

D R A F T

SUMMARY

Digest: The Act changes laws about mental health findings. The Act takes effect on the 91st day after sine die. (Flesch Readability Score: 81.4).

Directs the Oregon Health Authority to expand the capacity of the Oregon State Hospital.

Requires certain updates and reports when a defendant has been ordered to engage in community restoration services due to lacking fitness to proceed. Authorizes the release of the defendant's fitness to proceed records upon request in specified circumstances. Authorizes the court to order the defendant to participate in an in-custody jail-based restoration treatment program when the defendant lacks fitness to proceed.

Authorizes the Oregon Public Guardian and Conservator to establish a program for persons found to lack fitness to proceed and to receive records concerning the defendant.

Modifies the criteria for the commitment of an extremely dangerous person with mental illness.

Takes effect on the 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to mental health; creating new provisions; amending ORS 125.683,
3 161.355, 161.362, 161.367, 161.370, 161.371 and 426.701; and prescribing an
4 effective date.

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

6 7 OREGON STATE HOSPITAL CAPACITY

8
9 **SECTION 1. (1) The Oregon Health Authority shall, as soon as**
10 **practicable, expand the capacity at Oregon State Hospital for inpatient**
11 **psychiatric patients, including state and community hospital beds. The**

1 **additional capacity shall at least meet the projected additional capac-**
2 **ity needed as identified in the Oregon Health Authority Behavioral**
3 **Health Residential+ Facility Study of June 2024, projecting the need**
4 **for 486 new beds.**

5 **(2) Beginning no later than December 31, 2025, and annually there-**
6 **after, the Oregon Health Authority shall submit a report to the ap-**
7 **propriate interim committees of the Legislative Assembly, in the**
8 **manner described in ORS 192.245, concerning the current capacity of**
9 **Oregon State Hospital and the projected additional capacity needed in**
10 **the following year.**

11 **SECTION 2.** Section 1 of this 2025 Act is amended to read:

12 **Sec. 1.** *[(1) The Oregon Health Authority shall, as soon as practicable,*
13 *expand the capacity at Oregon State Hospital for inpatient psychiatric patients,*
14 *including state and community hospital beds. The additional capacity shall*
15 *at least meet the projected additional capacity needed as identified in the*
16 *Oregon Health Authority Behavioral Health Residential+ Facility Study of*
17 *June 2024, projecting the need for 486 new beds.]*

18 *[(2) Beginning no later than December 31, 2025, and annually thereafter,]*
19 The Oregon Health Authority shall **annually** submit a report to the appro-
20 priate interim committees of the Legislative Assembly, in the manner de-
21 scribed in ORS 192.245, concerning the current capacity of Oregon State
22 Hospital and the projected additional capacity needed in the following year.

23 **SECTION 3.** **The amendments to section 1 of this 2025 Act by section**
24 **2 of this 2025 Act become operative on January 2, 2028.**

25

26 **FITNESS TO PROCEED**

27

28 **SECTION 4.** ORS 161.355 is amended to read:

29 161.355. As used in ORS 161.355 to 161.371:

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

31 (2) “Community restoration services” means services and treatment nec-

1 essary to safely allow a defendant to gain or regain fitness to proceed in the
2 community, which may include supervision by pretrial services.

3 (3) "Hospital level of care" means that a defendant requires the type of
4 care provided by an inpatient hospital **or an in-custody jail-based resto-**
5 **ration treatment program** in order to gain or regain fitness to proceed.

6 (4) "Public safety concerns" means that the defendant presents a risk to
7 self or to the public if not hospitalized or in custody.

8 **SECTION 5.** ORS 161.367 is amended to read:

9 161.367. (1) If at any time the court determines that the defendant lacks
10 fitness to proceed, the court shall further determine whether there is a sub-
11 stantial probability that the defendant, in the foreseeable future, will gain
12 or regain fitness to proceed. If the court determines that there is no sub-
13 stantial probability that the defendant, in the foreseeable future, will gain
14 or regain fitness to proceed, the court shall dismiss, without prejudice and
15 in accordance with subsection (6) of this section, all charges against the
16 defendant and:

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

18 (b) Initiate commitment proceedings under ORS 426.070, 426.701 or 427.235
19 to 427.292.

20 (2)(a) The superintendent of the hospital or director of the facility in
21 which the defendant is committed under ORS 161.370, **the director of the**
22 **facility providing the in-custody jail-based restoration treatment pro-**
23 **gram** or a person examining the defendant as a condition of release to
24 community restoration services shall notify the court if the defendant gains
25 or regains fitness to proceed.

26 (b) A party to the case may notify the court if the defendant has gained
27 or regained fitness to proceed.

28 (c) The court may, upon its own motion or the request of either party,
29 hold a hearing to determine whether the defendant has gained or regained
30 fitness to proceed. If the court determines that the defendant has gained or
31 regained fitness to proceed, the court shall resume the criminal proceeding

1 unless the court determines that so much time has elapsed since the com-
2 mitment or release of the defendant to community restoration services that
3 it would be unjust to resume the criminal proceeding. If the court determines
4 that it would be unjust to resume the criminal proceeding, the court, on
5 motion of either party, may dismiss the charge in accordance with subsection
6 (6) of this section, and may order the defendant to be discharged or cause a
7 proceeding to be commenced forthwith under ORS 426.070 to 426.170, 426.701
8 or 427.235 to 427.292.

9 (3) If the defendant gains or regains fitness to proceed, the defendant
10 shall be given credit against each charge alleged in the accusatory instru-
11 ment for each day the defendant was **in custody or** committed under ORS
12 161.370 to the custody of a state mental hospital, or to the custody of a se-
13 cure intensive community inpatient facility designated by the Oregon Health
14 Authority.

15 (4) Notwithstanding the suspension of the criminal proceeding under ORS
16 161.370 (2), the fact that the defendant is unfit to proceed does not preclude
17 any objection through counsel and without the personal participation of the
18 defendant on the grounds that the indictment is insufficient, that the statute
19 of limitations has run, that double jeopardy principles apply or upon any
20 other ground at the discretion of the court which the court deems susceptible
21 of fair determination prior to trial.

22 (5) At the time that the court determines that the defendant lacks fitness
23 to proceed under ORS 161.370 (2), the court shall notify the defendant in
24 writing that federal law prohibits the defendant from purchasing or possess-
25 ing a firearm unless the person obtains relief from the prohibition under
26 federal law. The court shall again notify the defendant in writing of the
27 prohibition if the court finds that the defendant has gained or regained fit-
28 ness to proceed under subsection (2) of this section.

29 (6) If the court intends to dismiss all charges involving orders of com-
30 mitment against a defendant who is committed to and currently located at
31 a state mental hospital or other facility, the court shall order that the de-

1 defendant be immediately transported back to the jurisdiction in which the
2 charges were initiated, and the dismissal shall take effect only upon the
3 defendant's arrival in that jurisdiction.

4 **SECTION 6.** ORS 161.370 is amended to read:

5 161.370. (1)(a) When the defendant's fitness to proceed is drawn in ques-
6 tion, 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 certified evaluator who submitted the re-
13 port 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 proceed in accordance with this subsection.

