

SB 24-A6
(LC 383)
5/23/19 (JLM/ps)

Requested by HOUSE COMMITTEE ON JUDICIARY (at the request of Representative Jennifer Williamson)

**PROPOSED AMENDMENTS TO
A-ENGROSSED SENATE BILL 24
(INCLUDING AMENDMENTS TO RESOLVE CONFLICTS)**

1 On page 1 of the printed A-engrossed bill, delete lines 5 through 8 and
2 delete pages 2 through 9 and insert:

3 **“SECTION 1.** ORS 161.365 is amended to read:

4 “161.365. (1) When the court has reason to doubt the defendant’s fitness
5 to proceed by reason of incapacity as described in ORS 161.360, the court
6 may call any witness to its assistance in reaching its decision and shall order
7 that a community mental health program director, or the director’s
8 designee, consult with the defendant **and with any local entity that would**
9 **be responsible for supervising the defendant if the defendant were to**
10 **be released in the community**, to determine whether services and super-
11 vision necessary to safely [*restore*] **allow** the [*defendant’s*] **defendant to gain**
12 **or regain** fitness to proceed are available in the community. After the con-
13 sultation, the program director or the director’s designee shall provide to the
14 court a copy of the findings resulting from the consultation. If the court
15 determines the assistance of a psychiatrist or psychologist would be helpful,
16 the court may:

17 “(a) Order that a psychiatric or psychological examination of the defend-
18 ant be conducted by a certified evaluator as defined in ORS 161.309 and a
19 report of the examination be prepared; or

20 “(b) Order the defendant to be committed for the purpose of an examina-

1 tion [*for a period not exceeding 30 days*] to a state mental hospital or other
2 facility designated by the Oregon Health Authority if the defendant is at
3 least 18 years of age, or to a secure intensive community inpatient facility
4 designated by the authority if the defendant is under 18 years of age. **The**
5 **state mental hospital or other facility may retain custody of a de-**
6 **fendant committed under this paragraph for the duration necessary**
7 **to complete the examination of the defendant, not to exceed 30 days.**
8 **The examination may include a period of observation.**

9 **“(2)(a) A defendant committed under subsection (1)(b) of this sec-**
10 **tion shall be transported to the state mental hospital or other facility**
11 **for the examination.**

12 **“(b) At the conclusion of the examination, the superintendent of**
13 **the state mental hospital or the superintendent’s designee or the di-**
14 **rector of the facility may:**

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

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

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

25 **“[(2)] (3) The report of an examination described in this section must in-**
26 **clude, 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**

1 in ORS 161.360; and

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

8 “[~~(3)~~] (4) Except when the defendant and the court both request to the
9 contrary, the report may not contain any findings or conclusions as to
10 whether the defendant as a result of a qualifying mental disorder was subject
11 to the provisions of ORS 161.295 or 161.300 at the time of the criminal act
12 charged.

13 “[~~(4)~~] (5) If the examination by the psychiatrist or psychologist cannot
14 be conducted by reason of the unwillingness of the defendant to participate
15 in the examination, the report must so state and must include, if possible,
16 an opinion as to whether the unwillingness of the defendant was the result
17 of a qualifying mental disorder affecting capacity to proceed.

18 “[~~(5)~~] (6)(a) The report **resulting from the examination of a defendant**
19 **under this section** must be filed with the clerk of the court, who shall cause
20 copies to be delivered to the district attorney and to counsel for defendant.

21 “(b) **The entity or evaluator conducting the examination shall pro-**
22 **vide a copy of the report resulting from the examination to the com-**
23 **munity mental health program director or designee in:**

24 “(A) **The county in which the defendant is charged; and**

25 “(B) **The county of the defendant’s last known residence.**

26 “(c) **Reports prepared under this section are confidential and may**
27 **be made available only:**

28 “(A) **To the court, prosecuting attorney, defense attorney, agent of**
29 **the prosecuting or defense attorney, defendant, community mental**
30 **health program director or designee and any facility in which the de-**

1 **defendant is housed; or**

2 **“(B) As ordered by a court.**

3 **“(d) Any facility in which a defendant is housed may not use a re-**
4 **port prepared under this section to support a disciplinary action**
5 **against the defendant.**

6 **“(e) Nothing in this subsection prohibits the prosecuting attorney,**
7 **defense attorney or agent of the prosecuting or defense attorney from**
8 **discussing the contents of a report prepared under this section with**
9 **witnesses or victims as otherwise permitted by law.**

10 **“[(6)(a)] (7)(a) When upon motion of the court or a financially eligible**
11 **defendant, the court has ordered a psychiatric or psychological examination**
12 **of the defendant, a county or justice court shall order the county to pay, and**
13 **a circuit court shall order the public defense services executive director to**
14 **pay from funds available for the purpose:**

15 **“(A) A reasonable fee if the examination of the defendant is conducted**
16 **by a psychiatrist or psychologist in private practice; and**

17 **“(B) All costs including transportation of the defendant if the examina-**
18 **tion is conducted by a psychiatrist or psychologist in the employ of the**
19 **Oregon Health Authority or a community mental health program established**
20 **under ORS 430.610 to 430.670.**

21 **“(b) When an examination is ordered at the request or with the**
22 **acquiescence of a defendant who is determined not to be financially eligible,**
23 **the examination shall be performed at the defendant’s expense. When an ex-**
24 **amination is ordered at the request of the prosecution, the county shall pay**
25 **for the expense of the examination.**

26 **“[(7)] (8) The Oregon Health Authority shall establish by rule standards**
27 **for the consultation described in subsection (1) of this section.**

28 **“SECTION 1a. If Senate Bill 25 becomes law, section 1 of this 2019**
29 **Act (amending ORS 161.365) is repealed and ORS 161.365, as amended**
30 **by section 4, chapter ___, Oregon Laws 2019 (Enrolled Senate Bill 25),**

1 **is amended to read:**

2 “161.365. (1)(a) When the court has reason to doubt the defendant’s fitness
3 to proceed by reason of incapacity as described in ORS 161.360, the court
4 may call any witness to assist it in reaching its decision and shall order that
5 a community mental health program director, or the director’s designee,
6 consult with the defendant **and with any local entity that would be re-**
7 **sponsible for supervising the defendant if the defendant were to be**
8 **released in the community**, to determine whether services and supervision
9 necessary to safely [*restore*] **allow the [defendant’s] defendant to gain or**
10 **regain** fitness to proceed are available in the community. After the consul-
11 tation, the program director or the director’s designee shall provide to the
12 court a copy of the findings resulting from the consultation. If the court
13 determines the assistance of a psychiatrist or psychologist would be helpful,
14 the court may:

