

# Characteristics of Persons Committed to Oregon's Psychiatric Security Review Board

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On January 1, 1978, Oregon began a unique experiment. A five-member board assumed the responsibility of making decisions about the disposition of those persons who successfully assert the "insanity defense" to criminal charges.

This Psychiatric Security Review Board (PSRB) created by the legislature,<sup>1</sup> is composed of a psychiatrist, a psychologist, a lawyer, a person familiar with parole and probation, and a lay citizen. Each is appointed by the governor for a four-year term. The enabling statutes prohibit the selection of a psychiatrist or psychologist who is employed full time by the State Mental Health Division or community mental health programs. Although there is a full-time staff of three persons, the Board members are part time, each pursuing their occupations in addition to working on the Board, for which they receive per diem and reimbursement of expenses.

The Board was given jurisdiction previously exercised by the Judges over those persons found "not responsible" of crimes in Oregon because of mental disease or defect. Before 1978 in Oregon this finding was called "not guilty because of mental disease or defect" and was sometimes referred to as "not guilty by reason of insanity" (NGI or NGRI). Under the new statutes following the finding of "not responsible" (NR), the trial judge determines if the person continues to be affected by a mental disease or defect and if the person presents a substantial danger to others. If the answer to either question is no, the person is discharged and set free with no further controls. If the answer to both questions is yes, the person is placed under the jurisdiction of the PSRB for a period equal to the maximum sentence the person could have received if he or she had been found guilty of the crime. From that point on the PSRB assumes control over whether the person is institutionalized, placed in the community with conditions, or discharged from the Board's jurisdiction.

The Board must ensure that those persons on conditional release in the community are adequately supervised and treated so as to protect society. If

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their mental health deteriorates so they again constitute a substantial danger, the Board revokes their conditional release and returns them to a secure state hospital. Having this duty to monitor closely and at length virtually all persons successfully asserting an insanity defense places the Board in an excellent position to add to the still sparse body of knowledge about the "criminally insane." This opportunity is enhanced by the large number of persons who have been placed under the jurisdiction of the PSRB.

In a previous article<sup>2</sup> the procedures and standards governing the PSRB were discussed in detail. This article seeks to contribute to the literature focusing on what actually happens to those individuals found not guilty by reason of insanity. By centralizing all responsibility for the monitoring of the NR population in the PSRB, a remarkable opportunity was created to develop a statewide profile on all aspects of the process. Prior to the creation of the PSRB, all NR persons were handled by the many individual judges in whose courts the findings of not guilty by reason of insanity had been made. As in other jurisdictions in the country this system led to wide variations in decision making and an almost non-existent system of tracking and monitoring of those persons released from state institutions but ordered to remain on some conditional release status. With the centralized authority of the PSRB, there is significant information now available that sheds light on the whole area of the insanity defense and on the treatment of the person found not responsible.

There is currently a developing literature attempting to understand the working of the insanity defense on an empirical basis. Within the past few years, articles have appeared focusing on what happens to individuals found not guilty by reason of insanity in several jurisdictions. Pasewark et al.<sup>3</sup> and Steadman<sup>4</sup> have followed persons found not guilty by reason of insanity in New York State and compared primarily demographic and hospitalization variables of these persons with those of criminal offenders.

In a recent report Pantle, Pasewark, and Steadman<sup>5</sup> specifically compared institutional periods of those persons found NGRI with a matched group of criminal offenders. They found that the finding of NGRI did not lead to less institutionalization when compared to the matched offender group. They also found no substantial difference in criminal recidivism comparing the two groups. In looking specifically at the insanity acquittee group, they found in New York State a gradual increase in the numbers of people found NGRI. They found the group to be older than prison inmates and containing more women and Caucasians than is generally found in the prison population. The most frequent offense in the NGRI group was murder, accounting for 53 percent of all cases from 1965-1976. They included attempted murder in the murder group.

Singer<sup>6</sup> reported on 46 insanity acquittees in one county in New Jersey following the important New Jersey Supreme Court case of *State v. Krol*.<sup>7</sup> This paper was written from a legal perspective mainly as advice for defense

attorneys as they prepare either for an insanity defense or a "Krol" hearing for the insanity acquittee. She pointed to findings similar to the New York State group in that the person found NGRI was often subject to long periods of institutionalization and potentially to community monitoring for life. Again with findings similar to the New York group, she pointed to a number of cases that were viewed as inappropriate for the insanity defense in the first place.

