

# Oregon's New Insanity Defense System: A Review of the First Five Years, 1978 to 1982

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On January 1, 1978 Oregon instituted an insanity defense system that is unique in the country. The central feature of that system is the Psychiatric Security Review Board (PSRB). The system was experimental; the statute provided that the PSRB was to cease operation in 3<sup>1</sup>/<sub>2</sub> years unless the 1981 legislature renewed its existence.

Before and during the 1981 session the Oregon legislature conducted extensive reviews of the new system. Virtually all witnesses testified that the PSRB mechanism was a significant improvement over the old insanity defense system. Previously, as is still true in most states, Oregon had no independent board to supervise persons found not responsible and no community programs specifically designed for the provision of treatment and monitoring for such persons. The 1981 legislature made some refinements in the new system and extended indefinitely the life of the PSRB.<sup>1</sup>

The 1983 legislature again examined Oregon's insanity system. The Hinckley verdict had created enormous political pressure throughout the country to change the insanity defense. In effect, Oregon had beaten the rush by overhauling its system five years earlier. The 1983 legislature also concluded that the system was continuing to work well. They were content to make several relatively minor modifications to strengthen PSRB operations. Those changes will be reported elsewhere.

In most jurisdictions thoughtful debate about the insanity defense is hampered by lack of data and empirical studies. Oregon now has available extensive data about the insanity defense, primarily because the Oregon Psychiatric Security Review Board maintains detailed information about each person under its jurisdiction. With the cooperation of the PSRB we have conducted a series of analyses of that data and have published our findings and observations in a series of reports.<sup>2-5</sup> However, in addition to those more detailed studies, we believe a summary of the first five years of PSRB operation would be useful.

This article is a compilation of basic facts about Oregon's insanity defense system from January 1, 1978 through December 31, 1982. We have drawn some salient findings from our earlier publications. Some other data have been updated. Much of the information presented here has not been reported previously.

We organized the information around questions frequently asked by legislators, other policy makers, and the public. We also have pointed out where studies to date are insufficient to answer certain of those questions. Some of the answers

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Figure 1. New Placements under PSRB 1978-1982



presented are based on our studies of representative samples drawn from PSRB population; others reflect the entire population. Except where otherwise noted data are from PSRB records, as provided to us through February 1983. We express appreciation to the members and staff of the Psychiatric Security Review Board who without exception have encouraged full and open scrutiny of their work.

1. *How many people are placed under PSRB jurisdiction each year?*

On the average, 96 people per year were placed under PSRB jurisdiction. The number peaked at 116 in 1979 and fell by 35 to 81 in 1982 (Figure 1). Over the past three years the average has been 88. The total number of new placements was 479. In addition 151 people who had been found not guilty because of mental disease or defect under the old law prior to January 1, 1978 have been transferred to PSRB jurisdiction. Thus during its first five years of operation PSRB had a total of 630 placements under its jurisdiction.

2. *How many defendants were found not responsible and discharged by the trial court rather than placed under PSRB?*

**Table 1. Rates of Successful Insanity Defenses in Oregon Felony Cases**

|   | 1978   | 1979   | 1980   | 1981   | Total  |
|---|--------|--------|--------|--------|--------|
| Oregon criminal case findings                                       | 16,097 | 16,643 | 19,077 | 20,198 | 72,015 |
| — Circuit Court*  |        |        |        |        |        |
| Placements under PSRB for persons found not responsible of felonies | 78     | 83     | 61     | 71     | 293    |
| Percent of felony cases resulting in PSRB placements                | 0.5    | 0.5    | 0.3    | 0.4    | 0.4    |

\*SOURCE: state court administrator, as reported in document prepared by Oregon Prison Overcrowding Project

No reliable statewide data has been compiled to answer this question. As in other states, such information is located in individual files scattered throughout all the county courts. PSRB records concern only those placed under its jurisdiction.

Multnomah County (Oregon's largest county) has provided computer printouts of "terminated cases involving a defense of not responsible." The first monthly printout we have is dated August 11, 1980 and the last August 6, 1982. During this approximately two-year period, the printouts list 37 defendants who were found "not responsible" in Multnomah County Circuit Courts. Of those 37 people only three were not subsequently placed under PSRB jurisdiction. One of those was charged with forgery I, the second with possession of controlled substance, and the third with assault II. Thus of this sample 8 percent were discharged by a judge who found they no longer were affected by mental disease or defect or no longer presented a substantial danger.

**3. What is the rate of successful insanity defenses in Oregon?**

Less than 1 percent of criminal cases result in verdicts of not responsible. This is shown by two sets of data that lead to consistent findings.

Table 1 compares felony placements under PSRB with total number of circuit court felony cases filed during 1978 to 1981. Four-tenths of 1 percent (0.4 percent) of felony cases resulted in placements under PSRB. Adding the apparently few successful insanity defendants who are not placed under PSRB presumably still would result in a successful felony insanity defense rate of well below 1 percent.

Data provided by Portland's Metropolitan Public Defender James Hennings shows that from July 1, 1977 through April 1982 (with the exception of June 1980, which was not included in the data provided) the Metropolitan Public Defender's office closed 12,868 felony and misdemeanor cases of which 85 resulted in "not responsible" findings. Thus, 0.7 percent of their cases resulted in insanity verdicts. The rate has fallen since PSRB went into operation from 0.9 percent in fiscal year 1977-78 to 0.4 percent in fiscal year 1981-82.

**4. Are defendants who successfully plead the insanity defense wealthy?**

Some have said insanity is a rich man's defense. No study of this has been done in Oregon. One could easily be designed. The PSRB staff estimates that at the time of their hearings well over 90 percent of persons under PSRB jurisdiction are represented by appointed lawyers because they are indigent. This is con-

sistent with data from the Oregon Mental Health Division Office of Programs for Mental Health or Emotional Disturbances, showing the monthly income of Oregon PSRB clients served by community mental health programs during 1981-1982 to be: \$0 to 250 = 39 percent, \$251 to 666 = 52 percent, \$667 to 1,250 = 3 percent, \$1,251 or more = 6 percent.

5. *How many defendants raise the insanity defense unsuccessfully?*

Again, no reliable statewide data have been compiled. However, the Multnomah County Circuit Court printouts (discussed above in question 2) give some idea of the answer. For the approximately two-year period covered, the printouts list 196 defendants formally considering the insanity defense as identified either by filing a notice of mental illness, by the presence of a document in the case file showing that a psychiatric evaluation was pending, by being found "not responsible," or by some combination of these indications.