15 “(A) Order that a psychiatric or psychological examination of the de-
16 fendant be conducted by a certified evaluator as defined in ORS 161.309 and
17 a report of the examination be prepared; or

18 “(B) Order the defendant to be committed for the purpose of an examina-
19 tion [*for a period not exceeding 30 days*] to a state mental hospital or other
20 facility designated by the Oregon Health Authority if the defendant is at
21 least 18 years of age, or to a secure intensive community inpatient facility
22 designated by the authority if the defendant is under 18 years of age. **The**
23 **state mental hospital or other facility may retain custody of a de-**
24 **fendant committed under this paragraph for the duration necessary**
25 **to complete the examination of the defendant, not to exceed 30 days.**
26 **The examination may include a period of observation.**

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

30 “**(2)(a) A defendant committed under subsection (1)(a)(B) of this**

1 section shall be transported to the state mental hospital or other fa-
2 cility for the examination.

3 “(b) At the conclusion of the examination, the superintendent of
4 the state mental hospital or the superintendent’s designee or the di-
5 rector of the facility may:

6 “(A) Return the defendant to the facility from which the defendant
7 was transported; or

8 “(B) Inform the court and the parties that the defendant requires
9 a hospital level of care due to the defendant’s dangerousness and the
10 acuity of symptoms of the defendant’s qualifying mental disorder and
11 request that the defendant remain at the state mental hospital or
12 other facility pending a hearing or order under ORS 161.370.

13 “(c) If both parties consent, the court may, without holding a
14 hearing, enter any order authorized by ORS 161.370 based on a report
15 resulting from an examination conducted under this section.

16 “[2)] (3) The report of an examination described in this section must in-
17 clude, but is not necessarily limited to, the following:

18 “(a) A description of the nature of the examination;

19 “(b) A statement of the mental condition of the defendant;

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

23 “(d) If the defendant is incapacitated within the description set out in
24 ORS 161.360, a recommendation of treatment and services necessary to [*re-*
25 *store*] **allow the defendant to gain or regain capacity, including whether**
26 **a hospital level of care is required due to the defendant’s**
27 **dangerousness and the acuity of symptoms of the defendant’s qualify-**
28 **ing mental disorder.**

29 “[3)] (4) Except when the defendant and the court both request to the
30 contrary, the report may not contain any findings or conclusions as to

1 whether the defendant as a result of a qualifying mental disorder was subject
2 to the provisions of ORS 161.295 or 161.300 at the time of the criminal act
3 charged.

4 “[4] (5) If the examination by the psychiatrist or psychologist cannot
5 be conducted by reason of the unwillingness of the defendant to participate
6 in the examination, the report must so state and must include, if possible,
7 an opinion as to whether the unwillingness of the defendant was the result
8 of a qualifying mental disorder affecting capacity to proceed.

9 “[5] (6)(a) The report **resulting from the examination of a defendant**
10 **under this section may be filed electronically and** must be filed with the
11 **clerk of the court**, [*and may be filed electronically. The clerk of the court*]
12 **who** shall cause copies to be delivered to the district attorney[, *to the com-*
13 *munity mental health program director or designee*] and to counsel for de-
14 fendant.

15 “(b) **The entity or evaluator conducting the examination shall pro-**
16 **vide a copy of the report resulting from the examination to the com-**
17 **munity mental health program director or designee in:**

18 “(A) **The county in which the defendant is charged; and**

19 “(B) **The county of the defendant’s last known residence.**

20 “(c) **Reports prepared under this section are confidential and may**
21 **be made available only:**

22 “(A) **To the court, prosecuting attorney, defense attorney, agent of**
23 **the prosecuting or defense attorney, defendant, community mental**
24 **health program director or designee and any facility in which the de-**
25 **fendant is housed; or**

26 “(B) **As ordered by a court.**

27 “(d) **Any facility in which a defendant is housed may not use a re-**
28 **port prepared under this section to support a disciplinary action**
29 **against the defendant.**

30 “(e) **Nothing in this subsection prohibits the prosecuting attorney,**

1 **defense attorney or agent of the prosecuting or defense attorney from**
2 **discussing the contents of a report prepared under this section with**
3 **witnesses or victims as otherwise permitted by law.**

4 “[~~(6)(a)~~] (7)(a) When upon motion of the court or a financially eligible
5 defendant, the court has ordered a psychiatric or psychological examination
6 of the defendant, a county or justice court shall order the county to pay, and
7 a circuit court shall order the public defense services executive director to
8 pay from funds available for the purpose:

9 “(A) A reasonable fee if the examination of the defendant is conducted
10 by a psychiatrist or psychologist in private practice; and

11 “(B) All costs including transportation of the defendant if the examina-
12 tion is conducted by a psychiatrist or psychologist in the employ of the
13 Oregon Health Authority or a community mental health program established
14 under ORS 430.610 to 430.670.

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

20 “[~~(7)(a)~~ *Reports and evaluations conducted under this section are confiden-*
21 *tial and may be made available only:]*

22 “[~~(A)~~ *To the court, prosecuting attorney, defense attorney, defendant, com-*
23 *munity mental health program director or designee and facility in which the*
24 *defendant is housed; or]*

25 “[~~(B)~~ *As ordered by a court.]*

26 “[~~(b)~~ *A facility in which a defendant is housed may not use a report or*
27 *evaluation conducted under this section to support a disciplinary action*
28 *against the defendant.]*

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

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

2 “161.370. (1)(a) When the defendant’s fitness to proceed is drawn in
3 question, the issue shall be determined by the court.

