

Enterprise questions for PSRB members sent to Director Bort on Sept. 26

Response needed by Oct. 5

1. What are the responsibilities of Psychiatric Security Review Board and its staff?

The Psychiatric Security Review Board's mission is to protect the public by working with partnering agencies to ensure persons under its jurisdiction receive the necessary services and support to reduce the risk of future dangerous behavior using recognized principles of risk assessment, victims' interest and person centered care. We have a comprehensive, informative website that details the Board and the staff responsibilities. It can be accessed at https://www.oregon.gov/prb/Pages/about_us.aspx.

2. Director Bort had said the rate of new felonies post discharge documented by the Enterprise (18% within three three years, overall recidivism of 37%) was “concerning of course, but that’s different from our responsibility.” Please elaborate.

The Board staff is a small agency of 11 individuals with limited resources. Consistent with our mission and our scope of responsibility, we focus the majority of these resources on ensuring public safety through the monitoring and supervision of individuals who are currently under our jurisdiction and on conditional release. For instance, in 2017, we partnered with the community to monitor and supervise 445 individuals who were on conditional release. Of these 445, only 2 individuals were convicted of a new felony or misdemeanor. While any recidivism by any former client is concerning, our agency’s responsibility is to the clients under our jurisdiction. The agency is not resourced to ensure that individuals who are no longer under our jurisdiction will not engage in future criminal activity. This is parallel to a parole or probation agency’s inability to prevent future criminal activity past the expiration of the offender’s term.

3. How should the public measure the success of the PSRB?

Objectively, the Board’s success is measured through an Annual Performance Progress Report, posted for the public to view on the State website. Our measures include the recidivism of individuals on conditional release (0.45% in 2017); the timeliness of our hearings to ensure due process (98% in 2017); safely maintaining individuals in the community, which speaks to an excellent risk review process prior to an individual’s conditional release (99.43% in 2017); customer service; and scoring on a best practice agency survey. The results for 2017 were submitted on October 1, 2018 and will be available on the Oregon State Legislature’s website at <https://www.oregonlegislature.gov/lfo/Pages/KPM.aspx>.

The general public would most likely judge the success of the PSRB on our excellent public safety record (i.e. recidivism and safely maintaining individuals who are in the community). To attain this success, the Board has created a variety of interventions to independently monitor both the status of its clients on conditional release and the efficacy of their community treatment providers. Every individual on conditional release has a conditional release plan. Those plans are collaboratively created by inter-disciplinary professionals with forensic experience and familiarity with the client’s risk profile. Conditional release plans go through five layers of review and feedback including the client’s current team, an independent risk review panel at the Oregon State Hospital, the community provider, the county where the client will reside, and

finally, by the Board through a full hearing. Each client on conditional release is assigned a case manager who is responsible for ensuring the client complies with their conditional release plan and that the client receives the services he/she needs to maintain safety in the community. The Board staff frequently correspond with case managers and take appropriate action or implement best practice interventions as necessary to maintain public safety. The Board also uses the Oregon State Police Department's Law Enforcement Data Systems (LEDS) which notifies the Board if a client has any police contact.

4. If post-discharge outcomes are not part of how the public should measure the PSRB's success, why?

Once a person is discharged from the Board's jurisdiction, there are several other systems of care that the client or his or her clinical team can access. As a best practice, the Board, in collaboration with its partners, supports community providers in planning for what we term, client's *end of jurisdiction* to increase the likelihood that a client will continue to access treatment and resources at the appropriate level of care needed. However, once a client is discharged from the Board's jurisdiction, the Board no longer has any legal recourse to ensure that a client follows through with this plan. Rather, the client is supported by his or her mental health treatment team or other natural supports in the community. This is parallel to what occurs with an individual who is no longer under the supervision of a parole and probation agency.

5. Given our findings that 37 percent of former PSRB clients committed new crimes within three years and 133 people were violently attacked, does the board still believe it "has an exceptional record of reintegrating clients into the community?" Why?

Consistent with its mission and statutory responsibilities, the Board has an exceptional record of keeping the public safe while clients are under its jurisdiction, as evidenced by its low recidivism and ability to safely maintain individuals on conditional release. The Board does not work directly with clients, but rather partners with the Oregon Health Authority to support the professionals at the state hospital and in the community to assist with treatment goals, such as community integration, as well as risk mitigation.

These statistics are not surprising given the research shows that while most people with mental illness do not commit criminal or violent acts, that police contact is common. From our perspective, the public may want to consider contextual factors that would be helpful in understanding these results, as these were not available to the Board to consider in our response. For instance, the disposition of these alleged new crimes could be dismissals, civil commitments, or alternative sentencing, which provides context to the state of one's mental health stability as well as how serious the crimes were considered by prosecutors. Other factors that may affect these results include the sample size, how a "violent attack" is defined, whether the Board granted an early discharge or the client's sentence was terminated, whether the client was discharged from the State Hospital or from their conditional release placement, and the distance between the discharge and alleged new crime. Another factor to consider is the motivation of the person or agency pressing the charges. Did the victim feel that this was the only way to get the offender mental health treatment and/or resources? Did the county mental health provider attempt to civilly commit the client to avoid a criminal act, but could not meet the "imminent

danger” threshold? Were the police attempting to get the offender some help? Given that these complexities add context to these findings, we would caution any interpretations made from these statistics.

