Perspectives on the Mental Health / Criminal Justice System Interface

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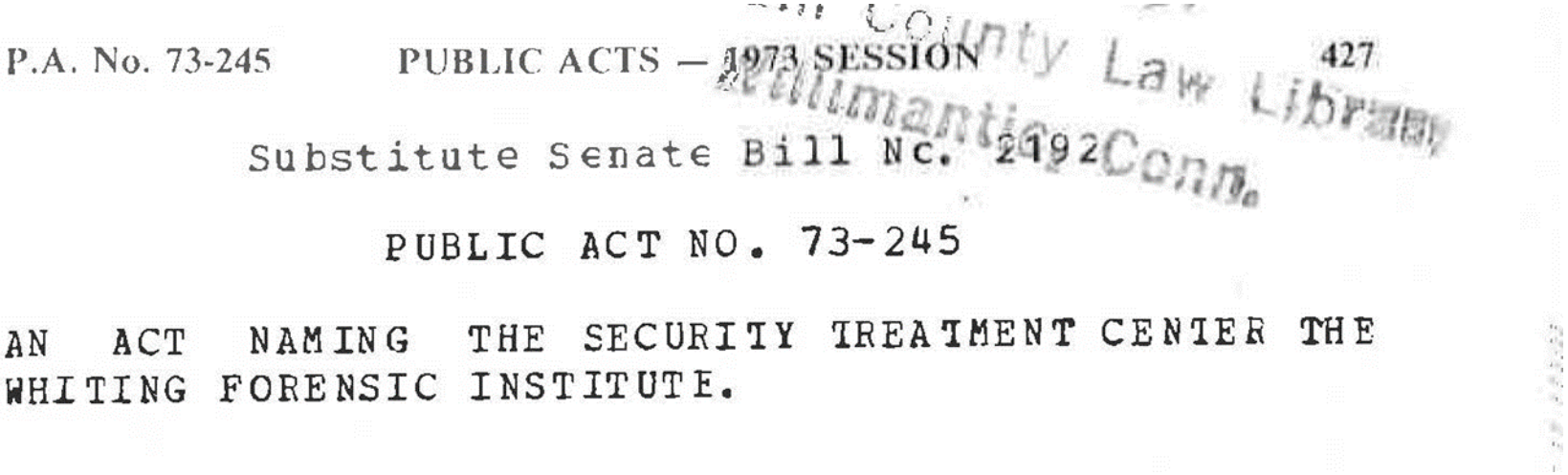
Disclosures

- No financial or commercial interest in the subject of this talk
- Worked at Whiting from 1988-1996, 2000-2007, 2017-2018
- DMHAS Director of Forensic Services from 2007-2023
- DMHAS Forensic Policy Advisor 2023-

Whiting History

- Built in the late 1960s
  - Designed to hold 140 individuals
- Opened in 1970 as the “Secure Treatment Center”
- Re-named Whiting Forensic Institute in PA 73-245

