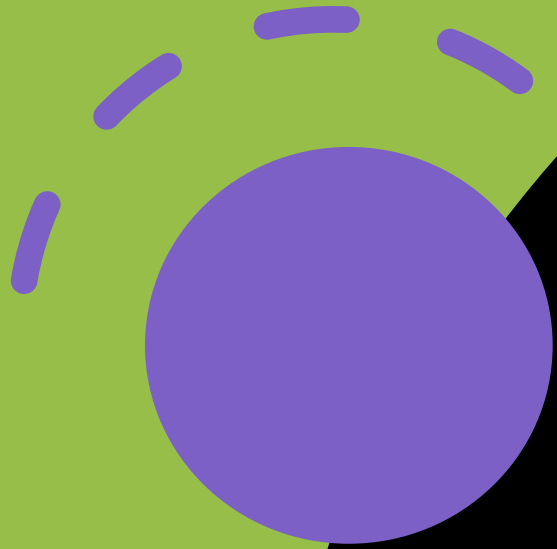
- PSRB Statutorily Required Hearings
 - FULL “Initial” hearing occurs ~6 months after the commitment begins.
 - ADMINISTRATIVE Certification hearing occurs ~30-60 days prior to the end of the commitment period.
 - FULL Revocation hearing occurs within 30 days from admission to OSH.
- PSRB Optional Hearings
 - Hospital may request a full hearing for conditional release or discharge at any time.
 - Community may request a hearing for discharge at any time.
 - FULL Certification hearing may be requested by the District Attorney *if* the treatment team does not endorse another period of commitment.
- Circuit Court Hearings
 - Every 24 months, if there is a protest (2021 change in law—60 days)

PSRB Hearings—Similar to GEI

- Hearings are held remotely.
- District attorney from the county where the commitment was granted represents the State.
- OPDS granted Harris Matarazzo the indigent defense contract for this population.
- OSH: Current prescriber provides jurisdictional opinion
- Community: Current prescriber provides jurisdictional opinion and current case manager often testifies about progress/level of care.

Certification Process (PSRB acts at EOJ!)

- The Circuit Court in the county where the original commitment was granted is responsible for granting new periods of commitment.
- A certification is the PSRB's recommendation to the Circuit Court that another period of commitment is appropriate.
 - PSRB requests jurisdictional report 120 days prior to the end of a commitment.
 - OSH/Provider submits report 90 days prior to the end of a commitment.
- PSRB is the ultimate decision-maker regarding certification.
- Certification timelines are STRICT—no certification, individual lapses.



Challenge 2: Rising Caseload & Indefinite Commitment

Civil Commitment Caseload & Hearings on the Rise

Caseload Increase (as of 12/31)	
2015	4
2017	12
2019	17
2021	25
2023	36
Today's Census	43

Hearing Increase			
	Full	Certify	Total
2023	18	15	33
2021	17	12	29
2020	6	7	13
2019	11	7	17
2018	10	2	12
2017	6	0	6
2016	8	1	9
2015	1	1	2

Indefinite Commitment?

Will Mosman
cause an
increase?

Total PSRB Civil Commit	43
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Total Discharged*	6
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Death	2
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No QMD	2
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No longer ED	2
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To date, a PSRB certification has never been overturned by any Circuit Court
Compare our standards of proof!

Impact of a Discharge

- ORS 426.701 was not created to usurp criminal responsibility.
- DA may reindict and request the circuit court to order a competency evaluation.
- Of the 4 clients who were discharged, this has occurred 0 times:
 - (2) Civil commitment under Chapter 427—has been repealed--HB 3234
 - 1 remained in a CHOICE RTH group home (no recent updates)
 - 1 remained in a long-term facility, and reoffended
- Likely course of a reindictment would be a guilty except for insanity adjudication?

Reindictment?

- ORS 426.702(10)(b):

Upon receiving the notice described in this subsection, the district attorney may request an order from the court in the county where the criminal charges were initiated for an evaluation to determine if the person is fit to proceed in the criminal proceeding. The court may order the state hospital or the state or local mental health facility providing treatment to the person to perform the evaluation. The hospital or facility shall provide copies of the evaluation to the district attorney, the person and the person's legal counsel, if applicable.



Challenge 4: Lack of Training or Standards for Experts

ORS 426.110 Appointment of Examiners

(2) To be qualified

(a) Agree to

(b) Be one

(A)

COI

Au

(B)

as

inv

Do the “examiner” criteria also apply to professionals testifying before the PSRB and making recommendations for recertification?

st:

Board who is of the Oregon Health Board by rule.

Security Review Board examinations for

(3) The authority or the Psychiatric Security Review Board may establish, by rule, requirements for certification as a mental health examiner for purposes of subsection (2)(b)(B) of this section.

Examiner Roles & Responsibilities

Initial
Examination

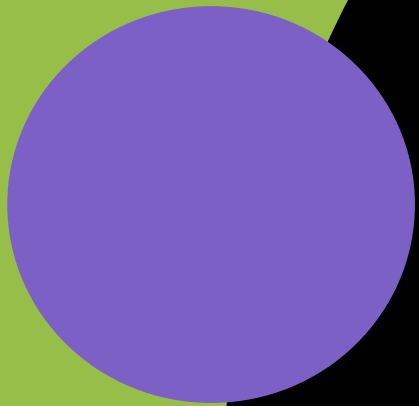
PSRB Hearing

PSRB
Certification

Protest
Hearing

What credential do
you need to
perform the
“examination?”

- [Lack of training standards for 426.701 examinations](#) (pg. 60)
- No OARs; not included in OHA’s civil commit training; not included in the OCFE training; not a training you get from graduate school; informal training provided by the Board.
- Practitioners are substituting their own statutory interpretation to the attorneys, the Board, and the courts (remember our definitions).
- Reported clinical and ethical implications due to unadjudicated felony charges contributes to conditional release barriers.



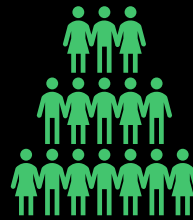
Plans for RAC

Planning for the Future



Division of Subgroups

Definitions
Procedures
Examiners
Other?



Participants for Each Session

Who is missing?



Session Dates

How many sessions for each subgroup?
Frequency of sessions for purposes of momentum?