

# Senate Bill 219

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## 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**.

Modifies timing of progress report superintendent of state mental hospital or director of facility to which defendant is committed must send court concerning defendant's fitness to proceed. Requires committing court to cause defendant to be transported back to court when certain circumstances occur. Establishes maximum time period authorized for restoration of defendant who lacks fitness to proceed.

Directs Oregon Health Authority to retain consultant to work with local governments, community mental health programs and other entities to establish recommendations concerning community restoration services and financial liability for defendants who lack fitness to proceed.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to fitness to proceed; creating new provisions; amending ORS 161.371; and declaring an  
3 emergency.

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

5 **SECTION 1.** ORS 161.371 is amended to read:

6 161.371. (1) The superintendent of a state mental hospital or director of a facility to which the  
7 defendant is committed under ORS 161.370 shall cause the defendant to be evaluated within 60 days  
8 from the defendant's delivery into the superintendent's or director's custody, for the purpose of de-  
9 termining whether there is a substantial probability that, in the foreseeable future, the defendant  
10 will have fitness to proceed. In addition, the superintendent or director shall:

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

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

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

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

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

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

25 (2)(a) If the superintendent of the state mental hospital or director of the facility to which the  
26 defendant is committed determines that there is a substantial probability that, in the foreseeable

**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 future, the defendant will gain or regain fitness to proceed, unless the court otherwise orders, the  
2 defendant shall remain in the superintendent's or director's custody where the defendant shall re-  
3 ceive treatment designed for the purpose of enabling the defendant to gain or regain fitness to pro-  
4 ceed. In keeping with the notice requirement under subsection (1)(b) of this section, the  
5 superintendent or director shall, for the duration of the defendant's period of commitment, submit  
6 a progress report to the committing court, concerning the defendant's fitness to proceed, at least  
7 once every [180] **30 days for the first 90 days of the commitment**, as measured from the date of  
8 the defendant's delivery into the superintendent's or director's custody, **and thereafter at least**  
9 **once every 90 days.**

10 (b) A progress report described in paragraph (a) of this subsection **shall consist of a brief**  
11 **update regarding the defendant's clinical functioning as it relates to fitness to proceed, and**  
12 may consist of an update to:

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

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

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

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

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

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

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

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

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

41 (A) If, after consideration of the factors and possible actions described in ORS 161.370 (2)(c) and  
42 any recommendations received under paragraph (a) or (b) of this subsection, the court determines  
43 that a hospital level of care is necessary due to public safety concerns or the acuity of symptoms  
44 of the defendant's qualifying mental disorder, and that based on the consultation or evaluation de-  
45 scribed in paragraph (a) or (b) of this subsection, any information provided by community-based

1 mental health providers or any other sources, primary and secondary release criteria as defined in  
2 ORS 135.230, and any other information the court finds to be trustworthy and reliable, the appro-  
3 priate community restoration services are not present and available in the community, the court  
4 may continue the commitment of the defendant.

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

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

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

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

25 (b) Notwithstanding subsection (2) of this section, if the most serious offense in the charging  
26 instrument is a misdemeanor, and the community mental health program director determines that  
27 the community restoration services that would mitigate any risk posed by the defendant are present  
28 and available in the community, the community mental health program director may file notice of  
29 the determination with the court. Upon receipt of the notice, the court shall order that the super-  
30 intendent of the state mental hospital or director of the facility to which the defendant is committed,  
31 within five judicial days:

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

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

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

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

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

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

12 [(A) *Three years; or]*

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

15 [(b) *For purposes of calculating the maximum period of commitment described in paragraph (a) of*  
 16 *this subsection:]*

17 [(A) *The initial custody date is the date on which the defendant is first committed under this sec-*  
 18 *tion on any charge alleged in the accusatory instrument; and]*

19 [(B) *The defendant shall be given credit against each charge alleged in the accusatory*  
 20 *instrument:]*

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

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

28 [(c) *The superintendent of the state mental hospital or director of the facility to which the defendant*  
 29 *is committed shall notify the committing court of the defendant's impending discharge 30 days before*  
 30 *the date on which the superintendent or director is required to discharge the defendant under this*  
 31 *subsection.]*

32 **(5) The committing court shall cause the defendant to be transported to the court upon**  
 33 **notification from the superintendent of the state mental hospital or director of the facility**  
 34 **to which the defendant is committed, or the designee of the superintendent or director, that**  
 35 **the defendant has gained or regained fitness to proceed, or that there is no substantial**  
 36 **probability that, within the maximum time period authorized for restoration under section**  
 37 **3 of this 2023 Act, the defendant will gain or regain fitness to proceed.**

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

41 (b) When the committing court receives a notice from the superintendent or director under  
 42 subsection (1) of this section concerning the defendant's progress or lack thereof, or under [*sub-*  
 43 *section (5) of this section]* **section 3 of this 2023 Act** concerning the defendant's impending dis-  
 44 charge, the committing court shall determine, after a hearing if a hearing is requested, whether the  
 45 defendant presently has fitness to proceed.