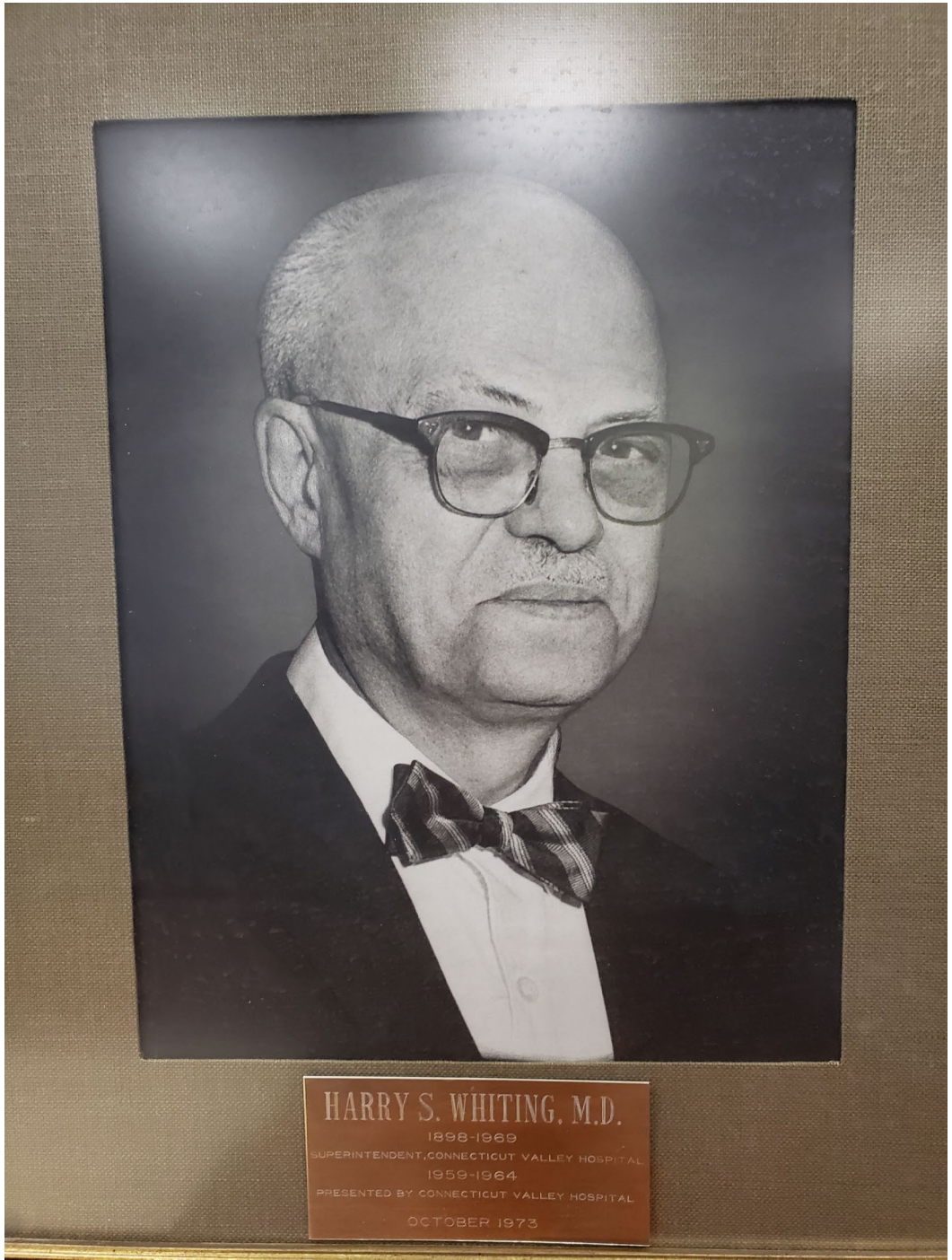


P.A. No. 73-245 PUBLIC ACTS — 1973 SESSION 427

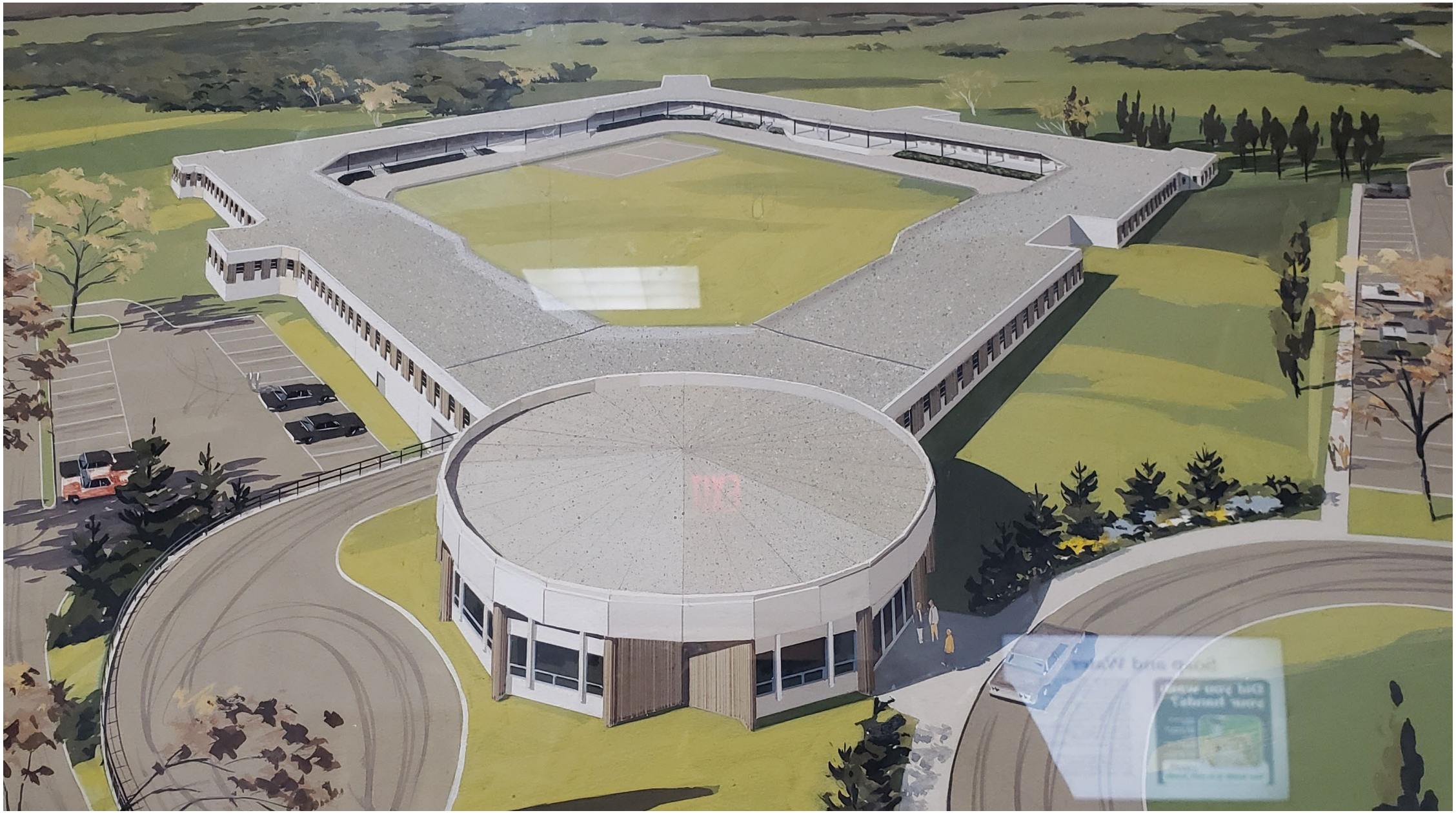
Substitute Senate Bill No. 2192

