

## Enrolled

# House Bill 2005

Sponsored by Representatives KROPP, ANDERSEN; Representatives BOWMAN, DOBSON, FAHEY, GAMBA, GOMBERG, GRAYBER, LEVY B, LEVY E, MARSH, NGUYEN H, NOSSE, RIEKE SMITH, TRAN, WALTERS, Senator REYNOLDS

CHAPTER .....

### AN ACT

Relating to behavioral health; creating new provisions; amending ORS 127.700, 127.736, 135.748, 161.362, 161.365, 161.370, 161.371, 166.273, 181A.290, 183.635, 197.660, 197.665, 426.005, 426.060, 426.070, 426.072, 426.074, 426.075, 426.090, 426.100, 426.130, 426.133, 426.155, 426.160, 426.180, 426.223, 426.225, 426.228, 426.231, 426.232, 426.233, 426.234, 426.235, 426.236, 426.237, 426.238, 426.241, 426.301, 426.385 and 426.701; repealing ORS 197.670; and declaring an emergency.

Whereas Oregon has a high population of individuals who report living with mental illness, and who need mental health and substance use disorder treatment; and

Whereas the Oregon Legislative Assembly finds that the increase in fentanyl and methamphetamine use has led to an increase in individuals who need a higher level of mental health and substance use disorder care; and

Whereas the United States and Oregon Constitutions protect the rights of defendants in the criminal justice system and defendants must be mentally fit to proceed in their criminal cases, and if a defendant is not fit to proceed because of a mental illness, the case must be paused until the defendant is restored to fitness; and

Whereas there has been a steady increase in the number of individuals in the last several years who are found not fit to proceed, or “unable to aid and assist” in their own defense; and

Whereas many of these individuals who are charged with a crime and determined to be unable to aid and assist in their own defense who are referred to the Oregon State Hospital for care are not admitted within seven days, as required by a federal court order; and

Whereas the population of individuals admitted to the Oregon State Hospital has shifted to increasing numbers of aid and assist patients rather than guilty except for insanity and civilly committed patients; and

Whereas increased demand for restoration services for defendants at the Oregon State Hospital has limited the beds available for individuals obtaining treatment through civil commitment; and

Whereas ensuring the rights of defendants to timely transportation to a therapeutic setting for restoration treatment will require significant financial investments and strategic initiatives from the state; and

Whereas the state must protect the rights of victims of crime and ensure improved public safety; and

Whereas public safety improves when individuals can access mental health treatment and services within the criminal justice system, the Oregon State Hospital and the community; and

Whereas protecting the rights of defendants while ensuring public safety requires solutions of many different types and the recognition that one idea will not solve this problem; and

Whereas the three branches of Oregon's government are committed to ongoing efforts, both in statute and in budget allocations, to solving this ongoing dilemma; and

Whereas the Oregon Legislative Assembly has determined that additional treatment capacity is critical to support Oregonians in need of mental health and substance use disorder treatment and has committed increased funding to support additional treatment capacity; and

Whereas it is the intention of the Oregon Legislative Assembly to increase support and capacity for individuals needing mental health and substance use disorder care and treatment, and to reduce the delay in admittance experienced by defendants needing restoration services at the Oregon State Hospital; now, therefore,

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

**CIVIL COMMITMENT  
(Person with a Mental Illness)**

**SECTION 1.** Sections 2 and 3 of this 2025 Act are added to and made a part of ORS 426.070 to 426.170.

**SECTION 2.** (1) A person has a mental illness and is in need of treatment for purposes of ORS 426.005 to 426.390 if the person is in need of treatment because the person:

- (a) Is a danger to self;
- (b) Is a danger to others;
- (c) Is unable to provide for basic personal needs; or
- (d) Has a chronic mental disorder.

(2) A person is a danger to self for purposes of this section if, because of a mental disorder:

(a) The person engaged in or threatened to engage in behavior that resulted in or was likely to result in serious physical harm to self; and

(b) Taking into consideration the person's particular history and circumstances, it is reasonably foreseeable that the person will engage in such behavior in the near future, even if such behavior is not imminent.

(3) A person is a danger to others for purposes of this section if, because of a mental disorder:

(a) The person engaged in or threatened to engage in behavior that resulted in or was likely to result in physical harm to another person; and

(b) Taking into consideration the person's particular history and circumstances, it is reasonably foreseeable that the person will engage in such behavior in the near future, even if such behavior is not imminent.

(4) A person is unable to provide for basic personal needs for purposes of this section if, because of a mental disorder:

(a) The person is unable to provide for basic personal needs that are necessary for the person to avoid reasonably foreseeable serious physical harm in the near future, even if the serious physical harm is not imminent; and

(b)(A) The person is not receiving such care as is necessary to avoid such harm; or

(B) If the person is involuntarily confined in a custodial setting, it is reasonably foreseeable that upon release the person will not receive such care as is necessary to avoid such harm.

