

**TESTIMONY ON SENATE BILL 295
BEFORE SENATE COMMITTEE ON JUDICIARY
MARCH 4, 2021**

**PRESENTED BY: DEBRA MARYANOV, SENIOR ASSISTANT GENERAL COUNSEL
OREGON JUDICIAL DEPARTMENT**

Chair Prozanski, Vice Chair Thatcher, and Members of the Committee:

I am Debra Maryanov, Senior Assistant General Counsel for the Oregon Judicial Department. I co-chair the SB 24 Implementation Aid & Assist Workgroup with Micky Logan of the Oregon Health Authority and Gillian Fischer of the Legislative Policy and Research Office. This workgroup has been meeting since 2019 with the goals of addressing implementation of SB 24 (2019) and improving the state's aid & assist processes through consensus-based legislative changes. SB 295 is a product of the workgroup's efforts.

We are grateful for the engagement of the Legislative Policy and Research Office, Oregon Health Authority, counties, public defenders, district attorneys, people with lived experience, and others for their work with us on this bill. It's not always easy to reach consensus on complex issues among so many stakeholders, but the commitment of this group cannot be overstated.

I will provide an overview of the bill and the dash one amendment, joined by other members of the workgroup who will provide additional context and perspective as to why these changes are needed.

Background

The aid and assist process may be triggered when a person experiencing mental illness is accused of a crime. 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. This process protects the constitutional rights of defendants.

SB 295 builds upon SB 1575A (2020), with some additional revisions developed by consensus.

SB 295

SB 295 restructures the aid & assist statutes to improve clarity, making a number of substantive changes to effectuate the intent of SB 24 to increase the use of community-based services for competency restoration. You will hear more about that intent from other members of the workgroup.

Throughout the bill, references to "capacity to stand trial" are changed to "fitness to proceed," because "fitness to proceed" more accurately captures the scope of aid & assist processes, which may include probation violations. Also, references to "supervision" by community mental health programs are replaced with "providing community restoration services" to clarify their focus on behavioral health services.

Section 2 defines “hospital level of care,” “community restoration services,” and “public safety concerns” for purposes of the aid and assist statutes.

Section 3 clarifies the requirements for reports to the court on forensic evaluations and community mental health program (CMHP) consultations.

- It removes the requirements for forensic evaluators to opine on the dangerousness of a defendant and the availability of community restoration services.
- It requires CMHPs to report to the court on the specific community services that are necessary to safely restore the defendant and whether those services are present and available in the community.
- It clarifies the confidentiality of reports resulting from forensic examinations, CHMP consultations, and documents submitted to the court by a state mental hospital.

Section 3 also requires the court to provide a copy of its orders within one judicial day to any entity ordered to provide restoration services.

Section 4 addresses credit for time served for defendants who are committed to the Oregon State Hospital (OSH) that gain or regain fitness to proceed. It clarifies that the defendant will be given credit against each charge alleged in the accusatory instrument for each day of commitment.

Section 5 addresses the “9(b) process” for the court to consider a recommendation by OSH or a CMHP that a defendant who was committed for lack of fitness no longer needs a hospital level of care:

- It amends the criteria for that recommendation, replacing consideration of a defendant’s dangerousness with the defendant’s present safety concerns when not hospitalized.
- It requires the CMHP to determine whether appropriate community restoration services are present and available in the community.
- It clarifies when the court may continue the commitment following a recommendation that the defendant no longer needs a hospital level of care, depending on whether the most serious offense in the charging instrument is a felony or a misdemeanor.

Section 6 addresses court processes when a judge initially has doubts about the defendant’s fitness to proceed:

- It provides court discretion on whether to order a CMHP consultation when the defendant is charged with certain high-level offenses.
- It clarifies that municipal courts shall order the city to pay for forensic examination when it is on the motion of the court of a financially eligible defendant.

Section 7 addresses the processes following the court’s determination that the defendant lacks fitness to proceed.

- It clarifies that a CMHP will recommend whether appropriate community restoration services are present and available in the community.
- It conforms to federal law by requiring the court to set a review hearing within seven days for any defendant who remains in custody after it determines an appropriate action and to enter an order that is consistent with the defendant’s constitutional due process rights.
- It clarifies that the court may require a defendant on community restoration to report regularly to OSH or a certified evaluator for examination.

- It clarifies when the court has authority to commit a defendant to OSH, depending on whether the most serious offense in the charging instrument is a felony or a misdemeanor.

Section 8 makes reports, motions, and orders concerning the involuntary medication of a defendant in custody of OSH after commitment under ORS 161.370 confidential and available for disclosure only as specified

SB 295 contains an emergency clause and would take effect immediately.

SB 295-1: Workgroup Amendment

OJD also supports SB 295-1, the workgroup amendment. The workgroup has continued to meet and discuss additional areas of improvements to the aid & assist processes. The -1 amendment makes a few modest changes to the bill:

- In Section 3, it 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.
- In Section 4, it expands the existing requirement for courts to notify defendants of applicable firearms prohibitions by requiring the notice to be in writing.
- In Sections 6 and 7, it authorizes the court to order an appropriate action for a defendant who lacks fitness to proceed without holding a hearing if the parties agree and the court makes all findings required by law.
- In Section 7, it provides that, if the court determines that 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.
- Also in Section 7, it provides that a court shall not order community restoration services in another county without permission of the receiving county.

I am happy to answer any questions you may have. Thank you.