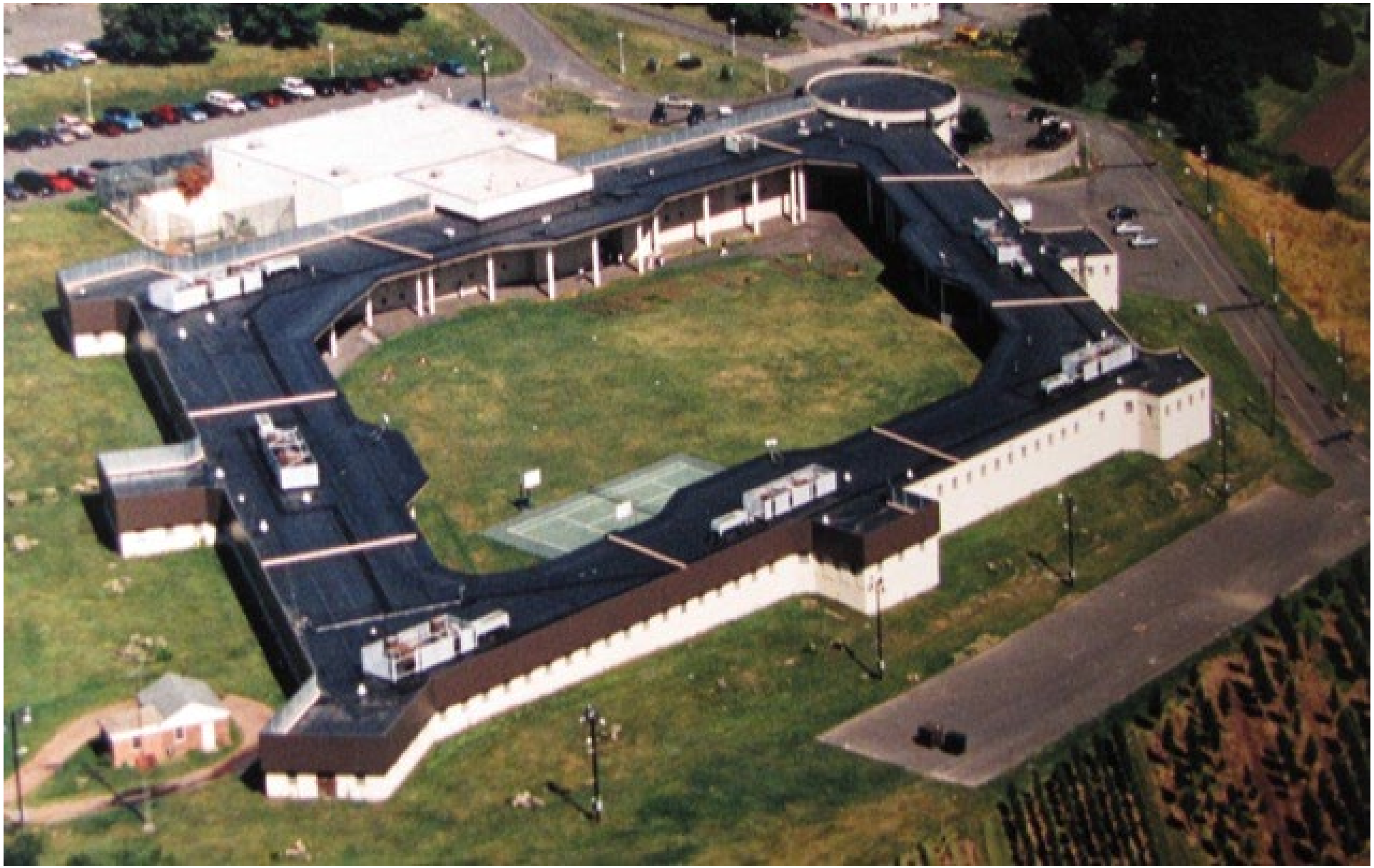
PUBLIC ACT NO. 73-245

AN ACT NAMING THE SECURITY TREATMENT CENTER THE WHITING FORENSIC INSTITUTE.



