

Olmstead, CRIPA and the Oregon PSRB

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Definitions -- CRIPA

- **Civil Rights of Institutionalized Persons Act (CRIPA)** – a federal statute administered by the Civil Rights Division of Department of Justice designed to protect the civil rights of individuals in public institutions, such as psychiatric hospitals, nursing homes, prisons.

Definitions - Olmstead

- Olmstead v. LC and EW -- 1999 Supreme Court decision, based on a section of the Americans with Disabilities Act, which focused on the rights of disabled persons receiving services in public institutions. The case involved two developmentally disabled women who had been voluntarily admitted to one of Georgia's state hospitals.

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- Eventually the hospital's treatment staff determined that each could be cared for in the community, but the two remained in the hospital. The suit was brought against the state of Georgia based on the state's failure to provide community care for these women.

Olmstead – Major Holding

- Judge Ginsberg wrote the majority opinion:
- “states are required to place persons with mental disabilities in community settings rather than in institutions when the State’s treatment professionals have determined that community placement is appropriate, the transfer...is not opposed by the affected individual, and the placement can be reasonably accommodated, taking into account the resources available.”

Cripa investigation of OSH

- June 14, 2006 -- the United States DOJ notified the Oregon Governor that it was initiating an investigation of the Oregon State Hospital (OSH) pursuant to (CRIPA).

DOJ Findings

- January 3, 2008 -- DOJ letter finding OSH deficient in five areas, four of which focused on the treatment environment within the hospital, including the lack of adequate nursing and psychiatric staff, the overuse of seclusion and restraint and the resultant failure to protect patients from harm.
- The final section of the letter focused on inadequate discharge planning

Linking CRIPA and OLMSTEAD

- Citing Olmstead the DOJ letter states:
- “Within the limitations of court-imposed confinement, federal law requires that OSH actively pursue the timely discharge of patients to the most integrated, appropriate setting that is consistent with the patient’s needs.”
- “Within the limitations of court-imposed confinement” is very meaningful in this context because the OSH population is almost totally court committed. (civil & criminal)

Olmstead & Oregon--2003

- 2003 -- the State of Oregon entered into a settlement agreement with Disability Rights Oregon (DRO) in a class action lawsuit alleging that the State had failed to provide community resources required to allow members of this class of “**civilly committed adults**” to be treated in the community.

Olmstead & Oregon -- 2003

- The settlement applied to Oregon's state hospitals" and to individuals who "had not been discharged within 90 days of the ready-to-place determination of their Treatment Team." The State agreed to develop the additional community resources necessary to accommodate the class.

Olmstead and the Obama Admin.

- 2008 Presidential election greatly influenced the policies of the DOJ.
- In the last month of the Bush administration the Civil Rights Division reached CRIPA settlements with six states (including Georgia)
- These settlements focused on the institutions and were criticized as being “weak”

2009—10th Anniversary of Olmstead

- President Obama – Declaration – Year of Community Living
- “The Olmstead ruling was a critical step forward for our nation, articulating one of the most fundamental rights of Americans with disabilities: Having the choice to live independently, I am proud to launch this initiative to reaffirm my Administration’s commitment to vigorous enforcement of civil rights for Americans with disabilities and to ensuring the fullest inclusion of all people in the life of our nation”

CRIPA & OLMSTEAD

- Following the Proclamation, DOJ issued a technical assistance guide for individuals and state and local governments.
- DOJ “has made enforcement of Olmstead a top priority” which “reaffirms its commitment to vindicate the right of individuals with disabilities to live integrated lives under the ADA and Olmstead”

New Georgia Settlement –10/2010

- DOJ and the State of Georgia -- a comprehensive agreement pertaining to patients in its hospitals for the mentally ill and developmentally disabled.
- Settlement expanded the CRIPA agreement made by the Bush administration.
- Based on Olmstead, this agreement focused on the significant expansion of the state's community mental health services with the goal of rapid deinstitutionalization of those patients ready for discharge, and on the development of stronger community crisis services in order to avoid future hospitalization.

DOJ Letter to Oregon--2010

- Soon after Georgia settlement the DOJ wrote a letter to the State of Oregon expanding its CRIPA investigation to determine how the State was complying with the Olmstead decision.
- This letter added emphasis to the portion of the original 2008 DOJ-CRIPA findings letter that dealt with hospital discharge.

