

House Bill 2273

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor Kate Brown for Oregon Health Authority)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Updates outdated terminology related to Oregon State Hospital.

A BILL FOR AN ACT

1
2 Relating to Oregon State Hospital; amending ORS 133.870, 137.464, 161.315, 161.327, 161.328, 161.362,
3 161.365, 161.367, 161.370, 161.371, 161.372, 161.373, 161.390, 163A.005, 206.315, 243.736, 341.522,
4 408.570, 421.107, 426.005, 426.241, 426.500, 426.650, 426.701, 426.702, 430.197, 430.735 and 430.768.

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

6 **SECTION 1.** ORS 133.870 is amended to read:

7 133.870. (1) Notwithstanding ORS 192.311 to 192.478, a law enforcement agency may not release
8 a booking photo except as provided in subsection (2) of this section.

9 (2) A law enforcement agency may release a booking photo described in subsection (1) of this
10 section:

11 (a) To the person depicted in the booking photo;

12 (b) To another law enforcement agency, or to a law enforcement officer employed by another
13 law enforcement agency, for a law enforcement purpose;

14 (c) To the public, if the law enforcement agency determines that there is a law enforcement
15 purpose for the release, including but not limited to assistance with the apprehension of a fugitive
16 or a suspect in a criminal investigation, or the identification of additional criminal activity;

17 (d) To [*a state mental hospital*] **the Oregon State Hospital** upon the admission to the **state**
18 hospital of the person depicted in the booking photo;

19 (e) To a party in a criminal proceeding resulting from the arrest during which the booking photo
20 was obtained;

21 (f) To the victim of the offense for which the person depicted in the booking photo was arrested;

22 (g) To the court, if the booking photo is part of a pretrial release report or is provided to the
23 court as part of the pretrial release process for the purposes of confirming the identity of a de-
24 fendant; or

25 (h) Upon the conviction of the person depicted in the booking photo, if the conviction results
26 from the arrest during which the booking photo was obtained.

27 (3) As used in this section:

28 (a) "Booking photo" means a photograph of a person taken by a law enforcement agency for
29 identification purposes when the person is booked into custody.

30 (b) "Law enforcement agency" has the meaning given that term in ORS 131.915.

31 (c) "Law enforcement officer" means an officer, deputy, member or employee of a law enforce-

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 ment agency.

2 **SECTION 2.** ORS 137.464 is amended to read:

3 137.464. (1)(a) At the death warrant hearing under ORS 137.463, the court shall order that the
4 Oregon Health Authority or its designee perform an assessment of the defendant’s mental capacity
5 to engage in reasoned choices of legal strategies and options if:

6 (A) The defendant indicates the wish to waive the right to counsel; and

7 (B) The court has substantial reason to believe that, due to mental incapacity, the defendant
8 cannot engage in reasoned choices of legal strategies and options.

9 (b) The court also shall order an assessment described in paragraph (a) of this subsection upon
10 motion by the state.

11 (2) If the requirements of subsection (1) of this section are met, the court may order the de-
12 fendant to be committed to [*a state mental hospital designated by the authority*] **the Oregon State**
13 **Hospital** for a period not exceeding 30 days for the purpose of assessing the defendant’s mental
14 capacity. The report of any competency assessment performed under this section must include, but
15 need not be limited to, the following:

16 (a) A description of the nature of the assessment;

17 (b) A statement of the mental condition of the defendant; and

18 (c) A statement regarding the defendant’s mental capacity to engage in reasoned choices of legal
19 strategies and options.

20 (3) If the competency assessment cannot be conducted because the defendant is unwilling to
21 participate, the report must so state and must include, if possible, an opinion as to whether the
22 unwillingness of the defendant is the result of a mental condition affecting the defendant’s mental
23 capacity to engage in reasoned choices of legal strategies and options.

24 (4) The authority shall file three copies of the report of the competency assessment with the
25 clerk of the court, who shall cause copies to be delivered to the district attorney and to counsel for
26 the defendant.

27 **SECTION 3.** ORS 161.315 is amended to read:

28 161.315. (1) Upon filing of notice or the introduction of evidence by the defendant as provided
29 in ORS 161.309, the state shall have the right to have at least one psychiatrist or licensed psychol-
30 ogist of its selection examine the defendant. The state shall file notice with the court of its intention
31 to have the defendant examined.

32 (2)(a) Upon filing of the notice, the court, in its discretion, may order the defendant committed
33 to [*a state mental hospital*] **the Oregon State Hospital** or any other suitable facility, if the defend-
34 ant is 18 years of age or older, for observation and examination, which may include treatment as
35 permitted by law.

36 (b) If the defendant is under 18 years of age, upon filing of the notice, the court, in its discretion,
37 may order the defendant committed to a secure intensive community inpatient facility designated
38 by the Oregon Health Authority for examination.

39 (c) The state [*mental*] hospital or other facility may retain custody of a defendant committed
40 under this subsection only for the duration necessary to complete the observation and examination
41 of the defendant, not to exceed 30 days.

42 (3) If the defendant objects to the examiner chosen by the state, the court for good cause shown
43 may direct the state to select a different examiner.

44 (4) An examiner performing an examination on the issue of insanity of a defendant under this
45 section is not obligated to examine the defendant for fitness to proceed unless, during the examina-

1 tion, the examiner determines that the defendant's fitness to proceed is drawn in question. If, during
 2 the examination, the examiner determines that the defendant's fitness to proceed is in doubt, the
 3 examiner shall report the issue to the court and to the superintendent of the **Oregon State**
 4 *[mental]* Hospital or the superintendent's designee, or to the director of the facility to which the
 5 defendant is committed. The superintendent or director may:

6 (a) Return the defendant to the facility from which the defendant was transported; or

7 (b) Inform the court and the parties that the defendant should remain at the state *[mental]* hos-
 8 pital or other facility for the purpose of an examination under ORS 161.365. If neither party objects,
 9 the court may order an examination under ORS 161.365 without holding a hearing.

10 (5) A report resulting from an examination under this section may be filed with the court elec-
 11 tronically.

12 (6)(a) Reports resulting from examinations conducted under this section are confidential and may
 13 be made available only:

14 (A) To the court, prosecuting attorney, defense attorney, agent of the prosecuting or defense
 15 attorney, defendant, community mental health program director or designee and any facility in
 16 which the defendant is housed; or

17 (B) As ordered by a court.

18 (b) Any facility in which a defendant is housed may not use a report prepared under this section
 19 to support a disciplinary action against the defendant.

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

23 **SECTION 4.** ORS 161.327 is amended to read:

24 161.327. (1) After the defendant is found guilty except for insanity pursuant to ORS 161.319, if
 25 the court finds by a preponderance of the evidence that a person found guilty except for insanity
 26 of a felony is affected by a qualifying mental disorder and presents a substantial danger to others,
 27 the court shall order as follows:

28 (a) If the court finds that the person is not a proper subject for conditional release, the court
 29 shall order the person committed to *[a state hospital]* **the Oregon State Hospital** or, if the person
 30 is under 18 years of age, to a secure intensive community inpatient facility for custody, care and
 31 treatment. When the court orders a person committed under this paragraph, the court shall place
 32 the person under the jurisdiction of the Psychiatric Security Review Board.

33 (b) If the court finds that the person can be adequately controlled with supervision and treat-
 34 ment if conditionally released and that necessary supervision and treatment are available, the court
 35 shall order the person conditionally released.

36 (2)(a) If a party intends to request conditional release under this section, the party shall, as soon
 37 as practicable, notify the opposing party, the court and the board of the request. The party re-
 38 questing conditional release shall make every effort to provide the notification in a manner that
 39 allows sufficient time to carry out the provisions described in this subsection before the court de-
 40 termination on conditional release.

41 (b) Upon receipt of a request for conditional release under this section:

42 (A) If the most serious offense in the charging instrument is a Class C felony, the court shall
 43 order that a local mental health program designated by the board consult with the person to de-
 44 termine whether the necessary supervision and treatment for the person are available in the com-
 45 munity and appropriate for the person and shall order the release of any records to the program

1 director that are necessary to complete the consultation.

2 (B) If the most serious offense in the charging instrument is a Class A or Class B felony, the
 3 court may order that a local mental health program designated by the board consult with the person
 4 to determine whether the necessary supervision and treatment for the person are available in the
 5 community and appropriate for the person. If the court orders the consultation, the court shall fur-
 6 ther order the release of any records to the program director that are necessary to complete the
 7 consultation.

8 (3)(a) If the outcome of a consultation described in subsection (2)(b) of this section indicates that
 9 the necessary supervision and treatment are available in the community and appropriate for the
 10 person, the local mental health program shall evaluate the person to determine whether the person
 11 can be adequately controlled with supervision and treatment if conditionally released, and the pro-
 12 gram director shall provide to the court and to the board a report of the findings resulting from the
 13 consultation, a report of the findings resulting from the evaluation and recommendations for treat-
 14 ment.

15 (b) If the outcome of a consultation described in subsection (2)(b) of this section indicates that
 16 the necessary supervision and treatment for the person are not available in the community or not
 17 appropriate for the person, the program director shall submit to the court and to the board a report
 18 of the findings resulting from the consultation and may include any recommendations for treatment.

19 (4) In determining whether a person should be conditionally released, the court:

20 (a) May order evaluations and examinations as provided in ORS 161.336 (3) and 161.346 (2) or
 21 as otherwise needed by the court;

22 (b) Shall act in conformance with subsection (2)(b) of this section concerning an order for a local
 23 mental health program designated by the board to consult with the person;

24 (c) Shall have as its primary concern the protection of society; and

25 (d) May not order conditional release without a report from the consultation described in sub-
 26 section (2)(b) of this section and the evaluation described in subsection [(3)(b)] **(3)(a)** of this section.

27 (5) When a person is conditionally released under this section, the person is subject to those
 28 supervisory orders of the court as are in the best interests of justice, the protection of society and
 29 the welfare of the person. The court shall designate a person or state, county or local agency to
 30 supervise the person upon release, subject to those conditions as the court directs in the order for
 31 conditional release. Prior to the designation, the court shall notify the person or agency to whom
 32 conditional release is contemplated and provide the person or agency an opportunity to be heard
 33 before the court. After receiving an order entered under subsection (1)(b) of this section, the person
 34 or agency designated shall assume supervision of the person pursuant to the direction of the board.
 35 The person or agency designated as supervisor shall be required to report in writing no less than
 36 once per month to the board concerning the supervised person's compliance with the conditions of
 37 release.

38 (6) Upon placing a person on conditional release, the court shall within one judicial day provide
 39 to the board an electronic copy of the conditional release order. The court shall additionally notify
 40 the board in writing of the supervisor appointed and all other conditions of release, and the person
 41 shall be on conditional release pending hearing before the board. Upon compliance with this sec-
 42 tion, the court's jurisdiction over the person is terminated.

43 (7) The total period of commitment or conditional release under ORS 161.315 to 161.351 may not
 44 exceed the maximum sentence provided by statute for the crime for which the person was found
 45 guilty except for insanity.

1 (8) An order of the court under this section is a final order appealable by the person found
 2 guilty except for insanity in accordance with ORS 19.205 (5). Notwithstanding ORS 19.255, notice
 3 of an appeal under this section shall be served and filed within 90 days after the order appealed from
 4 is entered in the register. The person shall be entitled on appeal to suitable counsel possessing
 5 skills and experience commensurate with the nature and complexity of the case. If the person is fi-
 6 nancially eligible, suitable counsel shall be appointed in the manner provided in ORS 138.500 (1), and
 7 the compensation for counsel and costs and expenses of the person necessary to the appeal shall be
 8 determined and paid as provided in ORS 138.500.

9 (9) Following the order described in subsection (1) of this section, the court shall notify the
 10 person of the right to appeal and the right to a hearing before the board in accordance with ORS
 11 161.336 (5) and 161.341 (3).

12 (10) The board shall hold a review hearing within 90 days for a person conditionally released
 13 under this section.

14 (11) The board shall establish by rule standards for the consultations described in subsection
 15 (2)(b) of this section and the evaluations described in subsection (3)(a) of this section.

16 **SECTION 5.** ORS 161.328 is amended to read:

17 161.328. (1) After the defendant is found guilty except for insanity pursuant to ORS 161.319, the
 18 court shall order a person committed to [*a state mental hospital*] **the Oregon State Hospital** or
 19 other facility designated by the Oregon Health Authority if:

20 (a) Each offense for which the person is found guilty except for insanity is a misdemeanor; and

21 (b) The court finds that the person is affected by a qualifying mental disorder and presents a
 22 substantial danger to others that requires commitment.

23 (2) The total period of commitment under this section may not exceed the maximum sentence
 24 provided by statute for the crime for which the person was found guilty except for insanity.

25 (3) If the superintendent of the **Oregon State** [*mental*] Hospital or the director of the facility to
 26 which the person is committed determines that a person committed under this section is no longer
 27 affected by a qualifying mental disorder or, if so affected, no longer presents a substantial danger
 28 to others that requires commitment, the superintendent or director shall file notice of that deter-
 29 mination with the committing court. Upon filing of the notice, the superintendent or director shall
 30 discharge the person from custody.