Harry S. Whiting MD





Purpose

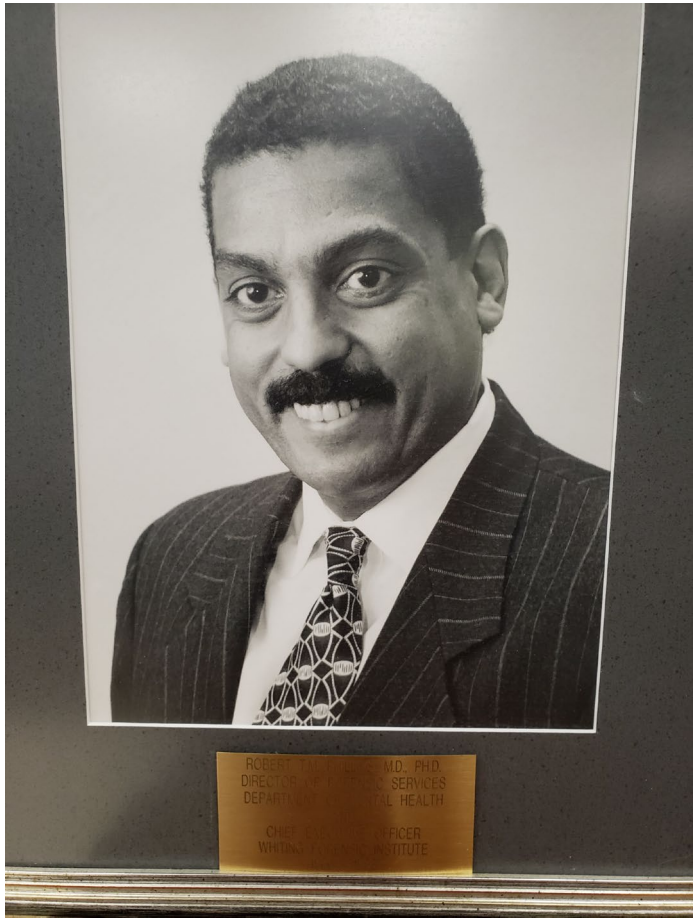
- CGS 17a-517 (formerly 17-194g)
  - For the psychiatric hospitalization of any person in the custody of DOC who is a “desperate or dangerous individual.”
    - This language remained until it was removed in PA 18-86
- CGS 17a-561 (formerly 17-239)
  - DMHAS patients who require treatment under maximum security conditions
  - Persons convicted of offenses enumerated in 17a-566 who have psychiatric disabilities and are dangerous to self/others and require custody, care, and treatment at hospital
  - Inmates in DOC who are transferred for psychiatric care
    - In PA 18-86, added treatment to restore competence to stand trial and treatment of insanity acquittees

Offenses Enumerated in 17a-566

- CGS 17a-567; formerly 17-245
  - Available post-conviction but pre-sentence
  - For the inpatient evaluation and potential treatment of person convicted of offense for which imprisonment at CCI Somers was the penalty (i.e., felony) or of sex offenses involving physical force or minor victim by adult perpetrator, or sex offenses of compulsive or repetitive nature
  - Allowed WFI to discharge person to state hospital, then to community, under parole
  - PA 89-89 removed this option, when parole was discontinued

Whiting Forensic Institute (1973-1995)

- Operated four units (out of six) until 1988
- Professional staff offices on other two units
- In 1988, opened final two units to increase capacity for DOC transfers
  - Total capacity 104 on 6 units
- Achieved Joint Commission Accreditation in 1989



Security and Treatment

AMERICAN JOURNAL OF FORENSIC PSYCHOLOGY: VOL 7, ISSUE 2, 1989 / 49

SECURITY ASPECTS OF CLINICAL CARE

Carol J. Scales, M.S.N., R.N.
Robert T.M. Phillips, M.D., Ph.D.
Lt. David Crysler

Balance: The Collaborative Forensic Model

- Effective clinical care can never be provided in an environment where either the patient or the therapist feels unsafe
- Safety is everybody’s business
- Security is a state of mind

Insanity Defense

- Hinckley trial prompted much discussion of the defense and legislative changes
- American Psychiatric Association (APA) statement strongly supporting the insanity defense (1983 and subsequent reiterations)
  - "…the insanity defense has always been grounded in the belief that there are defendants whose mental conditions are so impaired at the time of the crime that it would be unfair to punish them for their acts."
- Psychiatric Security Review Board (PSRB) Model
  - Oregon model (adopted in 1979) strongly supported by APA 1983: initial hospitalization followed by "long period of conditional release with careful supervision and outpatient treatment"
  - Adopted in CT 1985
  - CT praised by the Treatment Advocacy Center (2017 report) for PSRB and having "one of the best state forensic programs"
- Movement through state hospital system (pre and post PSRB)

July 1989 – Tragedy

- Killing of 9-year-old Jessica Short on Main Street, Middletown
- All acquittees on release status were brought back to hospital
  - Plan was for re-assessment of risk and treatment/supervision plans
  - Patients were not placed back on their previous plans
  - Resulted in lawsuit (Aug 1989) and Roe v. Hogan Settlement Agreement (Dec 1990) in federal district court
- Patients in Whiting recognized that their release would be more difficult and that people in the community would treat them differently