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

12 “(2)(a) If the court determines that the defendant lacks fitness to proceed,
13 the criminal proceeding against the defendant shall be suspended and[:]
14 **the court shall, at a hearing, proceed in accordance with this subsection.**

15 **“(b) After making the determination under paragraph (a) of this**
16 **subsection, the court shall receive input, to be considered at the**
17 **hearing, from a community mental health program director or the**
18 **director’s designee, and from any local entity that would be responsi-**
19 **ble for supervising the defendant if the defendant were to be released**
20 **in the community, concerning whether services and supervision nec-**
21 **essary to safely allow the defendant to gain or regain fitness to pro-**
22 **ceed are available in the community.**

23 **“(c) The court and the parties shall at the hearing determine an**
24 **appropriate action in the case, and the court shall enter an order**
25 **necessary to implement the action. In determining the appropriate**
26 **action, the court shall consider the primary and secondary release**
27 **criteria as defined in ORS 135.230, the least restrictive option appro-**
28 **priate for the defendant, the needs of the defendant and the interests**
29 **of justice. Actions may include but are not limited to:**

30 **“(A) Commitment for the defendant to gain or regain fitness to**

1 **proceed under subsection (3) or (5) of this section;**

2 **“(B) Community restoration as recommended by the community**
3 **mental health program director or designee;**

4 **“(C) Release on supervision;**

5 **“(D) Commencement of a civil commitment proceeding under ORS**
6 **426.070 to 426.170, 426.701 or 427.235 to 427.290;**

7 **“(E) Commencement of protective proceedings under ORS chapter**
8 **125; or**

9 **“(F) Dismissal of the charges pursuant to ORS 135.755.**

10 **“(d) If the court, while considering or ordering an appropriate**
11 **action under this subsection:**

12 **“(A) Determines that the defendant requires a hospital level of care,**
13 **the court shall make specific findings regarding why the defendant**
14 **requires such level of care.**

15 **“(B) Determines that the defendant does not require a hospital level**
16 **of care, but that services and supervision necessary to safely allow the**
17 **defendant to gain or regain fitness to proceed are not available in the**
18 **community, the court shall set a review hearing 14 days from the date**
19 **of the determination for any defendant remaining in custody.**

20 **“[(a)] (3)(a) Unless the court orders an action other than commit-**
21 **ment under subsection (2) of this section, and except as otherwise**
22 **provided in subsections (4) and (5) of this section, if the court finds that**
23 **the defendant is dangerous to self or others as a result of a qualifying mental**
24 **disorder, or that, based on the findings resulting from the consultation de-**
25 **scribed in ORS 161.365 (1) and from any information provided by**
26 **community-based mental health providers or any other sources, the**
27 **services and supervision necessary to [restore] allow the [defendant’s] de-**
28 **fendant to gain or regain fitness to proceed are not available in the com-**
29 **munity, the court shall commit the defendant to the custody of the**
30 **superintendent of a state mental hospital or director of a facility[,] desig-**

1 nated by the Oregon Health Authority[,] if the defendant is at least 18 years
2 of age, or to the custody of the director of a secure intensive community
3 inpatient facility designated by the authority if the defendant is under 18
4 years of age[; *or*].

5 **“(b) If the defendant is committed under this subsection, the com-**
6 **munity mental health program director shall at regular intervals,**
7 **during any period of commitment, review available community re-**
8 **sources and maintain communication with the defendant and the su-**
9 **perintendent of the state mental hospital or director of the facility in**
10 **order to facilitate an efficient transition to treatment in the commu-**
11 **nity when ordered.**

12 “[*(b)*] **(4)(a) If the court does not make a finding described in [*paragraph***
13 **(a) of this subsection,] subsection (3) of this section, if the circumstances**
14 **in subsection (5)(c) of this section apply or if the court determines that**
15 **care other than commitment for incapacity to stand trial would better serve**
16 **the defendant and the community, the court shall release the defendant on**
17 **supervision for as long as the unfitness endures.**

18 **“(b) The court may order a community mental health program di-**
19 **rector providing treatment to the defendant in the community to**
20 **provide the court with status reports on the defendant’s progress in**
21 **gaining or regaining fitness to proceed.**

22 **“(c) A community mental health program director providing treat-**
23 **ment to the defendant in the community shall notify the court if the**
24 **defendant gains or regains fitness to proceed.**

25 **“(5)(a) If the most serious offense in the charging instrument is a**
26 **misdemeanor or violation, except as provided in paragraph (d) of this**
27 **subsection, the court may not commit the defendant under subsection**
28 **(3) of this section without a recommendation by a certified evaluator**
29 **as defined in ORS 161.309, or a community mental health program di-**
30 **rector or the director’s designee, that the defendant requires a hospital**

1 level of care due to the defendant's dangerousness and the acuity of
2 symptoms of the defendant's qualifying mental disorder.

3 “(b) If at the time of determining the appropriate action for the
4 case the court has not received a recommendation as to whether the
5 defendant requires a hospital level of care due to the defendant's
6 dangerousness and the acuity of symptoms of the defendant's qualify-
7 ing mental disorder, the court shall order a certified evaluator or a
8 community mental health program director, or the director's designee,
9 to make such a recommendation.

10 “(c) If the court does not order the commitment of a defendant
11 described in this subsection to the state mental hospital or other fa-
12 cility, the court shall hold a hearing in accordance with subsection
13 (2)(c) of this section to determine and order an appropriate action
14 other than commitment.

15 “(d) If the court orders the commitment of a defendant described
16 in this subsection to the state mental hospital or other facility without
17 a recommendation that the defendant requires a hospital level of care
18 due to the defendant's dangerousness and the acuity of symptoms of
19 the defendant's qualifying mental disorder, the court shall make spe-
20 cific written findings regarding why commitment is necessary and
21 appropriate.

22 “[3] (6) When a defendant is released on supervision under subsection
23 [(2)(b)] (4) of this section, the court may place conditions that the court
24 deems appropriate on the release, including the requirement that the de-
25 fendant regularly report to the authority or a community mental health
26 program for examination to determine if the defendant has gained or re-
27 gained capacity to stand trial.

28 “[4] (7) When the court, on its own motion or upon the application of
29 the superintendent of the hospital or director of the facility in which the
30 defendant is committed, a person examining the defendant as a condition of

1 release on supervision, or either party, determines, after a hearing, if a
2 hearing is requested, that the defendant has gained or regained fitness to
3 proceed, the criminal proceeding shall be resumed. If, however, the court is
4 of the view that so much time has elapsed since the commitment or release
5 of the defendant on supervision that it would be unjust to resume the crim-
6 inal proceeding, the court on motion of either party may dismiss the charge
7 and may order the defendant to be discharged or cause a proceeding to be
8 commenced forthwith under ORS 426.070 to 426.170, **426.701** or 427.235 to
9 427.290.

10 “[5] **(8)** The superintendent of a state hospital or director of a facility
11 to which the defendant is committed shall cause the defendant to be evalu-
12 ated within 60 days from the defendant’s delivery into the superintendent’s
13 or director’s custody, for the purpose of determining whether there is a
14 substantial probability that, in the foreseeable future, the defendant will
15 have the capacity to stand trial. In addition, the superintendent or director
16 shall:

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

20 “(b) Within 90 days of the defendant’s delivery into the superintendent’s
21 or director’s custody, notify the committing court that:

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

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

25 “(C) There is a substantial probability that, in the foreseeable future, the
26 defendant will gain or regain the capacity to stand trial. If the probability
27 exists, the superintendent or director shall give the court an estimate of the
28 time in which the defendant, with appropriate treatment, is expected to gain
29 or regain capacity.