31 **SECTION 6.** ORS 161.362 is amended to read:

32 161.362. (1) A recommendation provided by a certified evaluator, pursuant to ORS 161.355 to
 33 161.371, that a defendant requires a hospital level of care due to the acuity of the defendant's
 34 symptoms must be based upon the defendant's current diagnosis and symptomology, the defendant's
 35 current ability to engage in treatment, present safety concerns relating to the defendant and any
 36 other pertinent information known to the evaluator. If the defendant is in a placement in a facility,
 37 the evaluator may defer to the treatment provider's recommendation regarding whether a hospital
 38 level of care is needed.

39 (2) A determination by a community mental health program director, or the director's designee,
 40 pursuant to ORS 161.355 to 161.371, that appropriate community restoration services are not present
 41 and available in the community must include information concerning the specific services necessary
 42 to safely allow the defendant to gain or regain fitness to proceed in the community and must specify
 43 the necessary services that are not present and available in the community.

44 (3)(a) Reports resulting from examinations performed by a certified evaluator, and documents
 45 containing the recommendations of or resulting from consultations with a community mental health

1 program director or the director’s designee, prepared under ORS 161.355 to 161.371, and any docu-
 2 ment submitted to the court by [*a state mental hospital*] **the Oregon State Hospital** related to the
 3 proceedings under ORS 161.355 to 161.371, are confidential and may be made available only:

4 (A) To the court, prosecuting attorney, defense attorney, agent of the prosecuting or defense
 5 attorney, defendant, community mental health program director or designee, state [*mental*] hospital
 6 and any facility in which the defendant is housed; or

7 (B) As ordered by a court.

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

10 (c) Nothing in this subsection prohibits the prosecuting attorney, defense attorney or agent of
 11 the prosecuting or defense attorney from discussing the contents of a report or document described
 12 in paragraph (a) of this subsection with witnesses or victims as otherwise permitted by law.

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

15 (5) Unless the court orders otherwise or either party objects, a defendant committed to [*a*] **the**
 16 state [*mental*] hospital or other facility, or a certified evaluator or other expert witness, may attend
 17 hearings held under ORS 161.355 to 161.371 via simultaneous electronic transmission.

18 **SECTION 7.** ORS 161.365 is amended to read:

19 161.365. (1)(a) When the court has reason to doubt the defendant’s fitness to proceed by reason
 20 of incapacity as described in ORS 161.360, the court may call any witness to assist it in reaching
 21 its decision and, except as provided in paragraph (b) of this subsection, shall order that a community
 22 mental health program director, or the director’s designee, consult with the defendant and with any
 23 local entity that would be responsible for providing community restoration services to the defendant
 24 if the defendant were to be released in the community, to determine whether appropriate community
 25 restoration services are present and available in the community. After the consultation, the program
 26 director or the director’s designee shall provide to the court a copy of the findings resulting from
 27 the consultation.

28 (b) If the defendant is charged with one or more of the following offenses the court is not re-
 29 quired to, but may in its discretion, order the consultation described in paragraph (a) of this sub-
 30 section:

31 (A) Aggravated murder;

32 (B) Murder in any degree;

33 (C) Attempted aggravated murder;

34 (D) Attempted murder in any degree;

35 (E) Manslaughter in any degree;

36 (F) Aggravated vehicular homicide;

37 (G) Arson in the first degree when classified as crime category 10 of the sentencing guidelines
 38 grid of the Oregon Criminal Justice Commission;

39 (H) Assault in the first degree;

40 (I) Assault in the second degree;

41 (J) Kidnapping in the first degree;

42 (K) Kidnapping in the second degree;

43 (L) Rape in the first degree;

44 (M) Sodomy in the first degree;

45 (N) Unlawful sexual penetration in the first degree;

1 (O) Robbery in the first degree; or

2 (P) Robbery in the second degree.

3 (c) If the court determines the assistance of a psychiatrist or psychologist would be helpful, the
4 court may:

5 (A) Order that a psychiatric or psychological examination of the defendant be conducted by a
6 certified evaluator and a report of the examination be prepared; or

7 (B) Order the defendant to be committed for the purpose of an examination to [*a state mental*
8 *hospital*] **the Oregon State Hospital** or other facility designated by the Oregon Health Authority
9 if the defendant is at least 18 years of age, or to a secure intensive community inpatient facility
10 designated by the authority if the defendant is under 18 years of age. The state [*mental*] hospital or
11 other facility may retain custody of a defendant committed under this paragraph for the duration
12 necessary to complete the examination of the defendant, not to exceed 30 days. The examination
13 may include a period of observation.

14 (d) The court shall provide a copy of any order entered under this subsection to the community
15 mental health program director or designee and to the state [*mental*] hospital or other facility by the
16 end of the next judicial day.

17 (2)(a) A defendant committed under subsection (1)(c)(B) of this section shall be transported to
18 the state [*mental*] hospital or other facility for the examination.

19 (b) At the conclusion of the examination, the superintendent of the **Oregon State** [*mental*] Hos-
20 pital or the superintendent's designee or the director of the facility may:

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

22 (B) Inform the court and the parties that the defendant requires a hospital level of care due to
23 the acuity of symptoms of the defendant's qualifying mental disorder and request that the defendant
24 remain at the state [*mental*] hospital or other facility pending a hearing or order under ORS 161.370.

25 (3) The report of an examination described in this section must include, but is not necessarily
26 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 as to whether the de-
30 fendant is incapacitated within the description set out in ORS 161.360; and

31 (d) If the defendant is incapacitated within the description set out in ORS 161.360, a recom-
32 mendation of treatment and services necessary to allow the defendant to gain or regain capacity,
33 including whether a hospital level of care is required due to the acuity of symptoms of the
34 defendant's qualifying mental disorder.

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

39 (5) If the examination by the certified evaluator cannot be conducted by reason of the unwill-
40 ingness of the defendant to participate in the examination, the report must so state and must in-
41 clude, if possible, an opinion as to whether the unwillingness of the defendant was the result of a
42 qualifying mental disorder affecting fitness to proceed.

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

1 (7)(a) When upon motion of the court or a financially eligible defendant, the court has ordered
 2 a psychiatric or psychological examination of the defendant, a county or justice court shall order
 3 the county to pay, a municipal court shall order the city to pay, and a circuit court shall order the
 4 public defense services executive director to pay from funds available for the purpose:

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

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

10 (b) When an examination is ordered at the request or with the acquiescence of a defendant who
 11 is determined not to be financially eligible, the examination shall be performed at the defendant's
 12 expense. When an examination is ordered at the request of the prosecution, the county shall pay for
 13 the expense of the examination.

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

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

17 161.367. (1) If at any time the court determines that the defendant lacks fitness to proceed, the
 18 court shall further determine whether there is a substantial probability that the defendant, in the
 19 foreseeable future, will gain or regain fitness to proceed. If the court determines that there is no
 20 substantial probability that the defendant, in the foreseeable future, will gain or regain fitness to
 21 proceed, the court shall dismiss, without prejudice, all charges against the defendant and:

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

23 (b) Initiate commitment proceedings under ORS 426.070, 426.701 or 427.235 to 427.290.

24 (2)(a) The superintendent of the [*hospital*] **Oregon State Hospital** or director of the facility in
 25 which the defendant is committed under ORS 161.370 or a person examining the defendant as a
 26 condition of release to community restoration services shall notify the court if the defendant gains
 27 or regains fitness to proceed.

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

30 (c) The court may, upon its own motion or the request of either party, hold a hearing to deter-
 31 mine whether the defendant has gained or regained fitness to proceed. If the court determines that
 32 the defendant has gained or regained fitness to proceed, the court shall resume the criminal pro-
 33 ceeding unless the court determines that so much time has elapsed since the commitment or release
 34 of the defendant to community restoration services that it would be unjust to resume the criminal
 35 proceeding. If the court determines that it would be unjust to resume the criminal proceeding, the
 36 court, on motion of either party, may dismiss the charge and may order the defendant to be dis-
 37 charged or cause a proceeding to be commenced forthwith under ORS 426.070 to 426.170, 426.701
 38 or 427.235 to 427.290.

39 (3) If the defendant gains or regains fitness to proceed, the defendant shall be given credit
 40 against each charge alleged in the accusatory instrument for each day the defendant was committed
 41 under ORS 161.370 to the custody of [*a*] **the Oregon State** [*mental*] Hospital, or to the custody of a
 42 secure intensive community inpatient facility designated by the Oregon Health Authority.

43 (4) Notwithstanding the suspension of the criminal proceeding under ORS 161.370 (2), the fact
 44 that the defendant is unfit to proceed does not preclude any objection through counsel and without
 45 the personal participation of the defendant on the grounds that the indictment is insufficient, that

1 the statute of limitations has run, that double jeopardy principles apply or upon any other ground
 2 at the discretion of the court which the court deems susceptible of fair determination prior to trial.

3 (5) At the time that the court determines that the defendant lacks fitness to proceed under ORS
 4 161.370 (2), the court shall notify the defendant in writing that federal law prohibits the defendant
 5 from purchasing or possessing a firearm unless the person obtains relief from the prohibition under
 6 federal law. The court shall again notify the defendant in writing of the prohibition if the court finds
 7 that the defendant has gained or regained fitness to proceed under subsection (2) of this section.

8 **SECTION 9.** ORS 161.370 is amended to read:

9 161.370. (1)(a) When the defendant's fitness to proceed is drawn in question, the issue shall be
 10 determined by the court.

11 (b) If neither the prosecuting attorney nor counsel for the defendant contests the finding of the
 12 report filed under ORS 161.365, the court may make the determination on the basis of the report.
 13 If the finding is contested, the court shall hold a hearing on the issue. If the report is received in
 14 evidence in the hearing, the party who contests the finding has the right to summon and to cross-
 15 examine any certified evaluator who submitted the report and to offer evidence upon the issue.
 16 Other evidence regarding the defendant's fitness to proceed may be introduced by either party.

17 (2)(a) If the court determines that the defendant lacks fitness to proceed, the criminal proceeding
 18 against the defendant shall be suspended and the court shall proceed in accordance with this sub-
 19 section.

20 (b) After making the determination under paragraph (a) of this subsection, the court shall re-
 21 ceive a recommendation from a community mental health program director or the director's
 22 designee, and from any local entity that would be responsible for treating the defendant if the de-
 23 fendant were to be released in the community, concerning whether appropriate community restora-
 24 tion services are present and available in the community.

25 (c) If the parties agree as to the appropriate action under this section, the court may, after
 26 making all findings required by law, enter any order authorized by this section. If the parties do not
 27 agree as to the appropriate action, the court and the parties shall, at a hearing, consider an ap-
 28 propriate action in the case, and the court shall make a determination and enter an order necessary
 29 to implement the action. In determining the appropriate action, the court shall consider the primary
 30 and secondary release criteria as defined in ORS 135.230, the least restrictive option appropriate for
 31 the defendant, the needs of the defendant and the interests of justice. Actions may include but are
 32 not limited to:

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

35 (B) An order to engage in community restoration services, as recommended by the community
 36 mental health program director or designee, under subsection (6) of this section;

37 (C) Commencement of a civil commitment proceeding under ORS 426.070 to 426.170, 426.701 or
 38 427.235 to 427.290;

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

40 (E) Dismissal of the charges pursuant to ORS 135.755.

41 (d) If the court, while considering or ordering an appropriate action under this subsection, does
 42 not order the defendant committed to [*a state mental hospital*] **the Oregon State Hospital** or other
 43 facility, but finds that appropriate community restoration services are not present and available in
 44 the community, for any defendant remaining in custody after such determination, the court shall set
 45 a review hearing seven days from the date of the determination under paragraph (a) of this sub-

1 section. At the review hearing, the court shall consider all relevant information and determine if
 2 commitment to the state [*mental*] hospital or other facility is appropriate under subsection (3) or (4)
 3 of this section, or if another action described in paragraph (c) of this subsection is appropriate. At
 4 the conclusion of the hearing the court shall enter an order in accordance with the defendant's
 5 constitutional rights to due process.

6 (e) If the court determines that the appropriate action in the case is an order for the defendant
 7 to engage in community restoration services, but the defendant has a pending criminal case, warrant
 8 or hold in one or more other jurisdictions, the other jurisdictions shall, within two judicial days of
 9 becoming aware of the proceeding under this section, communicate with the court and the other
 10 jurisdictions, if applicable, to develop a plan to address the interests of all jurisdictions in the de-
 11 fendant in a timely manner.

12 (3)(a) If the most serious offense in the charging instrument is a felony, the court shall commit
 13 the defendant to the custody of the superintendent of [*a*] **the Oregon State** [*mental*] Hospital or di-
 14 rector of a facility designated by the Oregon Health Authority if the defendant is at least 18 years
 15 of age, or to the custody of the director of a secure intensive community inpatient facility designated
 16 by the authority if the defendant is under 18 years of age, if the court makes the following findings:

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

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

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

29 (c) If the court does not order the commitment of the defendant under this subsection, the court
 30 shall proceed in accordance with subsection (2)(c) of this section to determine and order an appro-
 31 priate action other than commitment.