Whiting Forensic Division of Connecticut Valley Hospital (1995-2018)

- PA 95-257
  - Closure of Fairfield Hills Hospital and Norwich Hospital
    - Many patients discharged to community
    - Those who could not were transferred to CVH
  - Merger of WFI into Connecticut Valley Hospital (Whiting Forensic Division of CVH)
  - Director of Whiting to report to Director of Forensic Services
- Two competency restoration units (48 beds) at CVH became part of WFD
  - PA 99-210 made exception for use of mechanical restraint for transport of Whiting patients
  - PA 00-05 made exception for transport restraint based on legal status
  - One unit closed because not needed; moved to Dutcher Hall
- PSRB patients at CVH moved to Dutcher Hall in 1999


Whiting Forensic Services

Whiting Forensic Hospital (2018-present)

- PA 18-86
  - Separated Whiting from CVH as WFH by statute
    - Following Executive Order No. 63, effective 12/31/17
  - Created Task Force to study both hospitals
  - Made WFH subject to Department of Public Health licensure
  - Whiting CEO to report directly to DMHAS Commissioner
  - Removed language referring to Whiting patients as “desperate or dangerous individuals”

PSRB at the MH/CJ Interface

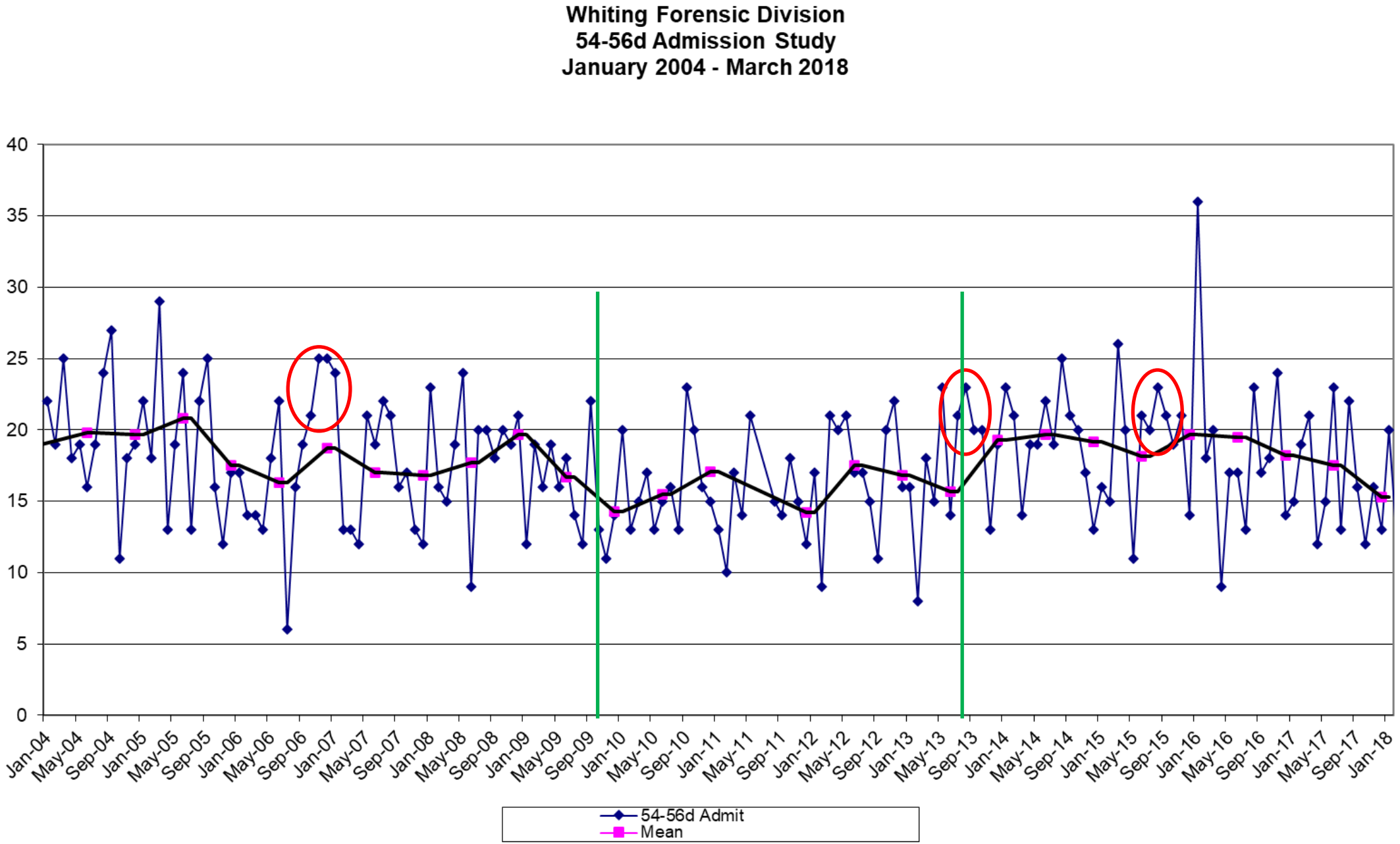
- PA 96-121 added a victim advocate as the sixth member of the Board
- Like Whiting itself, the Board is a focal point for the pressures for security/containment versus for care/recovery/re-integration
- Commitment to PSRB is often misunderstood
  - Hospital/DMHAS task of care is often misunderstood and is challenged
- PSRB decision-making role and CMS finding in 2017
- Commitment length is tied statutorily to possible prison sentence
  - Links punishment to individuals who have been found not morally blameworthy for their criminal acts