Thirty-seven of those defendants (19 percent) were found not responsible. This suggests that in Multnomah County the defense is formally considered in felony cases approximately five times as often as it is successful. We caution that this is the roughest of estimates. We believe it likely in many of those 196 cases defense counsel decided ultimately not to pursue an insanity defense, so the number should not be taken to demonstrate that the defense fails four out of five times it is argued in court.

6. *What kinds of trial proceedings result in verdicts of not responsible in Oregon?*

Eighty-six percent of insanity verdicts were agreed to by the prosecution. There was no contested trial in those cases — in effect, the prosecutor stipulated that an insanity finding was the correct verdict. The remaining 14 percent were contested by the prosecution, however, only 4 percent were tried before juries (Figure 2, next page). These statistics include only cases in which the insanity defense was successful.<sup>4</sup>

7. *Which prong of Oregon's insanity test was utilized in "not responsible" findings?*

No in-depth study of this question has been done. We expect it would be difficult to obtain reliable results because of the ambiguity of many court orders concerning insanity. However, we examined the PSRB case files of all persons placed under PSRB from January 1982 through October 1982. There were 60 placements during that time. The files of 3 persons contained insufficient information to make the determination. Table 2 (next page) shows the types of findings made in the court order entering a verdict of not responsible. Most frequently the court found the person to be "not responsible" without specifying whether it was because the person lacked substantial capacity to appreciate the criminality of conduct or because the person lacked substantial capacity to conform conduct to the requirements of the law or both. In other cases, the judge made specific findings that the defendant lacked substantial capacity both to appreciate and to conform. In still other cases the court found only lack of capacity to conform. In no case did the court find only lack of capacity to appreciate criminality.

## Oregon's New Insanity Defense System

Figure 2. Types of Trial Proceedings in Successful Insanity Defense Cases

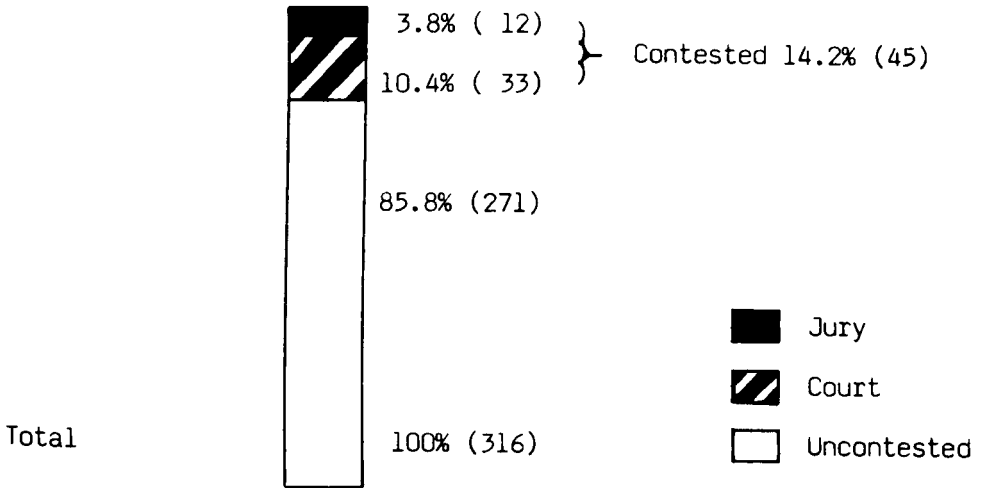


Table 2. Basis of "Not Responsible" Finding

|  | Number    | Percent    |
|--|-----------|------------|
| "Not responsible"  | 36        | 63         |
| Lacked substantial capacity to conform                   | 11        | 19         |
| Lacked substantial capacity to appreciate and to conform | 10        | 18         |
|  | <u>57</u> | <u>100</u> |

### 8. How often are insanity defenses presented to, but rejected by juries?

Like the earlier question of how often the insanity defense is raised, no reliable statewide data have been compiled to answer how often insanity defenses are rejected by juries. The information we have suggests that juries are extremely reluctant to return verdicts of not responsible. Only 12 of a series of 316 insanity verdicts we studied were returned by juries. Furthermore, the data covering two years from Multnomah County Circuit Court (discussed in question 2 above) show that in the 196 cases in which the insanity defense was formally raised, 58 were jury trials. We have no way of knowing whether the insanity defense was actually argued to the jury in all or most of those cases. Not one of those 58 resulted in a verdict of not responsible. Similarly, anecdotal observations about cases, letters written to the PSRB by jurors, informal polls of district attorneys, and so on, all suggest that juries in Oregon are very unreceptive to the insanity defenses argued before them.

### 9. What kinds of crimes were committed by defendants found not responsible in Oregon?

Table 3 (next page) shows the wide variety of criminal conduct for which 440 persons were placed under PSRB through 1980. Specific crimes range from murder, rape in the first degree, and kidnapping in the first degree to theft in the

Table 3. Primary Criminal Charge — Placements under PSRB

| Type of Crime               | (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       |

SOURCE: Rogers JL and Bloom JD: Characteristics of persons committed to Oregon's psychiatric security review board. *Bull Am Acad Psychiatry Law* 10:159, Table 4

Table 4. Persons Placed under PSRB for Misdemeanors Only

| Year                               | Persons with only Misdemeanors | Total PRSB Placement | Percentage with only Misdemeanors |
|------------------------------------|--------------------------------|----------------------|-----------------------------------|
| 1978                               | 20                             | 98                   | 20                                |
| 1979                               | 33                             | 116                  | 28                                |
| 1980                               | 28                             | 89                   | 31                                |
| 1981                               | 24                             | 95                   | 25                                |
| 1982                               | 21                             | 81                   | 26                                |
| Subtotals                          | 126                            | 479                  | 26                                |
| Pre-1978 cases transferred to PSRB | 11                             | 151                  | 7                                 |
| Total                              | 137                            | 630                  | 22                                |

second degree (shoplifting), cruelty to animals, and initiating a false report (fire alarm).

Table 4 shows that from 1978 through 1982 among all those found not responsible and placed under PSRB, 26 percent had committed only misdemeanor crimes. The table also indicates that the 1982 statutory change intended to reduce the number of misdemeanants being placed under PSRB had no appreciable effect in 1982.