30 “[6](a) **(9)(a)** If the superintendent or director determines that there is

1 a substantial probability that, in the foreseeable future, the defendant will
2 gain or regain the capacity to stand trial, unless the court otherwise orders,
3 the defendant shall remain in the superintendent's or director's custody
4 where the defendant shall receive treatment designed for the purpose of en-
5 abling the defendant to gain or regain capacity. In keeping with the notice
6 requirement under subsection [(5)(b)] **(8)(b)** of this section, the superinten-
7 dent or director shall, for the duration of the defendant's period of commit-
8 ment, submit a progress report to the committing court, concerning the
9 defendant's capacity or incapacity, at least once every 180 days as measured
10 from the date of the defendant's delivery into the superintendent's or
11 director's custody.

12 “(b)(A) Notwithstanding paragraph (a) of this subsection, if the super-
13 intendent or director determines that a defendant committed under this sec-
14 tion is no longer dangerous to self or others as a result of a qualifying
15 mental disorder, or that the services and supervision necessary to [restore]
16 **allow the [defendant's] defendant to gain or regain** fitness to proceed are
17 available in the community, the superintendent or director shall file notice
18 of that determination with the court.

19 “(B) Upon receipt of the notice, [*the court shall order the person released*
20 *on supervision as described in subsection (3) of this section.*] **the court shall**
21 **order that a community mental health program director or the**
22 **director's designee consult with the defendant and with any local en-**
23 **tity that would be responsible for supervising the defendant if the de-**
24 **fendant were to be released in the community, within seven judicial**
25 **days, to determine whether services and supervision necessary to**
26 **safely allow the defendant to gain or regain fitness to proceed are**
27 **available in the community. The director or designee shall provide the**
28 **court and the parties with recommendations from the consultation**
29 **within 14 judicial days of the court's order.**

30 “(C) **Within 14 judicial days of receiving the recommendations from**

1 **the consultation, the court shall hold a hearing to determine an ap-**
2 **propriate action in accordance with subsection (2)(c) of this section**
3 **as follows:**

4 **“(i) If, after consideration of the factors and possible actions de-**
5 **scribed in subsection (2)(c) of this section, and any recommendations**
6 **from the consultation described in this paragraph, the court deter-**
7 **mines that the defendant remains dangerous to self or others as a re-**
8 **sult of a qualifying mental disorder, or that the services and**
9 **supervision necessary to allow the defendant to gain or regain fitness**
10 **to proceed are not available in the community, the court may, after**
11 **making specific findings to that effect, continue the commitment.**

12 **“(ii) If the court determines that the defendant is no longer dan-**
13 **gerous to self or others as a result of a qualifying mental disorder, or**
14 **that the services and supervision necessary to allow the defendant to**
15 **gain or regain fitness to proceed are available in the community, the**
16 **court shall release the defendant after considering the recommen-**
17 **dations from the consultation described in subparagraph (B) of this**
18 **paragraph.**

19 **“(c) A progress report described in paragraph (a) of this subsection may**
20 **consist of an update to:**

21 **“(A) The original examination report conducted under ORS 161.365; or**

22 **“(B) An evaluation conducted under subsection [(5)] (8) of this section,**
23 **if the defendant did not receive an examination under ORS 161.365.**

24 **“[(7)(a)] (10)(a) A defendant who remains committed under subsection**
25 **[(6)] (9) of this section shall be discharged within a period of time that is**
26 **reasonable for making a determination concerning whether or not, and when,**
27 **the defendant may gain or regain capacity. However, regardless of the num-**
28 **ber of charges with which the defendant is accused, in no event shall the**
29 **defendant be committed for longer than whichever of the following, measured**
30 **from the defendant’s initial custody date, is shorter:**

1 “(A) Three years; or

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

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

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

9 “(B) The defendant shall be given credit against each charge alleged in
10 the accusatory instrument:

11 “(i) For each day the defendant is committed under this section, whether
12 the days are consecutive or are interrupted by a period of time during which
13 the defendant has gained or regained fitness to proceed; and

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

19 “[(8)] **(11)** The superintendent or director shall notify the committing
20 court of the defendant’s impending discharge 30 days before the date on
21 which the superintendent or director is required to discharge the defendant
22 under subsection [(7)] **(10)** of this section.

23 “[(9)] **(12)** When the committing court receives a notice from the super-
24 intendent or director under subsection [(5)] **(8)** or [(8)] **(11)** of this section
25 concerning the defendant’s progress or lack thereof, the committing court
26 shall determine, after a hearing, if a hearing is requested, whether the de-
27 fendant presently has the capacity to stand trial.

28 “[(10)] **(13)** If at any time the court determines that the defendant lacks
29 the capacity to stand trial, the court shall further determine whether there
30 is a substantial probability that the defendant, in the foreseeable future, will

1 gain or regain the capacity to stand trial and whether the defendant is en-
2 titled to discharge under subsection [(7)] **(10)** of this section. If the court
3 determines that there is no substantial probability that the defendant, in the
4 foreseeable future, will gain or regain the capacity to stand trial or that the
5 defendant is entitled to discharge under subsection [(7)] **(10)** of this section,
6 the court shall dismiss, without prejudice, all charges against the defendant
7 and:

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

9 “(b) Initiate commitment proceedings under ORS 426.070 or 427.235 to
10 427.290.

11 “[~~(11)~~] **(14)** All notices required under this section shall be filed with the
12 clerk of the court and delivered to both the district attorney and the counsel
13 for the defendant.

14 “[~~(12)~~] **(15)** If the defendant gains or regains fitness to proceed, the term
15 of any sentence received by the defendant for conviction of the crime charged
16 shall be reduced by the amount of time the defendant was committed under
17 this section to the custody of a state mental hospital, or to the custody of
18 a secure intensive community inpatient facility[,] designated by the Oregon
19 Health Authority.

20 “[~~(13)~~] **(16)** Notwithstanding the suspension of the criminal proceeding
21 under subsection (2) of this section, the fact that the defendant is unfit to
22 proceed does not preclude any objection through counsel and without the
23 personal participation of the defendant on the grounds that the indictment
24 is insufficient, that the statute of limitations has run, that double jeopardy
25 principles apply or upon any other ground at the discretion of the court
26 which the court deems susceptible of fair determination prior to trial.

