



Aid & Assist

2021 SB 295

Key Points

- Protects the constitutional rights of defendants in criminal cases to understand the nature of charges against them and assist in their own defense.
- Reflects consensus of a broad-based group of stakeholders, co-chaired by all three branches.
- Conforms statutory requirements for evaluator reports with the scope of their professional authority.
- Limits the time a defendant who has been found unfit to proceed may remain in jail, per federal requirements.

SB 295 – Aid & Assist Process

In the aid & assist process, if a court finds that a qualifying mental disorder may prevent a defendant from understanding the charges or assisting in their own defense, the court pauses the criminal case and may order the defendant to receive services to restore competency.

SB 295 builds on SB 1575A (2020). It restructures the aid & assist statutes to improve clarity and make the following substantive changes to effectuate the intent of SB 24 (2019) to increase the use of community-based services.

Hospital Level of Care

- Modifies criteria certified evaluator must consider for recommendations on “hospital level of care”
 - Requires consideration of the defendant’s symptoms, current diagnosis and ability to engage in treatment, appropriate restoration services, and general safety concerns
 - Replaces opinion on “dangerousness” with opinion on “general safety concerns”
- Modifies criteria for OSH to find that a defendant no longer needs a hospital level of care
- Narrows criteria when a judge may commit a defendant charged with a misdemeanor to OSH

Seven-Day Review Hearings

- Confirms Oregon law to federal requirements for the maximum duration that a defendant who lacks fitness to proceed may be held in jail pretrial
- Requires a judge to determine an appropriate action using current release criteria and enter an order that is consistent with the defendant’s constitutional due process rights

Substantive Changes from SB 1575A (2020) in SB 295

- Makes certain documents concerning involuntary medication confidential, and authorizes courts to provide certain documents to OSH
- Provides court discretion on whether to order a community mental health program consultation when the defendant is charged with certain crimes

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Proposed Workgroup Amendment to SB 295

3/1/2021

The SB 24 Implementation Workgroup continued to discuss additional improvements to the aid & assist statutes after the legislative draft of SB 295 was submitted. By a consensus, the workgroup proposes the following substantive changes to SB 295:

Aid & Assist Hearings Requirements

Authorizes the court to order an appropriate action for a defendant who lacks fitness to proceed to trial without holding a hearing if the parties agree and the court makes all required findings

Warrants and Holds

If community restoration may be appropriate for a defendant who has warrants or holds in other jurisdictions, the courts in those jurisdictions must communicate within two judicial days and develop a plan to address their interests in a timely manner

Evaluator Reports

Clarifies that, if a defendant is in a placement, an evaluator may defer to the treatment provider's recommendation of whether a hospital level of care is needed

Community Restoration Service Transfers

Provides that a court shall not order community restoration services in another county without permission of the receiving county

Notice of Firearms Prohibitions

Provides that existing requirement for courts to notify defendants of applicable firearms prohibitions must be in writing

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