

# D R A F T

## SUMMARY

Defines terms related to fitness to proceed. Reorganizes and restructures statutes related to fitness to proceed.

Modifies procedures and criteria for committing defendant charged with felony to state mental hospital or other facility in order to gain or regain fitness to proceed. Requires court to find that defendant requires hospital level of care due to public safety concerns or acuity of symptoms of defendant's mental disorder, and that appropriate community restoration services are not provided.

Modifies procedures and criteria for committing defendant charged with misdemeanor to state mental hospital or other facility in order to gain or regain fitness to proceed. Requires either recommendation from certified evaluator that defendant requires hospital level of care and statement from community mental health program director concerning available community restoration services, or for court to make certain findings concerning severity of defendant's symptoms, present public safety concerns and whether appropriate community restoration services are provided.

Modifies procedures when circumstances authorizing commitment of defendant no longer exist.

## A BILL FOR AN ACT

Relating to fitness to proceed; creating new provisions; and amending ORS 161.365, 161.370, 161.372, 161.373, 161.390, 161.392, 181A.290 and 430.230.

**Be It Enacted by the People of the State of Oregon:**

## PRELIMINARY PROVISIONS

**SECTION 1. (1) Sections 2 to 5 of this 2020 Act are added to and made a part of ORS 161.290 to 161.373.**

1       **(2) ORS 161.360, 161.365 and 161.370 are added to and made a part of**  
2 **sections 2 to 5 of this 2020 Act.**

3       **SECTION 2. As used in sections 2 to 5 of this 2020 Act:**

4       **(1) “Certified evaluator” has the meaning given that term in ORS**  
5 **161.309.**

6       **(2) “Community restoration services” means services and treatment**  
7 **necessary to safely allow a defendant to gain or regain fitness to pro-**  
8 **ceed in the community.**

9       **(3) “Hospital level of care” means that a defendant requires the type**  
10 **of care provided by an inpatient hospital in order to gain or regain**  
11 **fitness to proceed.**

12       **(4) “Public safety concerns” means that the defendant presents a**  
13 **risk to the public if not hospitalized or in custody.**

14       **SECTION 3. (1) A recommendation provided by a certified evalu-**  
15 **ator, pursuant to sections 2 to 5 of this 2020 Act, that a defendant re-**  
16 **quires a hospital level of care due to the acuity of the defendant’s**  
17 **symptoms must be based upon a review of appropriate community**  
18 **restoration services, the defendant’s current diagnosis and**  
19 **symptomology, the defendant’s current ability to engage in treatment**  
20 **and general safety concerns relating to the defendant. The recom-**  
21 **mendation must state the relevant considerations supporting the de-**  
22 **termination that a hospital level of care is required and why a hospital**  
23 **level of care is appropriate.**

24       **(2) A determination by a community mental health program direc-**  
25 **tor, or director’s designee, pursuant to sections 2 to 5 of this 2020 Act,**  
26 **that appropriate community restoration services are not provided in**  
27 **the community must include information concerning the community**  
28 **restoration services necessary to safely restore the defendant in the**  
29 **community and must specify those services that are not provided in**  
30 **the community.**

31       **(3) An entity or evaluator conducting an examination of a defend-**

1 ant under sections 2 to 5 of this 2020 Act shall provide a copy of any  
2 report resulting from the examination to the community mental  
3 health program director or designee in:

4 (a) The county in which the defendant is charged; and

5 (b) The county of the defendant's last known residence.

6 (4)(a) Reports resulting from examinations performed by a certified  
7 evaluator, and documents containing the recommendations of or re-  
8 sulting from consultations with a community mental health program  
9 director or the director's designee, prepared under sections 2 to 5 of  
10 this 2020 Act are confidential and may be made available only:

11 (A) To the court, prosecuting attorney, defense attorney, agent of  
12 the prosecuting or defense attorney, defendant, community mental  
13 health program director or designee and any facility in which the de-  
14 fendant is housed; or

15 (B) As ordered by a court.

16 (b) Any facility in which a defendant is housed may not use a report  
17 or document described in paragraph (a) of this subsection to support  
18 a disciplinary action against the defendant.

19 (c) Nothing in this subsection prohibits the prosecuting attorney,  
20 defense attorney or agent of the prosecuting or defense attorney from  
21 discussing the contents of a report or document described in para-  
22 graph (a) of this subsection with witnesses or victims as otherwise  
23 permitted by law.

24 (5) The court shall ensure that an order entered under sections 2  
25 to 5 of this 2020 Act is provided, by the end of the next judicial day,  
26 to any entity ordered to provide community restoration services.

27 (6) Unless the court orders otherwise or either party objects, a de-  
28 fendant committed to a state mental hospital or other facility, or a  
29 certified evaluator or other expert witness, may attend hearings held  
30 under sections 2 to 5 of this 2020 Act via simultaneous electronic  
31 transmission.

**FITNESS TO PROCEED GENERALLY**

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**SECTION 4. (1) If at any time the court determines that the defendant lacks the capacity to stand trial, the court shall further determine whether there is a substantial probability that the defendant, in the foreseeable future, will gain or regain the capacity to stand trial. If the court determines that there is no substantial probability that the defendant, in the foreseeable future, will gain or regain the capacity to stand trial, the court shall dismiss, without prejudice, all charges against the defendant and:**

**(a) Order that the defendant be discharged; or**

**(b) Initiate commitment proceedings under ORS 426.070 or 427.235 to 427.290.**

**(2) When the court, on its own motion or upon the application of the superintendent of the hospital or director of the facility in which the defendant is committed under ORS 161.370, a person examining the defendant as a condition of release to community restoration services or either party, determines, after a hearing, if a hearing is requested, that the defendant has gained or regained fitness to proceed, the criminal proceeding shall be resumed. If, however, the court is of the view that so much time has elapsed since the commitment or release of the defendant to community restoration services that it would be unjust to resume the criminal proceeding, the court on motion of either party may dismiss the charge and may order the defendant to be discharged or cause a proceeding to be commenced forthwith under ORS 426.070 to 426.170, 426.701 or 427.235 to 427.290.**

**(3) If the defendant gains or regains fitness to proceed, the term of any sentence received by the defendant for conviction of the crime charged shall be reduced by the amount of time the defendant was committed under ORS 161.370 to the custody of a state mental hospital, or to the custody of a secure intensive community inpatient facility**

1 designated by the Oregon Health Authority.

2 (4) Notwithstanding the suspension of the criminal proceeding un-  
3 der ORS 161.370 (2), the fact that the defendant is unfit to proceed does  
4 not preclude any objection through counsel and without the personal  
5 participation of the defendant on the grounds that the indictment is  
6 insufficient, that the statute of limitations has run, that double  
7 jeopardy principles apply or upon any other ground at the discretion  
8 of the court which the court deems susceptible of fair determination  
9 prior to trial.

10 (5) At the time that the court determines that the defendant lacks  
11 fitness to proceed under ORS 161.370 (2), the court shall notify the  
12 defendant that federal law prohibits the defendant from purchasing  
13 or possessing a firearm unless the person obtains relief from the pro-  
14 hibition under federal law. The court shall again notify the defendant  
15 of the prohibition if the court finds that the defendant has gained or  
16 regained fitness to proceed under subsection (2) of this section.