Ethics Consideration

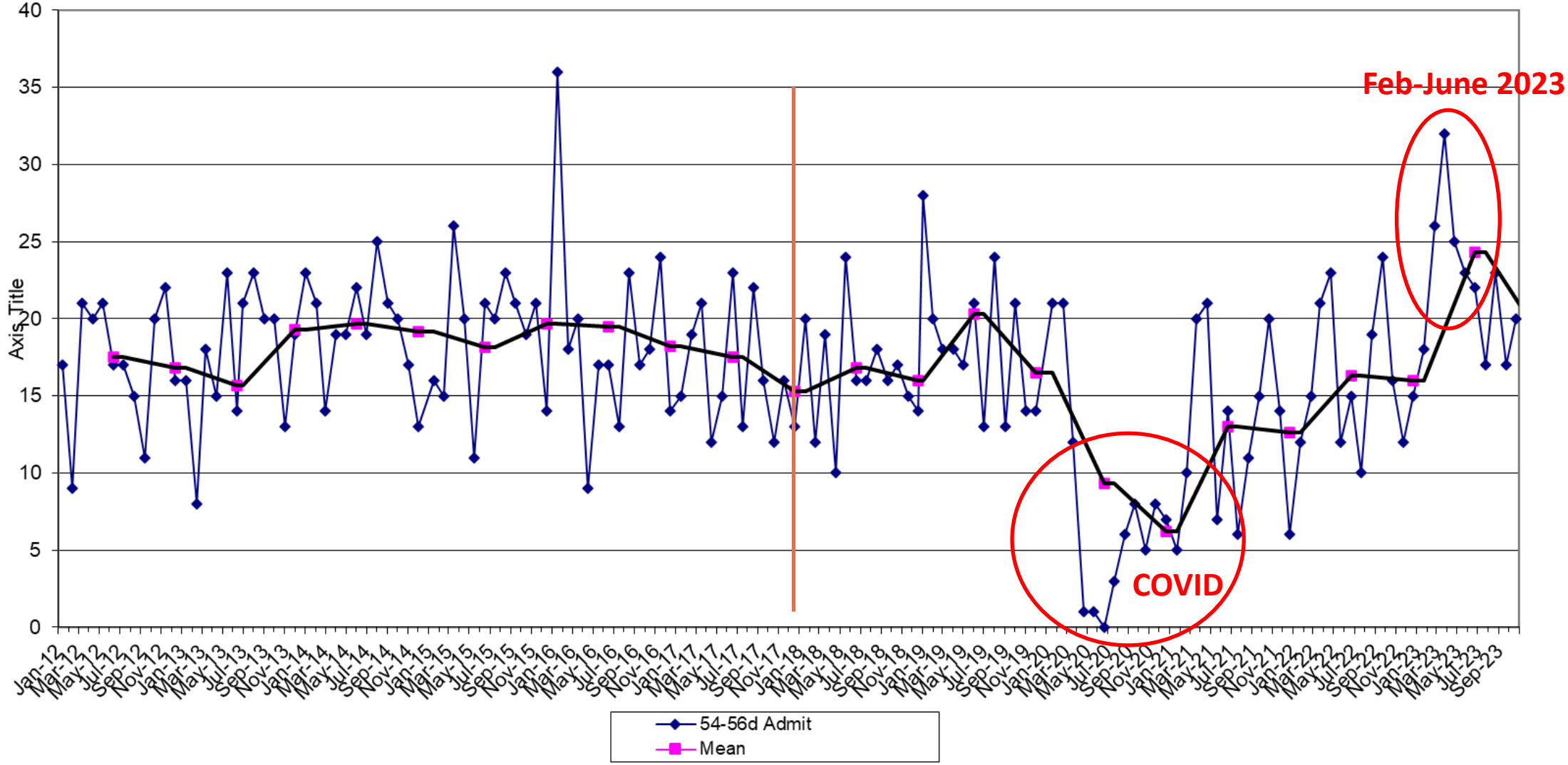
"Risk assessments are the proper concern of health professionals to the extent that they initiate remedial interventions that directly or indirectly benefit the person assessed. Decreasing a mentally disordered individual's chance of injuring others is a benefit to them as well as to the future victim…Confining and containing offenders as punishment, or simply to prevent further offending, may be legitimate for a criminal justice system but should have no place in a health service."