Note that among those found not guilty because of mental disease or defect before January 1, 1978 and then transferred to PSRB, the percentage of felons is much greater. This probably reflects the greater likelihood that felons found not guilty under the old systems would be kept in the hospital or on supervision until

Table 5. Number of Persons Placed under PSRB Who Were Found Not Responsible for Homicides or Attempted Homicides

|  | 1978    | 1979   | 1980  | 1981  | 1982  | Total  |
|--|---------|--------|-------|-------|-------|--------|
| Murder   | 2       | 1      | 3     | 1     | 1     | 8      |
| Attempt, solicit, or<br>conspire to murder     | 4       | 6      | 1     | 3     | —     | 14     |
| Manslaughter<br>(and attempt)                  | 4       | 3      | 1     | 2     | 4     | 14     |
| Totals (and percent) of<br>all PSRB placements | 10 (10) | 10 (9) | 5 (6) | 6 (6) | 5 (6) | 36 (8) |

Table 6. Counties of Origin for PSRB Placements  
(N = 574)

| County     | Number | % of total | County     | Number | % of total |
|------------|--------|------------|------------|--------|------------|
| Baker      | 6      | 1.0        | Lake       | 0      | 0          |
| Benton     | 5      | .9         | Lane       | 123    | 21.4       |
| Clackamas  | 18     | 3.1        | Lincoln    | 13     | 2.3        |
| Clatsop    | 2      | .3         | Linn       | 7      | 1.2        |
| Columbia   | 1      | .2         | Malheur    | 5      | .9         |
| Coos       | 7      | 1.2        | Marion     | 66     | 11.5       |
| Crook      | 0      | 0          | Morrow     | 1      | .2         |
| Curry      | 3      | .5         | Multnomah  | 200    | 34.8       |
| Deschutes  | 4      | .7         | Polk       | 6      | 1.0        |
| Douglas    | 26     | 4.5        | Sherman    | 0      | 0          |
| Gilliam    | 0      | 0          | Tillamook  | 4      | .7         |
| Grant      | 3      | .5         | Umatilla   | 4      | .7         |
| Harney     | 0      | 0          | Union      | 1      | .2         |
| Hood River | 0      | 0          | Wallowa    | 0      | 0          |
| Jackson    | 14     | 2.4        | Wasco      | 1      | .2         |
| Jefferson  | 2      | .3         | Washington | 23     | 4.0        |
| Josephine  | 13     | 2.3        | Wheeler    | 0      | 0          |
| Klamath    | 13     | 2.3        | Yamhill    | 3      | .5         |

1978 as compared with misdemeanants. Thus, they could be identified and located for transfer to PSRB more easily than misdemeanants. This suggests that any sample including pre-PSRB defendants is skewed toward more serious crimes.

For example, the sample of 440 persons shown in Table 3 includes pre-PSRB insanity defendants. It shows 12 percent were homicides. Table 5 shows that when we look only at those found not responsible and placed under PSRB since January 1, 1978, the percentage of homicides is still smaller: an average of 8 percent. It has been only 6 percent during each of the past three years.

10. *What counties place persons under PSRB?*

Table 6 shows the numbers of persons found not responsible in Oregon's 36 counties who were placed under or transferred to PSRB through June 30, 1982. County of origin was not included in our data for two persons out of 576 placed during that time period. Together, Multnomah, Lane, and Marion contributed 67.7 percent of the total. Of those three counties, Lane County had the highest

**Table 7. Disposition by Judges — Initial Placements under PSRB**

|       | Number Conditionally Released by Judges | Percent of Total Placements under PSRB |
|-------|---|--|
| 1978  | 5                                       | 5                                      |
| 1979  | 16                                      | 14                                     |
| 1980  | 15                                      | 17                                     |
| 1981  | 21                                      | 22                                     |
| 1982  | 16                                      | 20                                     |
| Total | 73                                      | 15                                     |

**Table 8. Felony Probation v. Felony Conditional Release**

|  | 1978  | 1979  | 1980  | 1981  | Total  |
|--|-------|-------|-------|-------|--------|
| New probations — felony*   | 2,885 | 3,510 | 3,835 | 3,975 | 14,205 |
| Total placements*<br>(Felony probation + new commitments to Corrections Division institutions) | 4,551 | 5,295 | 5,488 | 5,579 | 20,913 |
| Percent given probation by judges  | 63    | 66    | 70    | 71    | 68     |
| Conditional releases by judges in felonies   | 3     | 6     | 10    | 16    | 35     |
| Total felony placements under PSRB   | 78    | 83    | 61    | 71    | 293    |
| Percent given conditional releases by judges   | 4     | 7     | 16    | 23    | 12     |

\*SOURCE: Oregon Corrections Division, as reported in Document prepared by Oregon Prison Overcrowding Project

per capita rate based on 1981-1982 Oregon Blue Book population figures. Lane County's rate was 41 percent higher than Marion County's rate and 25 percent higher than Multnomah County's rate of placements under PSRB.

11. *How many persons are placed on conditional release by judges?*

When placing a person under PSRB jurisdiction a judge decides whether that person starts out committed to a state hospital or on conditional release. Table 7 shows how many persons found not responsible during 1978-1982 were placed on conditional release by the courts. PSRB staff members report that occasionally judges do not fulfill their statutory obligation to notify the Board when the court places a person on conditional release under PSRB jurisdiction. Thus, the individual is not actually supervised by PSRB unless and until they learn of the placement.

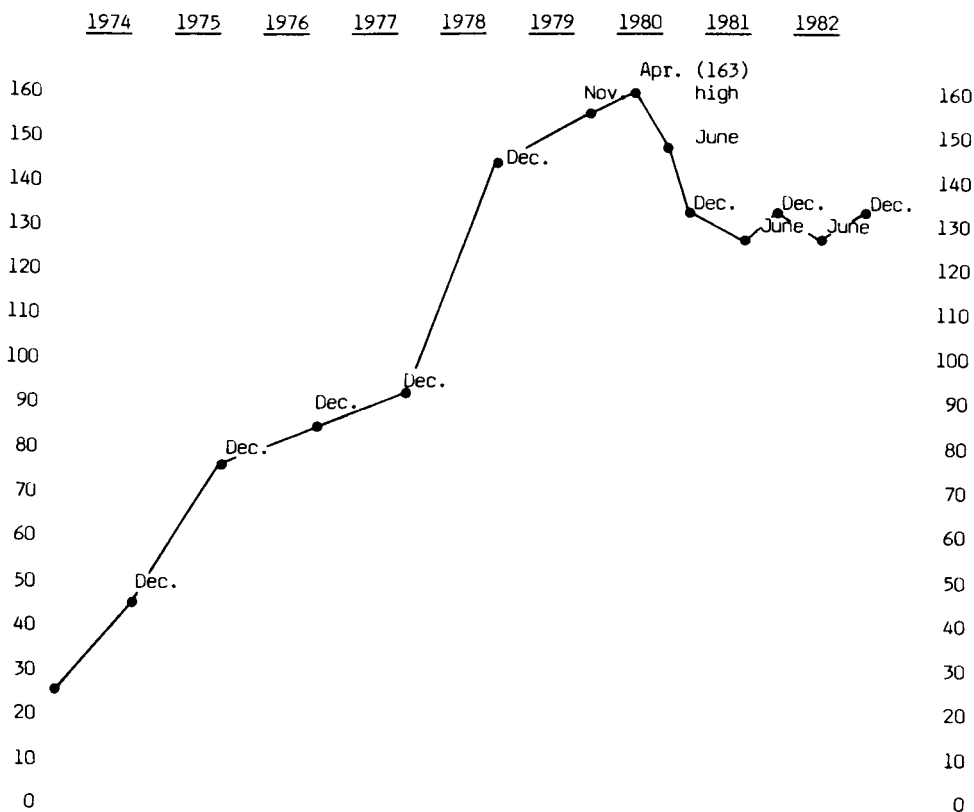
12. *How does the percentage of not responsible felons placed on conditional release by the judges compare with the percentage of convicted felons placed on probation?*