17  
18 **COMMITTED DEFENDANTS**

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20 **SECTION 5.** (1) The superintendent of a state mental hospital or  
21 director of a facility to which the defendant is committed under ORS  
22 161.370 shall cause the defendant to be evaluated within 60 days from  
23 the defendant's delivery into the superintendent's or director's cus-  
24 tody, for the purpose of determining whether there is a substantial  
25 probability that, in the foreseeable future, the defendant will have the  
26 capacity to stand trial. In addition, the superintendent or director  
27 shall:

28 (a) Immediately notify the committing court if the defendant, at  
29 any time, gains or regains the capacity to stand trial or will never  
30 have the capacity to stand trial.

31 (b) Within 90 days of the defendant's delivery into the

1 **superintendent's or director's custody, notify the committing court**  
2 **that:**

3 **(A) The defendant has the present capacity to stand trial;**

4 **(B) There is no substantial probability that, in the foreseeable fu-**  
5 **ture, the defendant will gain or regain the capacity to stand trial; or**

6 **(C) There is a substantial probability that, in the foreseeable future,**  
7 **the defendant will gain or regain the capacity to stand trial. If the**  
8 **probability exists, the superintendent or director shall give the court**  
9 **an estimate of the time in which the defendant, with appropriate**  
10 **treatment, is expected to gain or regain capacity.**

11 **(c) Notify the court if court-ordered involuntary medication is nec-**  
12 **essary for the defendant to gain or regain the capacity to stand trial**  
13 **and, if appropriate, submit a report to the court under ORS 161.372.**

14 **(2)(a) If the superintendent or director determines that there is a**  
15 **substantial probability that, in the foreseeable future, the defendant**  
16 **will gain or regain the capacity to stand trial, unless the court other-**  
17 **wise orders, the defendant shall remain in the superintendent's or**  
18 **director's custody where the defendant shall receive treatment de-**  
19 **signed for the purpose of enabling the defendant to gain or regain ca-**  
20 **capacity. In keeping with the notice requirement under subsection (1)(b)**  
21 **of this section, the superintendent or director shall, for the duration**  
22 **of the defendant's period of commitment, submit a progress report to**  
23 **the committing court, concerning the defendant's capacity or inca-**  
24 **capacity, at least once every 180 days as measured from the date of the**  
25 **defendant's delivery into the superintendent's or director's custody.**

26 **(b) A progress report described in paragraph (a) of this subsection**  
27 **may consist of an update to:**

28 **(A) The original examination report conducted under ORS 161.365;**  
29 **or**

30 **(B) An evaluation conducted under subsection (1) of this section,**  
31 **if the defendant did not receive an examination under ORS 161.365.**

1       **(3)(a) Notwithstanding subsection (2) of this section, if the most**  
2 **serious offense in the charging instrument is a felony, and the super-**  
3 **intendent or director determines that a hospital level of care is no**  
4 **longer necessary due to present public safety concerns, or no longer**  
5 **necessary due to the acuity of symptoms of the defendant's qualifying**  
6 **mental disorder, the superintendent or director shall file notice of the**  
7 **determination with the court.**

8       **(b) Upon receipt of the notice, the court shall order:**

9       **(A) That a community mental health program director or the**  
10 **director's designee, within five judicial days:**

11       **(i) Consult with the defendant and with any local entity that would**  
12 **be responsible for providing community restoration services, if the**  
13 **defendant were to be released in the community, to determine whether**  
14 **community restoration services are provided in the community; and**

15       **(ii) Provide the court and the parties with recommendations from**  
16 **the consultation.**

17       **(B) That the superintendent or director, within five judicial days:**

18       **(i) Evaluate the defendant to determine whether a hospital level of**  
19 **care is no longer necessary due to present public safety concerns, or**  
20 **no longer necessary due to the acuity of symptoms of the defendant's**  
21 **qualifying mental disorder; and**

22       **(ii) Provide the court and the parties with recommendations from**  
23 **the evaluation.**

24       **(c) Within 10 judicial days of receiving the recommendations de-**  
25 **scribed in paragraph (b) of this subsection, the court shall hold a**  
26 **hearing to determine an appropriate action in accordance with ORS**  
27 **161.370 (2)(c) as follows:**

28       **(A) If, after consideration of the factors and possible actions de-**  
29 **scribed in ORS 161.370 (2)(c) and the recommendations from the con-**  
30 **sultation and evaluation described in paragraph (b) of this subsection,**  
31 **the court determines that a hospital level of care is necessary due to**

1 present public safety concerns and the acuity of symptoms of the  
2 defendant's qualifying mental disorder, and that based on the consul-  
3 tation and evaluation described in paragraph (b) of this subsection,  
4 any information provided by community-based mental health providers  
5 or any other sources, and primary and secondary release criteria as  
6 defined in ORS 135.230, the appropriate community restoration services  
7 are not provided in the community, the court may continue the com-  
8 mitment of the defendant.

9 (B) If the court does not make the determination described in sub-  
10 paragraph (A) of this paragraph, the court shall terminate the com-  
11 mitment and shall set a review hearing seven days from the date of  
12 the commitment termination for any defendant remaining in custody.  
13 At the review hearing, the court shall consider all relevant informa-  
14 tion, determine an appropriate action in the case as described in ORS  
15 161.370 (2)(c) and enter an order in accordance with the defendant's  
16 constitutional rights to due process.

17 (4)(a) Notwithstanding subsection (2) of this section, if the most  
18 serious offense in the charging instrument is a misdemeanor, and the  
19 superintendent or director determines that the acuity of symptoms of  
20 the defendant's qualifying mental disorder is not severe and there are  
21 not present public safety concerns, the superintendent or director  
22 shall file notice of that determination with the court, along with rec-  
23 ommendations regarding the community restoration services that  
24 would mitigate any risk presented by the defendant.

25 (b) Upon receipt of the notice, the court shall order that a com-  
26 munity mental health program director or the director's designee,  
27 within five judicial days:

28 (i) Consult with the defendant and with any local entity that would  
29 be responsible for providing community restoration services, if the  
30 defendant were to be released in the community, to determine whether  
31 community restoration services are provided in the community; and



1 (ii) Provide the court and the parties with recommendations from  
2 the consultation.

3 (c) Within 10 judicial days of receiving the recommendations de-  
4 scribed in paragraph (b) of this subsection, the court shall hold a  
5 hearing to determine an appropriate action in accordance with ORS  
6 161.370 (2)(c) as follows:

7 (A) After consideration of the factors and possible actions described  
8 in ORS 161.370 (2)(c), and any recommendations from the consultation  
9 described paragraph (b) of this subsection, the court may continue the  
10 commitment of the defendant if the court makes written findings that  
11 appropriate community restoration services are not provided in the  
12 community and that there are present public safety concerns.