(5) A person has a chronic mental disorder for purposes of this section if:

(a) The person is a person with a chronic mental illness, as defined in ORS 426.495; and

(b) Within the previous three years the person has twice been placed in a hospital or approved inpatient facility by the Oregon Health Authority under ORS 426.060.

**SECTION 3. (1) When determining whether a person has a mental illness and is in need of treatment, the court may consider information that assists the court in making its determination, including but not limited to any of the following:**

**(a) The person's insight into the person's mental illness.**

**(b) The impact of the person's insight or lack of insight on the person's ability to follow a recommended treatment plan.**

**(c) The likelihood that, absent treatment, the person will become a danger to self, a danger to others or unable to provide for basic personal needs, as described in section 2 of this 2025 Act, in the near future.**

**(d) When possible, a clinical perspective on paragraph (c) of this subsection.**

**(2) When determining whether a person is in need of treatment because the person is a danger to self as described in section 2 of this 2025 Act, the court may consider information that assists the court in making its determination, including but not limited to any of the following:**

**(a) The person's recent overt acts causing or attempting to cause serious physical harm to self.**

**(b) Recent acts placing the person in circumstances that resulted in or were likely to result in serious physical harm to self.**

**(c)(A) The person's recent threats to cause serious physical harm to self and the severity of the harm threatened;**

**(B) Absent treatment, the likelihood of such threats being carried out; and**

**(C) Absent treatment, the likelihood of such threats reoccurring.**

**(d) Any past behavior and patterns of deterioration resulting from a mental disorder that contributed to prior involuntary hospitalizations for being a danger to self, how recently the past behavior occurred and the frequency and severity of the past behavior.**

**(3) When determining whether a person is in need of treatment because the person is a danger to others as described in section 2 of this 2025 Act, the court may consider information that assists the court in making its determination, including but not limited to any of the following:**

**(a)(A) Recent overt acts causing or attempting to cause physical harm to another person; and**

**(B) The frequency and severity of such acts.**

**(b) Recent destructive acts against property that were reasonably likely to place others at risk of physical harm.**

**(c)(A) Recent threats to cause physical harm to another person;**

**(B) The severity of the harm threatened;**

**(C) Absent treatment, the likelihood of such threats being carried out; and**

**(D) Absent treatment, the likelihood of such threats reoccurring.**

**(d)(A) Any past behavior and patterns of deterioration resulting from a mental disorder that contributed to prior involuntary hospitalizations for being a danger to others;**

**(B) How recently the past behavior occurred; and**

**(C) The frequency and severity of the past behavior.**

**(e) When possible, a clinical perspective on the person's risk of causing physical harm to another person.**

**(4) The court may not find that a person is in need of treatment because the person has a chronic mental disorder, as described in section 2 of this 2025 Act, unless the court finds that:**

**(a) The person 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 section 2 (5)(b) of this 2025 Act; and**

**(b) Absent treatment, the person will continue, to a reasonable medical probability, to physically or mentally deteriorate so that the person will become a danger to self, a danger**

**to others or unable to provide for the person's basic personal needs, as described in section 2 (2) to (4) of this 2025 Act.**

**SECTION 4.** 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 superintendent of a state mental 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 state mental hospital, 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 **described in section 2 (1) of this 2025 Act.** *[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) "Physical harm" means physical injury, physical pain or other physiological impairment, other than an injury, pain or impairment that is trivial in terms of pain or other bodily impact.**

*[(g)] (h) "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.*

**(i) "Serious physical harm" means physical injury, physical pain or other physiological impairment that places a person at risk of:**

**(A) Death;**

**(B) Serious and irreversible deterioration of health; or**

**(C) Serious and irreversible deterioration of any bodily organ.**

(2) Whenever a community mental health program director, director of the facility, superintendent of a state hospital or administrator of a facility is referred to, the reference includes any designee such person has designated to act on the person's behalf in the exercise of duties.

**SECTION 5.** ORS 426.130 is amended to read:

426.130. (1) After hearing all of the evidence, and reviewing the findings of the examiners, the court shall determine whether, **by clear and convincing evidence**, the person has a mental illness and is in need of treatment.

(2) *[If, in the opinion of the court,]* **If the court determines under subsection (1) of this section that the person:**

(a) *[Is a person with mental illness based upon clear and convincing evidence,]* **Has a mental illness and is in need of treatment**, the court:

(A) Shall order the release of the person and dismiss the case if:

(i) The person is willing and able to participate in treatment on a voluntary basis; and

(ii) The court finds that the person will probably do so.