18 (b) After making the determination under paragraph (a) of this subsection,
19 the court shall receive a recommendation from a community mental health
20 program director or the director's designee, and from any local entity **or**
21 **agency** that would be responsible for treating the defendant if the defendant
22 were to be released in the community, concerning whether appropriate com-
23 munity restoration services are present and available in the community.

24 (c) If the parties agree as to the appropriate action under this section, the
25 court may, after making all findings required by law, enter any order au-
26 thorized by this section. If the parties do not agree as to the appropriate
27 action, the court and the parties shall, at a hearing, consider an appropriate
28 action in the case, and the court shall make a determination and enter an
29 order necessary to implement the action. In determining the appropriate
30 action, the court shall consider the primary and secondary release criteria
31 as defined in ORS 135.230, the least restrictive option appropriate for the

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

3 (A) Commitment **or an order to participate in an in-custody jail-based**
4 **restoration treatment program** for the defendant to gain or regain fitness
5 to proceed under subsection (3) or (4) of this section;

6 (B) An order to engage in community restoration services, as recom-
7 mended by the community mental health program director or designee, under
8 subsection (6) of this section;

9 (C) Commencement of a civil commitment proceeding under ORS 426.070
10 to 426.170, 426.701 or 427.235 to 427.292;

11 (D) Commencement of protective proceedings under ORS chapter 125; or

12 (E) Dismissal of the charges pursuant to ORS 135.755 and in accordance
13 with ORS 161.367 (6).

14 (d) If the court, while considering or ordering an appropriate action under
15 this subsection, does not order the defendant committed to a state mental
16 hospital or other facility, **or ordered to participate in an in-custody**
17 **jail-based restoration treatment program**, but finds that appropriate
18 community restoration services are not present and available in the commu-
19 nity, for any defendant remaining in custody after such determination, the
20 court shall set a review hearing seven days from the date of the determi-
21 nation under paragraph (a) of this subsection. At the review hearing, the
22 court shall consider all relevant information and determine if commitment
23 to the state mental hospital or other facility, **or an order to participate**
24 **in an in-custody jail-based restoration treatment program**, is appropri-
25 ate under subsection (3) or (4) of this section, or if another action described
26 in paragraph (c) of this subsection is appropriate. At the conclusion of the
27 hearing the court shall enter an order in accordance with the defendant's
28 constitutional rights to due process.

29 (e) If the court determines that the appropriate action in the case is an
30 order for the defendant to engage in community restoration services, but the
31 defendant has a pending criminal case, warrant or hold in one or more other

1 jurisdictions, the other jurisdictions shall, within two judicial days of be-
2 coming aware of the proceeding under this section, communicate with the
3 court and the other jurisdictions, if applicable, to develop a plan to address
4 the interests of all jurisdictions in the defendant in a timely manner.

5 **(f) If the court determines that the appropriate action in the case**
6 **is the commencement of protective proceedings under ORS chapter**
7 **125, the court may, in accordance with ORS 125.600 and 125.605, appoint**
8 **a temporary fiduciary for the defendant to exercise the powers of a**
9 **guardian, until a guardian can be appointed.**

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

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

22 (B) Based on the findings resulting from a consultation described in ORS
23 161.365 (1), if applicable, from any information provided by community-based
24 mental health providers or any other sources, and primary and secondary
25 release criteria as defined in ORS 135.230, the appropriate community resto-
26 ration services are not present and available in the community.

27 (b) If the defendant is committed **or ordered to participate in an in-**
28 **custody jail-based restoration treatment program** under this subsection,
29 the community mental health program director, or director's designee, shall
30 at regular intervals, during any period of commitment **or while the de-**
31 **fendant is subject to the order**, review available community restoration

1 services and maintain communication with the defendant and the super-
2 intendent of the state mental hospital or director of the facility in order to
3 facilitate an efficient transition to treatment in the community when or-
4 dered.

5 (c) If the court does not order the commitment of the defendant **or order**
6 **the defendant to participate in an in-custody jail-based restoration**
7 **treatment program** under this subsection, the court shall proceed in ac-
8 cordance with subsection (2)(c) of this section to determine and order an
9 appropriate action other than commitment **or an order to participate in**
10 **an in-custody jail-based restoration treatment program.**

11 (4)(a) If the most serious offense in the charging instrument is a
12 misdemeanor, the court may not commit the defendant to the custody of the
13 superintendent of a state mental hospital or director of a facility designated
14 by the Oregon Health Authority, **or order the defendant to participate in**
15 **an in-custody jail-based restoration treatment program,** if the defendant
16 is at least 18 years of age, **or commit the defendant** to the custody of the
17 director of a secure intensive community inpatient facility designated by the
18 authority if the defendant is under 18 years of age, unless the court:

19 (A)(i) Receives a recommendation from a certified evaluator that the de-
20 fendant requires a hospital level of care due to the acuity of symptoms of the
21 defendant's qualifying mental disorder; and

22 (ii) Receives a recommendation from a community mental health program
23 director, or director's designee, that the appropriate community restoration
24 services are not present and available in the community; or

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

27 (i) The defendant needs a hospital level of care due to the acuity of the
28 symptoms of the defendant's qualifying mental disorder;

29 (ii) There are public safety concerns; and

30 (iii) The appropriate community restoration services are not present and
31 available in the community.

1 (b) If at the time of determining the appropriate action for the case, the
2 court is considering commitment **or an order to participate in an in-**
3 **custody jail-based restoration treatment program** under paragraph (a)(A)
4 of this subsection and:

5 (A) Has not received a recommendation from a certified evaluator as to
6 whether the defendant requires a hospital level of care due to the acuity of
7 symptoms of the defendant's qualifying mental disorder, the court shall order
8 a certified evaluator to make such a recommendation.

9 (B) Has not received a recommendation from the community mental
10 health program director or designee concerning whether appropriate com-
11 munity restoration services are present and available in the community, the
12 court shall order the director or designee to make such a recommendation.

13 (c) If the court does not order the commitment of the defendant **or order**
14 **the defendant to participate in an in-custody jail-based restoration**
15 **treatment program** under this subsection, the court shall proceed in ac-
16 cordance with subsection (2)(c) of this section to determine and order an
17 appropriate action other than commitment **or an order to participate in**
18 **an in-custody jail-based restoration treatment program**.

19 (d) If the defendant is committed **or ordered to participate in an in-**
20 **custody jail-based restoration treatment program** under this subsection,
21 the community mental health program director, or director's designee, shall
22 at regular intervals, during any period of commitment **or while the de-**
23 **fendant is subject to the order**, review available community restoration
24 services and maintain communication with the defendant and the super-
25 intendent of the state mental hospital or director of the facility in order to
26 facilitate an efficient transition to treatment in the community when or-
27 dered.

28 (5) If the most serious offense in the charging instrument is a violation,
29 the court may not commit the defendant to the custody of the superintendent
30 of a state mental hospital or director of a facility designated by the Oregon
31 Health Authority, **or order the defendant to participate in an in-custody**

1 **jail-based restoration treatment program**, if the defendant is at least 18
2 years of age, or **commit the defendant** to the custody of the director of a
3 secure intensive community inpatient facility designated by the authority if
4 the defendant is under 18 years of age.