13 (B) If the court does not make the findings described in subpara-  
14 graph (A) of this paragraph, the court shall terminate the commit-  
15 ment and shall set a review hearing seven days from the date of the  
16 commitment termination for any defendant remaining in custody. At  
17 the review hearing, the court shall consider all relevant information,  
18 determine an appropriate action in the case as described in ORS 161.370  
19 (2)(c) and enter an order in accordance with the defendant's constitu-  
20 tional rights to due process.

21 (5)(a) A defendant who remains committed under this section shall  
22 be discharged within a period of time that is reasonable for making a  
23 determination concerning whether, and when, the defendant may gain  
24 or regain capacity. However, regardless of the number of charges with  
25 which the defendant is accused, in no event shall the defendant be  
26 committed for longer than whichever of the following, measured from  
27 the defendant's initial custody date, is shorter:

28 (A) Three years; or

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

31 (b) For purposes of calculating the maximum period of commitment

1 **described in paragraph (a) of this subsection:**

2 **(A) The initial custody date is the date on which the defendant is**  
3 **first committed under this section on any charge alleged in the**  
4 **accusatory instrument; and**

5 **(B) The defendant shall be given credit against each charge alleged**  
6 **in the accusatory instrument:**

7 **(i) For each day the defendant is committed under this section,**  
8 **whether the days are consecutive or are interrupted by a period of**  
9 **time during which the defendant has gained or regained fitness to**  
10 **proceed; and**

11 **(ii) Unless the defendant is charged on any charging instrument**  
12 **with aggravated murder or a crime listed in ORS 137.700 (2), for each**  
13 **day the defendant is held in jail before and after the date the defend-**  
14 **ant is first committed, whether the days are consecutive or are inter-**  
15 **rupted by a period of time during which the defendant lacks fitness**  
16 **to proceed.**

17 **(c) The superintendent or director shall notify the committing court**  
18 **of the defendant's impending discharge 30 days before the date on**  
19 **which the superintendent or director is required to discharge the de-**  
20 **fendant under this subsection.**

21 **(6)(a) All notices required under this section shall be filed with the**  
22 **court and may be filed electronically. The clerk of the court shall**  
23 **cause copies of the notices to be delivered to both the district attorney**  
24 **and the counsel for the defendant.**

25 **(b) When the committing court receives a notice from the super-**  
26 **intendent or director under subsection (1) of this section concerning**  
27 **the defendant's progress or lack thereof, or under subsection (5) of this**  
28 **section concerning the defendant's impending discharge, the commit-**  
29 **ting court shall determine, after a hearing if a hearing is requested,**  
30 **whether the defendant presently has the capacity to stand trial.**

31 **(7) If at any time the court determines that the defendant lacks the**

1 **capacity to stand trial, the court shall further determine whether the**  
2 **defendant is entitled to discharge under subsection (5) of this section.**  
3 **If the court determines that the defendant is entitled to discharge**  
4 **under subsection (5) of this section, the court shall dismiss, without**  
5 **prejudice, all charges against the defendant and:**

6 (a) **Order that the defendant be discharged; or**

7 (b) **Initiate commitment proceedings under ORS 426.070 or 427.235**  
8 **to 427.290.**

9

10 **EXAMINATION OF DEFENDANT**

11

12 **SECTION 6.** ORS 161.365 is amended to read:

13 161.365. (1)(a) When the court has reason to doubt the defendant's fitness  
14 to proceed by reason of incapacity as described in ORS 161.360, the court  
15 may call any witness to assist it in reaching its decision and shall order that  
16 a community mental health program director, or the director's designee,  
17 consult with the defendant and with any local entity that would be respon-  
18 sible for [*supervising*] **providing community restoration services** to the  
19 defendant if the defendant were to be released in the community, to deter-  
20 mine whether [*services and supervision necessary to safely allow the defendant*  
21 *to gain or regain fitness to proceed*] **community restoration services** are  
22 [*available*] **provided** in the community. After the consultation, the program  
23 director or the director's designee shall provide to the court a copy of the  
24 findings resulting from the consultation. If the court determines the assist-  
25 ance of a psychiatrist or psychologist would be helpful, the court may:

26 (A) Order that a psychiatric or psychological examination of the defend-  
27 ant be conducted by a certified evaluator and a report of the examination  
28 be prepared; or

29 (B) Order the defendant to be committed for the purpose of an examina-  
30 tion to a state mental hospital or other facility designated by the Oregon  
31 Health Authority if the defendant is at least 18 years of age, or to a secure

1 intensive community inpatient facility designated by the authority if the  
2 defendant is under 18 years of age. The state mental hospital or other facility  
3 may retain custody of a defendant committed under this paragraph for the  
4 duration necessary to complete the examination of the defendant, not to ex-  
5 ceed 30 days. The examination may include a period of observation.

6 (b) The court shall provide a copy of any order entered under this sub-  
7 section to the community mental health program director or designee and to  
8 the state mental hospital or other facility by the end of the next judicial day.

9 (2)(a) A defendant committed under subsection (1)(a)(B) of this section  
10 shall be transported to the state mental hospital or other facility for the  
11 examination.

12 (b) At the conclusion of the examination, the superintendent of the state  
13 mental hospital or the superintendent's designee or the director of the facil-  
14 ity may:

15 (A) Return the defendant to the facility from which the defendant was  
16 transported; or

17 (B) Inform the court and the parties that the defendant requires a hospital  
18 level of care due to [*the defendant's dangerousness and*] the acuity of symp-  
19 toms of the defendant's qualifying mental disorder and request that the de-  
20 fendant remain at the state mental hospital or other facility pending a  
21 hearing or order under ORS 161.370.

22 (c) If both parties consent, the court may, without holding a hearing, en-  
23 ter any order authorized by ORS 161.370 based on a report resulting from an  
24 examination conducted under this section.

25 (3) The report of an examination described in this section must include,  
26 but is not necessarily limited to, the following:

27 (a) A description of the nature of the examination;

28 (b) A statement of the mental condition of the defendant;

29 (c) If the defendant suffers from a qualifying mental disorder, an opinion  
30 as to whether the defendant is incapacitated within the description set out  
31 in ORS 161.360; and

1 (d) If the defendant is incapacitated within the description set out in ORS  
2 161.360, a recommendation of treatment and services necessary to allow the  
3 defendant to gain or regain capacity, including whether a hospital level of  
4 care is required due to [*the defendant's dangerousness and*] the acuity of  
5 symptoms of the defendant's qualifying mental disorder.

6 (4) Except when the defendant and the court both request to the contrary,  
7 the report may not contain any findings or conclusions as to whether the  
8 defendant as a result of a qualifying mental disorder was subject to the  
9 provisions of ORS 161.295 or 161.300 at the time of the criminal act charged.

10 (5) If the examination by the certified evaluator cannot be conducted by  
11 reason of the unwillingness of the defendant to participate in the examina-  
12 tion, the report must so state and must include, if possible, an opinion as to  
13 whether the unwillingness of the defendant was the result of a qualifying  
14 mental disorder affecting capacity to proceed.

15 (6)[(a)] The report resulting from the examination of a defendant under  
16 this section may be filed electronically and must be filed with the clerk of  
17 the court, who shall cause copies to be delivered to the district attorney and  
18 to counsel for defendant.

