The Oregon Psychiatric Security Review Board: 1978–2012

Joseph D. Bloom, MD, and Mary Claire Buckley, JD

This commentary describes the functioning of the Oregon Psychiatric Security Review Board (PSRB) from 1978 through 2011, when the Oregon Legislature altered the authority of the PSRB in regard to certain hospitalized insanity acquittees. Following the Hinckley verdict, the American Psychiatric Association recognized the PSRB as a possible future model for the management and treatment of insanity acquittees. The commentary provides an overview of the board from administrative and empirical viewpoints over this 34-year period and discusses the changes made in PSRB statutes in 2012 and the implication of these changes for the future management of insanity acquittees in Oregon.

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The 1977 Oregon Legislature created the Oregon Psychiatric Security Review Board (PSRB), acting on recommendations from the Governor's Task Force on Corrections chaired by Oregon Circuit Court Judge John C. Beatty. In his memoirs, Judge Beatty wrote that the PSRB was created in response to a serious problem in the management of Oregon's insanity acquittees:

> Under the then existing law, an offender found not guilty for a crime by reason of mental disease or defect (NGI) could be committed to the Oregon State Hospital if the trial judge found him a danger to himself or others by reason of the disease or defect. At the hospital the offender was medicated until the doctors felt he was harmless and then was discharged as no longer a threat. Jurisdiction of the court terminated with the release of the offender by the hospital. Such persons, once discharged, rarely continued their medication and soon became as disturbed as they were before hospitalization. Not infrequently, they again committed serious crimes against other persons [Ref. 1, p 341].

Judge Beatty captured the situation that existed in many states in the late 1960s and early 1970s as the procedures governing post-insanity defense hospitalization began to merge with the nationwide trend toward the liberalization of the laws governing civil commitment.[2–4]

The PSRB began functioning in 1978 but gained national prominence in 1983 following the wounding of President Reagan and the Hinckley verdict (Ref. 3, pp 163–210). In its Statement on the Insanity Defense, the American Psychiatric Association cited the PSRB as a possible national model for the management and treatment of insanity acquittees after an insanity verdict is rendered.[5] Responding to the Hinckley verdict, the 1983 Oregon Legislature, changed the name of the verdict to guilty except for insanity (GEI), and attempted to exclude individuals who had only personality disorders from being eligible for the defense.[6] No other major statutory changes were made regarding the defense until 2011 when the legislature curtailed the PSRB's role regarding the hospital release of certain insanity acquittees. For this subset of individuals, the legislature partially turned the clock back to the situation that existed in the state before 1978, as described above by Judge Beatty.

This article describes the functioning of the PSRB from January 1, 1978, to December 30, 2011, to allow for a discussion of the first 34 years of the PSRB's operation in managing a very large number of insanity acquittees.

Dr. Bloom is Professor Emeritus, Department of Psychiatry, Oregon Health and Science University, Portland, OR. Ms. Buckley is Senior Management Analyst/DOJ Compliance Manager, Portland Police Bureau, Portland, OR. Address correspondence to: Joseph D. Bloom, MD, OHSU-UHN 80, Department of Psychiatry, 3181 S.W. Sam Jackson Park Road, Portland, OR 97201. E-mail: bloomj@ohsu.edu.

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Background

As designed by the 1977 Legislature the PSRB is an independent state agency with an Executive Director, a small staff, and five statutorily defined board members: an attorney, a psychiatrist, a psychologist, an individual familiar with probation and parole, and a lay citizen. Each board member is appointed by the governor and confirmed by the state senate.

The PSRB began functioning on January 1, 1978. From that time forward, after each successful insanity defense in Oregon, the trial court determined whether the person remained mentally ill and a "substantial danger to others"[7] and determined the crime the individual could have been found guilty of had there been a finding of guilt. At that point, the judge must commit the insanity acquittee to the jurisdiction of the PSRB for a term no longer than the maximum sentence that the individual could have received had there been a criminal conviction.[8] This finding sets the maximum length of PSRB jurisdiction. When this maximum time is reached, the individual must be either discharged or civilly committed.

The court also determines the individual's initial placement (i.e., forensic hospitalization or conditional release) and whether there are victims who want notification of future PSRB hearings. Once these determinations are completed, the trial court no longer has jurisdiction over the case.