OSH Populations-6/24/2011

- 581 patients – Portland and Salem
- 27% -- from civil commitment courts
- 73% -- from criminal courts
- 108 (25%) – Incompetent to Stand Trial
- 316 (75%) – PSRB Clients (insanity acquittes)
- Few voluntary patients since the late 1980s

Does Olmstead Apply to Criminal Court Commitments?

- The original Olmstead decision in Georgia applied to voluntary patients and in Oregon in 2003 to civilly committed patients.....Now 2008 OSH hospital was 73% criminal court committed.
- Remember the language: “within the limitations of court imposed confinement” and Community placement “is in order when the State’s treatment professionals have determined that community placement is appropriate”

Who Controls Release from OSH

- Civil Commitment – Physicians
- Individuals found Incompetent to Stand Trial – Physicians
- Individuals found GEI (Guilty Except for Insanity), (insanity acquittees) – the PSRB (Psychiatric Security Review Board) (Remember this is the largest population at OSH (316 (54%) on 6/24/11)

The Oregon PSRB

- The PSRB began functioning on January 1, 1978 with the statutory mandate to protect the public first and foremost
- responsible for the monitoring all persons found “Guilty Except for Insanity” by Oregon’s trial courts and who continue to be “mentally ill and dangerous”.
- Features include:
- a 5 member Board replacing approximately 90 trial court judges making decisions about the hospitalization or release of insanity acquittees;

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- a jurisdictional limit to the time an individual could be under the Board's jurisdiction ("insanity sentence")
- an extensive system of monitored conditional release based on individualized conditional release plans and the option for prompt revocation of conditional release and
- the statutory responsibility to discharge an insanity acquittee at any time during the jurisdictional time period if the Board finds that a person is "no longer mentally ill or dangerous".

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- Following the Hinckley verdict in 1983, the American Psychiatric Association recognized the PSRB as a potential model for other states to consider when revising their mechanisms for post-insanity defense procedures for insanity acquittees.

Scope of PSRB Activities

- 6/30/11--735 insanity acquittees under Board jurisdiction
- 328 (45%) were hospitalized at OSH
- 407 (55%) were on conditional release (397 (98%) in Oregon)

- 1st 6 months of 2011
- -----31 new insanity acquittees were committed by Oregon judges to PSRB jurisdiction, (5 (10%) following misdemeanor level offenses.
- -----38 individuals -- discharged from PSRB jurisdiction, 23 (61%) because PSRB jurisdiction had lapsed; 11(29%) after Board findings that they were no longer mentally ill or dangerous and 4 (11%) died during this time period.
- -----13 had conditional release revoked.
- -----PSRB conducted 387 hearings of which 162 (42%) were administrative reviews.

- No suicides or serious crimes reported for those on conditional release.

2011 Oregon Legislature

- The 2011 Oregon Legislature -- Faced with insufficient revenues and heavy budgetary demands, the legislators made significant changes in the laws governing admissions to its psychiatric hospitals.
- Enacted two major bills HB3100 and SB420

HB 3100

- With the agreement of all interested parties the bill has 3 components: The bill:
- 1. authorizes the Oregon Health Authority to develop a certification process for psychiatrists and psychologists who are participating in the evaluation of individuals for competency to stand trial or criminal responsibility at the time of the crime charged.
- 2. removes misdemeanor insanity acquittees from PSRB jurisdiction, but does allow judges to commit misdemeanants to the state hospital following successful insanity defenses if they remain mentally ill and a “substantial danger to others”.
- 3. provides for the hospitalization of those found IST only if the trial court determines them to be dangerous to self or others and as long as there are no services available for the person in the community. Without a finding of dangerousness those found IST are to be treated in the community.

Senate Bill 420

- The process that lead to the introduction of SB420 was atypical.
- In the midst of the legislative session and close to the deadline for hearings on bills, the Chief Justice of the Oregon Supreme Court was asked by the Oregon Health Authority (OHA) to convene a group to discuss the possibility of further legislation involving the PSRB.
- As I understand it, the group was made up of representatives from the OHA, the Governor's Office, the Attorney General's Office, and a group of state legislators led by the Chair of the Senate Judiciary Committee. Also invited was the Executive Director of DRO and a representative from the Oregon District Attorneys Association.
- No representatives from the PSRB itself, or the Oregon Psychiatric or Psychological Associations.

Senate Bill 420-2

- OHA presented no data as to why this bill was necessary or what problems they were trying to address.
- After several meeting the group introduced a bill that aimed solely at the PSRB. A hearing which lasted 6 minutes was held by the Senate Judiciary Committee and without further debate the bill was passed in Committee and sent off to the Joint Ways and Means Committee for consideration of its potential fiscal impact.