Cooke and Sikorski<sup>8</sup> reported on factors linked to release in Michigan and, in the only report from a rural western state, Pasewark and Lanthorn<sup>9</sup> looked at the disposition of those persons found NGRI in Wyoming. A recent report from Canada by Greenland<sup>10</sup> compares the use of the insanity defense in the province of Ontario with New York State.

These studies contribute to the goal of a better-informed scientific community that can contribute more than philosophical treatises on the working of the insanity defense as it is continually debated in public forums.

We intend in this article to provide an overview of the Oregon data and, in subsequent reports, to focus on specific areas of the process in more detail. All data for this study were obtained from the files of the PSRB with the active cooperation and participation of both the Board and the staff. Limitations on the data presented will be identified as it is presented.

### Findings

*Jurisdiction and Demography* Over the first three-year existence of the Psychiatric Security Review Board, 440 individuals were known to be under the jurisdiction of the Board at one time or another. This includes those persons whose supervision was inherited by the Board from the courts as well as those found not responsible since January 1, 1978, when the Board commenced operation.

Some individuals legally under the Board's jurisdiction have never been identified by the Board. This is because the Board assumed jurisdiction on January 1, 1978 of all persons previously found not guilty by reason of insanity who were still under the jurisdiction of the courts. In some instances, the court's supervision or even record keeping was deficient and courts could not identify all such individuals. Eventually the courts were able to identify 141 individuals who had been found not guilty by reason of insanity prior to the commencement of operations by the PSRB. These persons were transferred to PSRB jurisdiction as they were identified. In 1978, there were an additional 97 individuals found not responsible and placed under the Board's jurisdiction, in 1979 there were 116, and in 1980 there were 86 such dispositions (Table 1).

Of these persons, 400 (91 percent) were male, 40 (9 percent) were female. Their ages at the time they were found not responsible range from 17 to 74 with distribution as shown on Table 2. The mean age for the entire group was 30.8 and the median was 28.

*Trial Court Findings* Certain data available reflect the various trial

**Table 1. Commitments to PSRB Jurisdiction**

| January 1, 1978<br>(transfers from<br>court jurisdiction) | Number | Total |
|---|--------|-------|
|   | 141    | 141   |
| New Commitments   |        |       |
| 1978  | 97     |       |
| 1979  | 116    |       |
| 1980  | 86     |       |
| 1978-1980   |        | 299   |
| Total   |        | 440   |

courts' handling of the insanity defense. From December 8, 1978 through July 10, 1981, the Board held hearings on 359 individuals. Reconstructing what occurred in the trial court as to these individuals, it was striking that only 12 persons (3 percent of the total) were shown to have been found not responsible by jury verdicts. All the others were adjudged without presentation to a jury. Furthermore, 283 of the total (79 percent) were found not responsible as a result of agreement or stipulation between the state and the defense with only the formality of concurrence by the court. Sixty-four (18 percent of the total) were found not responsible in a contested hearing by a judge sitting without a jury.

**Table 2. Age at Time of Not Responsible Finding**

| Age     | # of individuals (N-440) | Percent |
|---------|--------------------------|---------|
| 17-19   | 20                       | 05      |
| 20-29   | 229                      | 53      |
| 30-39   | 115                      | 26      |
| 40-49   | 41                       | 09      |
| 50-59   | 19                       | 04      |
| 60 +    | 10                       | 02      |
| Unknown | 6                        | 01      |

It is also important to note that 85 (19 percent) persons were found not responsible of misdemeanors; with the remaining 355 (81 percent) found not responsible of crimes including at least one felony. However, the percentage of persons being found not responsible only of misdemeanors has climbed in each of the past three years. Data for these three years is summarized in Table 3. We are preparing a separate report on the mis-

**Table 3. Persons Committed to PSRB Following Misdemeanors, 1978-1980**

| Year                      | Persons committed<br>following misdemeanors | Total committed | Percentage<br>misdemeanors |
|---------------------------|---|-----------------|----------------------------|
| 1978                      | 19  | 97              | 19                         |
| 1979                      | 29  | 116             | 25                         |
| 1980                      | 27  | 86              | 31                         |
| Subtotal                  | 75  | 299             | 25                         |
| Pre-1978<br>(known cases) | 10  | 141             | 7                          |
| Total                     | 85  | 440             | 19                         |

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demeanor client committed to PSRB. Our belief is that the commitment of these persons represents an important bridge between the criminal justice system and the civil commitment system—and may reflect problems in the latter system.