32 (4)(a) If the most serious offense in the charging instrument is a misdemeanor, the court may
 33 not commit the defendant to the custody of the superintendent of [*a*] **the state** [*mental*] hospital or
 34 director of a facility designated by the Oregon Health Authority if the defendant is at least 18 years
 35 of age, or to the custody of the director of a secure intensive community inpatient facility designated
 36 by the authority if the defendant is under 18 years of age, unless the court:

37 (A)(i) Receives a recommendation from a certified evaluator that the defendant requires a hos-
 38 pital level of care due to the acuity of symptoms of the defendant's qualifying mental disorder; and

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

42 (B) Determines that the defendant requires a hospital level of care after making all of the fol-
 43 lowing written findings:

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

1 (ii) There are public safety concerns; and

2 (iii) The appropriate community restoration services are not present and available in the com-
 3 munity.

4 (b) If at the time of determining the appropriate action for the case, the court is considering
 5 commitment under paragraph (a)(A) of this subsection and:

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

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

12 (c) If the court does not order the commitment of the defendant under this subsection, the court
 13 shall proceed in accordance with subsection (2)(c) of this section to determine and order an appro-
 14 priate action other than commitment.

15 (d) If the defendant is committed under this subsection, the community mental health program
 16 director, or director's designee, shall at regular intervals, during any period of commitment, review
 17 available community restoration services and maintain communication with the defendant and the
 18 superintendent of the state [*mental*] hospital or director of the facility in order to facilitate an effi-
 19 cient transition to treatment in the community when ordered.

20 (5) If the most serious offense in the charging instrument is a violation, the court may not
 21 commit the defendant to the custody of the superintendent of [*a*] **the** state [*mental*] hospital or di-
 22 rector of a facility designated by the Oregon Health Authority if the defendant is at least 18 years
 23 of age, or to the custody of the director of a secure intensive community inpatient facility designated
 24 by the authority if the defendant is under 18 years of age.

25 (6)(a) If the court does not order the commitment of the defendant under subsection (3) or (4)
 26 of this section, if commitment is precluded under subsection (5) of this section or if the court de-
 27 termines that care other than commitment would better serve the defendant and the community, the
 28 court shall release the defendant, pursuant to an order that the defendant engage in community
 29 restoration services, until the defendant has gained or regained fitness to proceed, or until the court
 30 finds there is no substantial probability that the defendant will, within the foreseeable future, gain
 31 or regain fitness to proceed. The court may not order the defendant to engage in community resto-
 32 ration services in another county without permission from the other county.

33 (b) The court may order a community mental health program director coordinating the
 34 defendant's treatment in the community to provide the court with status reports on the defendant's
 35 progress in gaining or regaining fitness to proceed. The director shall provide a status report if the
 36 defendant is not complying with court-ordered restoration services.

37 (c) A community mental health program director coordinating the defendant's treatment in the
 38 community shall notify the court if the defendant gains or regains fitness to proceed. The notice
 39 shall be filed with the court and may be filed electronically. The clerk of the court shall cause
 40 copies of the notice to be delivered to both the district attorney and the counsel for the defendant.

41 (d) When a defendant is ordered to engage in community restoration services under this sub-
 42 section, the court may place conditions that the court deems appropriate on the release, including
 43 the requirement that the defendant regularly report to [*a*] **the** state [*mental*] hospital or a certified
 44 evaluator for examination to determine if the defendant has gained or regained fitness to proceed.

45 (7) The Oregon Health Authority shall establish by rule standards for the recommendation pro-

1 vided to the court described in subsection (2) of this section.

2 **SECTION 10.** ORS 161.371 is amended to read:

3 161.371. (1) The superintendent of [*a state mental hospital*] **the Oregon State Hospital** or di-
 4 rector of a facility to which the defendant is committed under ORS 161.370 shall cause the defendant
 5 to be evaluated within 60 days from the defendant's delivery into the superintendent's or director's
 6 custody, for the purpose of determining whether there is a substantial probability that, in the fore-
 7 seeable future, the defendant will have fitness to proceed. In addition, the superintendent or director
 8 shall:

9 (a) Immediately notify the committing court if the defendant, at any time, gains or regains fit-
 10 ness to proceed or if there is no substantial probability that, within the foreseeable future, the de-
 11 fendant will gain or regain fitness to proceed.

12 (b) Within 90 days of the defendant's delivery into the superintendent's or director's custody,
 13 notify the committing court that:

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

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

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

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

23 (2)(a) If the superintendent of the state [*mental*] hospital or director of the facility to which the
 24 defendant is committed determines that there is a substantial probability that, in the foreseeable
 25 future, the defendant will gain or regain fitness to proceed, unless the court otherwise orders, the
 26 defendant shall remain in the superintendent's or director's custody where the defendant shall re-
 27 ceive treatment designed for the purpose of enabling the defendant to gain or regain fitness to pro-
 28 ceed. In keeping with the notice requirement under subsection (1)(b) of this section, the
 29 superintendent or director shall, for the duration of the defendant's period of commitment, submit
 30 a progress report to the committing court, concerning the defendant's fitness to proceed, at least
 31 once every 180 days as measured from the date of the defendant's delivery into the superintendent's
 32 or director's custody.

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

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

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

37 (3)(a) Notwithstanding subsection (2) of this section, if the most serious offense in the charging
 38 instrument is a felony, and the superintendent of the state [*mental*] hospital or director of the facility
 39 to which the defendant is committed determines that a hospital level of care is no longer necessary
 40 due to present public safety concerns and the acuity of symptoms of the defendant's qualifying
 41 mental disorder, the superintendent or director may file notice of the determination with the court.
 42 Upon receipt of the notice, the court shall order that a community mental health program director
 43 or the director's designee, within five judicial days:

44 (A) Consult with the defendant and with any local entity that would be responsible for providing
 45 community restoration services, if the defendant were to be released in the community, to determine

1 whether community restoration services are present and available in the community; and

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

3 (b) Notwithstanding subsection (2) of this section, if the most serious offense in the charging
4 instrument is a felony, and the community mental health program director determines that commu-
5 nity restoration services that would mitigate any risk posed by the defendant are present and
6 available in the community, the community mental health program director may file notice of the
7 determination with the court. Upon receipt of the notice, the court shall order that the superinten-
8 dent of the state [*mental*] hospital or director of the facility to which the defendant is committed,
9 within five judicial days:

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

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

14 (c) Within 10 judicial days of receiving the recommendations described in paragraph (a) or (b)
15 of this subsection, the court shall hold a hearing to determine an appropriate action in accordance
16 with ORS 161.370 (2)(c) as follows:

17 (A) If, after consideration of the factors and possible actions described in ORS 161.370 (2)(c) and
18 any recommendations received under paragraph (a) or (b) of this subsection, the court determines
19 that a hospital level of care is necessary due to public safety concerns or the acuity of symptoms
20 of the defendant's qualifying mental disorder, and that based on the consultation or evaluation de-
21 scribed in paragraph (a) or (b) of this subsection, any information provided by community-based
22 mental health providers or any other sources, primary and secondary release criteria as defined in
23 ORS 135.230, and any other information the court finds to be trustworthy and reliable, the appro-
24 priate community restoration services are not present and available in the community, the court
25 may continue the commitment of the defendant.

26 (B) If the court does not make the determination described in subparagraph (A) of this para-
27 graph, the court shall terminate the commitment and shall set a review hearing seven days from the
28 date of the commitment termination for any defendant remaining in custody. At the review hearing,
29 the court shall consider all relevant information, determine an appropriate action in the case as
30 described in ORS 161.370 (2)(c) and enter an order in accordance with the defendant's constitutional
31 rights to due process.

32 (4)(a) Notwithstanding subsection (2) of this section, if the most serious offense in the charging
33 instrument is a misdemeanor, and the superintendent of the state [*mental*] hospital or director of the
34 facility to which the defendant is committed determines that the defendant no longer needs a hos-
35 pital level of care due to the acuity of symptoms of the defendant's qualifying mental disorder or
36 there are not present public safety concerns, the superintendent or director shall file notice of the
37 determination with the court, along with recommendations regarding the necessary community res-
38 toration services that would mitigate any risk presented by the defendant. Upon receipt of the no-
39 tice, the court shall order that a community mental health program director or the director's
40 designee, within five judicial days:

41 (A) Consult with the defendant and with any local entity that would be responsible for providing
42 community restoration services, if the defendant were to be released in the community, to determine
43 whether appropriate community restoration services are present and available in the community;
44 and

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

1 (b) Notwithstanding subsection (2) of this section, if the most serious offense in the charging
 2 instrument is a misdemeanor, and the community mental health program director determines that
 3 the community restoration services that would mitigate any risk posed by the defendant are present
 4 and available in the community, the community mental health program director may file notice of
 5 the determination with the court. Upon receipt of the notice, the court shall order that the super-
 6 intendent of the state [*mental*] hospital or director of the facility to which the defendant is commit-
 7 ted, within five judicial days:

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

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

12 (c) Within 10 judicial days of receiving the recommendations described in paragraph (a) or (b)
 13 of this subsection, the court shall hold a hearing to determine an appropriate action in accordance
 14 with ORS 161.370 (2)(c) as follows:

15 (A) After consideration of the factors and possible actions described in ORS 161.370 (2)(c), the
 16 consultation or evaluation and any recommendations described in paragraph (a) or (b) of this sub-
 17 section, and any other information the court finds to be trustworthy and reliable, the court may
 18 continue the commitment of the defendant if the court makes written findings that a hospital level
 19 of care is necessary due to public safety concerns and the acuity of symptoms of the defendant's
 20 qualifying mental disorder, and that appropriate community restoration services are not present and
 21 available in the community.

22 (B) If the court does not make the findings described in subparagraph (A) of this paragraph, the
 23 court shall terminate the commitment and shall set a review hearing seven days from the date of
 24 the commitment termination for any defendant remaining in custody. At the review hearing, the
 25 court shall consider all relevant information, determine an appropriate action in the case as de-
 26 scribed in ORS 161.370 (2)(c) and enter an order in accordance with the defendant's constitutional
 27 rights to due process.

28 (5)(a) If a defendant remains committed under this section, the court shall determine within a
 29 reasonable period of time whether there is a substantial probability that, in the foreseeable future,
 30 the defendant will gain or regain fitness to proceed. However, regardless of the number of charges
 31 with which the defendant is accused, in no event shall the defendant be committed for longer than
 32 whichever of the following, measured from the defendant's initial custody date, is shorter:

33 (A) Three years; or

34 (B) A period of time equal to the maximum sentence the court could have imposed if the de-
 35 fendant had been convicted.

36 (b) For purposes of calculating the maximum period of commitment described in paragraph (a)
 37 of this subsection:

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

40 (B) The defendant shall be given credit against each charge alleged in the accusatory instru-
 41 ment:

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

45 (ii) Unless the defendant is charged on any charging instrument with aggravated murder or a

1 crime listed in ORS 137.700 (2), for each day the defendant is held in jail before and after the date
 2 the defendant is first committed, whether the days are consecutive or are interrupted by a period
 3 of time during which the defendant lacks fitness to proceed.

4 (c) The superintendent of the state [mental] hospital or director of the facility to which the de-
 5 fendant is committed shall notify the committing court of the defendant's impending discharge 30
 6 days before the date on which the superintendent or director is required to discharge the defendant
 7 under this subsection.

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

11 (b) When the committing court receives a notice from the superintendent or director under
 12 subsection (1) of this section concerning the defendant's progress or lack thereof, or under sub-
 13 section (5) of this section concerning the defendant's impending discharge, the committing court
 14 shall determine, after a hearing if a hearing is requested, whether the defendant presently has fit-
 15 ness to proceed.

16 (7) If at any time the court determines that the defendant lacks fitness to proceed, the court
 17 shall further determine whether the defendant is entitled to discharge under subsection (5) of this
 18 section. If the court determines that the defendant is entitled to discharge under subsection (5) of
 19 this section, the court shall dismiss, without prejudice, all charges against the defendant and:

- 20 (a) Order that the defendant be discharged; or
- 21 (b) Initiate commitment proceedings under ORS 426.070, 426.701 or 427.235 to 427.290.

22 **SECTION 11.** ORS 161.372 is amended to read:

23 161.372. (1) If, at any point while the defendant is in the custody of the superintendent of the
 24 [state mental hospital] **Oregon State Hospital** after commitment under ORS 161.370, the super-
 25 intendent determines that medication is the recommended treatment in order to allow the defendant
 26 to gain or regain fitness to proceed, the defendant is refusing to take the recommended medication
 27 and the defendant cannot be involuntarily medicated without a court order, the superintendent shall
 28 submit a report of the determination to the court.

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

- 30 (a) Information regarding the benefits and side effects of each recommended medication;
- 31 (b) Information concerning the defendant's refusal to take the recommended medication; and
- 32 (c) The likelihood that the medication will allow the defendant to gain or regain fitness to pro-
 33 ceed.