Senate Bill 420 - Proposal

- The bill proposed to transfer the total responsibility for hospitalized insanity acquittees from the PSRB to the OHA limiting the PSRB authority to individuals on conditionally release.
- OHA would have complete jurisdiction over the hospitalized insanity acquittees and would have the powers to conditionally release or discharge these individuals. Jurisdictional authority would pass between the PSRB and the OHA depending on whether the person was in the hospital or community.
- SB420 would have placed the hospital treatment team and superintendent in key position for initiating conditional release or discharge.
- The bill required OHA to hold hearings for hospitalized insanity acquittees in lieu of the PSRB and to follow all of the current law in considering conditional release or discharge.

Senate Bill 420 - Final

- One amendment was allowed. Many of the state's distinct attorneys supported the PSRB and its excellent track record over the years in regard to crimes committed by individuals on conditional release. DAs proposed an amendment that would keep PSRB jurisdiction over hospitalized insanity acquittees with the most serious crimes leading to the insanity verdict.
- In order to get the bill passed the supporters accepted this amendment which then divided the crimes leading to the insanity verdict into "tier one", the most serious crimes and "tier two", those crimes that are "not tier one".
- The passage of this amendment allowed the bill to pass. The PSRB estimates that 60% of those currently in the hospital would remain under its jurisdiction with 40% then transferred to the jurisdiction of OHA

New Hospital Construction

- 2007 Legislature approved a 600 bed replacement hospital in Salem (now complete) and a 350 bed hospital in Junction City.
- Because of projected costs and political opposition the 2011 Legislature approved 5 million dollars for continued planning for only 174 bed hospital in Junction City.
- (Long term fate of 100 beds at POSH and 50 beds at Blue Mt. Recovery Center unclear.)

Discussion

- Hypothesis 1: Senate Bill 420 was designed to turn control of release decisions to the hospital and pave the way for a CRIPA agreement with the DOJ.
- Hypothesis 2: Based on costs and ideology the numbers of public psychiatric beds will continue to be inadequate to meet the needs of the state's population.

SB 420, CRIPA & Olmstead

- In supporting a new state hospital in Salem, including appropriate improvement in staffing and operations Oregon has come a long way to satisfying the CRIPA issues raised in the 2008 Findings Letter.
- SB 420 was a planned attempt to bring Olmstead language into Oregon law .
- It would not be a surprise to see a CRIPA settlement in the not to distant future.

DOJ Settlement in Delaware

- 7/11 – DOJ settlement with the state of Delaware included language about criminal court commitments.
- Settlement included: “People who are currently at Delaware Psychiatric Center, including those on forensic status for whom the relevant court approves community placement.”

Contrast to Oregon

- Since 1977 there is no relevant court imposing confinement for insanity acquittees at OSH. PSRB is the successor to the Court's authority.
- SB 420 substituted OHA and OSH as the successor organization for the PSRB for "tier two" patients.
- The law subjects OHA to many potential problems, including having to set up an entirely new legal structure with anticipated charges of conflict of interest between census reduction, cost containment and protection of the public.

Oregon & Insanity Defense Law

- SB 420 presents a highly unusual legal structure in regard to the insanity defense by defining a unique approach to hospital release.
- In most all jurisdictions release decisions are made by the original commitment court.
- SB 420 harkens back to the 1970's in insanity defense law when some states transferred insanity acquittees to the civil commitment system after a period of evaluation.
- This situation did not last and in many ways is similar to the situation in the 1970's led to the development of the PSRB

Hypothesis 2 – Psychiatric Beds

- Costs:
- There is a national crisis in psychiatric beds in the U.S. and Oregon
- Emergency Rooms are overcrowded and patients wait in EDs for beds to open
- Lack of psychiatric beds fueled the “incarceration revolution” (topic of last grand rounds)
- What appears to be the OHA plan: limit front door, and increase thru-put in the hospital, and exist with current number of beds.

One Side in the Bed Argument

- Ideology:
- “Lastly in the midst of severe budget cuts, Oregon plans to build a new, large state hospital in Junction City. The cost of operating this “big box” in the middle of a field in the Willamette Valley has to come from somewhere. Will it come from school budgets? State police? Corrections? Or, maybe, the desperately strapped community mental health budget? If community mental health is cut to staff Junction City, Oregon will be the anti-Olmstead state: it will create a structure of unnecessary segregation of individuals with mental disabilities. In sum, Oregon has been and remains content to leave people in expensive, unnecessary state hospital beds.” (Director DRO, 2010)