5 (6)(a) If the court does not order the commitment of the defendant **or**
6 **order the defendant to participate in an in-custody jail-based restora-**
7 **tion treatment program** under subsection (3) or (4) of this section, if
8 commitment **or an order to participate in an in-custody jail-based res-**
9 **toration treatment program** is precluded under subsection (5) of this sec-
10 tion or if the court determines that care other than commitment **or an order**
11 **to participate in an in-custody jail-based restoration treatment pro-**
12 **gram** would better serve the defendant and the community, the court shall
13 release the defendant, pursuant to an order that the defendant engage in
14 community restoration services, until the defendant has gained or regained
15 fitness to proceed, or until the court finds there is no substantial probability
16 that the defendant will, within the foreseeable future, gain or regain fitness
17 to proceed. The court may not order the defendant to engage in community
18 restoration services in another county without permission from the other
19 county.

20 (b) **When a defendant is ordered to engage in community restora-**
21 **tion services under this subsection, the court may place conditions**
22 **that the court deems appropriate on the release, including the re-**
23 **quirement that the defendant regularly report to a state mental hos-**
24 **pital or a certified evaluator for examination to determine if the**
25 **defendant has gained or regained fitness to proceed.**

26 (c) **The superintendent of the state mental hospital or the certified**
27 **evaluator to which the defendant is ordered to report under this sub-**
28 **section, or the community mental health program director coordinat-**
29 **ing the defendant's treatment in the community, shall cause the**
30 **defendant to be evaluated within 60 days from the date the defendant**
31 **was ordered to engage in community restoration services under this**

1 subsection for the purpose of determining whether there is a substan-
2 tial probability that, in the foreseeable future, the defendant will have
3 fitness to proceed, and provide the court with the results of the eval-
4 uation within 30 days. In addition, the superintendent, evaluator or
5 director shall:

6 (A) Immediately notify the court if the defendant, at any time,
7 gains or regains fitness to proceed or if there is no substantial proba-
8 bility that, within the foreseeable future, the defendant will gain or
9 regain fitness to proceed.

10 (B) Within 90 days from the date the defendant was ordered to en-
11 gage in community restoration services under this subsection, notify
12 the court that:

13 (i) The defendant has present fitness to proceed;

14 (ii) There is no substantial probability that, in the foreseeable fu-
15 ture, the defendant will gain or regain fitness to proceed; or

16 (iii) There is a substantial probability that, in the foreseeable fu-
17 ture, the defendant will gain or regain fitness to proceed. If the prob-
18 ability exists, the superintendent, evaluator or director shall give the
19 court an estimate of the time in which the defendant, with appropriate
20 treatment, is expected to gain or regain fitness to proceed.

21 (C) For the duration of the time period during which the defendant
22 is ordered to engage in community restoration services, submit a
23 progress report to the court, concerning the defendant's fitness to
24 proceed, at least once every 180 days as measured from the date the
25 defendant was ordered to engage in community restoration services
26 under this subsection.

27 [(b)] (d) The court may order a community mental health program direc-
28 tor coordinating the defendant's treatment in the community to provide the
29 court with status reports on the defendant's progress in gaining or regaining
30 fitness to proceed **in addition to any reports required by paragraph (c)**
31 **of this subsection.** The director shall provide a status report if the defend-

1 ant is not complying with court-ordered restoration services. **The status**
2 **report must be provided to the court within 48 hours if the conduct**
3 **constituting the noncompliance consists of missed appointments,**
4 **missed treatment sessions, a positive urine test for unauthorized sub-**
5 **stances, new law enforcement contact or a refusal to take prescribed**
6 **medications.**

7 [(c)] (e) [A community mental health program director coordinating the
8 defendant's treatment in the community shall notify the court if the defendant
9 gains or regains fitness to proceed. The notice] **The notification described**
10 **in paragraph (c)(A) of this subsection** shall be filed with the court and
11 may be filed electronically. The clerk of the court shall cause copies of the
12 notice to be delivered to both the district attorney and the counsel for the
13 defendant.

14 [(d) When a defendant is ordered to engage in community restoration ser-
15 vices under this subsection, the court may place conditions that the court deems
16 appropriate on the release, including the requirement that the defendant regu-
17 larly report to a state mental hospital or a certified evaluator for examination
18 to determine if the defendant has gained or regained fitness to proceed.]

19 (f) **If the court determines that there is a substantial probability**
20 **that, in the foreseeable future, the defendant will gain or regain fit-**
21 **ness to proceed, unless the court otherwise orders, the defendant shall**
22 **continue to engage in community restoration services and receive**
23 **treatment designed for the purpose of enabling the defendant to gain**
24 **or regain fitness to proceed.**

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

28 **SECTION 7.** ORS 161.371 is amended to read:

29 161.371. (1) The superintendent of a state mental hospital or director of
30 a facility to which the defendant is committed under ORS 161.370, **or the**
31 **director of the facility providing the in-custody jail-based restoration**

1 **treatment program**, shall cause the defendant to be evaluated within 60
2 days from the defendant's delivery into the superintendent's or director's
3 custody, for the purpose of determining whether there is a substantial prob-
4 ability that, in the foreseeable future, the defendant will have fitness to
5 proceed. In addition, the superintendent or director shall:

6 (a) Immediately notify the [*committing*] court if the defendant, at any
7 time, gains or regains fitness to proceed or if there is no substantial proba-
8 bility that, within the foreseeable future, the defendant will gain or regain
9 fitness to proceed.

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

12 (A) The defendant has present fitness to proceed;

13 (B) There is no substantial probability that, in the foreseeable future, the
14 defendant will gain or regain fitness to proceed; or

15 (C) There is a substantial probability that, in the foreseeable future, the
16 defendant will gain or regain fitness to proceed. If the probability exists, the
17 superintendent or director shall give the court an estimate of the time in
18 which the defendant, with appropriate treatment, is expected to gain or re-
19 gain fitness to proceed.

20 (c) Notify the court if court-ordered involuntary medication is necessary
21 for the defendant to gain or regain fitness to proceed and, if appropriate,
22 submit a report to the court under ORS 161.372.