34 (3)(a) Based upon the report described in subsection (1) of this section, the prosecuting attorney
 35 may file a motion requesting that the court authorize the involuntary administration of medication
 36 to the defendant. The prosecuting attorney shall provide a copy of the motion to the defendant.

37 (b) The court shall hold a hearing on the motion if either the prosecuting attorney or the de-
 38 fendant requests a hearing. At the hearing, the court shall determine whether to issue an order
 39 authorizing the involuntary administration of medication to the defendant.

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

- 42 (A) Involuntary medication of the defendant is not otherwise authorized by law;
- 43 (B) There are important state interests at stake in the prosecution of the defendant;
- 44 (C) The recommended medication will significantly further the important state interests because:
 45 (i) It is substantially likely that the medication will render the defendant fit to proceed; and

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

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

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

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

10 (A) The specific medication or type of medications permitted to be administered to the defend-
11 ant;

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

13 (C) The duration of time that the **Oregon State** [*mental*] Hospital may involuntarily medicate the
14 defendant before reporting back to the court on the defendant's mental condition and progress to-
15 ward gaining or regaining fitness to proceed. The duration of time shall not exceed the maximum
16 period of the defendant's commitment to the state [*mental*] hospital, or 180 calendar days, whichever
17 is shorter.

18 (4)(a) Reports, motions and orders concerning the involuntary medication of a defendant under
19 this section are confidential and may be made available only:

20 (A) To the court, prosecuting attorney, defense attorney, agent of the prosecuting or defense
21 attorney, defendant, community mental health program director or designee, state [*mental*] hospital
22 and any facility in which the defendant is housed; or

23 (B) As ordered by a court.

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

26 (c) Nothing in this subsection prohibits the prosecuting attorney, defense attorney or agent of
27 the prosecuting or defense attorney from discussing the contents of a report or document described
28 in paragraph (a) of this subsection with witnesses or victims as otherwise permitted by law.

29 **SECTION 12.** ORS 161.373 is amended to read:

30 161.373. (1) Unless otherwise prohibited by law or for good cause, all public bodies, as defined
31 in ORS 174.109, and any private medical provider in possession of records concerning the defendant,
32 shall, within five business days of receipt of the order, comply with a court order for the release
33 of records to the [*state mental hospital*] **Oregon State Hospital** or other facility designated by the
34 Oregon Health Authority for the purpose of conducting an examination or evaluation under ORS
35 161.355 to 161.371.

36 (2) Notwithstanding subsection (1) of this section, the Oregon Youth Authority, the Department
37 of Corrections, a community college district, a community college service district, a public univer-
38 sity, a school district or an education service district may, after notifying the state hospital or other
39 facility designated by the Oregon Health Authority, comply with the court order within 15 business
40 days of receipt of the order without good cause.

41 (3) As used in this section, in the case of a community college district, a community college
42 service district, a public university, a school district or an education service district, "business
43 day" does not include any day on which the central administration offices of the district or univer-
44 sity are closed.

45 **SECTION 13.** ORS 161.390 is amended to read:

1 161.390. (1) The Oregon Health Authority shall adopt rules for the assignment of persons to
 2 [*state mental hospitals*] **campuses of the Oregon State Hospital** or secure intensive community
 3 inpatient facilities after commitment under ORS 161.365 and 161.370 and for establishing standards
 4 for evaluation and treatment of persons committed to [*a*] **the** state hospital or a secure intensive
 5 community inpatient facility or ordered to a community mental health program under ORS 161.315
 6 to 161.351.

7 (2) When the Psychiatric Security Review Board requires the preparation of a predischarge or
 8 preconditional release plan before a hearing or as a condition of granting discharge or conditional
 9 release for a person committed under ORS 161.315 to 161.351 to [*a*] **the** state hospital or a secure
 10 intensive community inpatient facility for custody, care and treatment, the authority is responsible
 11 for and shall prepare the plan.

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

16 (4)(a) The board shall maintain and keep current the medical, social and criminal history of all
 17 persons committed to its jurisdiction. The confidentiality of records maintained by the board shall
 18 be determined pursuant to ORS 192.338, 192.345, 192.355 and 192.398.

19 (b) Except as otherwise provided by law, upon request of the board, [*a*] **the** state hospital, a
 20 community mental health program and any other health care service provider shall provide the
 21 board with all medical records pertaining to a person committed to the jurisdiction of the board.

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

24 **SECTION 14.** ORS 163A.005 is amended to read:

25 163A.005. As used in ORS 163A.005 to 163A.235:

26 (1) "Another United States court" means a federal court, a military court, the tribal court of a
 27 federally recognized Indian tribe or a court of:

- 28 (a) A state other than Oregon;
- 29 (b) The District of Columbia;
- 30 (c) The Commonwealth of Puerto Rico;
- 31 (d) Guam;
- 32 (e) American Samoa;
- 33 (f) The Commonwealth of the Northern Mariana Islands; or
- 34 (g) The United States Virgin Islands.

35 (2) "Attends" means is enrolled on a full-time or part-time basis.

36 (3)(a) "Correctional facility" means any place used for the confinement of persons:

37 (A) Charged with or convicted of a crime or otherwise confined under a court order.

38 (B) Found to be within the jurisdiction of the juvenile court for having committed an act that
 39 if committed by an adult would constitute a crime.

40 (b) "Correctional facility" applies to [*a state hospital*] **the Oregon State Hospital** or a secure
 41 intensive community inpatient facility only as to persons detained therein charged with or convicted
 42 of a crime, or detained therein after being found guilty except for insanity under ORS 161.290 to
 43 161.373 or responsible except for insanity under ORS 419C.411.

44 (4) "Institution of higher education" means a public or private educational institution that pro-
 45 vides a program of post-secondary education.

- 1 (5) “Sex crime” means:
- 2 (a) Rape in any degree;
- 3 (b) Sodomy in any degree;
- 4 (c) Unlawful sexual penetration in any degree;
- 5 (d) Sexual abuse in any degree;
- 6 (e) Incest with a child victim;
- 7 (f) Using a child in a display of sexually explicit conduct;
- 8 (g) Encouraging child sexual abuse in any degree;
- 9 (h) Transporting child pornography into the state;
- 10 (i) Paying for viewing a child’s sexually explicit conduct;
- 11 (j) Compelling prostitution;
- 12 (k) Promoting prostitution;
- 13 (L) Kidnapping in the first degree if the victim was under 18 years of age;
- 14 (m) Contributing to the sexual delinquency of a minor;
- 15 (n) Sexual misconduct if the offender is at least 18 years of age;
- 16 (o) Possession of materials depicting sexually explicit conduct of a child in the first degree;
- 17 (p) Kidnapping in the second degree if the victim was under 18 years of age, except by a parent
- 18 or by a person found to be within the jurisdiction of the juvenile court;
- 19 (q) Online sexual corruption of a child in any degree if the offender reasonably believed the
- 20 child to be more than five years younger than the offender;
- 21 (r) Luring a minor, if:
- 22 (A) The offender reasonably believed the minor or, in the case of a police officer or agent of a
- 23 police officer posing as a minor, the purported minor to be more than five years younger than the
- 24 offender or under 16 years of age; and
- 25 (B) The court designates in the judgment that the offense is a sex crime;
- 26 (s) Sexual assault of an animal;
- 27 (t) Public indecency or private indecency, if the person has a prior conviction for a crime listed
- 28 in this subsection;
- 29 (u) Trafficking in persons as described in ORS 163.266 (1)(b) or (c);
- 30 (v) Purchasing sex with a minor if the court designates the offense as a sex crime pursuant to
- 31 ORS 163.413 (3)(d), or the offense is the defendant’s second or subsequent conviction under ORS
- 32 163.413 (3)(b)(B);
- 33 (w) Invasion of personal privacy in the first degree, if the court designates the offense as a sex
- 34 crime pursuant to ORS 163.701 (3);
- 35 (x) Any attempt to commit any of the crimes listed in paragraphs (a) to (w) of this subsection;
- 36 (y) Burglary, when committed with intent to commit any of the offenses listed in paragraphs (a)
- 37 to (w) of this subsection; or
- 38 (z) Criminal conspiracy if the offender agrees with one or more persons to engage in or cause
- 39 the performance of an offense listed in paragraphs (a) to (w) of this subsection.
- 40 (6) “Sex offender” means a person who:
- 41 (a) Has been convicted of a sex crime;
- 42 (b) Has been found guilty except for insanity of a sex crime;
- 43 (c) Has been convicted in another United States court of a crime:
- 44 (A) That would constitute a sex crime if committed in this state; or
- 45 (B) For which the person would have to register as a sex offender in that court’s jurisdiction,

1 or as required under federal law, regardless of whether the crime would constitute a sex crime in
 2 this state; or

3 (d) Is described in ORS 163A.025 (1).

4 (7) “Works” or “carries on a vocation” means full-time or part-time employment for more than
 5 14 days within one calendar year whether financially compensated, volunteered or for the purpose
 6 of governmental or educational benefit.

7 **SECTION 15.** ORS 206.315 is amended to read:

8 206.315. (1) A sheriff is entitled to receive from the county the actual and necessary expenses
 9 of the sheriff incurred in transporting and conveying convicts and parole violators to a Department
 10 of Corrections institution and persons with mental illness to [*a state mental hospital*] **the Oregon**
 11 **State Hospital** when conveyed by the sheriff in pursuance of the adjudication of an authorized
 12 tribunal of the state, to be audited and allowed as other claims against the county.

13 (2) All counties are entitled to receive reimbursement from the state in the amounts specified
 14 in subsection (3) of this section for the actual and necessary expenses incurred by the sheriff under
 15 subsection (1) of this section.

16 (3) Reimbursement by the state under subsection (2) of this section shall be as follows:

17 (a) Full reimbursement for transporting and conveying persons with mental illness to [*a*] **the**
 18 state [*mental*] hospital.

19 (b) Full reimbursement for returning a parole violator to the state penitentiary.

20 (c) Seventy-five percent reimbursement for transporting and conveying a convict to a Depart-
 21 ment of Corrections institution.

22 **SECTION 16.** ORS 243.736 is amended to read:

23 243.736. (1) It is unlawful for any of the following public employees to strike or recognize a
 24 picket line of a labor organization while in the performance of official duties:

25 (a) Assistant attorneys general;

26 (b) Deputy district attorneys;

27 (c) Emergency communications worker;

28 (d) Employee of the Oregon Youth Authority who has custody, control or supervision of adjudi-
 29 cated youths;

30 (e) Firefighter;

31 (f) Guard at a correctional institution or [*mental hospital*] **the Oregon State Hospital**;

32 (g) Parole and probation officer who supervises adult offenders; and

33 (h) Police officer.

34 (2) As used in this section, “emergency communications worker” means an individual whose of-
 35 ficial focal duties are receiving information through the emergency communications system under
 36 ORS 403.105 to 403.250, relaying the information to public or private safety agencies or dispatching
 37 emergency equipment or personnel in response to the information.

38 **SECTION 17.** ORS 341.522, as amended by section 18, chapter 81, Oregon Laws 2022, is
 39 amended to read:

40 341.522. (1) The Office of Student Access and Completion shall administer the Oregon Promise
 41 program as provided by this section.

42 (2) Subject to subsections (7) to (10) of this section, the office shall provide a grant for commu-
 43 nity college courses to a person who meets the criteria described in subsections (3) to (6) of this
 44 section. The grant shall be limited as provided by subsections (7) to (10) of this section.