Paul Mullen, 2000 (p 308)

Competency Restoration



Whiting Forensic Division
54-56d Admission Study
January 2012 - October 2023



Consequences of Over-Census Conditions

- Daily attention to managing census
- Increased movement within hospital to accommodate new admissions
- Misdemeanor and low clinical risk individuals admitted to maximum security because no room in enhanced security
- Whiting unavailable for civil patients who need more secure settings
- Other hospitals asked to receive transfers from Whiting and DOC
- Brief continuance requests

Not Competent and Not Restorable (NCNR)

- 54-56d(m): “not a substantial probability that the defendant will attain competency within the period of treatment allowed…or at the end of such period”
  - Substantial probability not defined, including in Jackson v. Indiana, 406 U.S. 715 (1972)
- Creates concern for judges, prosecutors, victims, public
- Courts can order DMHAS to petition for civil commitment, even when clinically inappropriate
- Courts often keep high bonds on the individual in DMHAS custody as civil patient
- Periodic review (PA 98-88; for cases of death/serious physical injury) is often misunderstood
  - State v. Jenkins, 954 A.2d 806 (2008) ruled that restoration time is cumulative

54-56d(m) Work Group [2013-2015]

- Included judges, prosecutor, defense attorney, agency reps
- ABA Standards for Criminal Justice Mental Health (1984)
  - In cases of serious bodily harm, recommended special hearing on factual guilt, with possibility of “special commitment” to procedures used by jurisdiction for insanity acquittees
  - Commentary: “ABA believes strongly that a procedural mechanism must be provided to determine factual guilt or innocence of nontriable defendants, in fairness to them, and to commit to compelled hospitalization dangerous former criminal defendants, in fairness to society.”
  - 2016 update did not include this recommendation, although it was recommended by the committee assigned to review it

Other States' Efforts

- New Mexico: if court finds by C&CE that person committed crime and is dangerous, committed with re-hearing every 2 years
- Ohio: if court finds by C&CE that person committed crime and is mentally ill and subject to hospitalization, committed with re-hearing in 6 mos, then every 2 years
- Oregon commits "extremely dangerous persons" to their PSRB using their civil commitment statutes

Status in CT

- Work group failed to achieve consensus on what to recommend
  - Defense attorneys felt it unethical to represent incompetent defendant at a hearing in criminal court
  - One of the agencies did not wish to cede authority to a court to order/direct treatment under some form of “special commitment”
- Individuals with permanent brain injuries, intellectual disability, and chronic psychosis forced to be re-evaluated (very unlikely to be CST)
  - Was set at every 6 mos in PA 10-28
  - A mother’s advocacy led to change to 18-month reviews in PA 18-134
- Statute silent on whether a defendant might be sent for restoration following a periodic review report noting possible treatability
- NCNR individuals, who can be very similar to acquittees (except were too ill or impaired to even stand trial), have no monitoring of their care and status by the court or other judicial body

Task Force Report December 16, 2021

- Concerns about Whiting physical plant: recommend consideration of new maximum-security facility to promote recovery and healing
  - Stated goal of both safety and recovery and path to community reintegration
  - Milieu to encourage patient self-enrichment, creative activities, educational pursuits, vocational training, mastery of independent living skills
  - Adequate preparation to be safe and successful in returning to the community
- Need to develop robust community resources