In essence, the PSRB governs the movement of individuals under its jurisdiction from the forensic hospital to conditional release or, via revocation, from conditional release to the hospital, whereas the state's Addictions and Mental Health Division (AMH) is responsible for treatment in the hospital or by contract in the community. The PSRB is also required by statute to discharge any person if it determines that the individual is no longer mentally ill or a substantial danger to others. The PSRB legislation contains a key provision concerning continued jurisdiction of an insanity acquittee whose illness may be in remission:

> For purposes of (this section), a person affected by a mental disease or defect in a state of remission is regarded as having the mental disease or defect. A person whose mental disease or defect may, with reasonable medical probability, occasionally become active and, when it becomes active, will render the person a danger to others may not be discharged.[9]

As mentioned, this provision does not apply at the end of the term of commitment to the PSRB.

Over the years, the PSRB has been assigned additional tasks. The 2005 Oregon Legislature broadened the role of the PSRB by enacting a law that created a Juvenile PSRB, with its own board, to manage insanity acquittees under the age of 18.[10] In 2009, the legislature gave the PSRB the additional responsibility of administering hearings for the possible restoration of gun ownership for individuals disqualified by a prior civil commitment, insanity acquittal, or a finding of incompetent to stand trial[11] (IST).

The 2011 Oregon Legislature

The gradual expansion in the scope of the PSRB's responsibilities took an abrupt turn with the actions of the 2011 Legislature. One of us (J.D.B) described these changes in an earlier article.[12] To summarize, the 2011 Legislature was faced with several challenges: a continuing U.S. Department of Justice CRIPA (Civil Rights of Institutionalized Persons Act) investigation of the Oregon State Hospital, a large number of hospitalized insanity acquittees, a severe fiscal crisis, and advocacy groups opposing construction of any additional state hospital beds. Briefly, the legislature instituted a certification process for psychiatrists or psychologists participating in criminal court evaluations; restricted state hospitalization for competency restoration to individuals found IST only if they were found to be dangerous, or if services did not exist in the community; and eliminated commitment to PSRB jurisdiction for individuals charged only with misdemeanors by creating a separate commitment procedure for these individuals analogous to a civil commitment.

Most relevant to this article the legislature divided hospitalized felony-level insanity acquittees into two groups (Tier 1 and 2) on the basis of the crime for which the individual was found GEI. The PSRB maintained jurisdiction of the more serious crime-related Tier 1 clients, whereas the parent organization of the state hospital, the Oregon Health Authority, (OHA), was granted jurisdiction over Tier 2 individuals in the hospital. OHA was given the authority to determine when to grant conditional release to or discharge these Tier 2 individuals from the hospital without PSRB oversight. Once the individual is placed on conditional release, jurisdiction is transferred to the PSRB.

To manage its new responsibilities OHA created a board exactly parallel to the PSRB. The new board, the State Hospital Review Panel (SHRP), is required to maintain the protection of the public as its primary concern when deciding on conditional release or discharge. The changes became effective on January 1, 2012.

The PSRB from 1978 to 2012

The goal of this section is to describe the functioning of the PSRB from its inception in 1978 through 2011 to present an overview of this system in the years before the 2012 changes took effect. An earlier report, supported by the National Institute of Mental Health (NIMH), detailed the first 8 years of PSRB functioning,[13] from 1978 to 1986. Our data sources for this article include data gathered for the NIMH project, along with data gathered on a regular basis by the PSRB for administrative and reporting purposes. Data directly from the PSRB do not meet research standards. For many years the PSRB recorded data on new individuals assigned to its jurisdiction according to the terms of assignment rather than the individuals. For example, if an individual had a successful insanity defense based on two criminal charges, it is possible that the decision counted as two terms rather than one individual. Thus, there were more terms assigned to the PSRB than to individuals. In the years where an actual number of individuals assigned to the PSRB was not available, we determined that there were approximately three percent more terms assigned to PSRB's jurisdiction than individuals. For these years, our number of individuals assigned decreased by 3 percent. In the end, we believe that errors in the data are relatively small and are compensated for by the length of the reporting period and the large number of individuals covered during this period. We ask the reader to approach the data by looking at trends that developed over the 34-year reporting period that allow for a high-level view of the PSRB system. Data on the Juvenile PSRB are not included in this report.