Table 4 presents the original charge of those persons committed to the jurisdiction of the PSRB. Where an individual was found not responsible of multiple charges, only one was listed in the table. This was selected in the judgment of the authors as either the most violent or most serious charge, with the most violent charge taking precedence. Attempts were not listed separately except in the case of murder and attempted murder.

Table 4. Criminal Charge—Commitments to PSRB

| Charge                      | Total #<br>(N=440) | Percent |
|-----------------------------|--------------------|---------|
| Murder                      | 24                 | 5       |
| Attempted murder            | 22                 | 5       |
| Manslaughter                | 10                 | 2       |
| Kidnapping                  | 10                 | 2       |
| Rape                        | 15                 | 3       |
| Sodomy                      | 12                 | 3       |
| Sex abuse                   | 17                 | 4       |
| Robbery                     | 38                 | 9       |
| Assault                     | 62                 | 14      |
| Arson                       | 26                 | 6       |
| Burglary                    | 50                 | 11      |
| Unauthorized use of vehicle | 48                 | 11      |
| Theft                       | 22                 | 5       |
| Criminal mischief           | 14                 | 3       |
| Menacing                    | 10                 | 2       |
| Disorderly conduct          | 9                  | 2       |
| Trespass                    | 9                  | 2       |
| Recklessly endangering      | 8                  | 2       |
| Weapons charges             | 5                  | 1       |
| Driving charges             | 6                  | 1       |
| Other                       | 23                 | 5       |

*Psychiatric Characteristics of the Population* Although the PSRB deals with a population found not responsible by reason of mental disease or defect, psychiatric diagnosis is a major problem. These individuals have been diagnosed for the court usually by at least two experts, either psychiatrists or psychologists. They are then diagnosed again for the PSRB by the receiving state hospital and often by other experts brought in to reexamine individuals for the purposes of PSRB hearings.

For the purposes of this report, we have listed in Table 5 the primary diagnoses provided by the state hospital on persons under the PSRB jurisdiction. No claim can be made at this point on the criteria used for these diagnoses or, for that matter, for the diagnoses offered in the trial courts, which frequently differ from those made by the state hospital. Primary diagnoses are listed for 373 persons. Sixty-seven people of the 440 studied for this report either were never admitted to the state hospital or, if admitted, had no diagnosis on the chart or were still in the evaluation phase

Table 5. Primary Diagnosis (by State Hospital Staff)

| Diagnosis                | Total (N = 373) |       |         |
|--------------------------|-----------------|-------|---------|
|                          | N               | Total | Percent |
| Psychosis                |                 | 251   | 67      |
| Schizophrenia            | 228             |       |         |
| Affective                | 21              |       |         |
| Paranoia                 | 2               |       |         |
| Organic Brain Syndrome   | 24              | 24    | 6       |
| Neurosis                 | 5               | 5     | 1       |
| Personality Disorder     |                 | 74    | 20      |
| Antisocial               | 10              |       |         |
| Inadequate               | 10              |       |         |
| Passive-aggressive       | 5               |       |         |
| Sexual conduct disorders | 8               |       |         |
| Drug dependent           | 5               |       |         |
| Alcohol dependent        | 15              |       |         |
| Paranoid                 | 5               |       |         |
| Other                    | 16              |       |         |
| Mental Retardation       | 17              | 17    | 5       |
| No Mental Disorder       | 2               | 2     | 1       |

without diagnosis. Of the 373 persons diagnosed, 251 (67 percent) were diagnosed as psychotic, with 228 (61 percent of the total group) diagnosed as suffering from schizophrenia. The next leading diagnostic group was the personality disorders, including alcohol, drug abuse, and sexual conduct disorders. The group comprised 20 percent of the total sample for whom diagnoses were made by the state hospital personnel.

We are able to report some comparison data on diagnoses between the state hospital staff with those made by other examiners, either during the preceding court process or at the request of the Review Board or the patient to present to the Board at hearings. We have kept such comparative data on 274 individuals who have appeared consecutively before the Board by recording the "primary" diagnosis of such individual. The primary diagnosis has been taken to be that diagnosis constituting the most severe mental disorder displayed by the individual. Findings are summarized in Table 6.

In 80 percent of the cases (220 individuals) all the psychiatrists or psychologists examining the individual agreed on the diagnostic category, although there were some differences in terminology use. Sixty-six percent of the total were agreed to be affected by a psychotic illness, 5 percent to be retarded, 4 percent to be affected primarily by organic disorders, and only 5 percent were agreed by all to display only personality disorders and no major mental illness.