23 **(d)(A) Provide the defendant's records to the court, district attor-**
24 **ney or attorney for the defendant within 10 days of receipt of an elec-**
25 **tronically submitted records request. A request for records under this**
26 **paragraph must be either accompanied by an authorization for the**
27 **release signed by the defendant or made in accordance with 45 C.F.R.**
28 **164.512(e).**

29 **(B) As used in this paragraph, "records" includes but is not limited**
30 **to the following as they relate to the defendant:**

31 **(i) Electronic or paper medical records.**

1 (ii) **The master patient index.**

2 (iii) **Medical, psychological and psychiatric notes including history,**
3 **physicals, progress notes and discharge summaries.**

4 (iv) **Nursing notes.**

5 (v) **Educational materials.**

6 (vi) **Records from legal skills classes.**

7 (vii) **Raw data from any administered psychiatric or psychology**
8 **testing.**

9 (viii) **Audio or video recordings of any evaluation or testing.**

10 (ix) **Evaluation reports.**

11 (x) **Any other written or recorded statement concerning the**
12 **defendant's fitness to proceed.**

13 (2)(a) If the superintendent of the state mental hospital or director of the
14 facility to which the defendant is committed, **or the director of the facility**
15 **providing the in-custody jail-based restoration treatment program,** de-
16 termines that there is a substantial probability that, in the foreseeable fu-
17 ture, the defendant will gain or regain fitness to proceed, unless the court
18 otherwise orders, the defendant shall remain in the superintendent's or
19 director's custody where the defendant shall receive treatment designed for
20 the purpose of enabling the defendant to gain or regain fitness to proceed.
21 In keeping with the notice requirement under subsection (1)(b) of this sec-
22 tion, the superintendent or director shall, for the duration of the defendant's
23 period of commitment **or treatment,** submit a progress report to the [*com-*
24 *mitting*] court, concerning the defendant's fitness to proceed, at least once
25 every 180 days as measured from the date of the defendant's delivery into the
26 superintendent's or director's custody.

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

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

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

1 (3)(a) Notwithstanding subsection (2) of this section, if the most serious
2 offense in the charging instrument is a felony, and the superintendent of the
3 state mental hospital or director of the facility to which the defendant is
4 committed, **or the director of the facility providing the in-custody jail-**
5 **based restoration treatment program**, determines that a hospital level of
6 care is no longer necessary due to present public safety concerns and the
7 acuity of symptoms of the defendant's qualifying mental disorder, the super-
8 intendent or director may file notice of the determination with the court.
9 Upon receipt of the notice, the court shall order that a community mental
10 health program director or the director's designee, within five judicial days:

11 (A) Consult with the defendant and with any local entity that would be
12 responsible for providing community restoration services, if the defendant
13 were to be released in the community, to determine whether community res-
14 toration services are present and available in the community; and

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

17 (b) Notwithstanding subsection (2) of this section, if the most serious of-
18 fense in the charging instrument is a felony, and the community mental
19 health program director determines that community restoration services that
20 would mitigate any risk posed by the defendant are present and available in
21 the community, the community mental health program director may file no-
22 tice of the determination with the court. Upon receipt of the notice, the
23 court shall order that the superintendent of the state mental hospital or di-
24 rector of the facility to which the defendant is committed, **or the director**
25 **of the facility providing the in-custody jail-based restoration treatment**
26 **program**, within five judicial days:

27 (A) Evaluate the defendant to determine whether a hospital level of care
28 is no longer necessary due to present public safety concerns, or no longer
29 necessary due to the acuity of symptoms of the defendant's qualifying mental
30 disorder; and

31 (B) Provide the court and the parties with recommendations from the

1 evaluation.

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

6 (A) If, after consideration of the factors and possible actions described in
7 ORS 161.370 (2)(c) and any recommendations received under paragraph (a)
8 or (b) of this subsection, the court determines that a hospital level of care
9 is necessary due to public safety concerns or the acuity of symptoms of the
10 defendant's qualifying mental disorder, and that based on the consultation
11 or evaluation described in paragraph (a) or (b) of this subsection, any infor-
12 mation provided by community-based mental health providers or any other
13 sources, primary and secondary release criteria as defined in ORS 135.230,
14 and any other information the court finds to be trustworthy and reliable, the
15 appropriate community restoration services are not present and available in
16 the community, the court may continue the commitment [*of the defendant*]
17 **or participation in an in-custody jail-based restoration treatment pro-**
18 **gram.**

19 (B) If the court does not make the determination described in subpara-
20 graph (A) of this paragraph, the court shall terminate the commitment **or**
21 **participation in an in-custody jail-based restoration treatment pro-**
22 **gram** and shall set a review hearing seven days from the date of the [*com-*
23 *mitment*] termination for any defendant remaining in custody. At the review
24 hearing, the court shall consider all relevant information, determine an ap-
25 propriate action in the case as described in ORS 161.370 (2)(c) and enter an
26 order in accordance with the defendant's constitutional rights to due process.

27 (4)(a) Notwithstanding subsection (2) of this section, if the most serious
28 offense in the charging instrument is a misdemeanor, and the superintendent
29 of the state mental hospital or director of the facility to which the defendant
30 is committed, **or the director of the facility providing the in-custody**
31 **jail-based restoration treatment program**, determines that the defendant

1 no longer needs a hospital level of care due to the acuity of symptoms of the
2 defendant's qualifying mental disorder or there are not present public safety
3 concerns, the superintendent or director shall file notice of the determination
4 with the court, along with recommendations regarding the necessary com-
5 munity restoration services that would mitigate any risk presented by the
6 defendant. Upon receipt of the notice, the court shall order that a commu-
7 nity mental health program director or the director's designee, within five
8 judicial days:

9 (A) Consult with the defendant and with any local entity that would be
10 responsible for providing community restoration services, if the defendant
11 were to be released in the community, to determine whether appropriate
12 community restoration services are present and available in the community;
13 and

14 (B) Provide the court and the parties with recommendations from the
15 consultation.

16 (b) Notwithstanding subsection (2) of this section, if the most serious of-
17 fense in the charging instrument is a misdemeanor, and the community
18 mental health program director determines that the community restoration
19 services that would mitigate any risk posed by the defendant are present and
20 available in the community, the community mental health program director
21 may file notice of the determination with the court. Upon receipt of the no-
22 tice, the court shall order that the superintendent of the state mental hos-
23 pital or director of the facility to which the defendant is committed, **or the**
24 **director of the facility providing the in-custody jail-based restoration**
25 **treatment program**, within five judicial days:

26 (A) Evaluate the defendant to determine whether a hospital level of care
27 is no longer necessary due to present public safety concerns, or no longer
28 necessary due to the acuity of symptoms of the defendant's qualifying mental
29 disorder; and

30 (B) Provide the court and the parties with recommendations from the
31 evaluation.

1 (c) Within 10 judicial days of receiving the recommendations described in
2 paragraph (a) or (b) of this subsection, the court shall hold a hearing to de-
3 termine an appropriate action in accordance with ORS 161.370 (2)(c) as fol-
4 lows:

5 (A) After consideration of the factors and possible actions described in
6 ORS 161.370 (2)(c), the consultation or evaluation and any recommendations
7 described in paragraph (a) or (b) of this subsection, and any other informa-
8 tion the court finds to be trustworthy and reliable, the court may continue
9 the commitment **or treatment** of the defendant if the court makes written
10 findings that a hospital level of care is necessary due to public safety con-
11 cerns and the acuity of symptoms of the defendant's qualifying mental dis-
12 order, and that appropriate community restoration services are not present
13 and available in the community.

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

22 (5)(a) If a defendant remains committed **or ordered to participate in an**
23 **in-custody jail-based restoration treatment program** under this section,
24 the court shall determine within a reasonable period of time whether there
25 is a substantial probability that, in the foreseeable future, the defendant will
26 gain or regain fitness to proceed. However, regardless of the number of
27 charges with which the defendant is accused, in no event shall the defendant
28 be committed **or held in custody** for longer than whichever of the following,
29 measured from the defendant's initial custody date, is shorter:

30 (A) Three years; or

31 (B) A period of time equal to the maximum sentence the court could have

1 imposed if the defendant had been convicted.