Demographic Data

The most detailed descriptions of the demographics of PSRB clients cover the years 1978–1986 (Ref. 14, pp 37–56), and additional descriptions have come from a PSRB staff analysis for the years 2001–2011.[14] These two analyses demonstrate overall continuity over time. In summary, Oregon's insanity acquittees were predominantly male (85%), Caucasian (82–85%), never married (59%), or divorced (29%) and had an average age at the time of commitment of 35 in the early years and 45 in the last 11 years. In the earlier analysis, 61 percent had prior experience in both the criminal justice and mental health systems, and 16 percent had prior mental health system involvement without criminal justice involvement, and 16 percent had prior experience only in the criminal justice system. Only seven percent had no previous mental health or criminal justice involvement before commitment to the PSRB (see Ref. 14, pp 37–56).

According to consensus diagnoses (Ref. 14, pp 44, 45), 72 percent of Oregon's insanity acquittees had a primary diagnosis of psychosis, with 60 percent having schizophrenia; 7 percent, bipolar disorder; and 5 percent, other psychoses. Thirteen percent had either developmental disabilities or organic mental disorders, and an additional 11 percent had consensus diagnoses of personality disorder. A primary diagnosis of a substance abuse disorder accounted for 3 percent of the earlier sample, and secondary diagnoses of these disorders accounted for 27 percent of the early sample. In each report, the authors acknowledged inconsistent reporting of substance abuse as a secondary diagnosis.

Commitments to PSRB Jurisdiction

From 1978 through 2011, the PSRB had a total of 2,558 individuals committed to its jurisdiction, 2,037 (80%) charged with felony offenses and 521 (20%) charged with misdemeanors (an average of 75 new clients per year: 60 for felony and 15 for misdemeanor charges). Of those charged with felonies and committed to PSRB, 5 percent had been charged with murders, 35 percent with class A felonies, 21 percent with class B, and 39 percent with class C.

For a summary of the data, commitments and discharges were divided into five-year periods from 1978 to 2011. Table 1 depicts the average number of admissions per year for each period, for the total PSRB population and for misdemeanor admissions. The periods 1978–1982 and 2003–2007 demonstrate the largest number of new client assignments. The first period corresponds to the use of the new system by Oregon courts, especially for misdemeanor charges. Overall, misdemeanor charges were most heavily represented in the first five years of PSRB

Table 1 Average Number of PSRB Admissions per Year, in Five-Year Intervals

Years	Total Admissions	Misdemeanors
1978–1982	95	25
1983–1987	78	20
1988–1992	57	10
1993–1997	61	14
1998–2002	70	13
2003–2007	98	15
2008–2011 (4 years)	67	9

Table 2 Average Number of PSRB Discharges per Year, in Five-Year Intervals

Years	Total	Jurisdiction Lapsed	No Longer Mi./Danger.
1978–1982	63	16	38
1983–1987	52	18	30
1988–1992	50	32	15
1993–1997	56	36	18
1998–2002	50	39	6
2003–2007	67	47	16
2008–2011 (4 years)	71	51	13

Mi./Danger. = mentally ill or dangerous.

functioning, whereas in the last four years misdemeanor charges leading to PSRB commitments dropped considerably.

In the most recent 10 years of the study period, 2002–2011, felony charges leading to PSRB jurisdiction increased to 86 percent of the jurisdictional terms assigned to PSRB clients. Of the felony crimes charged, 28 (3%) were for murder or manslaughter. For the entire 34-year study period, the highest number of felony criminal charges resulting in PSRB jurisdiction occurred in the past decade: 99 in 2003, 101 in 2004, and 93 in 2007. As noted, the largest number of PSRB commitments occurred between 2003 and 2007. This period corresponded to an economic recession in Oregon that led to the attenuation of the Oregon Health Plan and the loss of mental health benefits for many individuals.