(B) May order conditional release under this subparagraph subject to the qualifications and requirements under ORS 426.125. If the court orders conditional release under this subparagraph, the court shall establish a period of commitment for the conditional release.

(C) May order commitment of the person *[with mental illness]* to the Oregon Health Authority for treatment if, in the opinion of the court, subparagraph (A) or (B) of this paragraph is not in the best interest of the person. If the court orders commitment under this subparagraph:

(i) The court shall establish a period of commitment.

(ii) The authority may place the committed person in outpatient commitment under ORS 426.127.

(D) Shall order that the person be prohibited from purchasing or possessing a firearm if, in the opinion of the court, there is a reasonable likelihood the person *[would constitute]* **is** a danger to self or others, or to the community at large, as a result of the person's mental or psychological state as demonstrated by past behavior or participation in incidents involving unlawful violence or threats of unlawful violence, or by reason of a single incident of extreme, violent, unlawful conduct. When a court makes an order under this subparagraph, the court shall cause a copy of the order to be delivered to the sheriff of the county who will enter the information into the Law Enforcement Data System.

(b) *[Is not a person with mental illness]* **Is not a person with a mental illness who is in need of treatment**, the court shall release the person from custody if the person has been detained under ORS 426.070, 426.180, 426.228, 426.232 or 426.233 and:

(A) Dismiss the case; or

(B) Order the person to participate in assisted outpatient treatment in accordance with ORS 426.133. The court may continue the proceeding for no more than seven days to allow time for the community mental health program director to develop the person's assisted outpatient treatment plan.

~~[(2)]~~ (3) A court that orders a conditional release, a commitment or assisted outpatient treatment under this section shall establish a period of commitment or treatment for the person subject to the order. Any period of commitment ordered for commitment or conditional release under this section shall be for a period of time not to exceed 180 days. A period of assisted outpatient treatment shall be for a period of time not to exceed 12 months.

~~[(3)]~~ (4) If the commitment proceeding was initiated under ORS 426.070 (1)(a) and if the notice included a request under ORS 426.070 (2)(d)(B), the court shall notify the two persons of the court's determination under *[subsection (1) of]* this section.

~~[(4)]~~ (5) If the court finds that the person *[is a person with mental illness]* **has a mental illness and is in need of treatment** and either orders commitment under subsection ~~[(1)(a)(B)]~~ (2)(a)(B) or (C) of this section or enters an order under subsection ~~[(1)(a)(D)]~~ (2)(a)(D) of this section, the court shall notify the person that the person is prohibited from purchasing or possessing a firearm under state and federal law unless the person obtains relief from the prohibition from the Psychiatric Security Review Board under ORS 166.273 or under federal law.

**SECTION 6.** ORS 426.070 is amended to read:

426.070. (1) Any of the following may initiate commitment procedures under this section by giving the notice described under subsection (2) of this section:

(a) Two persons;

(b) The local health officer; or  
(c) [Any] A magistrate **mentioned in ORS 133.030** or a judge of a court of a federally recognized Indian tribe located in this state.

(2) For purposes of subsection (1) of this section, the notice must comply with the following:

(a) It must be in writing under oath;

(b) It must be given to the community mental health program director or a designee of the director in the county where the person alleged to have a mental illness resides;

(c) It must state that a person within the county other than the person giving the notice [*is a person with*] **has a mental illness** and is in need of treatment, care or custody;

(d) If the commitment proceeding is initiated by two persons under subsection (1)(a) of this section, it may include a request that the court notify the two persons:

(A) Of the issuance or nonissuance of a warrant under this section; or

(B) Of the court's determination under ORS 426.130 [(1)]; and

(e) If the notice contains a request under paragraph (d) of this subsection, it must also include the addresses of the two persons making the request.

(3) Upon receipt of a notice under subsections (1) and (2) of this section or when notified by a circuit court that the court received notice under ORS 426.234, the community mental health program director, or designee of the director, shall:

(a) Immediately notify the judge of the court having jurisdiction for that county under ORS 426.060 of the notification described in subsections (1) and (2) of this section.