19 [(b) *The entity or evaluator conducting the examination shall provide a copy*  
20 *of the report resulting from the examination to the community mental health*  
21 *program director or designee in:]*

22 [(A) *The county in which the defendant is charged; and*]

23 [(B) *The county of the defendant's last known residence.*]

24 [(c) *Reports prepared under this section are confidential and may be made*  
25 *available only:]*

26 [(A) *To the court, prosecuting attorney, defense attorney, agent of the pros-*  
27 *ecuting or defense attorney, defendant, community mental health program di-*  
28 *rector or designee and any facility in which the defendant is housed; or]*

29 [(B) *As ordered by a court.*]

30 [(d) *Any facility in which a defendant is housed may not use a report pre-*  
31 *pared under this section to support a disciplinary action against the*

1 *defendant.]*

2 *[(e) Nothing in this subsection prohibits the prosecuting attorney, defense*  
3 *attorney or agent of the prosecuting or defense attorney from discussing the*  
4 *contents of a report prepared under this section with witnesses or victims as*  
5 *otherwise permitted by law.]*

6 (7)(a) When upon motion of the court or a financially eligible defendant,  
7 the court has ordered a psychiatric or psychological examination of the de-  
8 fendant, a county or justice court shall order the county to pay, and a circuit  
9 court shall order the public defense services executive director to pay from  
10 funds available for the purpose:

11 (A) A reasonable fee if the examination of the defendant is conducted by  
12 a certified evaluator in private practice; and

13 (B) All costs including transportation of the defendant if the examination  
14 is conducted by a certified evaluator in the employ of the Oregon Health  
15 Authority or a community mental health program established under ORS  
16 430.610 to 430.670.

17 (b) When an examination is ordered at the request or with the  
18 acquiescence of a defendant who is determined not to be financially eligible,  
19 the examination shall be performed at the defendant's expense. When an ex-  
20 amination is ordered at the request of the prosecution, the county shall pay  
21 for the expense of the examination.

22 (8) The Oregon Health Authority shall establish by rule standards for the  
23 consultation described in subsection (1) of this section.

24 *[(9) As used in this section and ORS 161.370, "certified evaluator" has the*  
25 *meaning given that term in ORS 161.309.]*

26

27 **DISPOSITION UPON FINDING OF LACK OF FITNESS**

28

29 **SECTION 7.** ORS 161.370 is amended to read:

30 161.370. (1)(a) When the defendant's fitness to proceed is drawn in ques-  
31 tion, the issue shall be determined by the court.

1 (b) If neither the prosecuting attorney nor counsel for the defendant  
2 contests the finding of the report filed under ORS 161.365, the court may  
3 make the determination on the basis of the report. If the finding is contested,  
4 the court shall hold a hearing on the issue. If the report is received in evi-  
5 dence in the hearing, the party who contests the finding has the right to  
6 summon and to cross-examine any certified evaluator who submitted the re-  
7 port and to offer evidence upon the issue. Other evidence regarding the  
8 defendant's fitness to proceed may be introduced by either party.

9 (2)(a) If the court determines that the defendant lacks fitness to proceed,  
10 the criminal proceeding against the defendant shall be suspended and the  
11 court shall, at a hearing, proceed in accordance with this subsection.

12 (b) After making the determination under paragraph (a) of this subsection,  
13 the court shall receive a recommendation, to be considered at the hearing,  
14 from a community mental health program director or the director's designee,  
15 and from any local entity that would be responsible for supervising the de-  
16 fendant if the defendant were to be released in the community, concerning  
17 whether [*services and supervision necessary to safely allow the defendant to*  
18 *gain or regain fitness to proceed are available*] **community restoration**  
19 **services are provided** in the community.

20 (c) The court and the parties shall at the hearing [*determine*] **consider**  
21 an appropriate action in the case, and the court shall **determine the ap-**  
22 **propriate action and** enter an order necessary to implement the action. In  
23 determining the appropriate action, the court shall consider the primary and  
24 secondary release criteria as defined in ORS 135.230, the least restrictive  
25 option appropriate for the defendant, the needs of the defendant and the in-  
26 terests of justice. Actions may include but are not limited to:

27 (A) Commitment for the defendant to gain or regain fitness to proceed  
28 under subsection (3) or [(5)] (4) of this section;

29 (B) Community restoration as recommended by the community mental  
30 health program director or designee;

31 (C) Release [*on supervision*] **under subsection (6) of this section;**

1 (D) Commencement of a civil commitment proceeding under ORS 426.070  
2 to 426.170, 426.701 or 427.235 to 427.290;

3 (E) Commencement of protective proceedings under ORS chapter 125; or

4 (F) Dismissal of the charges pursuant to ORS 135.755.

5 (d) If the court, while considering or ordering an appropriate action under  
6 this subsection, [*determines that the defendant does not require a hospital*  
7 *level of care due to the defendant's dangerousness and the acuity of symptoms*  
8 *of the defendant's qualifying mental disorder, but that services and supervision*  
9 *necessary to safely allow the defendant to gain or regain fitness to proceed are*  
10 *not available*] **does not order the defendant committed to a state mental**  
11 **hospital or other facility, but finds that community restoration ser-**  
12 **vices are not provided** in the community, for any defendant remaining in  
13 custody after such determination, the court shall set a review hearing seven  
14 days from the date of the determination under paragraph (a) of this sub-  
15 section. At the review hearing, the court shall consider all relevant infor-  
16 mation and determine [*an appropriate action in the case as described in*  
17 *paragraph (c) of this subsection. If the defendant remains in custody following*  
18 *the initial review hearing, the court shall hold further review hearings every*  
19 *seven days thereafter until the defendant is no longer in custody.*] **if com-**  
20 **mitment to the state mental hospital or other facility is appropriate**  
21 **under subsection (3) or (4) of this section, or if another action de-**  
22 **scribed in paragraph (c) of this subsection is appropriate. At the con-**  
23 **clusion of the hearing the court shall enter an order in accordance**  
24 **with the defendant's constitutional rights to due process.**

25 [(3)(a) *Unless the court orders an action other than commitment under*  
26 *subsection (2) of this section, and except as otherwise provided in subsections*  
27 *(4) and (5) of this section, if the court finds that the defendant is dangerous*  
28 *to self or others as a result of a qualifying mental disorder, that a hospital*  
29 *level of care is necessary due to the defendant's dangerousness and the acuity*  
30 *of symptoms of the defendant's qualifying mental disorder, and that, based on*  
31 *the findings resulting from the consultation described in ORS 161.365 (1) and*



1 *from any information provided by community-based mental health providers*  
2 *or any other sources, the services and supervision necessary to allow the de-*  
3 *fendant to gain or regain fitness to proceed are not available in the community,*  
4 *the court shall commit the defendant to the custody of the superintendent of*  
5 *a state mental hospital or director of a facility designated by the Oregon*  
6 *Health Authority if the defendant is at least 18 years of age, or to the custody*  
7 *of the director of a secure intensive community inpatient facility designated*  
8 *by the authority if the defendant is under 18 years of age.]*