Discharges from PSRB Jurisdiction

From 1978 through 2011, the PSRB discharged approximately 1,974 individuals. On average, the PSRB discharged approximately 58 individuals each year. Completion of the term of PSRB jurisdiction (jurisdiction lapsed) accounted for an average of 36 individuals per year and was the most frequent reason for discharge. An additional 18 discharges per year occurred after a PSRB determination that the individual was no longer mentally ill or substantially dangerous to others. Again, Table 2 demonstrates in 5-year averages that the discharge of individuals determined by PSRB to be no longer mentally ill or dangerous was most heavily weighted to the first 10 years of PSRB functioning (1978–1987). The table does not include other reasons for discharge, including 139 client deaths, an average of 4 per year, over the 34-year time span of this report. Most of these deaths were attributable to natural causes. However, 26 were known suicides, 20 of which occurred while the client was hospitalized. In addition, a small number of individuals were discharged after appeals court rulings in their cases.

Hospitalization, Conditional Release, and Revocation

Oregon adopted the American Law Institute's Model Penal Code test for Insanity in 1971.[15] The average daily census of insanity acquittees in the forensic unit at the Oregon State Hospital (OSH) in 1974 was 30. In 1978, the year that PSRB started functioning, the hospital census of PSRB clients was 112. This number was reduced to 100 in 1980, but by 1989 had grown to 289, and a decade later, in 1999, there were 304 insanity acquittees at OSH under the jurisdiction of the PSRB.

Table 3 demonstrates the average number of individuals under PSRB jurisdiction in the forensic hospital and on conditional release from 2002 through 2011. The table also shows the total number of revocations ordered by the PSRB for each year during the same period. The peak years for hospitalizations were 2004 and 2005, when slightly over 400 insanity acquittees were hospitalized at OSH.

The number of PSRB clients on conditional release has increased over the past decade, climbing steadily to slightly over 400 in 2010, when, for the

Table 3 PSRB: Hospitalization, Conditional Release, Revocation (2002–2011)

Year	H	CR	R
2002	342	245	47
2003	359	259	57
2004	405	281	72
2005	402	314	68
2006	369	336	60
2007	372	364	59
2008	379	368	41
2009	378	375	33
2010	381	403	30
2011	328	400	27

first time in the decade, there were more PSRB clients in the community than in the hospital—a distinction accentuated substantially in 2011.

At the end of December 2011, the 413 insanity acquittees on conditional release had placements in 21 of Oregon's 36 counties, including some living in Oregon's more rural locations. However, 77 percent of the placements were in Oregon's six most populous counties, with 45 percent of the total in the Portland metropolitan area. Overall, the placements ranged from secure residential treatment facilities to independent-living status. There were eight individuals placed in the Oregon Department of Corrections: five because of new crimes committed while under PSRB jurisdiction and three who came to PSRB under the dual jurisdictional responsibility of the PSRB and the state Department of Corrections. An additional 10 insanity acquittees were on conditional release in locations outside the state of Oregon.

Each conditionally released insanity acquittee is monitored by a plan requiring specific conditions and monthly reports to the PSRB by a designated case manager. An important component of the conditional release program is the ability of the PSRB to revoke a individual's release promptly and have that person returned to the forensic hospital. Revocations show a decrease in frequency over the past decade, with an average of 60 per year for the first five years (2002–2006) and 38 per year for the second five years (2007–2011).

Over the last decade of the study, 13 individuals were revoked from conditional release because they were charged with new felony-level crimes. To put this statistic in some perspective, 2.6 percent of the approximately 494 revocations during the decade came about as a result of a new felony charge. These numbers are based on the definition of recidivism adopted by the PSRB to compare PSRB data with the performance measure used by the Oregon Department of Corrections which defined recidivism as the percentage of revocations based on the commission of a new felony.

In addition, there were a few criminal charges against PSRB clients on conditional release that did not result in revocation and were not included in the above analysis. These individuals were mainly charged with minor crimes, predominantly drug usage, escape, and some misdemeanors. Viewing all of the new crimes together, there were no homicides and two charges of a Class A felony, with the remainder lesser charges or misdemeanors. During the last decade of the study, there were, on average, 339 individuals on conditional release per month during each year of the decade,[14] yielding a very low rate of new charges lodged against conditionally released PSRB clients.

The PSRB is now recording data on all new crimes charged against conditionally released insanity acquittees.