However, in 20 percent of the cases (54 individuals) there was a major disagreement among two or more of the examiners as to the correct primary diagnosis. By far the most prevalent disagreement was the hospital staff concluding that an individual displayed only a personality disorder when at least one other examiner concluded that the same individual was affected by a psychotic illness. This is highlighted by noting that, as shown in Table 5, the hospital staff diagnosed 20 percent of PSRB committees as displaying

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primarily personality disorders; by contrast, in only 5 percent of PSRB commitments studied were all examiners in agreement that the patient displayed only personality disorders (Table 6).

Table 6. Agreement/Disagreement Among Examiners on Primary Diagnosis

|                        | N   | (%)  | Total (N= 274) |         |
|------------------------|-----|------|----------------|---------|
|                        |     |      | Total          | Percent |
| Agreement              |     |      | 220            | 80      |
| Psychosis              | 182 | (66) |                |         |
| Organic brain syndrome | 11  | ( 4) |                |         |
| Mental retardation     | 14  | ( 5) |                |         |
| Personality disorder   | 13  | ( 5) |                |         |
| Major disagreement     |     |      | 54             | 20      |

*Hospitalization and Conditional Release* In this section, we focus on the conditional release aspect of the Board's jurisdiction. Hospitalization will be the subject of a separate report.

During the first three years of its existence the PSRB monitored 165 individuals who were on conditional release during one or more periods. These individuals accounted for 1929 person-months on conditional release. During that time 16 individuals on conditional release were charged with new crimes. These are listed, along with judgments and disposition of these cases, in Table 7. The most serious new crimes have been airplane hijack

Table 7. New Criminal Charges Filed Against Individuals on Conditional Release

| Individual | Charge(s)                                  | Judgment                             | Disposition                       |
|------------|--|--------------------------------------|-----------------------------------|
| 1          | Theft I                                    | Dismissed                            |                                   |
|            | Hijack                                     | Guilty                               | Prison                            |
| 2          | Driving under influence                    | Guilty                               | 10 days jail                      |
| 3          | Burglary II                                | Dismissed                            |                                   |
| 4          | Robbery                                    | Dismissed                            |                                   |
| 5          | Theft II                                   | Dismissed                            |                                   |
|            | Harassment                                 |                                      |                                   |
| 6          | Simple Assault                             | Guilty                               | Fine/Probation                    |
| 7          | Driving while suspended                    | Dismissed                            |                                   |
| 8          | Assault (misdemeanor)                      | Dismissed                            |                                   |
| 9          | Rape I, att. elude, trespass               | Guilty                               | 10 years prison                   |
|            | Escape II                                  | Guilty                               | 1 year jail                       |
| 10         | Theft of services, harassment              | Dismissed                            |                                   |
| 11         | Illegal shooting of cow elk                | Guilty                               | Fine                              |
| 12         | Felony driving while suspended             | —                                    |                                   |
| 13         | Driving while under influence, hit and run | —                                    |                                   |
| 14         | Fraudulent use of credit card              | —                                    |                                   |
| 15         | Unlawful use of weapon                     | Guilty                               | 10 days jail, suspended           |
| 16         | Theft II                                   | Dismissed                            |                                   |
| 17*        | Manslaughter (2 counts)                    |                                      |                                   |
|            | Assault II                                 | Not responsible (stipulated finding) | Recommitment to PSRB Jurisdiction |

\*This individual charged during January 1981

and rape. A driving incident resulting in two counts of manslaughter occurred early in the fourth year of the PSRB operation.

New criminal charges constituted grounds for revoking of conditional release. However, the Board also revoked releases when an individual committed unacceptable acts not resulting in criminal charges, when an individual's mental health deteriorated, or the person violated major conditions of release. During the first three years the Board issued 69 orders of revocation on 66 individuals. This represented a much higher rate of revocation than ordered by the Courts before the Board came into existence. From 1972 to 1977 only 8 individuals are known to have been revoked by the courts. In addition to the 165 persons described above, 27 other persons technically under PSRB jurisdiction had been placed on conditional release by the courts prior to January 1978 but were never located to be actively monitored by the PSRB.

*Discharge* During its first three years the PSRB discharged 144 individuals from its jurisdiction. Fifty-six of these were discharged as required because the maximum jurisdictional time of the PSRB had elapsed. Of the remaining persons, 13 were discharged because the Board concluded that evidence no longer showed the person to be affected by a mental disease or defect, 58 because the evidence no longer showed the person was a present or future substantial danger, and 7 individuals for the combination of both reasons. Five persons on conditional release committed suicide, and one died of natural causes. Four were discharged for miscellaneous procedural reasons. Table 8 gives additional details.