9 **(3)(a) If the most serious offense in the charging instrument is a**  
10 **felony, the court shall commit the defendant to the custody of the**  
11 **superintendent of a state mental hospital or director of a facility des-**  
12 **ignated by the Oregon Health Authority if the defendant is at least 18**  
13 **years of age, or to the custody of the director of a secure intensive**  
14 **community inpatient facility designated by the authority if the de-**  
15 **fendant is under 18 years of age, if the court makes the following**  
16 **findings:**

17 **(A) The defendant requires a hospital level of care due to public**  
18 **safety concerns if the defendant is not hospitalized or in custody or**  
19 **the acuity of symptoms of the defendant's qualifying mental disorder;**  
20 **and**

21 **(B) Based on the findings resulting from the consultation described**  
22 **in ORS 161.365 (1), from any information provided by community-based**  
23 **mental health providers or any other sources, and primary and sec-**  
24 **ondary release criteria as defined in ORS 135.230, the appropriate**  
25 **community restoration services are not provided in the community.**

26 (b) If the defendant is committed under this subsection, the community  
27 mental health program director, **or director's designee**, shall at regular  
28 intervals, during any period of commitment, review available community  
29 [*resources*] **restoration services** and maintain communication with the de-  
30 fendant and the superintendent of the state mental hospital or director of the  
31 facility in order to facilitate an efficient transition to treatment in the

1 community when ordered.

2 **(c) If the court does not order the commitment of the defendant**  
3 **under this subsection, the court shall proceed in accordance with**  
4 **subsection (2)(c) of this section to determine and order an appropriate**  
5 **action other than commitment.**

6 *[(4)(a) If the court does not make a finding described in subsection (3) of*  
7 *this section, if commitment is precluded under subsection (5) of this section or*  
8 *if the court determines that care other than commitment for incapacity to stand*  
9 *trial would better serve the defendant and the community, the court shall re-*  
10 *lease the defendant on supervision for as long as the unfitness endures.]*

11 *[(b) The court may order a community mental health program director*  
12 *providing treatment to the defendant in the community to provide the court*  
13 *with status reports on the defendant's progress in gaining or regaining fitness*  
14 *to proceed.]*

15 *[(c) A community mental health program director providing treatment to the*  
16 *defendant in the community shall notify the court if the defendant gains or*  
17 *regains fitness to proceed.]*

18 *[(5)(a) If the most serious offense in the charging instrument is a violation,*  
19 *the court may not commit the defendant under subsection (3) of this section.]*

20 *[(b)]* **(4)(a)** If the most serious offense in the charging instrument is a  
21 misdemeanor, the court may not commit the defendant *[under subsection (3)*  
22 *of this section]* **to a state mental hospital or other facility** unless the  
23 *[finding that the defendant requires a hospital level of care due to the*  
24 *defendant's dangerousness and the acuity of symptoms of the defendant's*  
25 *qualifying mental disorder is based on a recommendation by a certified eval-*  
26 *uator as defined in ORS 161.309, or a community mental health program di-*  
27 *rector or the director's designee, that the defendant requires such level of*  
28 *care.]* **court:**

29 **(A)(i) Receives a recommendation from a certified evaluator that**  
30 **the defendant requires a hospital level of care due to the acuity of**  
31 **symptoms of the defendant's qualifying mental disorder; and**

1 (ii) **Receives a recommendation from a community mental health**  
2 **program director, or director's designee, that the appropriate com-**  
3 **munity restoration services are not provided in the community; or**

4 (B) **Determines that the defendant requires a hospital level of care**  
5 **after making all of the following written findings:**

6 (i) **The acuity of symptoms of the defendant's qualifying mental**  
7 **disorder are severe;**

8 (ii) **There are present public safety concerns if the defendant is not**  
9 **hospitalized or in custody; and**

10 (iii) **The appropriate community restoration services are not pro-**  
11 **vided in the community.**

12 [(c)] (b) **If at the time of determining the appropriate action for the**  
13 **case, the court is considering commitment under paragraph (a)(A) of**  
14 **this subsection and:**

15 (A) **Has not received a recommendation from a certified evaluator** as  
16 **to whether the defendant requires a hospital level of care due to** [*the*  
17 *defendant's dangerousness and*] **the acuity of symptoms of the defendant's**  
18 **qualifying mental disorder, the court shall order a certified evaluator** [*or a*  
19 *community mental health program director, or the director's designee,*] **to make**  
20 **such a recommendation.**

21 (B) **Has not received a recommendation from the community men-**  
22 **tal health program director or designee that appropriate community**  
23 **restoration services are not provided in the community, the court**  
24 **shall order the director or designee to make such a recommendation.**

25 [(d)] (c) **If the court does not order the commitment of** [a] **the defendant**  
26 [*described in this subsection to the state mental hospital or other facility*]  
27 **under this subsection, the court shall** [*hold a hearing*] **proceed** in accord-  
28 **ance with subsection (2)(c) of this section to determine and order an appro-**  
29 **priate action other than commitment.**

30 (5) **If the most serious offense in the charging instrument is a vio-**  
31 **lation, the court may not commit the defendant to a state mental**

1 **hospital or other facility.**

2 **(6)(a) If the court does not order the commitment of the defendant**  
3 **under subsection (3) or (4) of this section, if commitment is precluded**  
4 **under subsection (5) of this section or if the court determines that care**  
5 **other than commitment for incapacity to stand trial would better**  
6 **serve the defendant and the community, the court shall release the**  
7 **defendant for community restoration services for as long as the un-**  
8 **fitness endures.**

9 **(b) The court may order a community mental health program di-**  
10 **rector providing treatment to the defendant in the community to**  
11 **provide the court with status reports on the defendant's progress in**  
12 **gaining or regaining fitness to proceed.**

13 **(c) A community mental health program director providing treat-**  
14 **ment to the defendant in the community shall notify the court if the**  
15 **defendant gains or regains fitness to proceed. The notice shall be filed**  
16 **with the court and may be filed electronically. The clerk of the court**  
17 **shall cause copies of the notice to be delivered to both the district at-**  
18 **torney and the counsel for the defendant.**

19 **[(6)] (d) When a defendant is released [on supervision] to community**  
20 **restoration services under [subsection (4) of this section] this subsection,**  
21 **the court may place conditions that the court deems appropriate on the re-**  
22 **lease, including the requirement that the defendant regularly report to the**  
23 **authority or a community mental health program for examination to deter-**  
24 **mine if the defendant has gained or regained capacity to stand trial.**

25 *[(7) When the court, on its own motion or upon the application of the su-*  
26 *perintendent of the hospital or director of the facility in which the defendant*  
27 *is committed, a person examining the defendant as a condition of release on*  
28 *supervision, or either party, determines, after a hearing, if a hearing is re-*  
29 *quested, that the defendant has gained or regained fitness to proceed, the*  
30 *criminal proceeding shall be resumed. If, however, the court is of the view that*  
31 *so much time has elapsed since the commitment or release of the defendant on*

1 *supervision that it would be unjust to resume the criminal proceeding, the*  
2 *court on motion of either party may dismiss the charge and may order the*  
3 *defendant to be discharged or cause a proceeding to be commenced forthwith*  
4 *under ORS 426.070 to 426.170, 426.701 or 427.235 to 427.290.]*

