

**Report on Implementation of SB 420**

November 1, 2011

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The Oregon Health Authority, Addictions and Mental Health (AMH) Division and the Psychiatric Security Review Board (PSRB) respectfully submit the following SB 420 (2011) report. AMH and PSRB are required to report to the Legislative Assembly an implementation report on November 1<sup>st</sup>, 2011.

**Background**

Senate Bill 420 was passed in the 2011 regular session and takes effect on January 1, 2012. This legislation changes the dispositional phase of the legal process for those who successfully assert the insanity defense. It creates a two tier system based on the nature of the offense for which one is found “guilty except for insanity” of a crime who continue to be affected by a mental disease or defect which, when active, causes them to pose a substantial danger to others. Those who commit Tier 1 offenses (i.e., aggravated murder or Ballot Measure 11 crimes) will continue to be placed under the jurisdiction of the Psychiatric Security Review Board (PSRB), while jurisdiction of Tier 2 offenders (i.e., non-Ballot Measure 11 crimes) will shift to the Oregon Health Authority (OHA). OHA will be responsible for conducting the statutorily required hearings and making decisions regarding placement of the Tier 2 individuals. As is the case with the PSRB, OHA shall consider public safety as its primary concern when making these determinations. Once conditionally released to the community, jurisdiction of Tier 2 offenders will transfer to the PSRB for monitoring and supervision responsibility.

**Progress to date**

Under OHA, the Addictions and Mental Health Division (AMH) has developed a plan to implement SB 420. It will establish the Oregon Health Authority Review Panel and its necessary supports to hold hearings to decide when Tier 2 offenders should be discharged or may be conditionally released into the community. It will create and adopt administrative rules outlining the review panel process.

To date, the following steps in the implementation process have been initiated:

- A project plan was created which outlines each step that needs to be completed with associated timelines to ensure implementation on January 1, 2012. The plan extends through July 1, 2012 to ensure compliance with hiring procedures, administrative rule filing, stakeholder notifications, patient notifications, the convening of the hearing panel, and reporting deadlines.
- After consultation and collaboration with PSRB, a process map has been developed which identifies each step in the hospital discharge and legal process, starting with OHA's receipt of a judgment order and a person's admission to Oregon State Hospital through discharge or conditional release from the hospital. It outlines the timeframes associated with each step as well as what action is required.
- Temporary rules governing the OHA hearings process and review panel are currently being drafted and reviewed by OHA leadership, as well as by the Department of Justice (DOJ).
- Oregon State Hospital (OSH) staff have been working with staff from the PSRB and DOJ to better understand the legal aspects involved in the preparation and conduct of the various types of hearings the OHA Review Panel will have to provide.
- OSH staff is working with PSRB staff on an on going basis to gain an understanding of the procedural and logistical aspects involved in the hearing process. The PSRB has provided OSH staff with samples of all forms, letters, memos and orders the PSRB currently utilizes for OSH's review and use.
- OSH staff is working with PSRB to create a similar database that can share information between the two agencies as clients' jurisdiction will transfer between the two depending on placement. The two agencies are also collaborating to establish a joint exhibit file with identical content requirements for both boards' consideration at their respective hearings.
- OHA has completed the reporting structure for the employees responsible for SB 420. The two position descriptions for the Executive Support Specialist 1 (ESS1) and Paralegal positions have been completed.
- OSH is in the process of developing a Department of Legal Affairs. Micky Logan has been hired by OSH and will head up this department. The two

positions associated with this bill will report to her. That department will be responsible on an ongoing basis for the conduct of OHA hearings.

- OHA is currently recruiting various professionals for the Review Panel.
- DOJ and OHA are drafting a Memorandum of Understanding for PSRB's review and ultimate agreement which addresses areas of patient handoff and work overlap.

### **Next Steps**

In order to comply with the January 1, 2012 implementation date of SB 420, AMH will file temporary rules, complete the Memorandum of Understanding between the OHA and PSRB and will complete the hiring of the personnel (ESS1 and Paralegal).

In moving forward with the final rules, AMH will convene a full Rule Advisory Committee (RAC) in January of 2012 to work on development of the permanent rules which will be completed by July of 2012. AMH is developing a list of interested parties who will be notified by the end of the year.

Once AMH appoints the OHA hearing Review Panel members, OSH's Department of Legal Affairs will train them prior to January 1, 2012, regarding the process as well as their roles and responsibilities. Recruiting panel members has proven challenging in the implementation of SB 420. A major issue which needs to still be addressed is the lack of liability coverage in the statute for the work of these panel members.