1 (7) If at any time the court determines that the defendant lacks fitness to proceed, the court  
 2 shall further determine whether the defendant is entitled to discharge under [*subsection (5) of this*  
 3 *section*] **section 3 of this 2023 Act**. If the court determines that the defendant is entitled to dis-  
 4 charge under [*subsection (5) of this section*] **section 3 of this 2023 Act**, the court shall dismiss,  
 5 without prejudice, all charges against the defendant and:

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

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

8 **SECTION 2. Section 3 of this 2023 Act is added to and made a part of ORS 161.355 to**  
 9 **161.371.**

10 **SECTION 3. (1) If a defendant is committed or ordered to engage in community restora-**  
 11 **tion services under ORS 161.370 (2)(c), the court shall determine within a reasonable period**  
 12 **of time whether there is a substantial probability that, within the maximum time period**  
 13 **authorized for restoration described in this section, the defendant will gain or regain fitness**  
 14 **to proceed.**

15 **(2) If the most serious offense in the charging instrument is a misdemeanor, in no event**  
 16 **shall the restoration period be longer than whichever of the following, measured from the**  
 17 **defendant's initial restoration date, is shorter:**

18 (a) 90 days; or

19 (b) A period of time equal to the maximum sentence the court could have imposed if the  
 20 defendant had been convicted.

21 **(3) If the most serious offense in the charging instrument is a felony, in no event shall**  
 22 **the restoration period be longer than whichever of the following, measured from the**  
 23 **defendant's initial restoration date, is shorter:**

24 (a) Six months; or

25 (b) A period of time equal to the maximum sentence the court could have imposed if the  
 26 defendant had been convicted.

27 **(4)(a) Notwithstanding subsection (3) of this section, if the most serious offense in the**  
 28 **charging instrument is aggravated murder or a felony listed in ORS 137.700 (2), the parties**  
 29 **may request an extension of the time period described in subsection (3) of this section of an**  
 30 **additional six months, and the court may order the extension if:**

31 **(A) The defendant has been evaluated and, based on the evaluator's clinical opinions, the**  
 32 **court finds that the defendant is likely to gain or regain fitness to proceed during the ex-**  
 33 **tension; and**

34 **(B) The parties acknowledge an intent to proceed with the case and the court finds that**  
 35 **the state has a strong interest in prosecuting the charges.**

36 **(b) If the court orders an extension of the restoration period under this subsection, the**  
 37 **court shall further order that the extended restoration period occur in the least restrictive**  
 38 **placement in which it is appropriate for the restoration to occur. Any finding concerning**  
 39 **the least restrictive appropriate placement must be based on clinical evidence.**

40 **(5) The maximum time period authorized for restoration for any felony may not exceed**  
 41 **one year.**

42 **(6) For purposes of calculating the maximum time period authorized for restoration un-**  
 43 **der this section:**

44 **(a) The initial restoration date is the date on which the defendant is first committed or**  
 45 **ordered to engage in community restoration services on any charge alleged in the accusatory**

1 instrument;

2 (b) Multiple charges must be consolidated into a single commitment, with the maximum  
 3 time period authorized for restoration based on the most serious charge as described in  
 4 subsections (2) to (5) of this section; and

5 (c) The defendant shall be given credit for each day the defendant is committed or or-  
 6 dered to engage in community restoration services.

7 (7) A defendant who has been discharged under this section due to the expiration of the  
 8 maximum time period authorized for restoration may not be committed or ordered to engage  
 9 in community restoration services under ORS 161.370 (2)(c) on new charges based on the  
 10 same conduct.

11 (8) The superintendent of the state mental hospital or director of the facility to which  
 12 the defendant is committed shall notify the committing court of the defendant’s impending  
 13 discharge 30 days before the date on which the superintendent or director is required to  
 14 discharge the defendant under this section.

15 **SECTION 4.** (1) No later than December 1, 2023, the Oregon Health Authority shall retain  
 16 a consultant to work with the authority, community mental health programs, local mental  
 17 health authorities, county governments, relevant tribal partners and the courts to establish  
 18 recommendations related to cost-sharing and incentive agreements between the authority  
 19 and community mental health programs for appropriate levels of treatment for defendants  
 20 who lack fitness to proceed.

21 (2) The recommendations of the consultant specifically must include:

22 (a) Recommendations concerning shared financial liability and clear accountability re-  
 23 quirements when the clinical recommendations of Oregon State Hospital staff are that the  
 24 defendant does not require a hospital level of care due to the acuity of symptoms of the  
 25 defendant’s qualifying mental disorder, but that the appropriate community restoration ser-  
 26 vices are not present and available in the community.

27 (b) Recommendations concerning shared financial liability and clear accountability re-  
 28 quirements when more than one county is responsible for the defendant’s commitment to  
 29 the Oregon State Hospital, including responsibility for costs between counties.

30 (c) Recommendations for when a county orders a defendant to engage in community  
 31 restoration services within an appropriate time frame, including potential incentives or  
 32 credits to offset costs for defendants committed to the Oregon State Hospital from that  
 33 county.

34 (3) The consultant shall prepare a report containing the recommendations and, no later  
 35 than December 31, 2024, provide the report to:

36 (a) The Oregon Health Authority; and

37 (b) The interim committees of the Legislative Assembly related to behavioral health, in  
 38 the manner provided under ORS 192.245.

39 **SECTION 5.** Section 4 of this 2023 Act is repealed on July 1, 2025.

40 **SECTION 6.** This 2023 Act being necessary for the immediate preservation of the public  
 41 peace, health and safety, an emergency is declared to exist, and this 2023 Act takes effect  
 42 on its passage.