2 (b) For purposes of calculating the maximum period of commitment **or**
3 **custody** described in paragraph (a) of this subsection:

4 (A) The initial custody date is the date on which the defendant is first
5 committed **or taken into custody** under this section on any charge alleged
6 in the accusatory instrument; and

7 (B) The defendant shall be given credit against each charge alleged in the
8 accusatory instrument:

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

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

19 (c) The superintendent of the state mental hospital or director of the fa-
20 cility to which the defendant is committed, **or the director of the facility**
21 **providing the in-custody jail-based restoration treatment program,**
22 shall notify the [*committing*] court of the defendant's impending discharge
23 **or release** 30 days before the date on which the superintendent or director
24 is required to discharge **or release** the defendant under this subsection.

25 (6)(a) All notices required under this section shall be filed with the court
26 and may be filed electronically. The clerk of the court shall cause copies of
27 the notices to be delivered to both the district attorney and the counsel for
28 the defendant.

29 (b) When the [*committing*] court receives a notice from the superintendent
30 or director under subsection (1) of this section concerning the defendant's
31 progress or lack thereof, or under subsection (5) of this section concerning

1 the defendant's impending discharge, the [*committing*] court shall determine,
2 after a hearing if a hearing is requested, whether the defendant presently
3 has fitness to proceed.

4 (7) If at any time the court determines that the defendant lacks fitness
5 to proceed, the court shall further determine whether the defendant is enti-
6 tled to discharge under subsection (5) of this section. If the court determines
7 that the defendant is entitled to discharge under subsection (5) of this sec-
8 tion, the court shall dismiss, without prejudice and in accordance with ORS
9 161.367 (6), all charges against the defendant and:

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

11 (b) Initiate commitment proceedings under ORS 426.070, 426.701 or 427.235
12 to 427.292.

13 **SECTION 8. Section 9 of this 2025 Act is added to and made a part**
14 **of ORS 125.675 to 125.691.**

15 **SECTION 9. (1) The Oregon Public Guardian and Conservator shall**
16 **develop and administer a program to provide guardianship services to**
17 **defendants whose criminal cases have been suspended or dismissed**
18 **pursuant to ORS 161.370 due to the defendant lacking fitness to pro-**
19 **ceed.**

20 **(2) Participants in the program must meet the criteria described in**
21 **ORS 125.680 (2) to receive public guardian and conservator services**
22 **under this section.**

23 **(3) The Oregon Public Guardian and Conservator may provide ser-**
24 **vices under this section at any time after the defendant's fitness to**
25 **proceed is drawn into question.**

26 **(4) A defendant's eligibility to participate in the program may be**
27 **determined at any time after a defendant's fitness to proceed is drawn**
28 **into question or, if the court finds that there is no substantial proba-**
29 **bility that the defendant will, in the foreseeable future, gain or regain**
30 **the fitness to proceed, no later than one year following the date on**
31 **which the defendant's case is dismissed.**

1 **(5) In administering the program described in this section, the**
2 **Oregon Public Guardian and Conservator shall collaborate and coor-**
3 **minate with district attorneys, community mental health programs and**
4 **facilities in which defendants are housed, including the Oregon State**
5 **Hospital.**

6 **SECTION 10.** ORS 125.683 is amended to read:

7 125.683. (1) In providing public guardian and conservator services, the
8 Oregon Public Guardian and Conservator shall conduct a needs assessment
9 for a person who claims or is claimed not to have relatives or friends willing
10 or able to assume the duties of guardianship or conservatorship and who
11 claims or is claimed to lack the financial resources to obtain a private
12 guardian or conservator. The purpose of the needs assessment is to determine
13 the person's eligibility to receive public guardian and conservator services
14 and to determine the appropriateness of filing a petition for the appointment
15 of a fiduciary or other pleading on behalf of the person in a court having
16 probate jurisdiction. The needs assessment shall, at a minimum:

17 (a) Assess the person's capacity to:

18 (A) Care for the person's own safety;

19 (B) Manage the person's own financial affairs; and

20 (C) Attend to and provide for necessities such as food, shelter, clothing
21 and medical care;

22 (b) Assess the person's financial resources;

23 (c) Determine whether information that is available about the person is
24 sufficient to support a finding that the person is incapacitated or financially
25 incapable and the entry of a court order for the appointment of a fiduciary
26 under ORS 125.010;

27 (d) Determine whether any other person may be willing and able to serve
28 as the person's guardian or conservator and, if appropriate, locate and con-
29 tact that other person;

30 (e) Determine the type of fiduciary, if any, to request in a petition filed
31 under ORS 125.055, giving preference to the least intrusive form of fiduciary

1 relationship consistent with the best interests of the person; and

2 (f) Determine how best to provide public guardian and conservator ser-
3 vices to the person that are least restrictive to the person's liberty, that are
4 least intrusive to the person and that provide for the greatest degree of in-
5 dependence that the person is capable of exercising.

6 (2)(a) If the person is a resident of a nursing home as defined in ORS
7 678.710 or a residential facility as defined in ORS [441.402] **443.400**, the
8 nursing home or residential facility shall provide the Oregon Public Guard-
9 ian and Conservator access to the person's records as is necessary to conduct
10 the needs assessment required under this section.

11 (b) Any other public agency that has provided or is providing care or
12 services to the person shall disclose to the Oregon Public Guardian and
13 Conservator, upon request, a minimum amount of information about the
14 person for whom the needs assessment is being conducted, including pro-
15 tected health information as defined in ORS 192.556 and financial informa-
16 tion, as is reasonably necessary to prevent or lessen a serious and imminent
17 threat to the health or safety of the person who is the subject of the needs
18 assessment. For purposes of this paragraph, a request from the Oregon Public
19 Guardian and Conservator for the purpose of conducting a needs assessment
20 is presumed to be a situation that will prevent or lessen a serious and im-
21 minent threat to the health or safety of the person.

22 (c) Any health care provider not identified in either paragraph (a) or (b)
23 of this subsection may disclose protected health information to the Oregon
24 Public Guardian and Conservator in accordance with 45 C.F.R. 164.512 (j) to
25 prevent or lessen a serious or imminent threat to the health or safety of a
26 person if the health care provider, in good faith, believes the disclosure is
27 necessary to prevent or lessen the threat. For purposes of this paragraph, a
28 request from the Oregon Public Guardian and Conservator for disclosure
29 under this paragraph for the purposes of conducting a needs assessment, or
30 the good faith belief and disclosure of the health care provider under this
31 paragraph, are presumed to be situations that will prevent or lessen a serious

1 and imminent threat to the health or safety of the person.