45 (3) A grant shall be awarded under this section to a person who meets the following criteria:

- 1 (a) Is enrolled in courses that are:
- 2 (A) Offered at a community college in this state; and
- 3 (B) Determined by the office, in accordance with rules adopted by the Higher Education Coordinating Commission, to be required for completion of:
- 4 (i) A one-year curriculum for students who plan to transfer to another post-secondary institution
- 5 of education;
- 6 (ii) An associate degree; or
- 7 (iii) A program in career and technical education;
- 8 (b) Except as provided in subsection (5) of this section, has been a resident of this state for at
- 9 least 12 months prior to enrolling in the courses described in paragraph (a) of this subsection;
- 10 (c) Attained the person's highest level of education, except as provided in subsection (5) of this
- 11 section, in this state prior to:
- 12 (A) Receiving a diploma under ORS 329.451;
- 13 (B) Receiving a certificate for passing an approved high school equivalency test such as the
- 14 General Educational Development (GED) test as provided by ORS 350.175;
- 15 (C) Completing grade 12 in compliance with the requirements of ORS 339.035; or
- 16 (D) Completing grade 12 at a private or parochial school, as described in ORS 339.030 (1)(a);
- 17 (d) Except as provided in subsections (4) and (5) of this section, attained the person's highest
- 18 level of education as described in paragraph (c) of this subsection within six months from the date
- 19 that the person first enrolls in courses described in paragraph (a) of this subsection for the purpose
- 20 of receiving a grant under this section;
- 21 (e) Earned a cumulative grade point average of 2.0 or better in high school or otherwise demonstrated an equivalent academic ability, as determined by the office according to rules adopted by
- 22 the commission;
- 23 (f) Completed and submitted the Free Application for Federal Student Aid for each academic
- 24 year and accepted all state and federal aid grants available to the person, if eligible to file the application; and
- 25 (g) Has not completed either of the following:
- 26 (A) More than a total of 90 credit hours, or the equivalent, at a post-secondary institution of
- 27 education; or
- 28 (B) A curriculum, degree or program, as described in paragraph (a)(B) of this subsection.
- 29 (4)(a) If a person otherwise meets the required criteria and has been awarded a grant under
- 30 subsection (3) of this section, but the person enters into service with a career and technical student
- 31 organization relating to agriculture or farming that is approved by the Department of Education
- 32 under ORS 344.077 within six months after the person attained the person's highest level of education as described in subsection (3)(c) of this section, the person will continue to be eligible to receive
- 33 the grant if the person first enrolls in courses described in subsection (3)(a) of this section within
- 34 six months of finishing the person's service with the career and technical student organization.
- 35 (b) In addition to the situation described in paragraph (a) of this subsection, the commission may
- 36 waive the requirement set forth in subsection (3)(d) of this section for a person who shows that the
- 37 person was unable to timely enroll in courses described in subsection (3)(a) of this section due to a
- 38 significant hardship. The commission may adopt rules to implement this paragraph.
- 39 (5)(a) A member of the Oregon National Guard who has completed initial active duty training
- 40 is not required to comply with the criteria set forth in subsection (3)(d) of this section in order to
- 41 receive a grant, provided that the member first enrolls in courses described in subsection (3)(a) of
- 42
- 43
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- 45

1 this section within six months after completing initial active duty training, as evidenced by an official form issued by the United States Department of Defense.

2
3 (b)(A) A person who completes the highest level of education as described in subsection (3)(c) of this section while confined in a correctional facility, either serving a sentence of incarceration
4 or as a young person, youth or adjudicated youth, is not required to comply with the criteria set
5 forth in subsection (3)(d) of this section in order to receive a grant, provided that the person first
6 enrolls in courses described in subsection (3)(a) of this section within six months after the date on
7 which the person is first released from a correctional facility following completion of the highest
8 level of education described in subsection (3)(c) of this section.

9
10 (B) The eligibility requirements described in subsection (6)(a)(C) of this section may be waived
11 by the office according to rules adopted by the commission for a person who receives a grant under
12 this section in the manner described in subparagraph (A) of this paragraph.

13 (C) As used in this paragraph:

14 (i) “Adjudicated youth,” “detention facility,” “young person” and “youth” have the meanings
15 given those terms in ORS 419A.004.

16 (ii) “Correctional facility” means any place used for the confinement of young persons, youths
17 or adjudicated youths or persons charged with or convicted of a crime or otherwise confined under
18 a court order, including [a]:

19 (I) A youth correction facility;

20 (II) A detention facility;

21 (III) A Department of Corrections institution;

22 (IV) A local correctional facility; or

23 (V) **The Oregon** State Hospital or a secure intensive community inpatient facility, with respect
24 to persons detained therein who are youths or adjudicated youths, who are charged with or con-
25 victed of a crime or who are detained therein after having been found guilty except for insanity of
26 a crime under ORS 161.290 to 161.373 or having been found responsible except for insanity under
27 ORS 419C.411.

28 (iii) “Department of Corrections institution” has the meaning given that term in ORS 421.005.

29 (iv) “Local correctional facility” has the meaning given that term in ORS 169.005.

30 (v) “Youth correction facility” has the meaning given that term in ORS 420.005.

31 (c)(A) If a person was a foster child:

32 (i) The person shall be treated as meeting the residency criteria for eligibility under subsection
33 (3)(b) of this section if, but for the person’s placement in out-of-state foster care, the person other-
34 wise meets the requirements of subsection (3)(b) of this section.

35 (ii) The person shall be treated as attaining the person’s highest level of education in this state
36 under subsection (3)(c) of this section if the person attained the person’s highest level of education
37 while placed in out-of-state foster care and the person’s highest level of education substantially
38 meets the requirements under subsection (3)(c) of this section.

39 (iii) The person is not required to comply with the criteria set forth in subsection (3)(d) of this
40 section in order to receive a grant provided that the person completes the highest level of education
41 as described in subparagraph (A)(ii) of this paragraph while in a treatment program and the person
42 first enrolls in courses described in subsection (3)(a) of this section within 12 months after the date
43 on which the person is released from the treatment program.

44 (B) Upon request from the commission, the Department of Human Services shall provide doc-
45 umentation of the placement status of a person described in paragraph (c)(A) of this subsection.

1 (C) As used in this paragraph:

2 (i) "Foster care" means substitute care for children placed by the Department of Human Ser-
3 vices or a tribal child welfare agency away from the child's parents and for whom the department
4 or agency has placement and care responsibility, including placements in foster family homes, foster
5 homes of relatives, group homes, emergency shelters, residential facilities, child care institutions and
6 preadoptive homes.

7 (ii) "Foster child" means a child over whom the Department of Human Services retained juris-
8 diction under ORS 417.200 for the duration of the child's placement in foster care outside the State
9 of Oregon.

10 (6)(a) A person continues to remain eligible to receive a grant under this section if the person,
11 in addition to satisfying the criteria specified in subsection (3) of this section, meets the following
12 criteria:

13 (A) Maintains at least the minimum cumulative grade point average prescribed by the commis-
14 sion based on federal aid grant requirements;

15 (B) Makes satisfactory academic progress toward a curriculum, degree or program, as described
16 in subsection (3)(a)(B) of this section, as prescribed by the commission based on federal aid grant
17 requirements; and

18 (C) Enrolls in courses described in subsection (3)(a) of this section for a sufficient number of
19 credit hours to be considered at least a half-time student each term for at least three terms in each
20 consecutive academic year.

21 (b) A person who fails to meet an eligibility requirement described in paragraph (a) of this
22 subsection becomes ineligible to receive a grant under this section for the term after which the
23 person fails to meet the eligibility requirement, unless the eligibility requirement is waived by the
24 office according to rules adopted by the commission.

25 (7)(a) The total amount of a grant awarded under this section shall be based on each term that
26 a person is enrolled in courses described in subsection (3)(a) of this section. Except as provided in
27 subsections (9) and (10) of this section, after the amount of tuition for the person for the term is
28 reduced by any amounts received by the person in state and federal aid grants, the person shall be
29 eligible for a grant under this section in an amount that equals:

30 (A) Except as provided by paragraph (b) of this subsection, not less than the greater of:

31 (i) \$2,000, adjusted for inflation based on the increase of the average cost of tuition at a com-
32 munity college operated under ORS chapter 341 in a manner determined by the commission by rule;
33 and

34 (ii) The person's actual cost for tuition.

35 (B) Not more than the lesser of:

36 (i) The average cost of tuition at a community college in this state, as determined by the office;
37 and

38 (ii) The person's actual cost for tuition.

39 (b)(A) If the office determines both that the person's actual cost for tuition exceeds the amount
40 set forth in paragraph (a)(A)(i) of this subsection and that the person's actual cost for tuition ex-
41 ceeds the average cost of tuition at a community college in this state, the person shall be eligible
42 for a grant in an amount that equals the average cost of tuition at a community college in this state.

43 (B) If the office determines that the person's actual cost for tuition is less than the amount set
44 forth in paragraph (a)(A)(i) of this subsection, the person shall be eligible for a grant in an amount
45 that equals the amount set forth in paragraph (a)(A)(i) of this subsection.

1 (c) The minimum amount of a grant, as calculated under paragraphs (a) and (b) of this sub-
2 section, may be prorated for a person who is enrolled in courses described in subsection (3)(a) of this
3 section for a sufficient number of credit hours to be considered at least a half-time student but not
4 a full-time student.

5 (d) The commission may prescribe by rule whether to include fees, and any limitations related
6 to the inclusion of fees, when determining the actual cost of tuition or the average cost of tuition
7 under this subsection.

8 (8) The commission may adopt by rule the priority by which grants are awarded, which may
9 allow for preference to be given to persons enrolled in school districts or high schools that meet
10 specified criteria.

11 (9) Prior to the start of the fall term of each academic year, the commission shall determine
12 whether there are sufficient moneys to award a grant under this section to each person who meets
13 the criteria described in subsections (3) to (6) of this section. When making a determination under
14 this subsection, the commission may consider both projected resources and statutory modifications
15 that will take effect during the current biennium. On the basis of this determination the commission
16 may:

17 (a) Limit eligibility to receive a grant under this section to a person whose financial resources,
18 as determined by the commission by rule, are at or below the level the commission determines is
19 necessary to allow the commission to operate the Oregon Promise program with available moneys;
20 or

21 (b) Reduce or eliminate any limitation on eligibility previously imposed by the commission under
22 paragraph (a) of this subsection.

23 (10)(a) If at any time the commission determines that there are insufficient moneys to provide
24 a grant to each person who has been awarded a grant under this section, the commission may de-
25 crease the total amount of the grant awarded.

26 (b) If at any time the commission determines that the amount of moneys available to operate the
27 Oregon Promise program exceeds the amount determined under subsection (9) of this section, the
28 commission may reduce or eliminate any limitation on eligibility to receive a grant under this sec-
29 tion that was previously imposed by the commission under subsection (9)(a) of this section.

30 (c) The commission shall promptly notify the interim committees of the Legislative Assembly
31 responsible for higher education each time the commission takes any action under paragraph (a) or
32 (b) of this subsection.

33 (11) The commission shall adopt any rules necessary for the administration of this section, in-
34 cluding any requirements related to:

35 (a) Specifying the form and timelines for submitting an application for a grant under this section;

36 (b) Determining whether a person is eligible for a grant under this section, including whether
37 the person shall be given priority as allowed under subsection (8) of this section;

38 (c) Implementing programs or policies that improve the academic success or completion rates for
39 persons who receive a grant under this section;

40 (d) Prescribing eligibility requirements and grant calculations for persons dually enrolled in a
41 community college and a public university; and

42 (e) Evaluating the impact of the program established under this section, including any require-
43 ments for reporting data needed for evaluations.

44 (12) No later than December 31 of each even-numbered year, the commission shall submit to an
45 interim legislative committee related to education a report that summarizes the commission's

1 findings on the impact of the program established under this section. The report shall include:

2 (a) Student completion rates of curricula, degrees and programs described in subsection (3)(a)(B)
3 of this section;

4 (b) The amount of federal aid grants received by persons who received a grant under this sec-
5 tion;

6 (c) The financial impact of the program on school districts that had students receive a grant
7 under this section;

8 (d) The financial impact and the enrollment impact of the program on community colleges and
9 public universities in this state; and

10 (e) The overall success rate of the program and financial impact of the program.

11 **SECTION 18.** ORS 408.570 is amended to read:

12 408.570. When a veteran who has been adjudged under ORS 426.130 to be a person with mental
13 illness is eligible for treatment in a United States veterans facility and commitment is necessary for
14 the proper care and treatment of such veteran, the Oregon Health Authority or community mental
15 health program director, as provided under ORS 426.060, may, upon receipt of a certificate of eligi-
16 bility from the United States Department of Veterans Affairs, assign the person to the United States
17 Department of Veterans Affairs for care, custody and treatment in a United States veterans facility.
18 Upon admission to any such facility, the veteran shall be subject to the rules and regulations of the
19 United States Department of Veterans Affairs and provisions of ORS 426.060 to 426.395 and related
20 rules and regulations of the Oregon Health Authority. The chief officer of such facility shall be
21 vested with the same powers exercised by [*superintendents of state hospitals for persons with mental*
22 *illness within this state*] **the superintendent of the Oregon State Hospital** with reference to the
23 retention, transfer, trial visit or discharge of the veteran so assigned. The commitment of a veteran
24 to a veterans facility within this state by a court of another state under a similar provision of law
25 has the same force and effect as if the veteran was committed to a veterans facility within that
26 other state.

27 **SECTION 19.** ORS 421.107 is amended to read:

28 421.107. (1) As used in this section:

29 (a) "Adjudicated youth" has the meaning given that term in ORS 419A.004.

30 (b) "Correctional facility":

31 (A) Means any place used for the confinement of adjudicated youths, detained juveniles, persons
32 charged with or convicted of a crime or persons otherwise confined under a court order.

33 (B) Includes but is not limited to a youth correction facility and a juvenile detention facility.

34 (C) Applies to [*a state hospital*] **the Oregon State Hospital** or a secure intensive community
35 inpatient facility only as to persons detained therein charged with or convicted of a crime, or de-
36 tained therein after having been found guilty except for insanity of a crime under ORS 161.290 to
37 161.373.

38 (c) "Inmate" means an adjudicated youth confined in a youth correction facility, a juvenile de-
39 tained in a juvenile detention facility, or any person incarcerated or detained in a correctional fa-
40 cility who is accused of, convicted of or sentenced for a violation of criminal law or for the violation
41 of the terms and conditions of pretrial release, probation, parole, post-prison supervision or a di-
42 version program.

