

HEALTH

Federal judge blasts Marion County in a scathing Oregon State Hospital ruling



By **Conrad Wilson** (OPB)

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An obviously angered federal judge ruled this week that a criminal defendant in Marion County cannot return to the Oregon State Hospital, months after efforts to treat the person's mental illness at the psychiatric facility failed.

The ruling is the latest spat between the county and U.S. District Court Judge Michael Mosman, who last year agreed to reduce the length of time patients could stay at the state hospital. The changes were temporary and designed to reduce how long criminal defendants, many in crisis, had to wait before they were admitted from local jails. The bulk of the hospital's work is to provide psychiatric treatment to people charged with crimes whose mental illness is so acute they cannot aid in their own legal defense. It's unconstitutional to prosecute someone in that condition.

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Oregon has long struggled to help people suffering from mental health problems. The



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providers who can intervene before a person's mental illness spirals out of control. Advocates for people with disabilities and prosecutors agree it shouldn't take getting charged with a crime before someone gets access to treatment. But Marion County contends it's the state's job to fund and provide the bulk of that care.

In a ruling Tuesday, Mosman took exception with Marion County's efforts to return a defendant to the state hospital, because those efforts violated the temporary admission standards state health officials, several district attorneys, disability advocates and county leaders — including those in Marion — [all reaffirmed just four months ago](#).

“Marion County is a little like someone showing up to a delivery truck where they are handing out free loaves of bread to people in need,” Mosman wrote in the order issued Tuesday. “When he first arrives, it looks like everyone will get a loaf to themselves. But then unexpectedly, a lot more people show up, and so now the loaves will need to be divided to feed everyone. But Marion County insists that it get its whole loaf, regardless of what that means to others.”



A federal judge ruled this week that a criminal defendant in Marion County cannot return to the Oregon State Hospital, shown in this Jan. 27, 2022 file photo, months after efforts to treat the person's mental illness at the psychiatric facility failed.

Kristyna Wentz-Graff / OPB

A long-running debate

Oregon is under a decades-old federal court decision, known as the “Mink order,” after Bobby Mink, the director of the state’s Department of Human Services in 2002. That’s when a federal judge ordered the state hospital to admit people charged with crimes within seven days of a state court judge finding them too mentally ill to aid in their own defense.

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In 2018, the number of people stuck in local jails waiting for admission into the state hospital grew, and the Oregon Health Authority, which runs the facility, fell out of compliance with the Mink order. Disability advocates sued, which put the case before Mosman. Over the course of several years and dozens of courtroom hearings, Mosman listened, asked questions and made rulings as state health officials and disability advocates sparred over how best to protect the constitutional rights of incoming patients.

Put simply, Mosmon's job was to bring the state back into compliance with the Mink decision. For the last two months, the state has succeeded.

Mosman [issued a ruling last year that temporarily reduced](#) the amount of time patients can stay at the state hospital. Patients facing the most serious charges were allowed to stay for up to one year, because most who respond to treatment do-so within a year or less. The compromise marked a major break-through after years of litigation between disability groups and the state.

In July, Mosman agreed to amend the order to accommodate district attorneys, state court judges and counties who asked to intervene in the case only after the new admission rules began to affect criminal cases in state courts. The plan called for the state hospital to release people charged with crimes, but not necessarily well enough to aid in their defense. That meant prosecutors and state court judges could face difficult decisions about dropping criminal charges.

Disability advocates note it shouldn't take a criminal charge against them for someone in Oregon to get treatment for a mental illness.

"If somebody says there aren't enough mental health resources in Oregon, they'll get no arguments from me," Tom Stenson, deputy legal director for Disability Right Oregon, told OPB. "It doesn't make any sense to jump from, 'We're frustrated that there aren't enough mental health resources in the state,' to saying, 'A good thing to do about that is to take this guy who was just inside the state hospital for more than a year and stick him back in and see if we get a different result.' I mean, there's a big disconnect there."



A hallway in the Bridges Program at the Oregon State Hospital in Salem, in this March 8, 2023 file photo. Patients in this area have pleaded guilty except for insanity to a crime.

Kristyna Wentz-Graff / OPB

The case in question

The underlying case involves Allen Moten, who was released from the state hospital in late January, after charges against him in Lane and Multnomah counties were dismissed.

Prosecutors in Multnomah County charged Moten early in 2021 with misdemeanor crimes, including harassment and interfering with public transportation. Months later, prosecutors in Lane County charged Moten with allegedly damaging a library in Eugene as well as injuring another person's hand with the handle of a knife. Despite more than 14 months receiving care, judges in both counties agreed that Moten's mental illness

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After he was released, Moten still had an outstanding warrant. The Marion County District Attorney's Office alleges Moten escaped from the state hospital in 2020, and that charge remains unresolved.