5 *[(8) The superintendent of a state hospital or director of a facility to which*  
6 *the defendant is committed shall cause the defendant to be evaluated within*  
7 *60 days from the defendant's delivery into the superintendent's or director's*  
8 *custody, for the purpose of determining whether there is a substantial proba-*  
9 *bility that, in the foreseeable future, the defendant will have the capacity to*  
10 *stand trial. In addition, the superintendent or director shall:]*

11 *[(a) Immediately notify the committing court if the defendant, at any time,*  
12 *gains or regains the capacity to stand trial or will never have the capacity to*  
13 *stand trial.]*

14 *[(b) Within 90 days of the defendant's delivery into the superintendent's or*  
15 *director's custody, notify the committing court that:]*

16 *[(A) The defendant has the present capacity to stand trial;]*

17 *[(B) There is no substantial probability that, in the foreseeable future, the*  
18 *defendant will gain or regain the capacity to stand trial; or]*

19 *[(C) There is a substantial probability that, in the foreseeable future, the*  
20 *defendant will gain or regain the capacity to stand trial. If the probability*  
21 *exists, the superintendent or director shall give the court an estimate of the*  
22 *time in which the defendant, with appropriate treatment, is expected to gain*  
23 *or regain capacity.]*

24 *[(c) Notify the court if court-ordered involuntary medication is necessary for*  
25 *the defendant to gain or regain the capacity to proceed and, if appropriate,*  
26 *submit a report to the court under ORS 161.372.]*

27 *[(9)(a) If the superintendent or director determines that there is a substan-*  
28 *tial probability that, in the foreseeable future, the defendant will gain or re-*  
29 *gain the capacity to stand trial, unless the court otherwise orders, the*  
30 *defendant shall remain in the superintendent's or director's custody where the*  
31 *defendant shall receive treatment designed for the purpose of enabling the de-*

1 *defendant to gain or regain capacity. In keeping with the notice requirement*  
2 *under subsection (8)(b) of this section, the superintendent or director shall, for*  
3 *the duration of the defendant's period of commitment, submit a progress report*  
4 *to the committing court, concerning the defendant's capacity or incapacity, at*  
5 *least once every 180 days as measured from the date of the defendant's delivery*  
6 *into the superintendent's or director's custody.]*

7 *[(b)(A) Notwithstanding paragraph (a) of this subsection, if the super-*  
8 *intendent or director determines that a defendant committed under this section*  
9 *is no longer dangerous to self or others as a result of a qualifying mental*  
10 *disorder, that a hospital level of care is not necessary due to the defendant's*  
11 *dangerousness and the acuity of symptoms of the defendant's qualifying mental*  
12 *disorder, or that the services and supervision necessary to allow the defendant*  
13 *to gain or regain fitness to proceed are available in the community, the su-*  
14 *perintendent or director shall file notice of that determination with the*  
15 *court.]*

16 *[(B) Upon receipt of the notice, the court shall order that a community*  
17 *mental health program director or the director's designee, within five judicial*  
18 *days:]*

19 *[(i) Consult with the defendant and with any local entity that would be*  
20 *responsible for supervising the defendant if the defendant were to be released*  
21 *in the community to determine whether services and supervision necessary to*  
22 *safely allow the defendant to gain or regain fitness to proceed are available*  
23 *in the community; and]*

24 *[(ii) Provide the court and the parties with recommendations from the con-*  
25 *sultation.]*

26 *[(C) Within 10 judicial days of receiving the recommendations from the*  
27 *consultation, the court shall hold a hearing to determine an appropriate action*  
28 *in accordance with subsection (2)(c) of this section as follows:]*

29 *[(i) If, after consideration of the factors and possible actions described in*  
30 *subsection (2)(c) of this section, and any recommendations from the consulta-*  
31 *tion described in this paragraph, the court determines that the defendant re-*

1 *mains dangerous to self or others as a result of a qualifying mental disorder,*  
2 *a hospital level of care is necessary due to the defendant's dangerousness and*  
3 *the acuity of symptoms of the defendant's qualifying mental disorder, and the*  
4 *services and supervision necessary to allow the defendant to gain or regain*  
5 *fitness to proceed are not available in the community, the court may, after*  
6 *making specific findings to that effect, continue the commitment.]*

7 *[(ii) If the court does not make the findings described in sub-subparagraph*  
8 *(i) of this subparagraph, the court shall terminate the commitment and shall*  
9 *set a review hearing seven days from the date of the commitment termination*  
10 *for any defendant remaining in custody. At the review hearing, the court shall*  
11 *consider all relevant information and determine an appropriate action in the*  
12 *case as described in subsection (2)(c) of this section. If the defendant remains*  
13 *in custody following the initial review hearing, the court shall hold further*  
14 *review hearings every seven days thereafter until the defendant is no longer*  
15 *in custody.]*

16 *[(c) A progress report described in paragraph (a) of this subsection may*  
17 *consist of an update to:]*

18 *[(A) The original examination report conducted under ORS 161.365; or]*

19 *[(B) An evaluation conducted under subsection (8) of this section, if the*  
20 *defendant did not receive an examination under ORS 161.365.]*

21 *[(10)(a) A defendant who remains committed under subsection (9) of this*  
22 *section shall be discharged within a period of time that is reasonable for*  
23 *making a determination concerning whether or not, and when, the defendant*  
24 *may gain or regain capacity. However, regardless of the number of charges*  
25 *with which the defendant is accused, in no event shall the defendant be com-*  
26 *mited for longer than whichever of the following, measured from the*  
27 *defendant's initial custody date, is shorter:]*

28 *[(A) Three years; or]*

29 *[(B) A period of time equal to the maximum sentence the court could have*  
30 *imposed if the defendant had been convicted.]*

31 *[(b) For purposes of calculating the maximum period of commitment de-*

1 *scribed in paragraph (a) of this subsection:]*

2 *[(A) The initial custody date is the date on which the defendant is first*  
3 *committed under this section on any charge alleged in the accusatory instru-*  
4 *ment; and]*

5 *[(B) The defendant shall be given credit against each charge alleged in the*  
6 *accusatory instrument:]*

7 *[(i) For each day the defendant is committed under this section, whether the*  
8 *days are consecutive or are interrupted by a period of time during which the*  
9 *defendant has gained or regained fitness to proceed; and]*

10 *[(ii) Unless the defendant is charged on any charging instrument with ag-*  
11 *gravated murder or a crime listed in ORS 137.700 (2), for each day the de-*  
12 *fendant is held in jail before and after the date the defendant is first*  
13 *committed, whether the days are consecutive or are interrupted by a period of*  
14 *time during which the defendant lacks fitness to proceed.]*

15 *[(11) The superintendent or director shall notify the committing court of the*  
16 *defendant's impending discharge 30 days before the date on which the super-*  
17 *intendent or director is required to discharge the defendant under subsection*  
18 *(10) of this section.]*

19 *[(12) When the committing court receives a notice from the superintendent*  
20 *or director under subsection (8) or (11) of this section concerning the*  
21 *defendant's progress or lack thereof, the committing court shall determine, af-*  
22 *ter a hearing, if a hearing is requested, whether the defendant presently has*  
23 *the capacity to stand trial.]*

