

Requested by Representative BARKER

**PROPOSED AMENDMENTS TO  
HOUSE BILL 2306**

1 In line 2 of the printed bill, after “proceed” insert “; creating new pro-  
2 visions; and amending ORS 161.370, 161.375 and 421.633”.

3 Delete lines 4 through 10 and insert:

4 **“SECTION 1. (1) The Oregon Health Authority shall adopt rules**  
5 **requiring that information concerning defendants lacking fitness to**  
6 **proceed be shared between the authority, state mental hospitals, law**  
7 **enforcement agencies, district attorneys, courts and community men-**  
8 **tal health programs.**

9 **“(2) The rules described in subsection (1) of this section shall specify**  
10 **that the information that must be shared includes but is not limited**  
11 **to the defendant’s diagnosis, acuity level, prior criminal history,**  
12 **treatment plan, discharge status, time spent in custody and charges**  
13 **and the identity of the court.**

14 **“(3) Any information shared pursuant to subsection (1) of this sec-**  
15 **tion may not be further disclosed except as authorized by state and**  
16 **federal law.**

17 **“SECTION 2. ORS 161.370 is amended to read:**

18 **“161.370. (1) When the defendant’s fitness to proceed is drawn in question,**  
19 **the issue shall be determined by the court. If neither the prosecuting attor-**  
20 **ney nor counsel for the defendant contests the finding of [the] a report filed**  
21 **under ORS 161.365, the court may make the determination on the basis of the**

1 report. If the finding is contested, the court shall hold a hearing on the is-  
2 sue. If the report is received in evidence in the hearing, the party who con-  
3 tests the finding has the right to summon and to cross-examine any  
4 psychiatrist or psychologist who submitted the report and to offer evidence  
5 upon the issue. Other evidence regarding the defendant's fitness to proceed  
6 may be introduced by either party.

7 “(2)(a) If the court determines that the defendant lacks fitness to proceed,  
8 the criminal proceeding against the defendant shall be suspended. [*and*.:]

9 “[*a*] (b) **The court may order the commitment of the defendant for**  
10 **restoration of fitness to proceed, as described in paragraph (c) of this**  
11 **subsection, if the court has received a report of an examination by a**  
12 **certified evaluator as defined in ORS 161.309 and the court finds:**

13 “(A) [*If the court finds*] That the defendant is dangerous to self or others  
14 as a result of mental disease or defect[.]; or

15 “(B) That, based on the findings resulting from the consultation described  
16 in ORS 161.365 (1), the services and supervision necessary to restore the  
17 defendant's fitness to proceed are not available in the community[.].

18 “(c) **If the court orders the commitment of the defendant under**  
19 **paragraph (b) of this subsection, the court shall commit the defendant:**

20 “(A) To the custody of the [*superintendent of a state mental hospital or*  
21 *director of a facility, designated by the Oregon Health Authority, if the de-*  
22 *fendant is at least 18 years of age,*] **Oregon Health Authority if the de-**  
23 **fendant is at least 18 years of age; or**

24 “(B) To the custody of the director of a secure intensive community in-  
25 patient facility designated by the authority if the defendant is under 18 years  
26 of age[; *or*].

27 “[*b*] (d) **The court shall release the defendant on supervision for**  
28 **the duration of time that the defendant lacks fitness to proceed:**

29 “(A) If the court does not make a finding described in paragraph [*a*] (b)  
30 of this subsection[.]; or

1       “(B) If the court determines that care other than commitment for inca-  
2       pacity to stand trial would better serve the defendant and the community[,  
3       *the court shall release the defendant on supervision for as long as the unfitness*  
4       *endures*].

5       “[(3)] (e) When a defendant is released on supervision under **paragraph**  
6       **(d) of this** subsection [(2)(b) of this section], the court may place conditions  
7       that the court deems appropriate on the release, including the requirement  
8       that the defendant regularly report to the authority or a community mental  
9       health program for examination to determine if the defendant has gained or  
10      regained capacity to stand trial.

11      “(3) **If the defendant is committed to the Oregon Health Authority**  
12      **under subsection (2) of this section, the authority shall then determine**  
13      **the location of the defendant’s commitment in consultation with the**  
14      **community mental health program director or the director’s designee.**

15      “(4) When the court, on its own motion or upon the application of the  
16      [*superintendent of the hospital*] **Oregon Health Authority** or **the** director  
17      of the facility in which the defendant is committed, a person examining the  
18      defendant as a condition of release on supervision, or either party, deter-  
19      mines, after a hearing, if a hearing is requested, that the defendant has  
20      gained or regained fitness to proceed, the criminal proceeding shall be re-  
21      sumed. If, however, the court is of the view that so much time has elapsed  
22      since the commitment or release of the defendant on supervision that it  
23      would be unjust to resume the criminal proceeding, the court on motion of  
24      either party may dismiss the charge and may order the defendant to be dis-  
25      charged or cause a proceeding to be commenced forthwith under ORS 426.070  
26      to 426.170 or 427.235 to 427.290.