2 **(d) If the person is currently or was previously a defendant in a**
3 **criminal case subject to ORS 161.370, and to the extent authorized by**
4 **federal law, the Oregon Public Guardian and Conservator shall have**
5 **access to any reports resulting from examinations or evaluations of**
6 **the defendant, documents containing recommendation of or resulting**
7 **from consultations with a community mental health program, docu-**
8 **ments submitted to the court by a state mental hospital related to the**
9 **proceedings under ORS 161.370 and any other court records relating to**
10 **the defendant.**

11 (3) For each person determined to be eligible for public guardian and
12 conservator services under this section, the Oregon Public Guardian and
13 Conservator shall develop a written plan setting forth the type and duration
14 of services to be provided by the Oregon Public Guardian and Conservator.
15 The plan shall be included in any nonemergency petition or pleading filed
16 with the court.

17 **SECTION 11.** ORS 161.362 is amended to read:

18 161.362. (1) A recommendation provided by a certified evaluator, pursuant
19 to ORS 161.355 to 161.371, that a defendant requires a hospital level of care
20 due to the acuity of the defendant's symptoms must be based upon the
21 defendant's current diagnosis and symptomology, the defendant's current
22 ability to engage in treatment, present safety concerns relating to the de-
23 fendant and any other pertinent information known to the evaluator. If the
24 defendant is in a placement in a facility, the evaluator may defer to the
25 treatment provider's recommendation regarding whether a hospital level of
26 care is needed.

27 (2) A determination by a community mental health program director, or
28 the director's designee, pursuant to ORS 161.355 to 161.371, that appropriate
29 community restoration services are not present and available in the commu-
30 nity must include information concerning the specific services necessary to
31 safely allow the defendant to gain or regain fitness to proceed in the com-

1 munity and must specify the necessary services that are not present and
2 available in the community.

3 (3)(a) Reports resulting from examinations performed by a certified eval-
4 uator, and documents containing the recommendations of or resulting from
5 consultations with a community mental health program director or the
6 director's designee, prepared under ORS 161.355 to 161.371, and any document
7 submitted to the court by a state mental hospital related to the proceedings
8 under ORS 161.355 to 161.371, are confidential and may be made available
9 only:

10 (A) To the court, prosecuting attorney, defense attorney, agent of the
11 prosecuting or defense attorney, defendant, community mental health pro-
12 gram director or designee, state mental hospital, **Oregon Public Guardian**
13 **and Conservator** and any facility in which the defendant is housed; or

14 (B) As ordered by a court.

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

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

22 (4) The court shall ensure that an order entered under ORS 161.355 to
23 161.371 is provided, by the end of the next judicial day, to any entity ordered
24 to provide restoration services.

25 (5) Unless the court orders otherwise or either party objects, a defendant
26 committed to a state mental hospital or other facility, or a certified evalu-
27 ator or other expert witness, may attend hearings held under ORS 161.355
28 to 161.371 via simultaneous electronic transmission.

29

30 **COMMITMENT OF EXTREMELY DANGEROUS PERSON WITH**
31 **MENTAL ILLNESS**

1 **SECTION 12.** ORS 426.701 is amended to read:

2 426.701. (1) For the purposes of this section and ORS 426.702:

3 (a) A person is “extremely dangerous” if the person:

4 (A) Is at least 18 years of age;

5 (B) Is exhibiting symptoms or behaviors of a qualifying mental disorder
6 substantially similar to those that preceded the act described in subsection
7 (3)(a)(C) of this section; and

8 (C) Because of a qualifying mental disorder:

9 (i) Presents a serious danger to the safety of other persons by reason of
10 an extreme risk that the person will inflict grave or potentially lethal
11 physical injury on other persons; and

12 (ii) Unless committed, will continue to represent an extreme risk to the
13 safety of other persons in the foreseeable future.

14 **(b)(A) “Qualifying mental disorder” means:**

15 **(i) A developmental or intellectual disability, traumatic brain in-**
16 **jury, brain damage or other biological dysfunction that is associated**
17 **with distress or disability, causing symptoms or impairment in at least**
18 **one important area of an individual’s functioning and that is defined**
19 **in the most recent edition of the Diagnostic and Statistical Manual**
20 **of Mental Disorders.**

21 **(ii) Any diagnosis of a psychiatric condition that is a significant**
22 **behavioral or psychological syndrome or pattern that is associated**
23 **with distress or disability, causing symptoms or impairment in at least**
24 **one important area of an individual’s functioning and that is defined**
25 **in the most recent edition of the Diagnostic and Statistical Manual**
26 **of Mental Disorders.**

27 [(b)] **(B)** “Qualifying mental disorder” does not include:

28 [(A)] **(i)** A disorder manifested solely by repeated criminal or otherwise
29 antisocial conduct; or

30 [(B)] **(ii)** A disorder constituting solely a personality disorder.

31 (c) A qualifying mental disorder is “resistant to treatment” if, after re-

1 ceiving care from a licensed psychiatrist and exhausting all reasonable psy-
2 chiatric treatment, or after refusing psychiatric treatment, the person
3 continues to be significantly impaired in the person's ability to make com-
4 petent decisions and to be aware of and control extremely dangerous behav-
5 ior.

6 (2)(a) A district attorney may petition the court to initiate commitment
7 proceedings described in this section if there is reason to believe a person
8 is an extremely dangerous person with mental illness. Venue is proper in the
9 county in which the person is alleged to have committed the qualifying act
10 or the county in which the person lives. The petition shall immediately be
11 served upon the person.

12 (b) If a person is committed to a state hospital under ORS 161.365 or
13 161.370 and the state hospital intends to discharge the person, the district
14 attorney may provide notice to the superintendent of the state hospital in-
15 dicating an intent to file a petition under this section. Upon receipt of the
16 notice, the superintendent may delay discharge of the person for up to seven
17 judicial days to allow for the petition to be filed and for the court to make
18 findings under paragraph (f) of this subsection.

19 (c) The person shall be advised in writing of:

20 (A) The allegation that the person is an extremely dangerous person with
21 mental illness and may be committed to the jurisdiction of the Psychiatric
22 Security Review Board for a maximum period of 24 months; and

23 (B) The right to a hearing to determine whether the person is an ex-
24 tremely dangerous person with mental illness, unless the person consents to
25 the commitment by waiving the right to a hearing in writing after consul-
26 tation with legal counsel.

27 (d) A person against whom a petition described in this subsection is filed
28 shall have the following:

29 (A) The right to obtain suitable legal counsel possessing skills and expe-
30 rience commensurate with the nature of the allegations and complexity of
31 the case and, if the person is without funds to retain legal counsel, the right

1 to have the court appoint legal counsel;

2 (B) The right to subpoena witnesses and to offer evidence on behalf of the
3 person at the hearing;

4 (C) The right to cross-examine any witnesses who appear at the hearing;
5 and

6 (D) The right to examine all reports, documents and information that the
7 court considers, including the right to examine the reports, documents and
8 information prior to the hearing, if available.

9 (e) Upon receipt of the petition, the court shall schedule a hearing and
10 shall appoint an examiner as described in ORS 426.110 to evaluate the per-
11 son. If the person is in custody or committed while the hearing is pending,
12 the hearing must commence within 30 days of filing the petition unless good
13 cause is found by the court. If the court finds good cause, the hearing must
14 commence no later than 60 days after the filing of the petition or, if the
15 district attorney provided notice under paragraph (b) of this subsection, the
16 date of the notice, whichever occurs first. As used in this paragraph, “good
17 cause” means:

18 (A) The person who would be considered the victim of the act described
19 in subsection (3)(a)(C) of this section if the act were criminally prosecuted,
20 or an essential witness for either the state or the person, is unable to testify
21 within the 30-day period.