When a trial judge places a defendant who was found not responsible on conditional release under the PSRB, that decision is roughly analogous to placing a convicted defendant on probation under the Corrections Division. Table 8 shows the percentage of each type of placement during 1978 to 1981 for felons.



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Figure 3. Forensic Patients in Oregon State Hospital following Insanity Defense\*



\*Data provided by Oregon State Hospital staff.

Averaged over the four years, the percentage of probation granted by judges is 5.7 times as high as the percentage of conditional releases granted by judges. Averaged over 1980 and 1981, which may prove more typical in the long run than the first two years of PSRB operation, the percentage of probation is 3.6 times as high as conditional release.

13. *How many persons found not responsible are held in the forensic psychiatric unit of the Oregon State Hospital?*

As shown in Figure 3 the number of persons in the Oregon State Hospital who had been found not guilty of crimes because of mental disease or defect climbed dramatically during the 1970s. The population grew even faster during 1978, the first year of PSRB operation. Starting in 1980 the population trend reversed, dropped sharply, and for the last two years (1981 and 1982) has remained relatively stable, fluctuating generally between 125 to 135 persons.

14. *How old are those placed under PSRB jurisdiction?*

Among 555 persons whose age was reported at the time they were placed

Table 9. Types of Felony Crimes among Females and Males

|   | Females |         | Males |         | Totals |         |
|---|---------|---------|-------|---------|--------|---------|
|   | No.     | Percent | No.   | Percent | No.    | Percent |
| Homicide/<br>attempted homicide*        | 8       | 29      | 26    | 9       | 34     | 11      |
| Assault                                 | 5       | 18      | 44    | 16      | 49     | 16      |
| Sex offenses                            | 2       | 7       | 28    | 10      | 30     | 10      |
| Kidnap                                  | 2       | 7       | 4     | 1       | 6      | 2       |
| Robbery                                 | 0       |         | 26    | 9       | 26     | 8       |
| Arson                                   | 4       | 14      | 18    | 6       | 22     | 7       |
| Burglary                                | 0       |         | 47    | 17      | 47     | 15      |
| Unauthorized<br>use of motor<br>vehicle | 2       | 7       | 52    | 18      | 54     | 17      |
| Theft                                   | 1       | 4       | 9     | 3       | 10     | 3       |
| Other                                   | 4       | 14      | 28    | 10      | 32     | 10      |
| Totals                                  | 28      | 100     | 282   | 100†    | 310    | 100     |

SOURCE: Reprinted with permission. Rogers JL, Sack WH, Bloom JD, Manson SM: Women in Oregon's insanity defense system. *J Psychiatry Law* 11:515-32, 1984

\*Each category includes attempts

†Actually adds to 99 because of rounding

$\chi^2$  test,  $p = .003$ ,  $df = 9$

under PSRB jurisdiction through June 31, 1982, their ages ranged from 17 to 76. The mean age was 31 and the median age 28.

15. *How many women are placed under PSRB jurisdiction?*

Among 575 persons placed under PSRB through June 31, 1982, there were 519 (90 percent) men and 56 (10 percent) women. In early 1983, two persons over age 80 were placed under PSRB jurisdiction. One is an 82-year-old man who shot a policeman, another is an 83-year-old woman who shot and killed another woman.

16. *Did the women under PSRB commit different types of crimes than the men?*

Yes.<sup>5</sup> A significantly greater percentage of women committed homicides. However, their homicides consisted of manslaughter and attempted murders, whereas men committed murders as well. Women also committed proportionally more arson (Table 9). Note that none of the women in that study sample committed robbery or burglary. Table 9 also shows the distribution of types of felony criminal conduct for men and for all persons found not responsible and placed under PSRB jurisdiction from January 1, 1978 through June 30, 1982. At the other end of the seriousness scale, a greater percentage of women committed misdemeanors (Table 10, next page). The distribution of type of misdemeanor crimes is shown in Table 11 (next page).

17. *What mental disorders affect those under PSRB jurisdiction?*

Table 12 (page 394) shows the primary diagnosis made by the Oregon State Hospital Staff of 373 persons under PSRB jurisdiction. Where multiple diagnoses were made we report the first appearing in the hierarchy shown.

A total of 78 percent were diagnosed as having a major mental illness or defect: psychosis, mental retardation, or organic brain syndrome. By far the largest single category was schizophrenia, accounting for 61 percent of the total. The

Table 10. Misdemeanor/Felony Classification within Sexes

|               | Female    |            | Male       |            | Totals     |            |
|---------------|-----------|------------|------------|------------|------------|------------|
|               | No.       | Percent    | No.        | Percent    | No.        | Percent    |
| Misdemeanor   | 20        | 42         | 94         | 25         | 114        | 27         |
| Felony        | 28        | 58         | 281        | 75         | 309        | 73         |
| <b>TOTALS</b> | <b>48</b> | <b>100</b> | <b>375</b> | <b>100</b> | <b>423</b> | <b>100</b> |

SOURCE: Reprinted with permission. Rogers JL, Sack WH, Bloom JD, Manson SM: Women in Oregon's insanity defense system. J Psychiatry Law 11:515-32, 1984  
 ( $\chi^2$  test,  $p = .02$ ,  $df = 1$ )