43 (d) "Juvenile detention facility" has the meaning given that term in ORS 169.005.

44 (e) "Youth correction facility" has the meaning given that term in ORS 420.005.

45 (2) An official of a correctional facility may not use a dog to extract an inmate from a cell.

(3) Nothing in this section prohibits:

(a) The use of a dog in a correctional facility for the purposes of tracking the location of an inmate or detecting contraband as defined in ORS 162.135.

(b) The use of a dog in a correctional facility to quell a disturbance, prevent an inmate escape or address an immediate health or safety risk to inmates or staff members.

(c) The use of dogs in a correctional facility as part of an inmate dog training program or for purposes relating to the rehabilitation, treatment, vocational education and skill-building of inmates.

SECTION 20. ORS 426.005 is amended to read:

426.005. (1) As used in ORS 426.005 to 426.390, unless the context requires otherwise:

(a) “Community mental health program director” means the director of an entity that provides the services described in ORS 430.630 (3) to (5).

(b) “Director of the facility” means [a] **the** superintendent of [a] **the Oregon State [mental] Hospital or a community hospital**, the chief of psychiatric services in a community hospital or the person in charge of treatment and rehabilitation programs at other treatment facilities.

(c) “Facility” means [a] **the Oregon State [mental] Hospital, a community hospital, residential facility, detoxification center, day treatment facility or such other facility as the authority determines suitable that provides diagnosis and evaluation, medical care, detoxification, social services or rehabilitation to persons who are in custody during a prehearing period of detention or who have been committed to the Oregon Health Authority under ORS 426.130.**

(d) “Licensed independent practitioner” means:

(A) A physician, as defined in ORS 677.010;

(B) A nurse practitioner licensed under ORS 678.375 and authorized to write prescriptions under ORS 678.390; or

(C) A naturopathic physician licensed under ORS chapter 685.

(e) “Nonhospital facility” means any facility, other than a hospital, that is approved by the authority to provide adequate security, psychiatric, nursing and other services to persons under ORS 426.232 or 426.233.

(f) “Person with mental illness” means a person who, because of a mental disorder, is one or more of the following:

(A) Dangerous to self or others.

(B) Unable to provide for basic personal needs that are necessary to avoid serious physical harm in the near future, and is not receiving such care as is necessary to avoid such harm.

(C) A person:

(i) With a chronic mental illness, as defined in ORS 426.495;

(ii) Who, within the previous three years, has twice been placed in a hospital or approved inpatient facility by the authority or the Department of Human Services under ORS 426.060;

(iii) Who is exhibiting symptoms or behavior substantially similar to those that preceded and led to one or more of the hospitalizations or inpatient placements referred to in sub-subparagraph (ii) of this subparagraph; and

(iv) Who, unless treated, will continue, to a reasonable medical probability, to physically or mentally deteriorate so that the person will become a person described under either subparagraph (A) or (B) of this paragraph or both.

(g) “Prehearing period of detention” means a period of time calculated from the initiation of custody during which a person may be detained under ORS 426.228, 426.231, 426.232 or 426.233.

(h) “State hospital” means the Oregon State Hospital.

1 (2) Whenever a community mental health program director, director of the facility, **the** super-
 2 intendent of [a] **the** state hospital or **an** administrator of a facility is referred to, the reference in-
 3 cludes any designee such person has designated to act on the person’s behalf in the exercise of
 4 duties.

5 **SECTION 21.** ORS 426.241 is amended to read:

6 426.241. (1) The cost of emergency psychiatric care, custody and treatment related to or result-
 7 ing from such psychiatric condition, provided by a hospital or other facility approved by the Oregon
 8 Health Authority and the community mental health program director of the county in which the
 9 facility is located, except [*a state hospital*] **the Oregon State Hospital**, for a person alleged to have
 10 a mental illness who is admitted or detained under ORS 426.070, 426.140, 426.228, 426.232 or 426.233,
 11 or for a person with mental illness who is admitted or detained under ORS 426.150, 426.223, 426.273,
 12 426.275 or 426.292, shall be paid by the community mental health program in the county of which
 13 the person is a resident from state funds provided to the community mental health program for this
 14 purpose. The community mental health program is responsible for the cost when state funds provided
 15 to the community mental health program are exhausted. The hospital or other facility shall charge
 16 to and collect from the person, third party payers or other legally or financially responsible indi-
 17 viduals or entities the costs of the emergency care, custody and treatment, as it would for any other
 18 patient, and any funds received shall be applied as an offset to the cost of the services provided
 19 under this section.

20 (2) If any person is admitted to or detained in [a] **the** state hospital under ORS 426.070, 426.140,
 21 426.180 to 426.210, 426.228, 426.232 or 426.233 for emergency care, custody or treatment, the au-
 22 thority shall charge to and collect from the person, third party payers or other legally or financially
 23 responsible individuals or entities the costs as it would for other patients of the state [*hospitals*]
 24 **hospital** under the provisions of ORS 179.610 to 179.770.

25 (3) If any person is adjudged to have a mental illness under the provisions of ORS 426.130, or
 26 determined to be an extremely dangerous person with mental illness under ORS 426.701 or 426.702,
 27 and the person receives care and treatment in [a] **the** state hospital, the person, third party payers
 28 or other legally or financially responsible individuals or entities shall be required to pay for the
 29 costs of the hospitalization at the state hospital, as provided by ORS 179.610 to 179.770, if financially
 30 able to do so.

31 (4) For purposes of this section and ORS 426.310, “resident” means resident of the county in
 32 which the person maintains a current mailing address or, if the person does not maintain a current
 33 mailing address within the state, the county in which the person is found, or the county in which
 34 a court-committed person has been conditionally released.

35 (5)(a) The authority may deny payment for part or all of the emergency psychiatric services
 36 provided by a hospital or nonhospital facility under ORS 426.232, 426.233 or 426.237 when the au-
 37 thority finds, upon review, that the condition of the person alleged to have a mental illness did not
 38 meet the admission criteria in ORS 426.232 (1), 426.233 (1) or 426.237 (1)(b)(A). The payer responsible
 39 under this section shall make a request for denial of payment for emergency psychiatric services
 40 provided under ORS 426.232, 426.233 or 426.237 in writing to the authority.

41 (b) The authority may require the following to provide the authority with any information that
 42 the authority determines is necessary to review a request for denial of payment made under this
 43 subsection or to conduct a review of emergency psychiatric services for the purpose of planning or
 44 defining authority rules:

45 (A) A hospital or nonhospital facility approved under ORS 426.228 to 426.235 or 426.237.

1 (B) A physician or a person providing emergency psychiatric services under ORS 426.228 to
 2 426.235 or 426.237.

3 (c) The authority shall adopt rules necessary to carry out the purposes of this subsection.

4 **SECTION 22.** ORS 426.500 is amended to read:

5 426.500. For the purpose of carrying out the policy and intent of ORS 426.490 to 426.500, the
 6 Oregon Health Authority shall:

7 (1) Adopt rules for the administration of ORS 426.490 to 426.500;

8 (2) Prepare a written discharge plan for each person with a chronic mental illness who is a
 9 patient at [*a state hospital*] **the Oregon State Hospital** or who is committed to the authority pur-
 10 suant to ORS 426.005 to 426.223 and 426.241 to 426.380;

11 (3) Ensure that case managers are provided for each person with a chronic mental illness de-
 12 scribed in subsection (2) of this section; and

13 (4) Disburse from any available funds:

14 (a) Funds for one LINC model in the area served by F. H. Dammasch State Hospital and one
 15 LINC model in the area served by the Oregon State Hospital licensed under ORS 443.415;

16 (b) Discretionary funds for services necessary to implement a discharge plan, including but not
 17 limited to transportation, medication, recreation and socialization; and

18 (c) Funds to provide day treatment services, community psychiatric inpatient services, and work
 19 activity services for persons with chronic mental illness when needed.

20 **SECTION 23.** ORS 426.650 is amended to read:

21 426.650. (1) Pursuant to rules promulgated by the Oregon Health Authority, the superintendent
 22 of [*any state hospital*] **the Oregon State Hospital** for the treatment and care of persons with mental
 23 illness may admit and hospitalize therein as a patient any person in need of medical or mental
 24 therapeutic treatment as a sexually dangerous person who voluntarily has made written application
 25 for such admission. No person under the age of 18 years shall be admitted as a patient to [*any*
 26 *such*] **a campus of the Oregon State Hospital** unless an application therefor in behalf of the person
 27 has been executed by the parent, adult next of kin or legal guardian of the person. Pursuant to rules
 28 and regulations of the authority, no person voluntarily admitted to [*any*] **the state hospital** shall be
 29 detained therein more than 72 hours after the person, if at least 18 years of age, has given notice
 30 in writing of desire to be discharged therefrom, or, if the patient is under the age of 18 years, after
 31 notice in writing has been given by the parent, adult next of kin or legal guardian of the person that
 32 such parent, adult next of kin or legal guardian desires that such person be discharged therefrom.

33 (2) Any person voluntarily admitted to [*a state facility*] **the state hospital** pursuant to this sec-
 34 tion may, upon application and notice to the superintendent [*of the institution concerned*], be granted
 35 a temporary leave of absence from the [*institution*] **state hospital** if such leave, in the opinion of
 36 the chief medical officer, will not interfere with the successful treatment or examination of the ap-
 37 plicant.

38 **SECTION 24.** ORS 426.701 is amended to read:

39 426.701. (1) For the purposes of this section and ORS 426.702:

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

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

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

44 (C) Because of a qualifying mental disorder:

45 (i) Presents a serious danger to the safety of other persons by reason of an extreme risk that

1 the person will inflict grave or potentially lethal physical injury on other persons; and

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

4 (b) “Qualifying mental disorder” does not include:

5 (A) A disorder manifested solely by repeated criminal or otherwise antisocial conduct; or

6 (B) A disorder constituting solely a personality disorder.

7 (c) A qualifying mental disorder is “resistant to treatment” if, after receiving care from a li-
8 censed psychiatrist and exhausting all reasonable psychiatric treatment, or after refusing psychiatric
9 treatment, the person continues to be significantly impaired in the person’s ability to make compe-
10 tent decisions and to be aware of and control extremely dangerous behavior.

11 (2)(a) A district attorney may petition the court to initiate commitment proceedings described
12 in this section if there is reason to believe a person is an extremely dangerous person with mental
13 illness. Venue is proper in the county in which the person is alleged to have committed the quali-
14 fying act or the county in which the person lives. The petition shall immediately be served upon the
15 person.

16 (b) If a person is committed to [a] **the Oregon** State Hospital under ORS 161.365 or 161.370 and
17 the state hospital intends to discharge the person, the district attorney may provide notice to the
18 superintendent of the state hospital indicating an intent to file a petition under this section. Upon
19 receipt of the notice, the superintendent may delay discharge of the person for up to seven judicial
20 days to allow for the petition to be filed and for the court to make findings under paragraph (f) of
21 this subsection.

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

23 (A) The allegation that the person is an extremely dangerous person with mental illness and
24 may be committed to the jurisdiction of the Psychiatric Security Review Board for a maximum pe-
25 riod of 24 months; and

26 (B) The right to a hearing to determine whether the person is an extremely dangerous person
27 with mental illness, unless the person consents to the commitment by waiving the right to a hearing
28 in writing after consultation with legal counsel.

29 (d) A person against whom a petition described in this subsection is filed shall have the follow-
30 ing:

31 (A) The right to obtain suitable legal counsel possessing skills and experience commensurate
32 with the nature of the allegations and complexity of the case and, if the person is without funds to
33 retain legal counsel, the right to have the court appoint legal counsel;

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

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

36 (D) The right to examine all reports, documents and information that the court considers, in-
37 cluding the right to examine the reports, documents and information prior to the hearing, if avail-
38 able.

39 (e) Upon receipt of the petition, the court shall schedule a hearing and shall appoint an exam-
40 iner as described in ORS 426.110 to evaluate the person. If the person is in custody or committed
41 while the hearing is pending, the hearing must commence within 30 days of filing the petition unless
42 good cause is found by the court. If the court finds good cause, the hearing must commence no later
43 than 60 days after the filing of the petition or, if the district attorney provided notice under para-
44 graph (b) of this subsection, the date of the notice, whichever occurs first. As used in this paragraph,
45 “good cause” means:

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

4 (B) The attorney for the person cannot reasonably be expected to participate in the hearing
 5 within the 30-day period, cannot be adequately prepared to represent the person at the hearing
 6 within the 30-day period, or has a schedule conflict that cannot be resolved in a manner that allows
 7 the attorney to represent the person at a hearing within the 30-day period.

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

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

12 (f)(A) The court may order that the person be committed to the custody of the superintendent
 13 of [a] **the Oregon** State Hospital or the director of a secure mental health facility while the petition
 14 is pending if the court finds probable cause that:

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

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

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

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

20 (B) If a person committed under this paragraph is held in a secure facility other than [a] **the**
 21 state hospital or secure mental health facility, including but not limited to a jail or prison, at the
 22 time the petition is filed, the court may further order that the person remain at that placement for
 23 sufficient time to allow the superintendent or director to safely admit the person. Any order of the
 24 court concerning the placement of a person under this subparagraph must be in accordance with the
 25 person's constitutional right to due process. If the person remains in a secure facility under this
 26 subparagraph, the superintendent, director or designee may consult with the facility to ensure con-
 27 tinuity of care for the person.