22 (B) The attorney for the person cannot reasonably be expected to partic-
23 ipate in the hearing within the 30-day period, cannot be adequately prepared
24 to represent the person at the hearing within the 30-day period, or has a
25 schedule conflict that cannot be resolved in a manner that allows the attor-
26 ney to represent the person at a hearing within the 30-day period.

27 (C) An examiner cannot be appointed to conduct the examination, or
28 conduct the examination and prepare a report, within the 30-day period.

29 (D) If a guardian ad litem is appointed on the case, the guardian ad litem
30 cannot be prepared for a hearing within the 30-day period.

31 (f)(A) The court may order that the person be committed to the custody

1 of the superintendent of a state hospital or the director of a secure mental
2 health facility while the petition is pending if the court finds probable cause
3 that:

4 (i) The person is at least 18 years of age;

5 (ii) The person has a qualifying mental disorder that is resistant to
6 treatment;

7 (iii) The person committed an act described in subsection (3)(a)(C) of this
8 section; and

9 (iv) Failure to commit the person while the hearing is pending would pose
10 serious harm or danger to the person or others.

11 (B) If a person committed under this paragraph is held in a secure facility
12 other than a state hospital or secure mental health facility, including but
13 not limited to a jail or prison, at the time the petition is filed, the court may
14 further order that the person remain at that placement for sufficient time to
15 allow the superintendent or director to safely admit the person. Any order
16 of the court concerning the placement of a person under this subparagraph
17 must be in accordance with the person's constitutional right to due process.
18 If the person remains in a secure facility under this subparagraph, the su-
19 perintendent, director or designee may consult with the facility to ensure
20 continuity of care for the person.

21 (C) Commitment to the custody of the superintendent of a state hospital
22 or the director of a secure mental health facility under this paragraph may
23 not exceed 60 days. If the hearing does not occur within 60 days, if the dis-
24 trict attorney dismisses the petition, or if the court holds the hearing but
25 does not commit the person, the person shall be returned to the county in
26 which the petition was filed and the court shall hold a disposition hearing
27 within five judicial days to determine how to proceed on the petition and
28 any outstanding criminal charges. A person who is returned to a secure fa-
29 cility other than a state hospital or secure mental health facility, including
30 but not limited to a jail or prison, under this paragraph may remain at the
31 placement until the disposition hearing.

1 (g) If the hearing is not commenced within the time period required by
2 paragraph (e) of this subsection, the court shall either dismiss the petition
3 or release the person on personal recognizance, to the custody of a third
4 party or upon any additional reasonable terms and conditions the court
5 deems appropriate.

6 (3)(a) At the hearing on the petition, the court shall order the person
7 committed as an extremely dangerous person with mental illness under the
8 jurisdiction of the Psychiatric Security Review Board for a maximum of 24
9 months if the court finds, by clear and convincing evidence, that:

10 (A) The person is extremely dangerous;

11 (B) The person suffers from a qualifying mental disorder that is resistant
12 to treatment; and

13 (C) Because of the qualifying mental disorder that is resistant to treat-
14 ment, the person committed one of the following acts:

15 (i) Caused **or attempted to cause** the death of another person;

16 (ii) Caused **or attempted to cause** serious physical injury to another
17 person by means of a dangerous weapon;

18 (iii) Caused **or attempted to cause** physical injury to another person by
19 means of a firearm as defined in ORS 166.210 or an explosive as defined in
20 ORS 164.055;

21 (iv) Engaged **or attempted to engage** in oral-genital contact with a child
22 under 14 years of age;

23 [(v) *Forcibly compelled sexual intercourse, oral-genital contact or the pene-*
24 *tration of another person's anus or vagina; or]*

25 (v) **Engaged in or attempted to engage in sexual contact or sexual**
26 **intercourse by means of forcible compulsion against another person**
27 **or against another person who was mentally incapacitated, physically**
28 **helpless or incapable of appraising the nature of the other person's**
29 **conduct;**

30 (vi) Caused **or attempted to cause** a fire or explosion that damaged the
31 protected property of another, as those terms are defined in ORS 164.305, or

1 placed another person in danger of physical injury, and the fire or explosion
2 was not the incidental result of normal and usual daily activities; **or**

3 **(vii) Any other act that constitutes an extreme danger to the per-**
4 **son, another person or the public.**

5 (b) The court shall further commit the person to a state hospital for
6 custody, care and treatment if the court finds, by clear and convincing evi-
7 dence, that the person cannot be controlled in the community with proper
8 care, medication, supervision and treatment on conditional release.

9 (c) The court shall specify in the order whether any person who would
10 be considered a victim as defined in ORS 131.007 of the act described in
11 paragraph (a)(C) of this subsection, if the act had been criminally prosecuted,
12 requests notification of any order or hearing, conditional release, discharge
13 or escape of the person committed under this section.

14 (d) The court shall be fully advised of all drugs and other treatment
15 known to have been administered to the alleged extremely dangerous person
16 with mental illness that may substantially affect the ability of the person to
17 prepare for, or to function effectively at, the hearing.

18 (e) The provisions of ORS 40.230, 40.235, 40.240, 40.250 and 179.505 do not
19 apply to the use of the examiner's report and the court may consider the
20 report as evidence.

21 (4) The findings of the court that a person committed an act described in
22 subsection (3)(a)(C) of this section may not be admitted in a criminal prose-
23 cution.

24 (5)(a) If the court commits a person under this section and the person has
25 pending criminal charges at the time of the hearing, the court shall dismiss
26 the criminal charges without prejudice, and if the person is further commit-
27 ted to a state hospital under this section, the dismissal shall not take effect
28 until the person's transportation to the state hospital.

29 (b) If the court commits a person to the state hospital under this section
30 and:

31 (A) The person is in a setting other than a state hospital, the court may

1 additionally order that the person remain in that placement until the person
2 can be safely transported to a state hospital pursuant to the order. Any order
3 of the court concerning the placement of the person under this subparagraph
4 must be in accordance with the person's constitutional right to due process.

5 (B) The person is at a state hospital at the time of the hearing, the person
6 may remain at the state hospital under the commitment.

7 (c) A person committed under this section shall remain under the jurisdic-
8 tion of the board for a maximum of 24 months unless the board conducts
9 a hearing and makes the findings described in subsection (6)(d) of this sec-
10 tion.