6. If the board is aware of flaws elsewhere in the mental health or criminal justice systems that impact clients’ success during or after jurisdiction, does the board have a responsibility to tell state leaders and seek fixes? Why or why not?

The Oregon Forensic Mental Health system is made of several different agencies, all of whom have the ability to advance legislative proposals to address flaws in the system. Consistent with the Oregon Administrative Rules that govern the Psychiatric Security Review Board, the current and former Executive Directors have been actively involved in community outreach to improve the criminal responsibility system. The Board also actively participates in the legislative process, and has collaborated in proposing legislative concepts and providing impact statements and/or testimony regarding proposed bills. Please visit our website for updates on our legislative participation.

7. In recent years, has the board raised such issues with legislators or other state leaders? If so, please elaborate.

Please refer to our PSRB 2017 Legislative Wrap-Up document that outlines the accomplishments made during that session.

<https://www.oregon.gov/prb/Documents/2017%20PSRB%20Legislative%20Wrap%20Up.pdf>

8. Does the board believe it needs more latitude to make discharge decisions than is currently available under Oregon law? Why?

The Board does not take a position on this.

9. Does the board support Oregon’s cap on length of jurisdiction? Why?

The Board does not take a position on this.

10. Should Oregon flex the full authority of *US v Jones* to allow the PSRB to supervise people until they are no longer dangerous?

The Board does not take a position on the constitutionality issues that are posed in *US v Jones*. The Board would refer the public to Disability Rights Oregon or Mental Health Association of Oregon for information related to the history of the civil rights of individuals who have been diagnosed with mental health conditions in the state of Oregon.

In addition, the Board would also refer the public to the PSRB Civil Commitment laws that were passed through House Bill 421 in 2013 as another mechanism of civilly committing individuals who are found to be “extremely dangerous” and “resistant to treatment.”

11. Should Oregon’s law continue to require that danger be linked to their qualifying mental disorder? Or should Oregon adopt the practice of other states to continue supervision if

they are dangerous for any reason, such as a substance use or a personality disorder?
Why?

The Board would refer the public to relevant case law, in particular, *Tharp v. PSRB*, 338 Or 413, 338 P3d 413 (2005) and *Ashcroft v. PSRB*, 338 Or 448, 111 P3d 1117 (2005). In those cases, the courts analyzed the relevant statutes and legislative history as a basis of its conclusion that substance use disorders and personality disorders, by themselves, are non-qualifying mental disorders (i.e. excluded from the term “mental disease or defect”). In *Ashcroft v. PSRB*, 192 Or App 467, 86 P3d 102 (2004), the Court of Appeals rejected the Board's alternative argument that petitioner "should be judicially estopped from arguing that alcohol dependence is not a mental disease or defect because he took the converse position in entering the plea of guilty except for insanity in the criminal proceeding that resulted in his commitment to [the Board's] jurisdiction." *Ashcroft*, 192 Or App at 469.

12. Should the board require providers with whom it contracts to incorporate work on criminogenic risk factors into their care? Why or why not?

The Board does not contract with providers. This role is served by the Oregon Health Authority. The Board expects providers working with PSRB individuals to employ empirically validated methods in the development of their risk management strategies. The use of such methods lends itself to the credibility of the evidence provided to the Board when it is making decisions about risk mitigation plans and jurisdiction. The Board, in collaboration with OHA, OSH, and other community partners, offers training and technical assistance to providers. In addition, the Board and OHA hold a yearly conference and monthly statewide provider meetings.

13. Why does the board not require that now?

This has always been an expectation.

14. To what extent does the authority of the board help stitch together services for PSRB clients on conditional release?

There is a five layer review of all conditional release plans (please refer to #3), that ultimately ends with the Board granting (or denying) a client's conditional release. These plans are an agreement between the Board and the community provider that particular services, supports or other resources designed to mitigate the client's risk will be provided to the client on conditional release. The Attorney General represents the state in these hearings, and may contest the conditional release plan or recommend additions or other modifications to further ensure public safety and that victim impact is considered. Once conditionally released, the Board monitors each client's compliance through monthly reports or more frequently if there is an immediate concern. A client's failure to comply with these conditions can result in the Board ordering any number of interventions, including transferring a client to a higher level of care or a revocation to the State Hospital.

15. How does the board assure that patchwork remains in tact after clients are freed?

This is related to our response to #4. As a best practice, the Board, in collaboration with its partners, supports community providers in planning for a client's end of jurisdiction to increase

the likelihood that a client will continue to access treatment and resources at the appropriate level of care recommended. The Board will work with the Oregon Health Authority to ensure that ongoing funding is available until a new funding stream is in place. The Board will approve placement transitions to the facility where the client might reside post-jurisdiction, to ensure good continuity of care and assess for any challenges there might be with that post-jurisdiction placement. However, once a client is discharged from the Board's jurisdiction, the Board no longer has any statutory authority to ensure that a client follows through with this plan. Furthermore, clients no longer under the Board are public citizens with civil rights, which includes the right not to take medication.