PSRB Workload

The PSRB issues its orders through an administrative hearing process. Three members of the board must be present at each hearing. Over the past 10 years, the PSRB conducted 6,499 hearings, an average of 650 for each year of the decade. Each hearing requires preparation of exhibits for each case, the creation of a case summary for board member use, calendaring of a docket, notification of witnesses and victims, organization of professional and lay testimony, and the drafting of final orders that result from the hearing. In addition, the staff and Executive Director must review monthly reports on conditionally released individuals and react immediately to emergency situations and potential revocations.

The New System

On December 31, 2011, the board had 731 individuals under its jurisdiction: 318 (44%) at the Oregon State Hospital and 413 (56%) on conditional release. One month later, on January 31, 2011, after the new system had been in effect for a month, there were 734 insanity acquittees in Oregon, 609 (83%) under the jurisdiction of the PSRB. These included all 413 conditionally released insanity acquittees, and 196 who were hospitalized and had been determined to be Tier 1. In addition 125 (17%) hospitalized insanity acquittees were deemed to be Tier 2 and were placed under the jurisdiction of the SHRP.

Discussion

The PSRB administers a comprehensive system designed to provide centralized decision-making for the postacquittal management of Oregon's insanity acquittees. The fact that the PSRB functioned uninterrupted for 34 years allows for a unique opportunity to view this system over an extended period. These were turbulent times in the history of the insanity defense, especially with the many changes after

the Hinckley verdict[16] and the movement of seriously mentally ill individuals into the criminal justice system.[17,18] During this time, Oregon remained strongly committed to the use of the insanity defense and to the PSRB as its vehicle for the management of its insanity acquittees within the mental health system. This article reviews the functioning of the PSRB over the 34-year period before the legislative changes that went into effect on January 1, 2012.

Demographically, Oregon's insanity acquittees were predominantly unmarried, male, and, mirroring the state population, Caucasian. Except for a small percentage, the PSRB population had extensive prior experience in both the mental health and criminal justice systems. They had illnesses that are considered most appropriate for possible insanity defenses: psychosis (72%) (predominantly schizophrenia) and organic mental disorders and developmental disabilities (13%). Eleven percent were given a primary diagnosis of personality disorder. In 1983 and 2011 the legislature took steps to remove those individuals with personality disorders from consideration for insanity defenses in Oregon.[6] Based on anecdotal reports from OSH psychiatrists, this statutory change did not reduce the number of individuals with a diagnosis of personality disorder who successfully asserted the insanity defense. It is hoped that the new law governing certification of forensic examiners will help reduce inappropriate insanity defenses.

Over the 34-year period Oregon judges committed an average of approximately 75 new clients per year to PSRB jurisdiction, with 20 percent of the total representing individuals charged with misdemeanors. In the early years, from 1978 to 1982, the high number of individuals committed to PSRB jurisdiction was related to the number charged with misdemeanors.

However, most of the commitments to the PSRB occurred between 2003 and 2007, when 110 individuals were committed in 2003 and 126 in 2004. These commitments predominantly followed felony charges. There is no ready explanation for the large number of commitments. However, it is tempting to hypothesize that the increase in PSRB admissions was related to the recession that Oregon experienced during those years, which resulted in decreased funding for community mental health programs. A relationship between increased PSRB commitments and the loss of community mental health funding has never been established. Research in this area might provide additional insight into the relationship between the availability of mental health services and an increase in mentally ill individuals charged with crimes and, in this case, ultimately committed as insanity acquittees.

The population of insanity acquittees in the state hospital rose from 30 in 1974 to over 400 in 2004 and 2005, before dropping to 328 in 2011. This increase did not go unnoticed by the Oregon Legislature and others concerned with the size and the cost of maintaining this population in the hospital.[12] Seventy-five new insanity acquittees committed to the PSRB each year is a high number for the hospital, but is relatively few when compared with the number of defendants who are convicted in Oregon's criminal courts each year. Further, as far as we know, there has never been an epidemiological study designed to predict the optimum number of insanity acquittees that a jurisdiction might have in order to keep the most seriously mentally ill individuals out of the prisons. This research could be done, given the number of individuals in state prisons who are mentally ill.[17,18] We offer that there are too few insanity acquittees in state mental health facilities where the chances for treatment and community care are greatly enhanced compared with that offered in prisons.