Table 11. Types of Misdemeanor Crimes among Females and Males

|                   | Females   |            | Males     |             | Totals     |             |
|-------------------|-----------|------------|-----------|-------------|------------|-------------|
|                   | No.       | Percent    | No.       | Percent     | No.        | Percent     |
| Assault           | 4         | 21         | 34        | 37          | 38         | 35          |
| Sex offenses      | 1         | 5          | 9         | 10          | 10         | 9           |
| Driving offenses  | 2         | 11         | 3         | 3           | 5          | 5           |
| Fire offenses     | 0         |            | 2         | 2           | 2          | 2           |
| Weapons offenses  | 1         | 5          | 2         | 2           | 3          | 3           |
| Resist arrest     | 2         | 11         | 8         | 9           | 10         | 9           |
| Theft             | 4         | 21         | 12        | 13          | 16         | 15          |
| Trespass          | 1         | 5          | 9         | 10          | 10         | 9           |
| Criminal Mischief | 4         | 21         | 10        | 11          | 14         | 13          |
| Other             | 0         |            | 2         | 2           | 2          | 2           |
| <b>Totals</b>     | <b>19</b> | <b>100</b> | <b>91</b> | <b>100*</b> | <b>110</b> | <b>100*</b> |

\*Actually adds to 99 percent and 102 percent  
 ( $\chi^2$  test,  $p = .63$ ,  $df = 9$ )

hospital staff diagnosed 20 percent as displaying only personality disorder categories, and 2 percent as being neurotic or free of mental disorder.

18. *How much agreement or disagreement is there between experts on diagnosis?*

We described our method of determining agreement/disagreement in another report.<sup>2</sup>

Table 13a (page 394) shows that among 256 cases analyzed the examining experts agreed with each other on diagnosis in 88 percent of the cases. The category with the greatest percentage of disagreement was that believed by the hospital staff to be personality disorders; 78 percent of all disagreement occurs in those cases where the state hospital staff diagnosed only personality disorders (Table 13b). Without question those cases are the most controversial. It should be emphasized these figures apply only to successful insanity defenses. Presumably there is disagreement about diagnosis in some or many of the "unsuccessful" insanity defense cases. But it is safe to say that among successful cases, there is agreement on diagnosis in more than four out of five cases. This is consistent with question 6 above, where it was shown that in more than four out of five successful insanity defenses the prosecution did not oppose the verdict.

19. *How many persons are conditionally released under PSRB supervision?*

Two hundred ninety-five persons under PSRB jurisdiction were on condi-

**Table 12. Primary Diagnosis by State Hospital Staff  
(N = 373)**

| Diagnosis                | Number | Total | Percent |
|--------------------------|--------|-------|---------|
| Mental retardation       | 17     | 17    | 5       |
| Organic brain syndrome   | 24     | 24    | 6       |
| Psychosis                |        | 251   | 67      |
| Schizophrenia            | 228    |       |         |
| Affective                | 21     |       |         |
| Paranoia                 | 2      |       |         |
| 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     |       |         |
| Neurosis                 | 5      | 5     | 1       |
| No mental disorder       | 2      | 2     | 1       |

SOURCE: Rogers JL and Bloom JD: Characteristics of persons committed to Oregon's psychiatric security review board. *Bull Am Acad Psychiatry Law* 10:160, Table 3.

**Table 13a. Diagnostic Agreement/Disagreement within Categories of Diagnosis**

|              | Psychosis |     | Personality Disorder |     | Mental Retardation |     | Organic Brain Syndrome |     | Neurosis |     | Total   |     |
|--------------|-----------|-----|----------------------|-----|--------------------|-----|------------------------|-----|----------|-----|---------|-----|
|              | Percent   | No. | Percent              | No. | Percent            | No. | Percent                | No. | Percent  | No. | Percent | No. |
| Agreement    | 98        | 170 | 30                   | 13  | 100                | 13  | 87                     | 13  | 40       | 7   | 88      | 216 |
| Disagreement | 2         | 4   | 70                   | 31  |                    |     | 13                     | 2   | 60       | 3   | 12      | 40  |
| Total        | 100       | 174 | 100                  | 44  | 100                | 13  | 100                    | 15  | 100      | 10  | 100     | 256 |

( $\chi^2$  test,  $p = .001$ ,  $df = 4$ )

**Table 13b. Diagnostic Categories within Disagreement**

|              | Psychosis |     | Personality Disorder |     | Mental Retardation |     | Organic Brain Syndrome |     | Neurosis |     | Total   |     |
|--------------|-----------|-----|----------------------|-----|--------------------|-----|------------------------|-----|----------|-----|---------|-----|
|              | Percent   | No. | Percent              | No. | Percent            | No. | Percent                | No. | Percent  | No. | Percent | No. |
| Disagreement | 10        | 4   | 78                   | 31  |                    |     | 5                      | 2   | 8        | 3   | 100     | 40  |

tional release at some time between January 1, 1978 and December 31, 1982. This represents 47 percent of all those under PSRB during that time.

**20. How many persons on conditional release were charged with new crimes?**

Of the total 295 persons, 39 (13 percent) were charged with new crimes while on conditional release during the five-year study. Of the 39 persons, 21 were known to have been charged with misdemeanor crime(s). This leaves 18 persons out of 295 (6 percent) charged with new felonies while on conditional release. Table 14 (next page) lists the charges and dispositions known to the PSRB in the order the charges were filed, except we list last the six persons who were charged

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**Table 14. New Charges Filed against Persons on Conditional Release**