27 “[~~(14)~~] **(17)** At the time that the court determines that the defendant lacks
28 fitness to proceed under subsection (2) of this section, the court shall notify
29 the defendant that federal law prohibits the defendant from purchasing or
30 possessing a firearm unless the person obtains relief from the prohibition

1 under federal law. The court shall again notify the defendant of the prohi-
2 bition if the court finds that the defendant has gained or regained fitness to
3 proceed under subsection [(4)] (7) of this section.

4 **“(18)(a) The entity or evaluator conducting an examination of a**
5 **defendant under this section shall provide a copy of any report de-**
6 **scribed in this section to the community mental health program di-**
7 **rector or designee in:**

8 **“(A) The county in which the defendant is charged; and**

9 **“(B) The county of the defendant’s last known residence.**

10 **“(b) Reports prepared under this section are confidential and may**
11 **be made available only:**

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

16 **“(B) As ordered by a court.**

17 **“(c) Any facility in which a defendant is housed may not use a re-**
18 **port prepared under this section to support a disciplinary action**
19 **against the defendant.**

20 **“(d) Nothing in this subsection prohibits the prosecuting attorney,**
21 **defense attorney or agent of the prosecuting or defense attorney from**
22 **discussing the contents of a report prepared under this section with**
23 **witnesses or victims as otherwise permitted by law.**

24 **“(19) Unless the court orders otherwise or either party objects, a**
25 **defendant committed to a state hospital or other facility, or a certified**
26 **evaluator or other expert witness, may attend hearings held under this**
27 **section via simultaneous electronic transmission.**

28 **“(20) The Oregon Health Authority shall establish by rule standards**
29 **for the input provided to the court described in subsection (2) of this**
30 **section.**

1 **“SECTION 2a. If Senate Bill 25 becomes law, section 2 of this 2019**
2 **Act (amending ORS 161.370) is repealed and ORS 161.370, as amended**
3 **by section 5, chapter ___, Oregon Laws 2019 (Enrolled Senate Bill 25),**
4 **is amended to read:**

5 “161.370. (1)(a) When the defendant’s fitness to proceed is drawn in
6 question, the issue shall be determined by the court.

7 **“(b) If neither the prosecuting attorney nor counsel for the defendant**
8 **contests the finding of the report filed under ORS 161.365, the court may**
9 **make the determination on the basis of the report. If the finding is contested,**
10 **the court shall hold a hearing on the issue. If the report is received in evi-**
11 **dence in the hearing, the party who contests the finding has the right to**
12 **summon and to cross-examine any psychiatrist or psychologist who submitted**
13 **the report and to offer evidence upon the issue. Other evidence regarding the**
14 **defendant’s fitness to proceed may be introduced by either party.**

15 **“(2)(a) If the court determines that the defendant lacks fitness to proceed,**
16 **the criminal proceeding against the defendant shall be suspended and[:] the**
17 **court shall, at a hearing, proceed in accordance with this subsection.**

18 **“(b) After making the determination under paragraph (a) of this**
19 **subsection, the court shall receive input, to be considered at the**
20 **hearing, from a community mental health program director or the**
21 **director’s designee, and from any local entity that would be responsi-**
22 **ble for supervising the defendant if the defendant were to be released**
23 **in the community, concerning whether services and supervision nec-**
24 **essary to safely allow the defendant to gain or regain fitness to pro-**
25 **ceed are available in the community.**

26 **“(c) The court and the parties shall at the hearing determine an**
27 **appropriate action in the case, and the court shall enter an order**
28 **necessary to implement the action. In determining the appropriate**
29 **action, the court shall consider the primary and secondary release**
30 **criteria as defined in ORS 135.230, the least restrictive option appro-**

1 **priate for the defendant, the needs of the defendant and the interests**
2 **of justice. Actions may include but are not limited to:**

3 **“(A) Commitment for the defendant to gain or regain fitness to**
4 **proceed under subsection (3) or (5) of this section;**

5 **“(B) Community restoration as recommended by the community**
6 **mental health program director or designee;**

7 **“(C) Release on supervision;**

8 **“(D) Commencement of a civil commitment proceeding under ORS**
9 **426.070 to 426.170, 426.701 or 427.235 to 427.290;**

10 **“(E) Commencement of protective proceedings under ORS chapter**
11 **125; or**

12 **“(F) Dismissal of the charges pursuant to ORS 135.755.**

13 **“(d) If the court, while considering or ordering an appropriate**
14 **action under this subsection:**

15 **“(A) Determines that the defendant requires a hospital level of care,**
16 **the court shall make specific findings regarding why the defendant**
17 **requires such level of care.**

18 **“(B) Determines that the defendant does not require a hospital level**
19 **of care, but that services and supervision necessary to safely allow the**
20 **defendant to gain or regain fitness to proceed are not available in the**
21 **community, the court shall set a review hearing 14 days from the date**
22 **of the determination for any defendant remaining in custody.**

23 **“(e) The court shall ensure that an order entered under this sub-**
24 **section is provided, by the end of the next judicial day, to any entity**
25 **ordered to provide services and supervision necessary to restore the**
26 **defendant’s fitness to proceed.**

27 **“[(A)] (3)(a) Unless the court orders an action other than commit-**
28 **ment under subsection (2) of this section, and except as otherwise**
29 **provided in subsections (4) and (5) of this section, if the court finds that**
30 **the defendant is dangerous to self or others as a result of a qualifying mental**

1 disorder, or that, based on the findings resulting from the consultation de-
2 scribed in ORS 161.365 (1) **and from any information provided by**
3 **community-based mental health providers or any other sources**, the
4 services and supervision necessary to [*restore*] **allow** the [*defendant's*] **de-**
5 **fendant to gain or regain** fitness to proceed are not available in the com-
6 munity, the court shall commit the defendant to the custody of the
7 superintendent of a state mental hospital or director of a facility[,] desig-
8 nated by the Oregon Health Authority[,] if the defendant is at least 18 years
9 of age, or to the custody of the director of a secure intensive community
10 inpatient facility designated by the authority if the defendant is under 18
11 years of age[; *or*].

12 **“(b) If the defendant is committed under this subsection, the com-**
13 **munity mental health program director shall at regular intervals,**
14 **during any period of commitment, review available community re-**
15 **sources and maintain communication with the defendant and the su-**
16 **perintendent of the state mental hospital or director of the facility in**
17 **order to facilitate an efficient transition to treatment in the commu-**
18 **nity when ordered.**

19 “[*B*)] (4)(a) If the court does not make a finding described in [*subpara-*
20 *graph (A) of this paragraph,*] **subsection (3) of this section, if the cir-**
21 **cumstances in subsection (5)(c) of this section apply** or if the court
22 determines that care other than commitment for incapacity to stand trial
23 would better serve the defendant and the community, the court shall release
24 the defendant on supervision for as long as the unfitness endures.