11 (6)(a) The board shall hold a hearing six months after the initial com-
12 mitment described in subsection (3) of this section, and thereafter six months
13 after a further commitment described in ORS 426.702, to determine the
14 placement of the person and whether the person is eligible for conditional
15 release or early discharge. The board shall provide written notice of the
16 hearing to the person, the person's legal counsel and the office of the district
17 attorney who filed the initial petition under subsection (2) of this section
18 within a reasonable time prior to the hearing. The board shall further notify
19 the person of the following:

20 (A) The nature of the hearing and possible outcomes;

21 (B) The right to appear at the hearing and present evidence;

22 (C) The right to be represented by legal counsel and, if the person is
23 without funds to retain legal counsel, the right to have the court appoint
24 legal counsel;

25 (D) The right to subpoena witnesses;

26 (E) The right to cross-examine witnesses who appear at the hearing; and

27 (F) The right to examine all reports, documents and information that the
28 board considers, including the right to examine the reports, documents and
29 information prior to the hearing if available.

30 (b) If the board determines at the hearing that the person still suffers
31 from a qualifying mental disorder that is resistant to treatment and contin-

1 ues to be extremely dangerous, and that the person cannot be controlled in
2 the community with proper care, medication, supervision and treatment if
3 conditionally released, the person shall remain committed to a state hospital.

4 (c) If the board determines at the hearing that the person still suffers
5 from a qualifying mental disorder that is resistant to treatment and contin-
6 ues to be extremely dangerous, but finds that the person can be controlled
7 in the community with proper care, medication, supervision and treatment
8 if conditionally released, the board shall conditionally release the person.

9 (d) If the board determines at the hearing that the person no longer suf-
10 fers from a qualifying mental disorder that is resistant to treatment or is
11 no longer extremely dangerous, the board shall discharge the person. The
12 discharge of a person committed under this section does not preclude com-
13 mitment of the person pursuant to ORS 426.005 to 426.390.

14 (7)(a) At any time during the commitment to a state hospital, the super-
15 intendent of the state hospital may request a hearing to determine the status
16 of the person's commitment under the jurisdiction of the board. The request
17 shall be accompanied by a report setting forth the facts supporting the re-
18 quest. If the request is for conditional release, the request shall be accom-
19 panied by a verified conditional release plan. The hearing shall be conducted
20 as described in subsection (6) of this section.

21 (b) The board may make the findings described in subsection (6)(c) of this
22 section and conditionally release the person without a hearing if the office
23 of the district attorney who filed the initial petition under subsection (2) of
24 this section does not object to the conditional release.

25 (c) At any time during conditional release, a state or local mental health
26 facility providing treatment to the person may request a hearing to deter-
27 mine the status of the person's commitment under the jurisdiction of the
28 board. The hearing shall be conducted as described in subsection (6) of this
29 section.

30 (8)(a) If the board orders the conditional release of a person under sub-
31 section (6)(c) of this section, the board shall order conditions of release that

1 may include a requirement to report to any state or local mental health fa-
2 cility for evaluation. The board may further require cooperation with, and
3 acceptance of, psychiatric or psychological treatment from the facility. Con-
4 ditions of release may be modified by the board from time to time.

5 (b) When a person is referred to a state or local mental health facility for
6 an evaluation under this subsection, the facility shall perform the evaluation
7 and submit a written report of its findings to the board. If the facility finds
8 that treatment of the person is appropriate, the facility shall include its
9 recommendations for treatment in the report to the board.

10 (c) Whenever treatment is provided to the person by a state or local
11 mental health facility under this subsection, the facility shall furnish reports
12 to the board on a regular basis concerning the progress of the person.

13 (d) Copies of all reports submitted to the board pursuant to this sub-
14 section shall be furnished to the person and to the person's legal counsel, if
15 applicable. The confidentiality of these reports is determined pursuant to
16 ORS 192.338, 192.345 and 192.355.

17 (e) The state or local mental health facility providing treatment to the
18 person under this subsection shall comply with the conditional release order
19 and any modifications of the conditions ordered by the board.

20 (9)(a) If at any time while the person is conditionally released it appears
21 that the person has violated the terms of the conditional release, the board
22 may order the person returned to a state hospital for evaluation or treat-
23 ment. A written order of the board is sufficient warrant for any law
24 enforcement officer to take the person into custody. A sheriff, municipal
25 police officer, parole or probation officer or other peace officer shall execute
26 the order, and the person shall be returned to the state hospital as soon as
27 practicable.

28 (b) The director of a state or local mental health facility providing
29 treatment to a person under subsection (8) of this section may request that
30 the board issue a written order for a person on conditional release to be
31 taken into custody if there is reason to believe that the person can no longer

1 be controlled in the community with proper care, medication, supervision and
2 treatment.

3 (c) Within 30 days following the return of the person to a state hospital,
4 the board shall conduct a hearing to determine if, by a preponderance of the
5 evidence, the person is no longer fit for conditional release. The board shall
6 provide written notice of the hearing to the person, the person's legal coun-
7 sel and the office of the district attorney who filed the initial petition under
8 subsection (2) of this section within a reasonable time prior to the hearing.
9 The notice shall advise the person of the nature of the hearing, the right to
10 have the court appoint legal counsel and the right to subpoena witnesses,
11 examine documents considered by the board and cross-examine all witnesses
12 who appear at the hearing.

13 (10)(a) If the person had unadjudicated criminal charges at the time of the
14 filing of the petition for the person's initial commitment under this section
15 and the state hospital or the state or local mental health facility providing
16 treatment to the person intends to recommend discharge of the person at an
17 upcoming hearing, the superintendent of the state hospital or the director
18 of the facility shall provide written notice to the board and the district at-
19 torney of the county where the criminal charges were initiated of the dis-
20 charge recommendation at least 45 days before the hearing. The notice shall
21 be accompanied by a report describing the person's diagnosis and the treat-
22 ment the person has received.

23 (b) Upon receiving the notice described in this subsection, the district
24 attorney may request an order from the court in the county where the
25 criminal charges were initiated for an evaluation to determine if the person
26 is fit to proceed in the criminal proceeding. The court may order the state
27 hospital or the state or local mental health facility providing treatment to
28 the person to perform the evaluation. The hospital or facility shall provide
29 copies of the evaluation to the district attorney, the person and the person's
30 legal counsel, if applicable.

31 (c) The person committed under this section may not waive an evaluation

1 ordered by the court to determine if the person is fit to proceed with the
2 criminal proceeding as described in this subsection.

3 (11) The board shall make reasonable efforts to notify any person de-
4 scribed in subsection (3)(c) of this section of any order or hearing, condi-
5 tional release, discharge or escape of the person committed under this
6 section.

7 (12) Unless the court orders otherwise or either party objects, any party
8 or witness may attend a hearing held under this section via simultaneous
9 electronic transmission.

10 (13) The board shall adopt rules to carry out the provisions of this section
11 and ORS 426.702.

12 (14) Any time limitation described in ORS 131.125 to 131.155 does not run
13 during a commitment described in this section or a further commitment de-
14 scribed in ORS 426.702.

15

16

CAPTIONS

17

18 **SECTION 13. The unit captions used in this 2025 Act are provided**
19 **only for the convenience of the reader and do not become part of the**
20 **statutory law of this state or express any legislative intent in the**
21 **enactment of this 2025 Act.**

22

23

EFFECTIVE DATE

24

25 **SECTION 14. This 2025 Act takes effect on the 91st day after the**
26 **date on which the 2025 regular session of the Eighty-third Legislative**
27 **Assembly adjourns sine die.**

28