Police arrested Moten on July 13 after he failed to appear in court. Days later, a clinical psychologist determined Morton "has a well-documented history of Schizophrenia, is off medication, and is currently displaying several negative symptoms (e.g., flat affect, impoverished thinking) and responses to auditory hallucinations," according to court records. The psychologist recommended Moten receive care in a hospital setting.



A dining area at the Oregon State Hospital in Salem, March 8, 2023.

Kristyna Wentz-Graff / OPB

The county also looked for treatment options outside of the state hospital, but was unable to find one that could accept Moten. So on July 28, Marion County Circuit

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Hospital administration denied Moten's admission, citing Mosman's temporary admission order aimed at getting the psychiatric facility back into compliance with defendants' constitutional rights.

The Marion County District Attorney's Office asked a state court judge to determine whether the hospital was right.

"At this time, the Oregon State Hospital through its attorneys has determined that Defendant is not eligible for admission," a prosecutor with the Marion County District Attorney's Office wrote in a Sept. 14 court filing. "At this time we ask the Court to determine whether that is correct."

Marion County Circuit Court Judge James Edmonds determined Moten could be sent to the hospital. Edmonds also asked the state hospital to explain why it didn't admit Moten, an order, if violated could result in hospital staff being held in contempt of court.

State health officials objected and asked Mosman to clarify whether Moten could be admitted.

Mosman's ruling was scathing.

"So how did we get here, again, with Marion County coming up with implausible workarounds and threatening well-meaning, overworked public health workers with the draconian punishment of contempt?" Mosman wrote in his ruling this week. "Marion County says the answer lies in the fact that the defendant 'has statutory and constitutional rights to be restored at [the Oregon State Hospital].' True, as far as it goes. So, of course, does the defendant languishing in some other county's jail who cannot get into OSH because Marion County is demanding that its defendants take priority."

Marion County Commissioner Colm Willis blasted Mosman's ruling.

"It's unfortunate that Judge Mossman was so disrespectful of a Marion County Judge's attempt to keep our community safe," Willis said in a written statement. "At issue was the status of a patient who had escaped from the state hospital. Here in Marion County, the home of the state hospital, we feel the effects of these situations immediately. For Judge Mossman to dismiss such a serious question in such a flippant manner is disappointing to say the least."

Stenson, with Disability Rights Oregon, said Mosman has bent over backwards to accommodate Marion County's demands. The county relies on state and federal dollars to fund community mental health, Stenson pointed out. "There's actually zero money coming out of the coffers of Marion County to support mental health efforts," he said.

Stenson said Disability Right Oregon sued the state years ago. It was only after Mosman's order jeopardized criminal cases in state courts that district attorneys, private hospitals and counties got involved, he said. Limiting the amount of time people charged with crimes can stay at the hospital has exposed the lack of other treatment options. Stenson said it shows how some in the criminal justice system view the state hospital as a "dumping ground" to "warehouse people."

"Instead of building those therapeutic networks, they stick them in the state hospital because they know that they may never get a conviction, but that guy will be out of the community for a year or two while all this gets sorted out," Stenson said. "That's the real game. That's how a lot of people view this system."

Last month, Marion County's attorneys filed a lawsuit in state court that argues the leaders of the Oregon Health Authority and the State Hospital aren't following the law because they've failed to provide care for those ordered to receive treatment at the hospital.

"It's clear everyone is frustrated with the state of Oregon's behavioral health system," Marion County District Attorney Paige Clarkson told OPB.

She said the criminal justice system failed to provide Moten treatment. The county will try to connect Moten with mental health services.

But Moten's defense attorney has filed a motion to dismiss the charges in Marion County. If a judge signs it, that means Moten could be released from the Marion County Jail any day, Clarkson said.

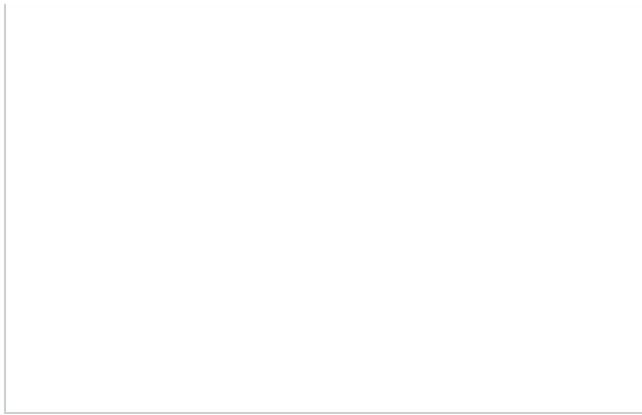
"Unfortunately, for defendants like this one, he will not be getting any help," she told OPB. "That's not a result anyone wants. It's not safe for him, and it's not safe for any of our communities."

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