25 **“(b) The court may order a community mental health program di-**
26 **rector providing treatment to the defendant in the community to**
27 **provide the court with status reports on the defendant’s progress in**
28 **gaining or regaining fitness to proceed.**

29 **“(c) A community mental health program director providing treat-**
30 **ment to the defendant in the community shall notify the court if the**

1 defendant gains or regains fitness to proceed.

2 “(5)(a) If the most serious offense in the charging instrument is a
3 misdemeanor or violation, except as provided in paragraph (d) of this
4 subsection, the court may not commit the defendant under subsection
5 (3) of this section without a recommendation by a certified evaluator
6 as defined in ORS 161.309, or a community mental health program di-
7 rector or the director’s designee, that the defendant requires a hospital
8 level of care due to the defendant’s dangerousness and the acuity of
9 symptoms of the defendant’s qualifying mental disorder.

10 “(b) If at the time of determining the appropriate action for the
11 case the court has not received a recommendation as to whether the
12 defendant requires a hospital level of care due to the defendant’s
13 dangerousness and the acuity of symptoms of the defendant’s qualify-
14 ing mental disorder, the court shall order a certified evaluator or a
15 community mental health program director, or the director’s designee,
16 to make such a recommendation.

17 “(c) If the court does not order the commitment of a defendant
18 described in this subsection to the state mental hospital or other fa-
19 cility, the court shall hold a hearing in accordance with subsection
20 (2)(c) of this section to determine and order an appropriate action
21 other than commitment.

22 “(d) If the court orders the commitment of a defendant described
23 in this subsection to the state mental hospital or other facility without
24 a recommendation that the defendant requires a hospital level of care
25 due to the defendant’s dangerousness and the acuity of symptoms of
26 the defendant’s qualifying mental disorder, the court shall make spe-
27 cific written findings regarding why commitment is necessary and
28 appropriate.

29 “[b) *The court shall ensure that an order entered under this subsection is*
30 *provided, by the end of the next judicial day, to any entity ordered to provide*

1 *services and supervision necessary to restore the defendant's fitness to*
2 *proceed.]*

3 “[3] **(6)** When a defendant is released on supervision under subsection
4 [(2)(a)(B)] **(4)** of this section, the court may place conditions that the court
5 deems appropriate on the release, including the requirement that the de-
6 fendant regularly report to the authority or a community mental health
7 program for examination to determine if the defendant has gained or re-
8 gained capacity to stand trial.

9 “[4] **(7)** When the court, on its own motion or upon the application of
10 the superintendent of the hospital or director of the facility in which the
11 defendant is committed, a person examining the defendant as a condition of
12 release on supervision, or either party, determines, after a hearing, if a
13 hearing is requested, that the defendant has gained or regained fitness to
14 proceed, the criminal proceeding shall be resumed. If, however, the court is
15 of the view that so much time has elapsed since the commitment or release
16 of the defendant on supervision that it would be unjust to resume the crim-
17 inal proceeding, the court on motion of either party may dismiss the charge
18 and may order the defendant to be discharged or cause a proceeding to be
19 commenced forthwith under ORS 426.070 to 426.170, **426.701** or 427.235 to
20 427.290.

21 “[5] **(8)** The superintendent of a state hospital or director of a facility
22 to which the defendant is committed shall cause the defendant to be evalu-
23 ated within 60 days from the defendant's delivery into the superintendent's
24 or director's custody, for the purpose of determining whether there is a
25 substantial probability that, in the foreseeable future, the defendant will
26 have the capacity to stand trial. In addition, the superintendent or director
27 shall:

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

1 “(b) Within 90 days of the defendant’s delivery into the superintendent’s
2 or director’s custody, notify the committing court that:

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

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

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

11 “[~~(6)(a)~~] **(9)(a)** If the superintendent or director determines that there is
12 a substantial probability that, in the foreseeable future, the defendant will
13 gain or regain the capacity to stand trial, unless the court otherwise orders,
14 the defendant shall remain in the superintendent’s or director’s custody
15 where the defendant shall receive treatment designed for the purpose of en-
16 abling the defendant to gain or regain capacity. In keeping with the notice
17 requirement under subsection [~~(5)(b)~~] **(8)(b)** of this section, the superinten-
18 dent or director shall, for the duration of the defendant’s period of commit-
19 ment, submit a progress report to the committing court, concerning the
20 defendant’s capacity or incapacity, at least once every 180 days as measured
21 from the date of the defendant’s delivery into the superintendent’s or
22 director’s custody.

23 “(b)**(A)** Notwithstanding paragraph (a) of this subsection, if the super-
24 intendent or director determines that a defendant committed under this sec-
25 tion is no longer dangerous to self or others as a result of a qualifying
26 mental disorder, or that the services and supervision necessary to [*restore*]
27 **allow** the [*defendant’s*] **defendant to gain or regain** fitness to proceed are
28 available in the community, the superintendent or director shall file notice
29 of that determination with the court.

30 “**(B)** Upon receipt of the notice, [*the court shall order the person released*

1 *on supervision as described in subsection (3) of this section.] the court shall*
2 **order that a community mental health program director or the**
3 **director’s designee consult with the defendant and with any local en-**
4 **tity that would be responsible for supervising the defendant if the de-**
5 **fendant were to be released in the community, within seven judicial**
6 **days, to determine whether services and supervision necessary to**
7 **safely allow the defendant to gain or regain fitness to proceed are**
8 **available in the community. The director or designee shall provide the**
9 **court and the parties with recommendations from the consultation**
10 **within 14 judicial days of the court’s order.**

11 **“(C) Within 14 judicial days of receiving the recommendations from**
12 **the consultation, the court shall hold a hearing to determine an ap-**
13 **propriate action in accordance with subsection (2)(c) of this section**
14 **as follows:**

15 **“(i) If, after consideration of the factors and possible actions de-**
16 **scribed in subsection (2)(c) of this section, and any recommendations**
17 **from the consultation described in this paragraph, the court deter-**
18 **mines that the defendant remains dangerous to self or others as a re-**
19 **sult of a qualifying mental disorder, or that the services and**
20 **supervision necessary to allow the defendant to gain or regain fitness**
21 **to proceed are not available in the community, the court may, after**
22 **making specific findings to that effect, continue the commitment.**

23 **“(ii) If the court determines that the defendant is no longer dan-**
24 **gerous to self or others as a result of a qualifying mental disorder, or**
25 **that the services and supervision necessary to allow the defendant to**
26 **gain or regain fitness to proceed are available in the community, the**
27 **court shall release the defendant after considering the recommen-**
28 **dations from the consultation described in subparagraph (B) of this**
29 **paragraph.**

30 **“(c) A progress report described in paragraph (a) of this subsection may**

1 consist of an update to:

2 “(A) The original examination report conducted under ORS 161.365; or

3 “(B) An evaluation conducted under subsection ~~[(5)]~~ **(8)** of this section,
4 if the defendant did not receive an examination under ORS 161.365.