28 (C) Commitment to the custody of the superintendent of [a] **the** state hospital or the director
 29 of a secure mental health facility under this paragraph may not exceed 60 days. If the hearing does
 30 not occur within 60 days, if the district attorney dismisses the petition, or if the court holds the
 31 hearing but does not commit the person, the person shall be returned to the county in which the
 32 petition was filed and the court shall hold a disposition hearing within five judicial days to deter-
 33 mine how to proceed on the petition and any outstanding criminal charges. A person who is re-
 34 turned to a secure facility other than [a] **the** state hospital or **a** secure mental health facility,
 35 including but not limited to a jail or prison, under this paragraph may remain at the placement until
 36 the disposition hearing.

37 (g) If the hearing is not commenced within the time period required by paragraph (e) of this
 38 subsection, the court shall either dismiss the petition or release the person on personal recogni-
 39 zance, to the custody of a third party or upon any additional reasonable terms and conditions the
 40 court deems appropriate.

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

44 (A) The person is extremely dangerous;

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

1 (C) Because of the qualifying mental disorder that is resistant to treatment, the person com-
 2 mitted one of the following acts:

3 (i) Caused the death of another person;

4 (ii) Caused serious physical injury to another person by means of a dangerous weapon;

5 (iii) Caused physical injury to another person by means of a firearm as defined in ORS 166.210
 6 or an explosive as defined in ORS 164.055;

7 (iv) Engaged in oral-genital contact with a child under 14 years of age;

8 (v) Forcibly compelled sexual intercourse, oral-genital contact or the penetration of another
 9 person's anus or vagina; or

10 (vi) Caused a fire or explosion that damaged the protected property of another, as those terms
 11 are defined in ORS 164.305, or placed another person in danger of physical injury, and the fire or
 12 explosion was not the incidental result of normal and usual daily activities.

13 (b) The court shall further commit the person to [a] **the** state hospital for custody, care and
 14 treatment if the court finds, by clear and convincing evidence, that the person cannot be controlled
 15 in the community with proper care, medication, supervision and treatment on conditional release.

16 (c) The court shall specify in the order whether any person who would be considered a victim
 17 as defined in ORS 131.007 of the act described in paragraph (a)(C) of this subsection, if the act had
 18 been criminally prosecuted, requests notification of any order or hearing, conditional release, dis-
 19 charge or escape of the person committed under this section.

20 (d) The court shall be fully advised of all drugs and other treatment known to have been ad-
 21 ministered to the alleged extremely dangerous person with mental illness that may substantially af-
 22 fect the ability of the person to prepare for, or to function effectively at, the hearing.

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

25 (4) The findings of the court that a person committed an act described in subsection (3)(a)(C)
 26 of this section may not be admitted in a criminal prosecution.

27 (5)(a) If the court commits a person under this section and the person has pending criminal
 28 charges at the time of the hearing, the court shall dismiss the criminal charges without prejudice,
 29 and if the person is further committed to [a] **the** state hospital under this section, the dismissal shall
 30 not take effect until the person's transportation to the state hospital.

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

32 (A) The person is in a setting other than [a] **the** state hospital, the court may additionally order
 33 that the person remain in that placement until the person can be safely transported to [a] **the** state
 34 hospital pursuant to the order. Any order of the court concerning the placement of the person under
 35 this subparagraph must be in accordance with the person's constitutional right to due process.

36 (B) The person is at [a] **the** state hospital at the time of the hearing, the person may remain
 37 at the state hospital under the commitment.

38 (c) A person committed under this section shall remain under the jurisdiction of the board for
 39 a maximum of 24 months unless the board conducts a hearing and makes the findings described in
 40 subsection (6)(d) of this section.

41 (6)(a) The board shall hold a hearing six months after the initial commitment described in sub-
 42 section (3) of this section, and thereafter six months after a further commitment described in ORS
 43 426.702, to determine the placement of the person and whether the person is eligible for conditional
 44 release or early discharge. The board shall provide written notice of the hearing to the person, the
 45 person's legal counsel and the office of the district attorney who filed the initial petition under

1 subsection (2) of this section within a reasonable time prior to the hearing. The board shall further
 2 notify the person of the following:

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

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

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

7 (D) The right to subpoena witnesses;

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

9 (F) The right to examine all reports, documents and information that the board considers, in-
 10 cluding the right to examine the reports, documents and information prior to the hearing if avail-
 11 able.

12 (b) If the board determines at the hearing that the person still suffers from a qualifying mental
 13 disorder that is resistant to treatment and continues to be extremely dangerous, and that the person
 14 cannot be controlled in the community with proper care, medication, supervision and treatment if
 15 conditionally released, the person shall remain committed to [a] **the** state hospital.

16 (c) If the board determines at the hearing that the person still suffers from a qualifying mental
 17 disorder that is resistant to treatment and continues to be extremely dangerous, but finds that the
 18 person can be controlled in the community with proper care, medication, supervision and treatment
 19 if conditionally released, the board shall conditionally release the person.

20 (d) If the board determines at the hearing that the person no longer suffers from a qualifying
 21 mental disorder that is resistant to treatment or is no longer extremely dangerous, the board shall
 22 discharge the person. The discharge of a person committed under this section does not preclude
 23 commitment of the person pursuant to ORS 426.005 to 426.390.

24 (7)(a) At any time during the commitment to [a] **the** state hospital, the superintendent of the
 25 state hospital may request a hearing to determine the status of the person's commitment under the
 26 jurisdiction of the board. The request shall be accompanied by a report setting forth the facts sup-
 27 porting the request. If the request is for conditional release, the request shall be accompanied by a
 28 verified conditional release plan. The hearing shall be conducted as described in subsection (6) of
 29 this section.

30 (b) The board may make the findings described in subsection (6)(c) of this section and condi-
 31 tionally release the person without a hearing if the office of the district attorney who filed the ini-
 32 tial petition under subsection (2) of this section does not object to the conditional release.

33 (c) At any time during conditional release, a state or local mental health facility providing
 34 treatment to the person may request a hearing to determine the status of the person's commitment
 35 under the jurisdiction of the board. The hearing shall be conducted as described in subsection (6)
 36 of this section.

37 (8)(a) If the board orders the conditional release of a person under subsection (6)(c) of this sec-
 38 tion, the board shall order conditions of release that may include a requirement to report to any
 39 state or local mental health facility for evaluation. The board may further require cooperation with,
 40 and acceptance of, psychiatric or psychological treatment from the facility. Conditions of release
 41 may be modified by the board from time to time.

42 (b) When a person is referred to a state or local mental health facility for an evaluation under
 43 this subsection, the facility shall perform the evaluation and submit a written report of its findings
 44 to the board. If the facility finds that treatment of the person is appropriate, the facility shall in-
 45 clude its recommendations for treatment in the report to the board.

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

4 (d) Copies of all reports submitted to the board pursuant to this subsection shall be furnished
 5 to the person and to the person's legal counsel, if applicable. The confidentiality of these reports is
 6 determined pursuant to ORS 192.338, 192.345 and 192.355.

7 (e) The state or local mental health facility providing treatment to the person under this sub-
 8 section shall comply with the conditional release order and any modifications of the conditions or-
 9 dered by the board.

10 (9)(a) If at any time while the person is conditionally released it appears that the person has
 11 violated the terms of the conditional release, the board may order the person returned to [a] **the**
 12 state hospital for evaluation or treatment. A written order of the board is sufficient warrant for any
 13 law enforcement officer to take the person into custody. A sheriff, municipal police officer, parole
 14 or probation officer or other peace officer shall execute the order, and the person shall be returned
 15 to the state hospital as soon as practicable.

16 (b) The director of a state or local mental health facility providing treatment to a person under
 17 subsection (8) of this section may request that the board issue a written order for a person on con-
 18 ditional release to be taken into custody if there is reason to believe that the person can no longer
 19 be controlled in the community with proper care, medication, supervision and treatment.

20 (c) Within 30 days following the return of the person to [a] **the** state hospital, the board shall
 21 conduct a hearing to determine if, by a preponderance of the evidence, the person is no longer fit
 22 for conditional release. The board shall provide written notice of the hearing to the person, the
 23 person's legal counsel and the office of the district attorney who filed the initial petition under
 24 subsection (2) of this section within a reasonable time prior to the hearing. The notice shall advise
 25 the person of the nature of the hearing, the right to have the court appoint legal counsel and the
 26 right to subpoena witnesses, examine documents considered by the board and cross-examine all
 27 witnesses who appear at the hearing.

28 (10)(a) If the person had unadjudicated criminal charges at the time of the filing of the petition
 29 for the person's initial commitment under this section and the state hospital or the state or local
 30 mental health facility providing treatment to the person intends to recommend discharge of the
 31 person at an upcoming hearing, the superintendent of the state hospital or the director of the fa-
 32 cility shall provide written notice to the board and the district attorney of the county where the
 33 criminal charges were initiated of the discharge recommendation at least 45 days before the hearing.
 34 The notice shall be accompanied by a report describing the person's diagnosis and the treatment the
 35 person has received.

36 (b) Upon receiving the notice described in this subsection, the district attorney may request an
 37 order from the court in the county where the criminal charges were initiated for an evaluation to
 38 determine if the person is fit to proceed in the criminal proceeding. The court may order the state
 39 hospital or the state or local mental health facility providing treatment to the person to perform the
 40 evaluation. The **state** hospital or facility shall provide copies of the evaluation to the district at-
 41 torney, the person and the person's legal counsel, if applicable.

42 (c) The person committed under this section may not waive an evaluation ordered by the court
 43 to determine if the person is fit to proceed with the criminal proceeding as described in this sub-
 44 section.

45 (11) The board shall make reasonable efforts to notify any person described in subsection (3)(c)

1 of this section of any order or hearing, conditional release, discharge or escape of the person com-
 2 mitted under this section.

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

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

6 (14) Any time limitation described in ORS 131.125 to 131.155 does not run during a commitment
 7 described in this section or a further commitment described in ORS 426.702.

8 **SECTION 25.** ORS 426.702 is amended to read:

9 426.702. (1)(a) At the end of the 24-month period of commitment described in ORS 426.701, any
 10 person who remains committed under the jurisdiction of the Psychiatric Security Review Board shall
 11 be discharged, unless the board certifies to the court in the county in which the person was ori-
 12 ginally committed that the person is still extremely dangerous and suffers from a qualifying mental
 13 disorder that is resistant to treatment. The board, pursuant to its rules, may delegate to the su-
 14 perintendent of the **Oregon** State Hospital or the director of the state or local mental health facility
 15 providing treatment to the person the responsibility for making the certification. If the certification
 16 is made, the person will not be released.

17 (b) The board may additionally certify that the person cannot be controlled in the community
 18 with proper care, medication, supervision and treatment on conditional release and must be com-
 19 mitted to [a] **the Oregon** State Hospital. The board, pursuant to its rules, may delegate to the su-
 20 perintendent of the state hospital or the director of the state or local mental health facility
 21 providing treatment to the person the responsibility for making the additional certification.

22 (2) The certification shall immediately be served upon the person by the superintendent of the
 23 state hospital or the director of the state or local mental health facility providing treatment to the
 24 person. The superintendent or director shall inform the court in writing that service has been made
 25 and the date thereof.

26 (3) The certification shall advise the person of all the following:

27 (a) That the board, **state** hospital or facility has requested that commitment be continued for
 28 an additional 24 months.

29 (b) That the person may protest this further commitment within 14 days, and that, if the person
 30 does not protest, the commitment will be continued for a maximum of 24 months.

31 (c) That the person may consult with legal counsel when deciding whether to protest the further
 32 commitment and that legal counsel will be provided for the person without cost if the person is
 33 without funds to retain legal counsel.

34 (d) That the person may protest a further period of commitment either orally or in writing by
 35 signing the form accompanying the certification.

36 (e) That if the person does protest a further period of commitment, the person is entitled to a
 37 hearing before the court to determine whether commitment should be continued.

38 (f) That the person is entitled to have a psychologist or psychiatrist, other than a member of the
 39 staff at the facility where the person is being treated, examine the person and report to the court
 40 the results of the examination at the hearing.

41 (g) That the person may subpoena witnesses and offer evidence on behalf of the person at the
 42 hearing.

43 (h) That if the person is without funds to retain legal counsel or an examining psychologist or
 44 psychiatrist for the hearing, the court will appoint legal counsel or an examining psychologist or
 45 psychiatrist.