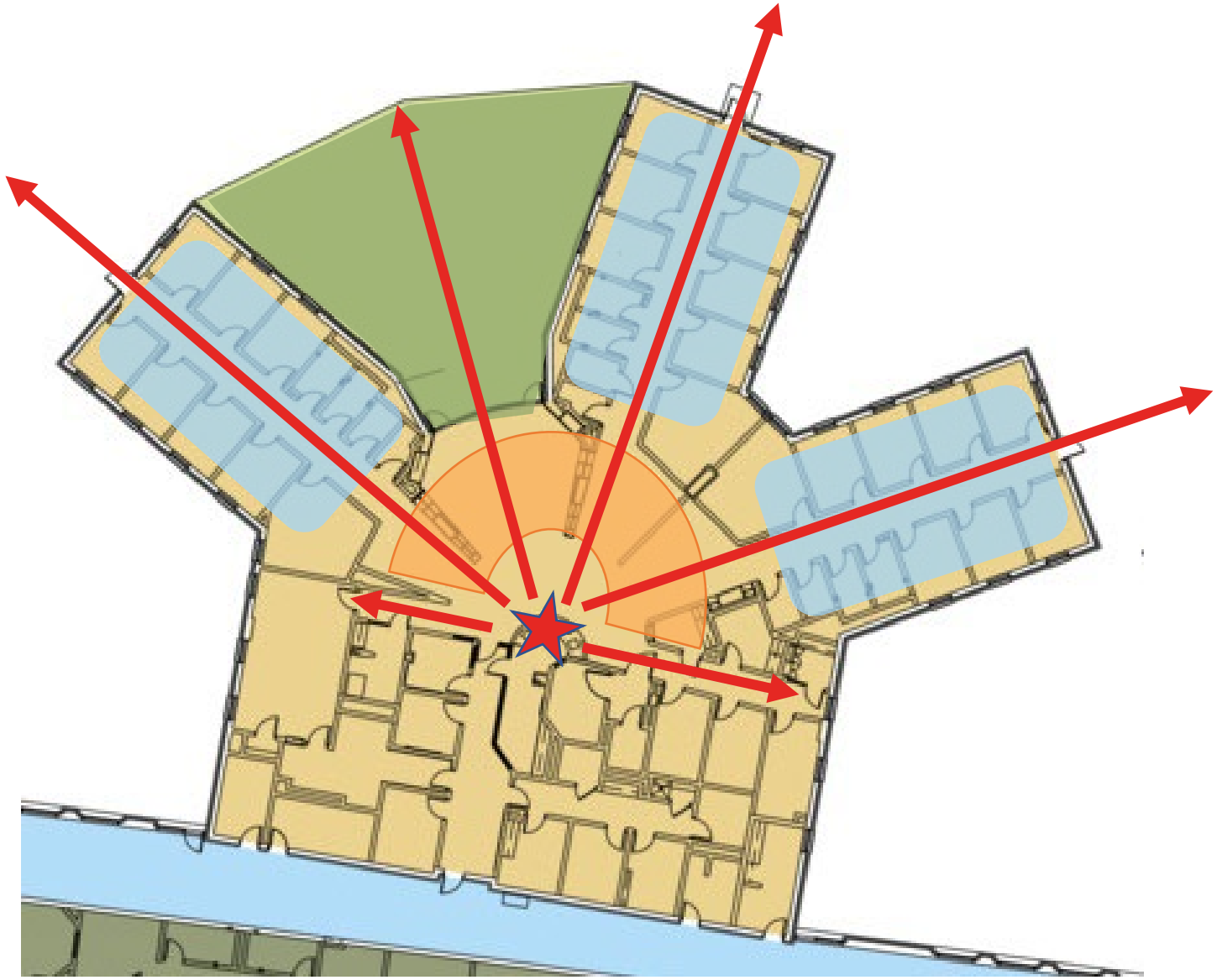
PA 22-45

- Effort to re-balance concern for the well-being of acquittees
  - Sec. 4 amended 17a-584 such that the PSRB's "primary concerns are the protection of society *and the safety and well-being of the acquittee*"
  - Sec. 5 amended 17a-593 such that the court's "*secondary concern is the safety and well-being of the acquittee*" at re-commitment hearing (but a joint *primary concern* at initial commitment [17a-582(e)] in Sec. 3)
  - Sec. 7 allowed patients to apply for Temporary Leave
  - Sec. 8 allowed WFH to transfer acquittees to Dutcher service without PSRB approval
  - Sec. 6 created Working Group to evaluate PSRB
    - "balancing of the protection of society, victims' rights and the health and well-being" of acquittees

WFH Architecture Study

- Directed in PA 22-45
- Architects and hospital staff meeting since September 2023
  - Review of program needs/space requirements
- Two sites in Middletown being studied
- Study report due January 2024

LIVING UNIT LAYOUT | BEST PRACTICES

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January 2023 Sentencing Commission Report

- 32% of the incarcerated population was classified as having an active mental health disorder requiring treatment (MH-3 or higher).
- An additional 41% of the population was classified as having a history of mental health disorders not requiring active treatment (MH-2).
- 34% had a moderate substance abuse problem requiring treatment (T-3)
- 40% of the population had a serious or an extremely serious substance abuse problem requiring residential or intensive outpatient treatment (T-4 and T-5).

Considering Intersectionality

- In only 7% of people with mental illness who are arrested are symptoms of their illness directly related to the criminal activity (Peterson et al, 2010).
- Most people who experience mental illness are arrested for the same reasons as people who do not experience mental illness. (Peterson et al. 2010; Skeem et al. 2011; Peterson et al. 2014)
- Most people living with mental illness are not violent and are not arrested.
- The risk factors for mental illness and criminal justice involvement largely overlap, with social determinants contributing substantially to both outcomes (Rotter and Compton 2022; Ashekun et al. 2023)

Considering Homeostasis in Insanity Acquittal

- Prevent recommitment of insanity acquittees
  - Judges could order longer commitments
- Decrease commitment or hospitalization lengths
  - Prosecutors could more vigorously challenge release
- Shift balance toward recovery
  - Prosecutors could more vigorously challenge initial insanity defenses
- Balance in favor of safety/security
  - Defendants will not seek insanity defense

Present Useful Directions

- Enhanced Forensic Respite Bed (EFRB) and Jail Diversion
  - Potential to expand to outpatient restoration and early intercept
- PSRB community bed expansion
- PSRB Working Group
- Re-imagining re-entry from DOC
- Inter-agency and inter-branch collaboration that exists in CT

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