27      “(5) The [*superintendent of a state hospital*] **Oregon Health Authority**  
28      **or, for a defendant under 18 years of age, the** director of a facility to  
29      which the defendant is committed shall cause the defendant to be evaluated  
30      within 60 days from the defendant’s delivery into the [*superintendent’s*]

1 **authority's** or director's custody, for the purpose of determining whether  
2 there is a substantial probability that, in the foreseeable future, the defend-  
3 ant will have the capacity to stand trial. In addition, the [*superintendent*]  
4 **authority** or director shall:

5 “(a) Immediately notify the committing court if the defendant, at any  
6 time, gains or regains the capacity to stand trial or will never have the ca-  
7 pacity to stand trial.

8 “(b) Within 90 days of the defendant's delivery into the  
9 [*superintendent's*] **authority's** or director's custody, notify the committing  
10 court that:

11 “(A) The defendant has the present capacity to stand trial;

12 “(B) There is no substantial probability that, in the foreseeable future, the  
13 defendant will gain or regain the capacity to stand trial; or

14 “(C) There is a substantial probability that, in the foreseeable future, the  
15 defendant will gain or regain the capacity to stand trial. If the probability  
16 exists, the [*superintendent*] **authority** or director shall give the court an es-  
17 timate of the time in which the defendant, with appropriate treatment, is  
18 expected to gain or regain capacity.

19 “(6)(a) If the [*superintendent*] **authority** or director determines that there  
20 is a substantial probability that, in the foreseeable future, the defendant will  
21 gain or regain the capacity to stand trial, unless the court otherwise orders,  
22 the defendant shall remain in the [*superintendent's*] **authority's** or director's  
23 custody where the defendant shall receive treatment designed for the purpose  
24 of enabling the defendant to gain or regain capacity. In keeping with the  
25 notice requirement under subsection (5)(b) of this section, the  
26 [*superintendent*] **authority** or director shall, for the duration of the  
27 defendant's period of commitment, submit a progress report to the commit-  
28 ting court, concerning the defendant's capacity or incapacity, at least once  
29 every 180 days as measured from the date of the defendant's delivery into the  
30 [*superintendent's*] **authority's** or director's custody.

1       “(b) Notwithstanding paragraph (a) of this subsection, [*if the superinten-*  
2 *dent or director determines that a defendant committed under this section is*  
3 *no longer dangerous to self or others as a result of mental disease or defect,*  
4 *or that the services and supervision necessary to restore the defendant’s fitness*  
5 *to proceed are available in the community, the superintendent or director]* **the**  
6 **authority or the director shall, in consultation with the community**  
7 **mental health program director or the director’s designee, determine**  
8 **the level of care and supervision appropriate for the defendant and**  
9 **necessary for the safety of the community and** shall file notice of that  
10 determination with the court. **If the notice contains a determination that**  
11 **the defendant does not require a hospital level of care and supervision,**  
12 upon receipt of the notice, the court shall order the person released on  
13 supervision as described in subsection [(3)] **(2)(e)** of this section.

14       “(7)(a) A defendant who remains committed under subsection (6) of this  
15 section shall be discharged within a period of time that is reasonable for  
16 making a determination concerning whether or not, and when, the defendant  
17 may gain or regain capacity. However, regardless of the number of charges  
18 with which the defendant is accused, in no event shall the defendant be  
19 committed for longer than whichever of the following, measured from the  
20 defendant’s initial custody date, is shorter:

21       “(A) Three years; or

22       “(B) A period of time equal to the maximum sentence the court could have  
23 imposed if the defendant had been convicted.

24       “(b) For purposes of calculating the maximum period of commitment de-  
25 scribed in paragraph (a) of this subsection:

26       “(A) The initial custody date is the date on which the defendant is first  
27 committed under this section on any charge alleged in the accusatory in-  
28 strument; and

29       “(B) The defendant shall be given credit against each charge alleged in  
30 the accusatory instrument for each day the defendant is committed under

1 this section, whether the days are consecutive or are interrupted by a period  
2 of time during which the defendant has gained or regained fitness to proceed.

3 “(8) The [*superintendent*] **authority** or director shall notify the commit-  
4 ting court of the defendant’s impending discharge 30 days before the date on  
5 which the [*superintendent*] **authority** or director is required to discharge the  
6 defendant under subsection (7) of this section.

7 “(9) When the committing court receives a notice from the  
8 [*superintendent*] **authority** or director under subsection (5) or (8) of this  
9 section concerning the defendant’s progress or lack thereof, the committing  
10 court shall determine, after a hearing, if a hearing is requested, whether the  
11 defendant presently has the capacity to stand trial.