| Person | New Charge(s)   | Disposition                                  | Comments                              | Original Crime(s)  |
|--------|---|--|---------------------------------------|--|
| 1.     | Illegal shooting of cow elk                               | Guilty/fine                                  |                                       | Arson I  |
| 2.     | Theft I<br>Hijacking                                      | Dismissed<br>Guilty/60 years                 | Occurred while revoked                | Attempted extortion  |
| 3.     | Driving under influence                                   | Guilty/10 days                               |                                       | Robbery I  |
| 4.     | Burglary II   | Dismissed                                    |                                       | Burglary II  |
| 5.     | Aggravated robbery  | Dismissed                                    | Returned to Oregon, Committed suicide | Resisting arrest, Trespass I, Mischief II                              |
| 6.     | Theft II, Harrassment                                     | Dismissed                                    |                                       | Murder   |
| 7.     | Simple assault  | Guilty/fine/<br>probation                    | City ordinance                        | Att. rape I  |
| 8.     | Driving while suspended                                   | Dismissed                                    | Out of state                          | Robbery III<br>Assault III   |
| 9.     | Assault IV  | Dismissed                                    |                                       | Sex abuse IV<br>Indecent exposure                                      |
| 10.    | Rape I,<br>Att. to elude, trespass                        | Guilty Att. rape<br>10 years                 |                                       | Assault II<br>Burglary I   |
| 11.    | Felony driving while suspended                            |  |                                       | Burglary I   |
| 12.    | Driving under influence, hit and run                      |  |                                       | Murder   |
| 13.    | Fraudulent use of credit card(s)                          |  |                                       | Robbery II   |
| 14.    | Unlawful use of weapon                                    | Guilty/10 days<br>Suspended                  | Seattle municipal ordinance           | Robbery II<br>Extortion, UUMV  |
| 15.    | Theft II  | Dismissed                                    |                                       | Theft II,<br>Trespass II   |
| 16.    | Manslaughter (2)<br><br>Assault III                       | Not responsible<br><br>(NR) PSRB<br>45 years | Traffic collision                     | Recklessly endangering<br>Mischief II, Attempt to elude, resist arrest |
| 17.    | Disorderly conduct  | Dismissed                                    |                                       | Robbery III  |
| 18.    | Burglary II, Driving under influence                      | NR/PSRB 6 years                              |                                       | Robbery I, Att. murder   |
| 19.    | Attempted robbery   | Guilty/probation                             | California                            | Robbery II   |
| 20.    | Driving while suspended                                   | Dismissed                                    |                                       | Escape II  |
| 21.    | Assault IV  | NR/PSRB                                      |                                       | Robbery II   |
| 22.    | Driving under influence, Theft I, Driving while suspended | DWS dismissed                                |                                       |  |
|        | Guilty/jail   |  |                                       |  |
|        | Escape II   |  |                                       |  |
| 23.    | Burglary I  | Guilty/20 years                              |                                       | Burglary I   |
| 24.    | Drunk in public   |  | Louisiana                             | Murder I   |
| 25.    | Domestic abuse  | Dismissed                                    |                                       | Arson I  |
| 26.    | Burglary (4)  | Guilty/jail                                  |                                       | Burglary II  |
| 27.    | Criminal mischief   | Dismissed                                    |                                       | Public indecency   |
| 28.    | Theft II  | Guilty/probation<br>Community service        |                                       | UUMV   |

*(continued on next page)*

Table 14. continued

| Person         | New Charge(s)                               | Disposition                       | Comments                                      | Original Crime(s)                           |
|----------------|---|-----------------------------------|---|---|
| 29.            | Initiating false fire report                | Dismissed                         |   | Arson I                                     |
| 30.            | Assault IV                                  | Dismissed                         |   | Burglary I<br>Mischief I and II<br>Menacing |
| 31.            | Attempted murder                            |                                   | Wisconsin/<br>while revoked                   | Kidnap I and II<br>Coercion                 |
| 32.            | Felony driving while suspended              | Guilty/2 years                    | While revoked                                 | Burglary I<br>Robbery III                   |
| 33.            | Theft II                                    | Guilty/90 days                    | While revoked                                 | Robbery II                                  |
| 34.            | Robbery I                                   | Guilty/6 years                    | While on initial conditional release by judge | UUMV  |
| 35.            | Assault III                                 | Guilty/6 years                    | "   | Att. murder,<br>Menacing                    |
| 36.            | Arson II                                    | NR/PSRB                           | "   | Assault I                                   |
| 37.            | Public indecency                            | NR/to PSRB on conditional release | "   | Public indecency                            |
| 38.            | Theft II                                    | Dismissed                         | While on initial conditional release by judge | UUMV  |
| 39.            | Possession controlled substance/menacing    | Dismissed                         |   | Mischief I<br>Mischief II                   |
| <b>Summary</b> |   |                                   |   |   |
|                | <b>Persons charged with new crimes</b>      |                                   | <b>No.</b>                                    | <b>Percent</b>                              |
|                | New misdemeanor charges                     |                                   | 21  | 7   |
|                | New felony charges                          |                                   | 18  | 6   |
|                | <b>Persons without new criminal charges</b> |                                   | 256   | 87  |
|                | Total persons on conditional release        |                                   | 295   | 100   |

with crimes while on conditional release granted by judges when placing these persons under PSRB. The table also shows the original charges for which the individuals were found not responsible and placed under PSRB.

Fifteen of the 39 persons are known to have been found guilty of at least one of the new crimes charged against them. Fourteen others had charges dismissed, resulting in continued PSRB jurisdiction on the original "not responsible" finding; 5 were known to have been found "not responsible" of the new charge(s) and were placed under PSRB for an additional "insanity sentence." Dispositions on 5 persons were unreported in the data provided us.

21. *How many people under PSRB jurisdiction committed crimes while not on conditional release?*

An additional 15 people were charged with new crimes during 1978 to 1982 while under PSRB jurisdiction but on some status other than conditional release. Of these persons, 9 were on so-called "unauthorized leave" (UL) from the hospital. This means they had escaped, usually by walking away while on the hospital grounds, and in at least one case by forceful escape from the security unit. Three persons were charged with new crimes for acts committed inside the hospital. Two were on PSRB approved passes when charged with new crimes (misdemeanors in both cases). One person had been transferred to the penitentiary following

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**Table 15. New Charges Filed against Persons under PSRB Jurisdiction while Not on Conditional Release**

| Person | Status                   | Charge(s)   | Disposition                        | Comments  | Original Crimes                                |
|--------|--------------------------|---|------------------------------------|---|--|
| 1.     | UL<br>(escape)           | Mischief I<br>Assault II                                | Guilty/5 years                     |   | UUMV   |
| 2.     | UL                       | Unauthorized use<br>of motor vehicle                    | Dismissed                          |   | UUMV, Theft II                                 |
| 3.     | UL                       | Theft I   | NR/PSRB                            |   | Robbery II                                     |
| 4.     | UL                       | Burglary I<br>Escape II                                 | Guilty (Theft I)<br>Probation      |   | Robbery II                                     |
| 5.     | UL                       | Burglary I,<br>Unauthorized use of<br>vehicle, menacing | Guilty/UUV,<br>Menacing,<br>Prison |   | Arson I,<br>Reckless burning                   |
| 6.     | UL                       | Driving under<br>influence                              |                                    |   | Forgery I                                      |
| 7.     | UL                       | Carrying concealed<br>weapon                            | Dismissed                          | Washington State  | Robbery I                                      |
| 8.     | UL                       | Murder  |                                    | Texas/Returned to<br>Oregon State Hosp.<br>Committed suicide<br>Assault IV<br>Arson I | Rape I<br>Sodomy<br>Kidnap II                  |
| 9.     | UL                       | Theft/Disorderly<br>conduct                             |                                    |   |  |
| 10.    | Pass                     | Carrying concealed<br>weapon                            |                                    | Burglary I<br>Theft II  |  |
| 11.    | Pass                     | Drunk in public   | Guilty/few days<br>jail            | Texas   | Robbery III                                    |
| 12.    | Inpatient                | Assault II  | Guilty                             |   | Murder   |
| 13.    | Inpatient                | Assault II  | Dismissed                          |   | Murder   |
| 14.    | On corrections<br>parole | Burglary I  | Guilty/5 years                     |   | Manslaughter II<br>Ex-convict in<br>possession |
| 15.    | Inpatient                | Escape II   | Guilty/1 year                      |   | Assault II<br>Burglary II                      |

*\*Note:* list does not include others who went UL from Oregon State Hospital and were charged with escape merely for purposes of obtaining arrest warrant to return them to hospital. See discussion about escapes.

a conviction and was paroled without notice to PSRB when he was charged with Burglary I. Crimes and dispositions where known are reported in Table 15. Among the 15 persons, 10 were charged with felonies.