24 *[(13) If at any time the court determines that the defendant lacks the ca-*  
25 *capacity to stand trial, the court shall further determine whether there is a*  
26 *substantial probability that the defendant, in the foreseeable future, will gain*  
27 *or regain the capacity to stand trial and whether the defendant is entitled to*  
28 *discharge under subsection (10) of this section. If the court determines that*  
29 *there is no substantial probability that the defendant, in the foreseeable future,*  
30 *will gain or regain the capacity to stand trial or that the defendant is entitled*  
31 *to discharge under subsection (10) of this section, the court shall dismiss,*



1 *without prejudice, all charges against the defendant and:]*

2 *[(a) Order that the defendant be discharged; or]*

3 *[(b) Initiate commitment proceedings under ORS 426.070 or 427.235 to*  
4 *427.290.]*

5 *[(14) All notices required under this section shall be filed with the court*  
6 *and may be filed electronically. The clerk of the court shall cause copies of the*  
7 *notices to be delivered to both the district attorney and the counsel for the*  
8 *defendant.]*

9 *[(15) If the defendant gains or regains fitness to proceed, the term of any*  
10 *sentence received by the defendant for conviction of the crime charged shall*  
11 *be reduced by the amount of time the defendant was committed under this*  
12 *section to the custody of a state mental hospital, or to the custody of a secure*  
13 *intensive community inpatient facility designated by the Oregon Health Au-*  
14 *thority.]*

15 *[(16) Notwithstanding the suspension of the criminal proceeding under*  
16 *subsection (2) of this section, the fact that the defendant is unfit to proceed*  
17 *does not preclude any objection through counsel and without the personal*  
18 *participation of the defendant on the grounds that the indictment is insuffi-*  
19 *cient, that the statute of limitations has run, that double jeopardy principles*  
20 *apply or upon any other ground at the discretion of the court which the court*  
21 *deems susceptible of fair determination prior to trial.]*

22 *[(17) At the time that the court determines that the defendant lacks fitness*  
23 *to proceed under subsection (2) of this section, the court shall notify the de-*  
24 *fendant that federal law prohibits the defendant from purchasing or possessing*  
25 *a firearm unless the person obtains relief from the prohibition under federal*  
26 *law. The court shall again notify the defendant of the prohibition if the court*  
27 *finds that the defendant has gained or regained fitness to proceed under sub-*  
28 *section (7) of this section.]*

29 *[(18)(a) The entity or evaluator conducting an examination of a defendant*  
30 *under this section shall provide a copy of any report described in this section*  
31 *to the community mental health program director or designee in:]*

1 [(A) *The county in which the defendant is charged; and*]

2 [(B) *The county of the defendant's last known residence.*]

3 [(b) *Reports prepared under this section are confidential and may be made*  
4 *available only.*]

5 [(A) *To the court, prosecuting attorney, defense attorney, agent of the pros-*  
6 *ecuting or defense attorney, defendant, community mental health program di-*  
7 *rector or designee and any facility in which the defendant is housed; or]*

8 [(B) *As ordered by a court.*]

9 [(c) *Any facility in which a defendant is housed may not use a report pre-*  
10 *pared under this section to support a disciplinary action against the*  
11 *defendant.*]

12 [(d) *Nothing in this subsection prohibits the prosecuting attorney, defense*  
13 *attorney or agent of the prosecuting or defense attorney from discussing the*  
14 *contents of a report prepared under this section with witnesses or victims as*  
15 *otherwise permitted by law.*]

16 [(19) *The court shall ensure that an order entered under this section is*  
17 *provided, by the end of the next judicial day, to any entity ordered to provide*  
18 *services and supervision necessary to restore the defendant's fitness to*  
19 *proceed.*]

20 [(20) *Unless the court orders otherwise or either party objects, a defendant*  
21 *committed to a state hospital or other facility, or a certified evaluator or other*  
22 *expert witness, may attend hearings held under this section via simultaneous*  
23 *electronic transmission.*]

24 [(21)] (7) The Oregon Health Authority shall establish by rule standards  
25 for the recommendation provided to the court described in subsection (2) of  
26 this section.

27  
28 **CONFORMING AMENDMENTS**

29  
30 **SECTION 8.** ORS 161.372 is amended to read:

31 161.372. (1) If, at any point while the defendant is in the custody of the

1 superintendent of the state mental hospital **after commitment** under ORS  
2 161.370, the superintendent determines that medication is the recommended  
3 treatment in order to allow the defendant to gain or regain fitness to pro-  
4 ceed, the defendant is refusing to take the recommended medication and the  
5 defendant cannot be involuntarily medicated without a court order, the su-  
6 perintendent shall submit a report of the determination to the court.

7 (2) The report described in subsection (1) of this section shall include:

8 (a) Information regarding the benefits and side effects of each recom-  
9 mended medication;

10 (b) Information concerning the defendant's refusal to take the recom-  
11 mended medication; and

12 (c) The likelihood that the medication will allow the defendant to gain  
13 or regain fitness to proceed.

14 (3)(a) Based upon the report described in subsection (1) of this section,  
15 the prosecuting attorney may file a motion requesting that the court au-  
16 thorize the involuntary administration of medication to the defendant. The  
17 prosecuting attorney shall provide a copy of the motion to the defendant.

18 (b) The court shall hold a hearing on the motion if either the prosecuting  
19 attorney or the defendant requests a hearing. At the hearing, the court shall  
20 determine whether to issue an order authorizing the involuntary adminis-  
21 tration of medication to the defendant.

22 (c) In order to enter an order authorizing the involuntary administration  
23 of medication to the defendant, the court must find that:

24 (A) Involuntary medication of the defendant is not otherwise authorized  
25 by law;

26 (B) There are important state interests at stake in the prosecution of the  
27 defendant;

28 (C) The recommended medication will significantly further the important  
29 state interests because:

30 (i) It is substantially likely that the medication will render the defendant  
31 fit to proceed; and

1 (ii) It is substantially unlikely that the medication will cause side effects  
2 that will impair the fairness of the criminal proceeding;

3 (D) Involuntary administration of medication is necessary to further the  
4 important state interests because there are no alternative, less intrusive  
5 treatments that would produce the same result as the medication; and

6 (E) Administration of the medication is medically appropriate because it  
7 is in the defendant's best medical interest in light of the defendant's medical  
8 condition.

9 (d) A court order authorizing the involuntary administration of  
10 medication to a defendant under this section must specify:

11 (A) The specific medication or type of medications permitted to be ad-  
12 ministered to the defendant;

13 (B) The maximum dosage that may be administered; and

14 (C) The duration of time that the state mental hospital may involuntarily  
15 medicate the defendant before reporting back to the court on the defendant's  
16 mental condition and progress toward gaining or regaining fitness to pro-  
17 ceed. The duration of time shall not exceed the maximum period of the  
18 defendant's commitment to the state mental hospital, or 180 calendar days,  
19 whichever is shorter.