1 (4) The person serving the certification shall read and deliver the certification to the person and
 2 ask whether the person protests a further period of commitment. The person may protest a further
 3 period of commitment and request a hearing either orally or by signing a simple protest form to be
 4 given to the person with the certification. If the person does not protest a further period of com-
 5 mitment within 14 days of service of the certification, the board, **state** hospital or facility shall so
 6 notify the court, and the court shall, without further hearing, order the commitment of the person
 7 to the jurisdiction of the board for a maximum of 24 months. The court shall further order that the
 8 person be committed to [a] **the** state hospital if a certification under subsection (1)(b) of this section
 9 has been made.

10 (5) When the person protests a further period of commitment and requests a hearing, the board,
 11 **state** hospital or facility shall immediately notify the court, and the court shall have the person
 12 brought before it and shall again advise the person that the board, **state** hospital or facility has
 13 requested that commitment be continued for an additional period of time and that if the person does
 14 not protest this commitment the commitment will be continued for a maximum of 24 months. The
 15 person shall also be informed of the rights set forth in subsection (3) of this section.

16 (6) If the person requests a hearing under subsections (4) and (5) of this section, the following
 17 provisions apply as described:

18 (a) The hearing shall be conducted as promptly as possible, but no more than 60 days from the
 19 date of the protest and request for a hearing, and at a time and place as the court may direct.
 20 Venue for the hearing is proper in the county in which the person was originally committed.

21 (b) While the hearing is pending, the person remains under the jurisdiction of the board and the
 22 person's placement may continue.

23 (c) If the person requests a continuance in order to prepare for the hearing or to obtain legal
 24 counsel to represent the person, the court may grant postponement and order the continued de-
 25 tention of the person during postponement for an additional 30 days.

26 (d) The person has the right to representation by or appointment of legal counsel subject to ORS
 27 135.055, 151.216 and 151.219.

28 (e) If the person requests an examination by a psychologist or psychiatrist and is without funds
 29 to retain a psychologist or psychiatrist for purposes of the examination, the court shall appoint a
 30 psychologist or psychiatrist, other than a member of the staff from the facility where the person is
 31 being treated, to examine the person at no expense to the person and to report to the court the
 32 results of the examination.

33 (f) The provisions of ORS 40.230, 40.235, 40.240, 40.250 and 179.505 do not apply to the use of
 34 medical records from the current period of commitment or to testimony related to such records or
 35 period of commitment in connection with hearings under this section. The court may consider as
 36 evidence such reports and testimony.

37 (g) Unless the court orders otherwise or either party objects, any party or witness may attend
 38 the hearing via simultaneous electronic transmission.

39 (h) The court shall then conduct a hearing. The court may take judicial notice of the findings
 40 regarding the act described in ORS 426.701 (3)(a)(C) made by the court at the initial commitment.
 41 If, after hearing the evidence and reviewing the recommendations of the board and the state hospital
 42 or the state or local mental health facility providing treatment to the person, in the opinion of the
 43 court the person is still extremely dangerous and suffering from a qualifying mental disorder that
 44 is resistant to treatment by clear and convincing evidence, the court may order commitment to the
 45 jurisdiction of the board for an additional maximum of 24 months. The court shall further commit

1 the person to [a] **the** state hospital for custody, care and treatment if the court finds, by clear and
 2 convincing evidence, that the person cannot be controlled in the community with proper care,
 3 medication, supervision and treatment on conditional release.

4 (i) At the end of the 24-month period, the person shall be discharged unless the board, **state**
 5 hospital or facility again certifies to the committing court that the person is still an extremely
 6 dangerous person with mental illness and in need of further treatment, in which event the proce-
 7 dures set forth in this section shall be followed.

8 **SECTION 26.** ORS 430.197 is amended to read:

9 430.197. The Mental Health Services Fund is established in the State Treasury, separate and
 10 distinct from the General Fund. The Mental Health Services Fund comprises moneys collected or
 11 received by the Oregon Health Authority, the Department of Human Services and the Department
 12 of Corrections under ORS 179.640, 426.241 and 430.165. The moneys in the fund are continuously
 13 appropriated to the Oregon Health Authority, the Department of Human Services and the Depart-
 14 ment of Corrections for the purposes of paying the costs of:

15 (1) Services provided to a person in a state institution, as defined in ORS 179.610;

16 (2) Emergency psychiatric care, custody and treatment paid under ORS 426.241;

17 (3) Emergency care, custody or treatment provided to a person admitted to or detained in [*a*
 18 *state mental hospital*] **the Oregon State Hospital** or a nonhospital facility under ORS 426.070,
 19 426.140, 426.180 to 426.210, 426.228, 426.232 or 426.233; and

20 (4) Programs operating under ORS 430.265, 430.306 to 430.375, 430.405, 430.415 and 430.850 to
 21 430.880.

22 **SECTION 27.** ORS 430.735 is amended to read:

23 430.735. As used in ORS 430.735 to 430.765:

24 (1) "Abuse" means one or more of the following:

25 (a) Abandonment, including desertion or willful forsaking of an adult or the withdrawal or neg-
 26 lect of duties and obligations owed an adult by a caregiver or other person.

27 (b) Any physical injury to an adult caused by other than accidental means, or that appears to
 28 be at variance with the explanation given of the injury.

29 (c) Willful infliction of physical pain or injury upon an adult.

30 (d) Sexual abuse.

31 (e) Neglect.

32 (f) Verbal abuse of an adult.

33 (g) Financial exploitation of an adult.

34 (h) Involuntary seclusion of an adult for the convenience of the caregiver or to discipline the
 35 adult.

36 (i) A wrongful use of a physical or chemical restraint upon an adult, excluding an act of re-
 37 straint prescribed by a physician licensed under ORS chapter 677, physician assistant licensed under
 38 ORS 677.505 to 677.525, naturopathic physician licensed under ORS chapter 685 or nurse practi-
 39 tioner licensed under ORS 678.375 to 678.390 and any treatment activities that are consistent with
 40 an approved treatment plan or in connection with a court order.

41 (j) An act that constitutes a crime under ORS 163.375, 163.405, 163.411, 163.415, 163.425, 163.427,
 42 163.465 or 163.467.

43 (k) Any death of an adult caused by other than accidental or natural means.

44 (2) "Adult" means a person 18 years of age or older:

45 (a) With a developmental disability who is currently receiving services from a community pro-

1 gram or facility or who was previously determined eligible for services as an adult by a community
 2 program or facility;

3 (b) With a severe and persistent mental illness who is receiving mental health treatment from
 4 a community program; or

5 (c) Who is receiving services for a substance use disorder or a mental illness in a facility or [*a*
 6 *state hospital*] **the Oregon State Hospital.**

7 (3) “Adult protective services” means the necessary actions taken to prevent abuse or exploi-
 8 tation of an adult, to prevent self-destructive acts and to safeguard the adult’s person, property and
 9 funds, including petitioning for a protective order as defined in ORS 125.005. Any actions taken to
 10 protect an adult shall be undertaken in a manner that is least intrusive to the adult and provides
 11 for the greatest degree of independence.

12 (4) “Caregiver” means an individual, whether paid or unpaid, or a facility that has assumed re-
 13 sponsibility for all or a portion of the care of an adult as a result of a contract or agreement.

14 (5) “Community program” includes:

15 (a) A community mental health program or a community developmental disabilities program as
 16 established in ORS 430.610 to 430.695; or

17 (b) A provider that is paid directly or indirectly by the Oregon Health Authority to provide
 18 mental health treatment in the community.

19 (6) “Facility” means a residential treatment home or facility, residential care facility, adult fos-
 20 ter home, residential training home or facility or crisis respite facility.

21 (7) “Financial exploitation” means:

22 (a) Wrongfully taking the assets, funds or property belonging to or intended for the use of an
 23 adult.

24 (b) Alarming an adult by conveying a threat to wrongfully take or appropriate money or prop-
 25 erty of the adult if the adult would reasonably believe that the threat conveyed would be carried
 26 out.

27 (c) Misappropriating, misusing or transferring without authorization any money from any ac-
 28 count held jointly or singly by an adult.

29 (d) Failing to use the income or assets of an adult effectively for the support and maintenance
 30 of the adult.

31 (8) “Intimidation” means compelling or deterring conduct by threat.

32 (9) “Law enforcement agency” means:

33 (a) Any city or municipal police department;

34 (b) A police department established by a university under ORS 352.121 or 353.125;

35 (c) Any county sheriff’s office;

36 (d) The Oregon State Police; or

37 (e) Any district attorney.

38 (10) “Neglect” means:

39 (a) Failure to provide the care, supervision or services necessary to maintain the physical and
 40 mental health of an adult that may result in physical harm or significant emotional harm to the
 41 adult;

42 (b) Failure of a caregiver to make a reasonable effort to protect an adult from abuse; or

43 (c) Withholding of services necessary to maintain the health and well-being of an adult that
 44 leads to physical harm of the adult.

45 (11) “Public or private official” means:

1 (a) Physician licensed under ORS chapter 677, physician assistant licensed under ORS 677.505
2 to 677.525, naturopathic physician, psychologist or chiropractor, including any intern or resident;

3 (b) Licensed practical nurse, registered nurse, nurse's aide, home health aide or employee of an
4 in-home health service;

5 (c) Employee of the Department of Human Services or Oregon Health Authority, local health
6 department, community mental health program or community developmental disabilities program or
7 private agency contracting with a public body to provide any community mental health service;

8 (d) Peace officer;

9 (e) Member of the clergy;

10 (f) Regulated social worker;

11 (g) Physical, speech or occupational therapist;

12 (h) Information and referral, outreach or crisis worker;

13 (i) Attorney;

14 (j) Licensed professional counselor or licensed marriage and family therapist;

15 (k) Any public official;

16 (L) Firefighter or emergency medical services provider;

17 (m) Elected official of a branch of government of this state or a state agency, board, commission
18 or department of a branch of government of this state or of a city, county or other political subdi-
19 vision in this state;

20 (n) Personal support worker, as defined in ORS 410.600;

21 (o) Home care worker, as defined in ORS 410.600; or

22 (p) Individual paid by the Department of Human Services to provide a service identified in an
23 individualized service plan of an adult with a developmental disability.

24 (12) "Services" includes but is not limited to the provision of food, clothing, medicine, housing,
25 medical services, assistance with bathing or personal hygiene or any other service essential to the
26 well-being of an adult.

27 (13)(a) "Sexual abuse" means:

28 (A) Sexual contact with a nonconsenting adult or with an adult considered incapable of con-
29 senting to a sexual act under ORS 163.315;

30 (B) Sexual harassment, sexual exploitation or inappropriate exposure to sexually explicit mate-
31 rial or language;

32 (C) Any sexual contact between an employee of a facility or paid caregiver and an adult served
33 by the facility or caregiver;

34 (D) Any sexual contact between an adult and a relative of the adult other than a spouse;

35 (E) Any sexual contact that is achieved through force, trickery, threat or coercion; or

36 (F) Any sexual contact between an individual receiving mental health or substance abuse
37 treatment and the individual providing the mental health or substance abuse treatment.

38 (b) "Sexual abuse" does not mean consensual sexual contact between an adult and a paid
39 caregiver who is the spouse of the adult.

40 (14) "Sexual contact" has the meaning given that term in ORS 163.305.

41 (15) "Verbal abuse" means to threaten significant physical or emotional harm to an adult
42 through the use of:

43 (a) Derogatory or inappropriate names, insults, verbal assaults, profanity or ridicule; or

44 (b) Harassment, coercion, threats, intimidation, humiliation, mental cruelty or inappropriate
45 sexual comments.

1 **SECTION 28.** ORS 430.768 is amended to read:

2 430.768. (1) When the Department of Human Services investigates a report of abuse under ORS
 3 430.735 to 430.765 at a residential training home as defined in ORS 443.400 that is operated by the
 4 department or **the Oregon Health Authority investigates** a report of abuse at [*a state hospital*
 5 *described in ORS 426.010*] **the Oregon State Hospital**, the department **or the authority** shall ad-
 6 dress in the written report of its findings whether the person alleged to be responsible for the abuse
 7 was acting in self-defense.

8 (2) The department **or the authority** shall make a finding that the allegation of abuse is un-
 9 substantiated if the department **or the authority** finds that:

10 (a) The person was acting in self-defense in response to the use or imminent use of physical
 11 force;

12 (b) The amount of force used was reasonably necessary to protect the person from violence or
 13 assault; and

14 (c) The person used the least restrictive procedures necessary under the circumstances in ac-
 15 cordance with an approved behavior management plan or other method of response approved by the
 16 department **or the authority** by rule.

17 (3) Notwithstanding ORS 179.505, the department **or the authority** shall disclose to the person
 18 alleged to be responsible for the abuse a copy of its findings under subsection (1) of this section if
 19 the allegation of abuse is substantiated.

20 (4) If a person makes a claim of self-defense during an investigation of a report of abuse and the
 21 allegation is found to be substantiated, the person may ask the Director of Human Services **or the**
 22 **Director of the Oregon Health Authority** to review the finding. The director shall appoint a re-
 23 view team to conduct the review and make a recommendation to the director under procedures
 24 adopted by the director by rule.

25 (5) As used in this section, “self-defense” means the use of physical force upon another person
 26 in self-defense or to defend a third person.

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