However, from one point of view, 75 new insanity acquittees each year and a growing hospital population represent a problem. Oregon, like many other states, has been closing psychiatric beds for years.[19] Given the current number of beds in Oregon, there is no space for voluntary patients in the state hospital system, and there is a dwindling number of individuals hospitalized after civil commitment.[20,21] Insanity acquittees now make up the largest group of patients at OSH, and the hospital predominantly serves the criminal courts that commit individuals found incompetent to stand trial and GEI.

In contrast to the hospital, the population of individuals on conditional release rose steadily from 2002 to 2011 reaching 403 individuals in 2010 when, for the first time, there were more PSRB clients on conditional release than in the hospital. Conditional release has always been a very important aspect of the PSRB system,[22] as it attempts to balance the rights and treatment of individual insanity acquittees with the mandate to protect the public.

The current trend in regard to hospital beds now appears to be a decrease in the number of PSRB

commitments (2008–2011), an increase in the PSRB population on conditional release, and a decrease in the hospitalized PSRB population. If this pattern holds, we can expect that the stress on the OSH from this population may decrease in the near future. This prediction appears to be a reasonable one, as the cohort from 2003 to 2007 ages within the system and reaches the beginning of its jurisdictional limits. In addition, as of 2012, misdemeanor insanity acquittees were no longer placed under the PSRB.

From 1978 through 2011, there was an average of 58 individuals discharged from PSRB jurisdiction each year. Discharges occur when individuals reach the court-imposed limits on PSRB jurisdiction or when the PSRB makes a determination that an individual is no longer mentally ill or dangerous to others. Most individuals discharged have reached the limits of PSRB jurisdiction. However, an average of 18 individuals per year were found no longer mentally ill or dangerous. Table 2 demonstrates that many more individuals were discharged as no longer mentally ill or dangerous in the first 10 years of PSRB operation than in the last 10 years. PSRB decision-making has never been directly studied. However, it is not far-fetched to postulate that, along with society in general, over time the PSRB has become more security conscious in making its decisions.[23]

During this decade, the number of individuals on conditional release charged with new felonies was very low, given the very large number on conditional release during each year. The low rates of criminal recidivism can be attributed mostly to the effectiveness of the conditional release plan, the monitoring of the plan by community case managers, and the fact that deviations from the plan are reported to the PSRB and may lead to immediate revocation.

The original PSRB had a remarkable 34-year run. However, the new system adopted by the 2011 Legislature[24] clearly reflects dissatisfaction with the PSRB in relation to the question of hospital release. The PSRB was viewed by proponents of the 2011 changes as risk-averse. This is the first time that dissatisfaction reached the legislative level, and it was only by the intervention of the Oregon District Attorney Association that the PSRB retained any jurisdiction over hospitalized insanity acquittees. It was the district attorneys who developed the division of jurisdiction based on the original criminal charge. This division of Tier 1 and 2 insanity acquittees based only on the instant criminal charge did not take into account any other variables, such as prior criminal charges or convictions. No data were presented to the legislature, and there is no reason to believe at this point that Tier 1 and 2 individuals are actually different in other than the original charge in their current case.

By dividing insanity acquittees into the two groups, the 2011 legislation created parallel systems for the conditional release or possible discharge of Tier 2 individuals controlled by the SHRP instead of the PSRB. The legislature made no other changes in the substance of the original PSRB statutes. The new review panel and the old PSRB will now both carry exactly the same statutory responsibilities. We now have two parallel boards managing what in essence may be the same population. These parallel systems are expensive, and our view is that with some success, based on SHRP determinations, the original proposal will again be brought forward to future legislatures to place all hospitalized insanity acquittees under the new SHRP. We return here to the comments of Judge Beatty[1] and the caution inherent in his words. He described a time when the hospital was most prominent in regard to the discharge of insanity acquittees. At that time, bad outcomes led to the creation of the PSRB. We do not know at this point whether we in Oregon will see a repeat of the situation that existed in the state in the 1970s. We do know, however, that regardless of the system, bad outcomes and changes will follow.

To an extent, Oregon's commitment to the structural integrity of the original PSRB concluded at the end of 2011, and a new era in the state's system began on January 1, 2012. It is our hope that this overview will help put the years 1978 through 2011 in perspective, stimulate additional research efforts, and add to the national discussion on the management and treatment of insanity acquittees.

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