12 “(10) If at any time the court determines that the defendant lacks the  
13 capacity to stand trial, the court shall further determine whether there is a  
14 substantial probability that the defendant, in the foreseeable future, will  
15 gain or regain the capacity to stand trial and whether the defendant is en-  
16 titled to discharge under subsection (7) of this section. If the court deter-  
17 mines that there is no substantial probability that the defendant, in the  
18 foreseeable future, will gain or regain the capacity to stand trial or that the  
19 defendant is entitled to discharge under subsection (7) of this section, the  
20 court shall dismiss, without prejudice, all charges against the defendant and:

21 “(a) Order that the defendant be discharged; or

22 “(b) Initiate commitment proceedings under ORS 426.070 or 427.235 to  
23 427.290.

24 “(11) All notices required under this section shall be filed with the clerk  
25 of the court and delivered to both the district attorney and the counsel for  
26 the defendant.

27 “(12) If the defendant gains or regains fitness to proceed, the term of any  
28 sentence received by the defendant for conviction of the crime charged shall  
29 be reduced by the amount of time the defendant was committed under this  
30 section to the custody of a state mental hospital, or to the custody of a se-

1 cure intensive community inpatient facility, designated by the Oregon Health  
2 Authority.

3 “(13) Notwithstanding the suspension of the criminal proceeding under  
4 subsection (2) of this section, the fact that the defendant is unfit to proceed  
5 does not preclude any objection through counsel and without the personal  
6 participation of the defendant on the grounds that the indictment is insuffi-  
7 cient, that the statute of limitations has run, that double jeopardy principles  
8 apply or upon any other ground at the discretion of the court which the  
9 court deems susceptible of fair determination prior to trial.

10 **“SECTION 3.** ORS 161.375 is amended to read:

11 “161.375. (1) When a patient, who has been placed at a state hospital for  
12 evaluation, care, custody and treatment under ORS 161.315 to 161.351 or by  
13 court order under ORS 161.315[,] **or** 161.365 [*or 161.370*], has escaped or is  
14 absent without authorization from the hospital or from the custody of any  
15 person in whose charge the superintendent has placed the patient, the su-  
16 perintendent may order the arrest and detention of the patient.

17 “(2) When a patient, who has been placed at a secure intensive community  
18 inpatient facility for evaluation, care, custody and treatment under ORS  
19 161.315 to 161.351 or by court order under ORS 161.315, 161.365, 161.370 or  
20 419C.527, has escaped or is absent without authorization from the facility or  
21 from the custody of any person in whose charge the director of the facility  
22 has placed the patient, the director of the facility shall notify the Director  
23 of the Oregon Health Authority. The Director of the Oregon Health Au-  
24 thority may order the arrest and detention of the patient.

25 **“(3) When a patient, who has been committed to the custody of the**  
26 **Oregon Health Authority by court order under ORS 161.370, has es-**  
27 **caped or is absent without authorization from the facility in which the**  
28 **Oregon Health Authority has placed the patient, the director of the**  
29 **facility shall notify the Director of the Oregon Health Authority. The**  
30 **Director of the Oregon Health Authority may order the arrest and**

1 **detention of the patient.**

2 “[3] (4) The superintendent or the Director of the Oregon Health Au-  
3 thority may issue an order under this section based upon a reasonable belief  
4 that grounds exist for issuing the order. When reasonable, the superintendent  
5 or the Director of the Oregon Health Authority shall investigate to ascertain  
6 whether such grounds exist.

7 “[4] (5) Any order issued by the superintendent or the Director of the  
8 Oregon Health Authority as authorized by this section constitutes full au-  
9 thority for the arrest and detention of the patient and all laws applicable to  
10 warrant or arrest apply to the order. An order issued by the superintendent  
11 or the Director of the Oregon Health Authority under this section expires  
12 72 hours after being signed by the superintendent or the Director of the  
13 Oregon Health Authority.

14 “[5] (6) As used in this section, ‘superintendent’ means the superinten-  
15 dent of the state hospital to which the person was committed or the  
16 superintendent’s authorized representative.

17 **“SECTION 4.** ORS 421.633 is amended to read:

18 “421.633. (1) Notwithstanding ORS 421.611 to 421.630 or any actions taken  
19 under ORS 421.611 to 421.630, the Department of Corrections may lease all  
20 or part of the real property and any improvements to the real property  
21 known as the Milliron Road Site south of Junction City, Lane County, to the  
22 Oregon Health Authority for a period of years agreed upon by the depart-  
23 ment and the authority.

24 “(2) The authority may build, own and operate, on the real property  
25 leased from the department under subsection (1) of this section, a hospital  
26 to provide diagnosis and evaluation, medical care, detoxification, social ser-  
27 vices, rehabilitation or other services for individuals committed to the au-  
28 thority under ORS **161.370** or 426.130 and individuals committed to a state  
29 hospital under ORS 161.327 [*or 161.370*].

30 “(3) The department and the authority are authorized to negotiate and



1 enter into a written agreement transferring ownership of the hospital de-  
2 scribed in subsection (2) of this section from the authority to the department,  
3 under terms and conditions acceptable to the agencies.”.

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