20 **SECTION 9.** ORS 161.373 is amended to read:

21 161.373. (1) Unless otherwise prohibited by law or for good cause, all  
22 public bodies, as defined in ORS 174.109, and any private medical provider  
23 in possession of records concerning the defendant, shall, within five business  
24 days of receipt of the order, comply with a court order for the release of  
25 records to the state mental hospital or other facility designated by the  
26 Oregon Health Authority for the purpose of conducting an examination or  
27 evaluation under [ORS 161.365 or 161.370] **sections 2 to 5 of this 2020 Act.**

28 (2) Notwithstanding subsection (1) of this section, the Oregon Youth Au-  
29 thority, the Department of Corrections, a community college district, a  
30 community college service district, a public university, a school district or  
31 an education service district may, after notifying the state hospital or other

1 facility designated by the Oregon Health Authority, comply with the court  
2 order within 15 business days of receipt of the order without good cause.

3 (3) As used in this section, in the case of a community college district,  
4 a community college service district, a public university, a school district  
5 or an education service district, “business day” does not include any day on  
6 which the central administration offices of the district or university are  
7 closed.

8 **SECTION 10.** ORS 161.390 is amended to read:

9 161.390. (1) The Oregon Health Authority shall adopt rules for the as-  
10 signment of persons to state mental hospitals or secure intensive community  
11 inpatient facilities **after commitment** under ORS 161.365 and 161.370 and  
12 for establishing standards for evaluation and treatment of persons committed  
13 to a state hospital or a secure intensive community inpatient facility or or-  
14 dered to a community mental health program under ORS 161.315 to 161.351.

15 (2) When the Psychiatric Security Review Board requires the preparation  
16 of a predischarge or preconditional release plan before a hearing or as a  
17 condition of granting discharge or conditional release for a person committed  
18 under ORS 161.315 to 161.351 to a state hospital or a secure intensive com-  
19 munity inpatient facility for custody, care and treatment, the authority is  
20 responsible for and shall prepare the plan.

21 (3) In carrying out a conditional release plan prepared under subsection  
22 (2) of this section, the authority may contract with a community mental  
23 health program, other public agency or private corporation or an individual  
24 to provide supervision and treatment for the conditionally released person.

25 (4)(a) The board shall maintain and keep current the medical, social and  
26 criminal history of all persons committed to its jurisdiction. The  
27 confidentiality of records maintained by the board shall be determined pur-  
28 suant to ORS 192.338, 192.345, 192.355 and 192.398.

29 (b) Except as otherwise provided by law, upon request of the board, a  
30 state hospital, a community mental health program and any other health  
31 care service provider shall provide the board with all medical records per-

1 taining to a person committed to the jurisdiction of the board.

2 (5) The evidentiary phase of a hearing conducted by the board under ORS  
3 161.315 to 161.351 is not a deliberation for purposes of ORS 192.690.

4 **SECTION 11.** ORS 161.392 is amended to read:

5 161.392. (1) The Oregon Health Authority shall adopt rules necessary to  
6 certify psychiatrists and licensed psychologists for the purpose of performing  
7 evaluations and examinations described in ORS 161.309[, 161.365] and  
8 419C.524 **and sections 2 to 5 of this 2020 Act.** The rules must include a  
9 description of the standards and qualifications necessary for certification.  
10 The authority may charge a fee for certification under this section in an  
11 amount determined by rule.

12 (2) The authority shall consult with the Psychiatric Security Review  
13 Board about proposed rules described in subsection (1) of this section before  
14 issuing the proposed rules for public comment and before adopting the rules.

15 **SECTION 12.** ORS 181A.290 is amended to read:

16 181A.290. (1) The Department of Human Services, the Oregon Health Au-  
17 thority, the Psychiatric Security Review Board and the Judicial Department  
18 shall provide the Department of State Police with the minimum information  
19 necessary to identify persons who:

20 (a) Have been committed by a court to the Oregon Health Authority un-  
21 der ORS 426.130, based on a finding that the person is dangerous to self or  
22 others;

23 (b) Are subject to a court order under ORS 426.130 or 426.133 prohibiting  
24 the person from purchasing or possessing a firearm;

25 (c) Have been committed by a court to the Department of Human Services  
26 under ORS 427.290, based on a finding that the person is dangerous to self  
27 or others;

28 (d) Have been found by a court to lack fitness to proceed under ORS  
29 161.370;

30 (e) Have been found guilty except for insanity of a crime under ORS  
31 [161.295 to 161.370] **161.290 to 161.373;**

1 (f) Have been found responsible except for insanity for an act under ORS  
2 419C.411;

3 (g) Have been placed under the jurisdiction of the Psychiatric Security  
4 Review Board under ORS 161.315 to 161.351; or

5 (h) Have been committed to a state hospital or facility under ORS 161.315  
6 to 161.351 or 419C.529 to 419C.544.

7 (2) Upon receipt of the information described in this section, the Depart-  
8 ment of State Police shall access and maintain the information and transmit  
9 the information to the federal government as required under federal law.

10 (3) The Department of Human Services, the Oregon Health Authority, the  
11 Psychiatric Security Review Board and the Judicial Department shall enter  
12 into agreements with the Department of State Police describing the access  
13 to information provided under this section.

14 (4) The Department of State Police shall adopt rules:

15 (a) After consulting with the Department of Human Services, the Oregon  
16 Health Authority, the Psychiatric Security Review Board and the Judicial  
17 Department, describing the type of information provided to the Department  
18 of State Police under this section; and

19 (b) Describing the method and manner of maintaining the information  
20 described in this section and transmitting the information to the federal  
21 government.

22 (5) As used in this section, “minimum information necessary” means data  
23 elements or nominal information that is necessary or required under federal  
24 law to accurately identify a person described in this section and includes the  
25 person’s name, date of birth, gender and reference information that identifies  
26 the originating agency or court and enables the originating agency or court  
27 to locate an underlying record or file of a person described in this section.  
28 “Minimum information necessary” does not include any medical, psychiatric  
29 or psychological information, case histories or files of a person described in  
30 this section or any record or file of an originating agency or court.

31 **SECTION 13.** ORS 430.230 is amended to read:

1 430.230. As used in ORS 430.230 to 430.236:

2 (1) “Comprehensive community supports and services” includes:

3 (a) Community-based mental health or substance use disorder treatment  
4 programs;

5 (b) [*Community-based services necessary to restore a defendant’s fitness to*  
6 *proceed, as described in ORS 161.370 (2)(a)*] **Community restoration ser-**  
7 **vices as defined in section 2 of this 2020 Act;**

8 (c) Evidence-based and tribal-based programs designed to reduce hospital  
9 and jail utilization by target populations; and

10 (d) Programs aimed at diverting individuals with nonperson criminal  
11 charges experiencing mental illness or substance use disorders from the  
12 criminal justice system.

13 (2) “County” includes a single county or a regional consortium of coun-  
14 ties.

15

16

**MISCELLANEOUS**

17

18 **SECTION 14. The unit and section captions used in this 2020 Act**  
19 **are provided only for the convenience of the reader and do not become**  
20 **part of the statutory law of this state or express any legislative intent**  
21 **in the enactment of this 2020 Act.**

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