### 22. *How many people escape from the Oregon State Hospital while under PSRB jurisdiction?*

Oregon State Hospital holds patients in several degrees of security. Breakouts from the maximum security wards are very rare. However, until recently almost every month a number of people escaped by walking away while outside locked wards with various types of grounds privileges. The PSRB has no authority over management of patients in the hospital and so has no direct responsibility for preventing escapes. The Mental Health Division has revised its policies and the number of escapes declined dramatically in 1982 (Table 16, next page).

### 23. *How many people were never conditionally released or discharged?*

Some individuals were committed to the hospital at the beginning of their PSRB jurisdiction and remained committed until the end of the study period. Table 17 (page 399) shows the number of persons committed each year who had not yet been released or discharged by December 31, 1982. Predictably, the more

Table 16. Escapes from Oregon State Hospital during Certain Months

|                    |                   | Escapes  | Returned<br>within Same<br>Month | Total Returned<br>from Escapes at<br>Any Time |   |
|--------------------|-------------------|----------|----------------------------------|---|---|
| 1980               | April             | 3        | 0                                | 7   |   |
|                    | May               | 11       | 6                                | 7   |   |
|                    | June              | 5        | 4                                | 5   |   |
|                    | July              | 6        | 2                                | 3   |   |
|                    | August            |          |                                  |   |   |
|                    | September         |          |                                  |   |   |
|                    | October           | 7        | 2                                | 5   |   |
|                    | November          | 5        | 2                                | 5   |   |
|                    | December          | 4        | 1                                | 6   |   |
|                    | Totals (7 months) | 41       | 17                               | 38  |   |
|                    | 1981              | January  | 0                                | 0   | 1 |
|                    |                   | February | 9                                | 5   | 8 |
| March              |                   | 7        | 4                                | 9   |   |
| April              |                   | 4        | 4                                | 6   |   |
| May                |                   | 7        | 3                                | 4   |   |
| June               |                   | 6        | 2                                | 3   |   |
| July               |                   | 9        | 6                                | 11  |   |
| August             |                   |          |                                  |   |   |
| September          |                   | 5        | 3                                | 7   |   |
| October            |                   | 7        | 4                                | 7   |   |
| November           |                   | 3        | 2                                | 4   |   |
| December           |                   | 3        | 3                                | 3   |   |
| Totals (11 months) | 60                | 36       | 63                               |   |   |
| 1982               | January           | 5        | 3                                | 4   |   |
|                    | February          | 0        | 0                                | 2   |   |
|                    | March             | 0        | 0                                | 0   |   |
|                    | April             | 0        | 0                                | 1   |   |
|                    | May               | 1        | 0                                | 1   |   |
|                    | June              | 1        | 0                                | 0   |   |
|                    | July              | 0        | 0                                | 0   |   |
|                    | August            | 0        | 0                                | 0   |   |
|                    | September         | 1        | 0                                | 0   |   |
|                    | October           | 0        | 0                                | 1   |   |
|                    | November          | 0        | 0                                | 0   |   |
|                    | December          | 1        | 1                                | 1   |   |
| Totals (12 months) | 9                 | 4        | 10                               |   |   |

SOURCE: by Oregon State Hospital

recent the year of commitment, the greater the percentage who remained in the hospital at the end of the study period.

#### 24. How many people were discharged at their first PSRB hearing?

In question 2 above we discussed the apparently few persons who are discharged by the trial judge and never placed under PSRB jurisdiction. Others who are placed under PSRB are discharged by the PSRB at their first hearing. As prescribed by statute (which was amended from time to time) that first hearing occurred for those committed to the hospital within 20 days, 6 months, or 180 days. Occasionally that hearing was held late: up to 8 months after commitment.

Table 18 (next page) summarizes data on persons who were discharged by the PSRB at their first hearing. Persons who were placed on conditional release by the judges are included if they were discharged at an initial PSRB hearing within



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**Table 17. Number of Persons Who Were Continuously Committed to Oregon State Hospital from Date of Placement Under PSRB until End of Study December 31, 1982**

| Year of Commitment | Number | Percent of Total Placed under PSRB that Year |
|--------------------|--------|--|
| Pre-1978*          | 17     | 11   |
| 1978               | 8      | 8  |
| 1979               | 12     | 10   |
| 1980               | 17     | 19   |
| 1981               | 27     | 28   |
| 1982               | 47     | 58   |
| Total              | 128    | 20   |

\*Committed to hospital before PSRB and transferred to PSRB jurisdiction since January 1, 1978.

**Table 18. Persons Discharged within Eight Months at Their First PSRB Hearing**

| Year of Placement  | Number of Discharges | Numbers by Reasons*   | Percent of Total PSRB Placements |
|--------------------|----------------------|-----------------------|----------------------------------|
| Pre-1978**         | 23                   |                       | 15                               |
| 1978               | 2                    | A-0<br>B-1<br>A&B-1   | 2                                |
| 1979               | 17                   | A-2<br>B-15           | 15                               |
| 1980               | 26                   | A-6<br>B-20           | 29                               |
| 1981               | 25                   | A-7<br>B-18           | 26                               |
| 1982               | 10                   | A-1<br>B-9            | 12                               |
| Total 1978 to 1982 | 80                   | A-16<br>B-63<br>A&B-1 | 17                               |

\*Reasons for discharge

A = no longer affected by mental disease or defect

B = no longer substantially dangerous

\*\*This subgroup is potentially different. Many of these people did not have their first hearing until several years after PSRB started operation, since PSRB was not promptly made aware of people found not guilty before 1978 who were technically under its jurisdiction, but who had been "lost" by the judges.

Those committed after September 1982 had not had their first hearing by the end of 1982.

8 months; they are excluded if their first PSRB hearing was after 8 months since many individuals remain successfully on conditional release for years without a hearing.