5 “[~~(7)(a)~~] **(10)(a)** A defendant who remains committed under subsection
6 ~~[(6)]~~ **(9)** of this section shall be discharged within a period of time that is
7 reasonable for making a determination concerning whether or not, and when,
8 the defendant may gain or regain capacity. However, regardless of the num-
9 ber of charges with which the defendant is accused, in no event shall the
10 defendant be committed for longer than whichever of the following, measured
11 from the defendant’s initial custody date, is shorter:

12 “(A) Three years; or

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

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

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

20 “(B) The defendant shall be given credit against each charge alleged in
21 the accusatory instrument:

22 “(i) For each day the defendant is committed under this section, whether
23 the days are consecutive or are interrupted by a period of time during which
24 the defendant has gained or regained fitness to proceed; and

25 “(ii) Unless the defendant is charged **on any charging instrument** with
26 aggravated murder or a crime listed in ORS 137.700 (2), for each day the
27 defendant is held in jail **before and after the date the defendant is first**
28 **committed**, whether the days are consecutive or are interrupted by a period
29 of time during which the defendant lacks fitness to proceed.

30 “[~~(8)~~] **(11)** The superintendent or director shall notify the committing

1 court of the defendant's impending discharge 30 days before the date on
2 which the superintendent or director is required to discharge the defendant
3 under subsection [(7)] (10) of this section.

4 "[9] (12) When the committing court receives a notice from the super-
5 intendent or director under subsection [(5)] (8) or [(8)] (11) of this section
6 concerning the defendant's progress or lack thereof, the committing court
7 shall determine, after a hearing, if a hearing is requested, whether the de-
8 fendant presently has the capacity to stand trial.

9 "[10] (13) If at any time the court determines that the defendant lacks
10 the capacity to stand trial, the court shall further determine whether there
11 is a substantial probability that the defendant, in the foreseeable future, will
12 gain or regain the capacity to stand trial and whether the defendant is en-
13 titled to discharge under subsection [(7)] (10) of this section. If the court
14 determines that there is no substantial probability that the defendant, in the
15 foreseeable future, will gain or regain the capacity to stand trial or that the
16 defendant is entitled to discharge under subsection [(7)] (10) of this section,
17 the court shall dismiss, without prejudice, all charges against the defendant
18 and:

19 "(a) Order that the defendant be discharged; or

20 "(b) Initiate commitment proceedings under ORS 426.070 or 427.235 to
21 427.290.

22 "[11] (14) All notices required under this section shall be filed with the
23 court and may be filed electronically. The clerk of the court shall cause
24 copies of the notices to be delivered to both the district attorney and the
25 counsel for the defendant.

26 "[12] (15) If the defendant gains or regains fitness to proceed, the term
27 of any sentence received by the defendant for conviction of the crime charged
28 shall be reduced by the amount of time the defendant was committed under
29 this section to the custody of a state mental hospital, or to the custody of
30 a secure intensive community inpatient facility[,] designated by the Oregon

1 Health Authority.

2 “[~~(13)~~] **(16)** Notwithstanding the suspension of the criminal proceeding
3 under subsection (2) of this section, the fact that the defendant is unfit to
4 proceed does not preclude any objection through counsel and without the
5 personal participation of the defendant on the grounds that the indictment
6 is insufficient, that the statute of limitations has run, that double jeopardy
7 principles apply or upon any other ground at the discretion of the court
8 which the court deems susceptible of fair determination prior to trial.

9 “[~~(14)~~] **(17)** At the time that the court determines that the defendant lacks
10 fitness to proceed under subsection (2) of this section, the court shall notify
11 the defendant that federal law prohibits the defendant from purchasing or
12 possessing a firearm unless the person obtains relief from the prohibition
13 under federal law. The court shall again notify the defendant of the prohi-
14 bition if the court finds that the defendant has gained or regained fitness to
15 proceed under subsection [~~(4)~~] **(7)** of this section.

16 “[~~(15)(a)~~] *Reports and evaluations conducted under this section are confi-*
17 *dential and may be made available only:]*

18 “[~~(A)~~] *To the court, prosecuting attorney, defense attorney, defendant, com-*
19 *munity mental health program director or designee and facility in which the*
20 *defendant is housed; or]*

21 “[~~(B)~~] *As ordered by a court.]*

22 “[~~(b)~~] *A facility in which a defendant is housed may not use a report or*
23 *evaluation conducted under this section to support a disciplinary action*
24 *against the defendant.]*

25 “**(18)(a) The entity or evaluator conducting an examination of a**
26 **defendant under this section shall provide a copy of any report de-**
27 **scribed in this section to the community mental health program di-**
28 **rector or designee in:**

29 “**(A) The county in which the defendant is charged; and**

30 “**(B) The county of the defendant’s last known residence.**

1 **“(b) Reports prepared under this section are confidential and may**
2 **be made available only:**

3 **“(A) To the court, prosecuting attorney, defense attorney, agent of**
4 **the prosecuting or defense attorney, defendant, community mental**
5 **health program director or designee and any facility in which the de-**
6 **fendant is housed; or**

7 **“(B) As ordered by a court.**

8 **“(c) Any facility in which a defendant is housed may not use a re-**
9 **port prepared under this section to support a disciplinary action**
10 **against the defendant.**

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

15 **“(19) Unless the court orders otherwise or either party objects, a**
16 **defendant committed to a state hospital or other facility, or a certified**
17 **evaluator or other expert witness, may attend hearings held under this**
18 **section via simultaneous electronic transmission.**

19 **“(20) The Oregon Health Authority shall establish by rule standards**
20 **for the input provided to the court described in subsection (2) of this**
21 **section.**

22 **“SECTION 3. ORS 161.315 is amended to read:**

23 **“161.315. (1) Upon filing of notice or the introduction of evidence by the**
24 **defendant as provided in ORS 161.309, the state shall have the right to have**
25 **at least one psychiatrist or licensed psychologist of its selection examine the**
26 **defendant. The state shall file notice with the court of its intention to have**
27 **the defendant examined.**

28 **“(2)(a) Upon filing of the notice, the court, in its discretion, may order**
29 **the defendant committed to a state [*institution*] **mental hospital** or any**
30 **other suitable facility, if the defendant is 18 years of age or older, for ob-**

1 servation and examination, **which may include treatment as permitted**
2 **by law** [*as the court may designate for a period not to exceed 30 days*].