16. Should the board require a discharge plan be entered as an exhibit when making discharge decisions?

If a client or a treatment team requests that a client be granted an early discharge from the PSRB, by statute, the Board is required to discharge the person from custody if they find the person is no longer affected by a qualifying mental disorder, or, if so affected, the person no longer presents a substantial dangers to others when that disorder is active. While a discharge plan could be a piece of evidence that the Board weighs in making these findings, the lack of a discharge plan could not, in and of itself, be the basis for denying a discharge when the burden of proof has otherwise been met. Even if a discharge plan was required, following a client's discharge from the Board, that client is considered a public citizen with the right to follow through, modify or completely disregard the discharge plan that was presented to the Board.

17. Why does the board not require that now?

Explanation in #16

18. Many group homes and residential treatment facilities work solely with forensic or non-forensic clients, meaning people must move when freed by the board. How does the board guarantee a smooth transition to a comparable level of care when someone is discharged?

Please refer to response in #4 and #15.

19. Why has the current board not sought to measure post-discharge recidivism?

The Board carries out prescribed responsibilities that were created by the Oregon Legislature, and takes those responsibilities very seriously as evidenced by our excellent safety record while clients are under our jurisdiction. Our mandate is clear, that we use our resources to monitor and supervise the 600 clients who are currently under our jurisdiction. The Board holds an average of 650 hearings each year. Hearings require the preparation of exhibits for each case, calendaring of a docket, notification of witnesses and victims, organization of professional and lay testimony, and the drafting of final orders that result from the hearing. In addition, the staff and Executive Director must review monthly reports on conditionally released individuals and react immediately to emergency situations and potential revocations.

Board members and staff have co-authored or otherwise contributed to the vast literature that has been published on the state of Oregon's PSRB. The Board does seek to measure outcomes by developing collaborations with professionals who have the credentials, skill sets, access to

relevant databases and funding to create and carry out research projects, such Dr. Joseph Bloom, who has in fact examined post-jurisdiction statistics among many other PSRB-related topics. More recently, the Board partnered with Dr. Michael J. Vitacco, a forensic psychologist in the Department of Psychiatry and Health Behavior at the Medical College of Georgia at Augusta University, and published an article in the journal, Law and Human Behavior, that examined evidence-based tools and their ability to predict success while clients are on conditional release.

20. Why has the board instead focused on cooperative and internal research, primarily, about conditional release?

Given that the safety of clients on conditional release is the target population for which the legislature created the PSRB, the Board's focuses its resources on conditional release. The Board has access to data of clients who are currently or were previously under the jurisdiction of the Board. As mentioned in #19, we have also partnered with researchers who have access to more expansive data sets.

We would refer the public to several scholarly publications that have been written about the Psychiatric Security Review Board, including its history, demographics, functioning, and even statistics on post-jurisdiction that can easily be accessed online or through our website.

21. Does the board think it should track recidivism? Why or why not?

Consistent with its mission and statutory responsibilities, the Board tracks the recidivism of clients under its jurisdiction. In addition, the Board has been planning to launch a recidivism study over the next year. There are some limitations that make such an evaluation difficult and onerous, such as tracking people who leave the state post-jurisdiction, our very small workforce, a lack of funding, and our lack of credentialed statisticians or research professionals on our staff. There are a number of qualified organizations, including those in academia, that may take this on as a matter of expanding knowledge of post discharge recidivism rates as public interest increases and funding and resources opportunities become available to do this type of research. In addition to local universities, Oregon has the Criminal Justice Commission, an agency whose mission is to improve the legitimacy, efficiency, and effectiveness of state and local criminal justice systems. Nationally, we could also look to federal agencies such as SAMHSA or the National Institute for Justice for opportunities to participate in or help fund this research.

22. If the board does not think tracking recidivism is its responsibility, whose is it?

Please refer to #22.

23. After Dr. Bloom's 1986 rearrest study, did the board make changes to its policies or make recommendations to state leaders about how to improve outcomes for freed insanity acquittees?

The Board has certainly evolved its policies over the last 32 years, most directly when there have been changes in statute and/or decisions made by the Court of Appeals or Supreme Court in

Oregon. Our website has a list of the most significant court decisions that have impacted how the Board applies the law when making its decisions. In addition, we would recommend interested members of the public to examine the legislative archives to explore the legislative history of concepts that have been supported or not supported by the agency.

24. Does the board consider its handling of public records requests from the Enterprise this year to be timely and reasonable? Why?

Yes. The agency engaged in due diligence in its approach to these requests, balancing the public interests with privacy interests as required by the law. In consultation with public records advocates, the Director provided several recommendations to assist the newspaper in receiving requested records as expeditiously as possible and at no cost to the Enterprise. The agency spent over \$10,000 of its own budget as well as several hours of staff resources to prepare requests for the Enterprise. To date, the Enterprise has received all records that have been requested and our agency will continue to handle requests from them and all members of the public timely, reasonably, and as required by the law.