Table 8. Discharges from PSRB Jurisdiction

| Reason for Discharge   | 1978 | 1979 | 1980 | Total |
|--|------|------|------|-------|
| 1. Expiration of maximum jurisdictional period               | 16   | 21   | 19   | 56    |
| 2. Finding of no longer affected by mental disease or defect | 1    | 0    | 12   | 13    |
| 3. Finding of no longer presenting substantial danger        | 0    | 19   | 39   | 58    |
| 4. Combination of both findings in columns 2 and 3           | 0    | 3    | 4    | 7     |
| 5. Ordered by Appellate Court                                | 0    | 0    | 1*   | 1     |
| 6. Natural death   | 0    | 1    | 0    | 1     |
| 7. Suicide   | 2    | 0    | 3    | 5     |
| 8. Mandatory hearing not held                                | 2    | 0    | 0    | 2     |
| 9. Other   | 0    | 1    | 0    | 1     |
| Total  | 21   | 45   | 78   | 144   |

\*Later reversed by Supreme Court

## Discussion

Our data show a definite increase in the successful use of the insanity defense during the past decade, similar to the increased reported from other jurisdictions. The successful use of the insanity defense in Oregon began to increase prior to the creation of the PSRB. Some have claimed the increase started because the state went from using a modified M'Naughton test to the ALI test for criminal responsibility in 1971.

However, the trend reversed in 1979, one year after the creation of the



PSRB. Whether this trend will continue is not clear at the present time, although an effort continues to have defense attorneys carefully weigh the cons as well as the pros of a successful insanity defense compared to conviction. The extremely tight supervision provided by the PSRB means that in many respects the insanity "defense" in Oregon might more accurately be seen now as an insanity "sentence."

In Oregon there is now a broad range of crimes in which an insanity defense is asserted, including the surprising finding of its use in an increasing number of misdemeanors. The broadening of the use of the defense is more apparent in Oregon than in any of the reports cited earlier from other jurisdictions.

The data point back to the trial court in several important areas. Only 3 percent of 359 individuals were known to have had a jury trial in the trial court, with another 18 percent found not responsible by a judge in a contested hearing. This leaves 79 percent of the cases not contested. Approaching this from the vantage of diagnosis, given our previously stated caution in this area, some 20 percent of those people sent to the state hospital are diagnosed there as displaying only personality disorder. Does this combination of a high number of personality disorders with the small number of contested hearings indicate a lack of scrutiny as to who gets to the jurisdiction of the PSRB? Or does it merely reflect a diagnostic bias of the state hospital staff; or, conversely, a diagnostic bias of those conducting examinations for the trial courts? Even as to the 67 percent of persons diagnosed as psychotic, is enough thought being given to the possibility of responsibility for criminal actions in the presence of psychosis?

A study is being designed to judge the extent to which persons under PSRB jurisdiction were appropriate for an insanity defense. This study will allow us to examine how the various trial courts are handling the insanity defense. The Oregon legislature recently debated requiring counties to report on those cases where the insanity defense is asserted but is not successful. These data currently are not available and offer no comparison of the successful with the non-successful case. Without some study criteria, the question of the increased number and type of insanity defense cases is subject to all types of interpretation mostly based on subjective viewpoint.

In addition to centralizing case monitoring, the PSRB has been the catalyst for creating treatment programs in several Oregon counties specifically for PSRB clients. The conditional release plans are highly individualized and include a spectrum of treatment options purchased with specially designated mental health monies. It is our impression that the individualized treatment plan coupled with prompt revocation hearings has kept relatively small the number of crimes charged against persons on conditional release. The initial data presented in this report looks promising. We also plan to look at criminal recidivism and subsequent hospitalization in those persons discharged from the PSRB's jurisdiction. We especially want to review those persons discharged as either no longer mentally ill

and/or dangerous to assess the accuracy of the PSRB in making these determinations.

In summary, the initial experience with the PSRB appears quite favorable. The PSRB was initially funded with a sunset provision including a legislative review in the 1981 legislature. A recent survey of the PSRB functioning completed by a Governor's Task Force on the Chronically Mentally Ill strongly recommended the continuation of the PSRB with some minor modifications of procedure and board composition. The legislature agreed and the PSRB will continue to function.

The national significance of the Oregon experiment lies in the availability of objective data regarding the subsequent careers of people removed from the criminal justice system because of mental illness. We shall have the opportunity to do comparative studies on many aspects of the insanity defense and hope to contribute constructively to the public debate regarding proposed statutory changes.

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