25. *How many persons are discharged by PSRB and for what reasons?*

Table 19 (page 400) shows all discharges and reasons for discharge by the PSRB. Since the PSRB discharged 313 of the total 630 persons placed under its jurisdiction during the five-year period, a net of 317 were under PSRB jurisdiction at the end of 1982. To our knowledge, no one has reported on what happens to those discharged. We are performing a study of this population. It is also noteworthy that eight persons committed suicide (an additional two did so in early 1983 after this study).

Table 19. Discharges from PSRB Jurisdiction, 1978 to 1982

| Reason for Discharge   | 1978 | 1979 | 1980 | 1981 | 1982 | Total |
|--|------|------|------|------|------|-------|
| 1. Expiration of maximum jurisdictional period               | 16   | 21   | 19   | 23   | 23   | 102   |
| 2. Finding of no longer affected by mental disease or defect | 1    | 0    | 12   | 9    | 19   | 41    |
| 3. Finding of no longer presenting substantial danger        | 0    | 19   | 39   | 41   | 45   | 144   |
| 4. Combination of both findings in columns 2 and 3           | 0    | 3    | 4    | 1    | 0    | 8     |
| 5. Ordered by Appellate Court                                | 0    | 0    | *1   | 1    | 0    | 2     |
| 6. Natural death   | 0    | 1    | 0    | 1    | 1    | 3     |
| 7. Suicide   | 2    | 0    | 3    | 1    | 2    | 8     |
| 8. Mandatory hearing not held                                | 2    | 0    | 0    | 0    | 0    | 2     |
| 9. Other   | 0    | 1    | 0    | 2    | 0    | 3     |
| Total  | 21   | 45   | 78   | 79   | 90   | 313   |

\*later reversed by Supreme Court

26. *How much time do persons spend under PSRB jurisdiction? How much time do they spend in the hospital? How does this compare with those found guilty?*

Although these questions are discussed frequently, and some have claimed answers, the questions are extremely difficult to answer accurately. There are many complicating factors, including:

(1) The PSRB has been in operation only five years, and its practices have changed noticeably over the years as shown by its increasing rate of discharge at first hearings and by other statistics. Which portion of the five years is fair to use in calculating its release practices?

(2) A significant number of people have never been released from the hospital (question 23 above). Since PSRB has been operating only five years and since we have no way of knowing how long these individuals will be held, there is no way of averaging their stays in with those who are released. To ignore these people and to look only at those who have been released would be misleading, since the number of persons who have never been released is substantial.

(3) To accurately compare insanity results with conviction results we need to factor in the much greater rate of probation, which results in no confinement, for those convicted compared with those found insane (question 12 above). We also need to take into account that Corrections Division figures for average length of time in prison before parole not only exclude those put on probation but also apply to only felons. PSRB "patients" include misdemeanants. For instance, some persons committing misdemeanor theft in the second degree who are placed under PSRB are in fact confined for a full year.

(4) More than half of all persons ever placed under PSRB remain under their jurisdiction (question 24 above). Thus, again, it is impossible to answer meaningfully how long people stay under PSRB jurisdiction. Unlike the corrections system the PSRB has not been in existence long enough to have had a complete turnover of its client population. Presumably, those who have been discharged to date represent a less serious subgroup than those who remain under PSRB jurisdiction. Thus, statistics based only on those released to date or discharged to date are misleading unless clearly labeled as based on a skewed sample.

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**Table 20. Providence Day Treatment PSRB Clients**

|  | 1980      | 1981       | 1982       | 1983*     | Totals     |
|--|-----------|------------|------------|-----------|------------|
| Evaluations conducted  | 35        | 49         | 42         | 13        | 139        |
| Admissions to program<br>(percent of evaluations)                      | 9<br>(26) | 21<br>(43) | 26<br>(62) | 5<br>(38) | 61<br>(44) |
| Revocations within one<br>year of admission<br>(percent of admissions) | 7<br>(78) | 13<br>(62) | 8<br>(31)  | 1<br>(20) | 29<br>(48) |
| New criminal charges<br>(percent of admissions)                        | 1<br>(11) | 2<br>(10)  | 1<br>(4)   | 0<br>(0)  | 4<br>(7)   |

\*Data for January through March

Data provided by Providence Day Treatment Staff

**Table 21. Oregon Legislature Appropriations Designated for PSRB System**

| Biennium              |                      |  |             |
|-----------------------|----------------------|--|-------------|
| July 1983 - June 1985 | PSRB Administrative  |  | \$ 290,000  |
|                       | Community Treatment  |  | 647,000     |
|                       | Total                |  | \$ 937,000  |
| 1981-1983             | PSRB Administrative  |  | \$ 246,000  |
|                       | Community Treatment  |  | 574,000     |
|                       | Total                |  | \$ 820,000  |
| 1979-1981             | PSRB Administrative  |  | \$ 217,000  |
|                       | Community Treatment  |  | 430,000     |
|                       | Total                |  | \$ 647,000  |
| 1977-1979             | PSRB Administrative  |  | \$ 140,000  |
|                       | Community Treatment* |  |             |
|                       | Total                |  |             |
| Total 1977-1985       | PSRB Administrative  |  | \$ 893,000  |
|                       | Community Treatment  |  | 1,651,000   |
|                       | Total                |  | \$2,544,000 |

All figures rounded to nearest \$1,000.

\*During the first biennium of PSRB operations there was no separate appropriation designated for PSRB community treatment, which instead was paid out of the general mental health and corrections division budgets.

In summary, more time must elapse before we can make valid comparison of "time served" by those convicted versus those placed under PSRB.

## 27. *How effective are the community treatment programs for PSRB patients on conditional release?*

The community programs developed for PSRB are a key aspect of Oregon's system. We are engaged in analyses of those programs. Initial indications are that a high percentage of those on conditional release are revoked by the PSRB but that few of those revocations result from new criminal charges. This is illustrated by Table 20, providing information from Providence Day Treatment Program in Portland, Multnomah County. This suggests that the conditional release program is working effectively to monitor and intervene promptly to prevent recidivism.

## 28. *How much does the PSRB system cost?*

The Oregon Legislature appropriates money for the PSRB system in two amounts. One is for the operation of the PSRB itself, including salaries of the three full-time employees (executive director, administrative assistant, and secre-

tary), the per diem of the board members (\$152 plus mileage), office space lease, administrative costs, and so forth. The other sum is for community treatment programs for persons placed on conditional release by the PSRB. During the 1983 to 1985 biennium it is expected to cost \$3,100 per year per client in a typical conditional release program. The approved budget will pay for approximately 63 persons on regular conditional release at any time plus approximately 16 intensive "slots" providing greater services at increased cost. Actual costs vary with the intensity of the treatment and supervision the PSRB requires as a condition of release for each individual. Total appropriations have been as shown in Table 21 (preceding page).

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