3 “(b) If the defendant is under 18 years of age, upon filing of the notice,
4 the court, in its discretion, may order the defendant committed to a secure
5 intensive community inpatient facility designated by the Oregon Health Au-
6 thority for [*observation and*] examination [*as the court may designate for a*
7 *period not to exceed 30 days*].

8 “(c) **The state mental hospital or other facility may retain custody**
9 **of a defendant committed under this subsection only for the duration**
10 **necessary to complete the observation and examination of the de-**
11 **fendant, not to exceed 30 days.**

12 “(3) If the defendant objects to the examiner chosen by the state, the
13 court for good cause shown may direct the state to select a different exam-
14 iner.

15 “(4) An examiner performing an examination on the issue of insanity of
16 a defendant under this section is not obligated to examine the defendant for
17 fitness to proceed unless, during the examination, the examiner determines
18 that the defendant’s fitness to proceed is drawn in question. **If, during the**
19 **examination, the examiner determines that the defendant’s fitness to**
20 **proceed is in doubt, the examiner shall report the issue to the court**
21 **and to the superintendent of the state mental hospital or the**
22 **superintendent’s designee, or to the director of the facility to which**
23 **the defendant is committed. The superintendent or director may:**

24 “(a) **Return the defendant to the facility from which the defendant**
25 **was transported; or**

26 “(b) **Inform the court and the parties that the defendant should**
27 **remain at the state mental hospital or other facility for the purpose**
28 **of an examination under ORS 161.365. If neither party objects, the**
29 **court may order an examination under ORS 161.365 without holding a**
30 **hearing.**

1 “(5)(a) Reports resulting from examinations conducted under this
2 section are confidential and may be made available only:

3 “(A) To the court, prosecuting attorney, defense attorney, agent of
4 the prosecuting or defense attorney, defendant, community mental
5 health program director or designee and any facility in which the de-
6 fendant is housed; or

7 “(B) As ordered by a court.

8 “(b) Any facility in which a defendant is housed may not use a re-
9 port prepared under this section to support a disciplinary action
10 against the defendant.

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

15 “SECTION 3a. If Senate Bill 25 becomes law, section 3 of this 2019
16 Act (amending ORS 161.315) is repealed and ORS 161.315, as amended
17 by section 3, chapter ___, Oregon Laws 2019 (Enrolled Senate Bill 25),
18 is amended to read:

19 “161.315. (1) Upon filing of notice or the introduction of evidence by the
20 defendant as provided in ORS 161.309, the state shall have the right to have
21 at least one psychiatrist or licensed psychologist of its selection examine the
22 defendant. The state shall file notice with the court of its intention to have
23 the defendant examined.

24 “(2)(a) Upon filing of the notice, the court, in its discretion, may order
25 the defendant committed to a state [*institution*] **mental hospital** or any
26 other suitable facility, if the defendant is 18 years of age or older, for ob-
27 servation and examination, **which may include treatment as permitted**
28 **by law** [*as the court may designate for a period not to exceed 30 days*].

29 “(b) If the defendant is under 18 years of age, upon filing of the notice,
30 the court, in its discretion, may order the defendant committed to a secure

1 intensive community inpatient facility designated by the Oregon Health Au-
2 thority for *[observation and]* examination *[as the court may designate for a*
3 *period not to exceed 30 days]*.

4 **“(c) The state mental hospital or other facility may retain custody**
5 **of a defendant committed under this subsection only for the duration**
6 **necessary to complete the observation and examination of the de-**
7 **fendant, not to exceed 30 days.**

8 “(3) If the defendant objects to the examiner chosen by the state, the
9 court for good cause shown may direct the state to select a different exam-
10 iner.

11 “(4) An examiner performing an examination on the issue of insanity of
12 a defendant under this section is not obligated to examine the defendant for
13 fitness to proceed unless, during the examination, the examiner determines
14 that the defendant’s fitness to proceed is drawn in question. **If, during the**
15 **examination, the examiner determines that the defendant’s fitness to**
16 **proceed is in doubt, the examiner shall report the issue to the court**
17 **and to the superintendent of the state mental hospital or the**
18 **superintendent’s designee, or to the director of the facility to which**
19 **the defendant is committed. The superintendent or director may:**

20 **“(a) Return the defendant to the facility from which the defendant**
21 **was transported; or**

22 **“(b) Inform the court and the parties that the defendant should**
23 **remain at the state mental hospital or other facility for the purpose**
24 **of an examination under ORS 161.365. If neither party objects, the**
25 **court may order an examination under ORS 161.365 without holding a**
26 **hearing.**

27 “(5) A report resulting from an examination under this section may be
28 filed with the court electronically.

29 “[*(6)(a) Reports and evaluations conducted under this section are confiden-*
30 *tial and may be made available only:]*”

1 “[A] *To the court, prosecuting attorney, defense attorney, defendant, com-*
2 *munity mental health program director or designee and facility in which the*
3 *defendant is housed; or]*

4 “[B] *As ordered by a court.*]

5 “[b] *A facility in which a defendant is housed may not use a report or*
6 *evaluation conducted under this section to support a disciplinary action*
7 *against the defendant.*]

8 **“(6)(a) Reports resulting from examinations conducted under this**
9 **section are confidential and may be made available only:**

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

14 **“(B) As ordered by a court.**

15 **“(b) Any facility in which a defendant is housed may not use a re-**
16 **port prepared under this section to support a disciplinary action**
17 **against the defendant.**

18 **“(c) Nothing in this subsection prohibits the prosecuting attorney,**
19 **defense attorney or agent of the prosecuting or defense attorney from**
20 **discussing the contents of a report prepared under this section with**
21 **witnesses or victims as otherwise permitted by law.**

22 **“SECTION 4. This 2019 Act being necessary for the immediate**
23 **preservation of the public peace, health and safety, an emergency is**
24 **declared to exist, and this 2019 Act takes effect on its passage.”.**

25