[*(b) Immediately notify the Oregon Health Authority if commitment is proposed because the person appears to be a person with mental illness, as defined in ORS 426.005 (1)(f)(C). When such notice is received, the authority may verify, to the extent known by the authority, whether or not the person meets the criteria described in ORS 426.005 (1)(f)(C)(i) and (ii) and so inform the community mental health program director or designee of the director.*]

**(b) Immediately notify the Oregon Health Authority if commitment is proposed because the person appears to be a person who is in need of treatment because of a chronic mental disorder, as described in section 2 (5) of this 2025 Act. When such notice is received, the authority may verify, to the extent known by the authority, whether or not the person meets the criteria described in section 2 (5) of this 2025 Act and so inform the community mental health program director or designee of the director.**

(c) Initiate an investigation under ORS 426.074 to determine whether there is probable cause to believe that the person [*is in fact a person with mental illness*] **in fact has a mental illness and is in need of treatment.**

(4) Upon completion, a recommendation based upon the investigation report under ORS 426.074 shall be promptly submitted to the court. If the community mental health program director determines that probable cause does not exist to believe that a person released from detention under ORS 426.234 (2)(c) or (3)(b) [*is a person with mental illness*] **has a mental illness and is in need of treatment**, the community mental health program director may recommend assisted outpatient treatment in accordance with ORS 426.133.

(5) When the court receives notice under subsection (3) of this section:

(a) If the court, following the investigation, concludes that there is probable cause to believe that the person investigated [*is a person with mental illness*] **has a mental illness and is in need of treatment**, it shall, through the issuance of a citation as provided in ORS 426.090, cause the person to be brought before it at a time and place as it may direct, for a hearing under ORS 426.095 to determine whether the person [*is a person with mental illness*] **has a mental illness and is in need of treatment**. The person shall be given the opportunity to appear voluntarily at the hearing unless the person fails to appear or unless the person is detained pursuant to paragraph (b) of this subsection.

(b)(A) If the court finds that there is probable cause to believe that failure to take the person into custody pending the investigation or hearing would pose serious harm or danger to the person or to others, the court may issue a warrant of detention to the community mental health program

director or designee or the sheriff of the county or designee directing the director, sheriff or a designee to take the person alleged to have a mental illness into custody and produce the person at the time and place stated in the warrant.

(B) At the time the person is taken into custody, the person shall be informed by the community mental health program director, the sheriff or a designee of the following:

(i) The person's rights with regard to representation by or appointment of counsel as described in ORS 426.100;

(ii) The warning under ORS 426.123; and

(iii) The person's right, if the community mental health program director, sheriff or designee reasonably suspects that the person is a foreign national, to communicate with an official from the consulate of the person's country. A community mental health program director, sheriff or designee is not civilly or criminally liable for failure to provide the information required by this sub-subparagraph. Failure to provide the information required by this sub-subparagraph does not in itself constitute grounds for the exclusion of evidence that would otherwise be admissible in a proceeding.

(C) The court may make any orders for the care and custody of the person prior to the hearing as it considers necessary.

(c) If the notice includes a request under subsection (2)(d)(A) of this section, the court shall notify the two persons of the issuance or nonissuance of a warrant under this subsection.

#### **(Prehearing Treatment)**

**SECTION 7. Section 8 of this 2025 Act is added to and made a part of ORS 426.070 to 426.170.**

**SECTION 8. (1) At any time before the conclusion of a hearing under ORS 426.095, the community mental health program director may offer a person alleged to have a mental illness and to be in need of treatment a diversion from commitment as an opportunity for intensive treatment if:**

**(a) The community mental health program director and a licensed independent practitioner of a hospital or nonhospital facility have probable cause to believe the person has a mental illness and is in need of treatment; and**

**(b)(A) The hospital or nonhospital facility is approved by the Oregon Health Authority; and**

**(B) The community mental health program director and the licensed independent practitioner agree that the hospital or nonhospital facility can provide the intensive care or treatment for mental illness that is necessary and sufficient to meet the emergency psychiatric needs of the person.**

**(2)(a) The community mental health program director shall provide notice of the offer of diversion from commitment:**

**(A) In writing to the court having jurisdiction under ORS 426.060; and**

**(B) Orally and in writing to the person alleged to have a mental illness and to be in need to treatment.**

**(b) The notice under this subsection must include all of the following:**

**(A) A written statement by the community mental health program director and the licensed independent practitioner, attesting that the director and the practitioner have probable cause to believe the person has a mental illness and is in need of treatment.**

**(B) A diversion treatment plan described in subsection (3) of this section.**

**(C) Notice of the person's right to request and be provided with a hearing under ORS 426.070 to 426.170 at any time during the diversion from commitment.**

**(D) Notice of the person's rights regarding representation by or appointment of counsel.**

**(E) The date and time the notice was given to the person.**

**(3)(a) A licensed independent practitioner who files a statement described in subsection (2)(b)(A) of this section must, in consultation with the community mental health program**

director, prepare a diversion treatment plan for the person alleged to have a mental illness and to be in need of treatment.

(b) The treatment plan must describe, in general terms, the types of treatment and medication to be provided to the person during the diversion.

(c) The treatment plan must include, at a minimum:

(A) A description of the medications to be administered;

(B) The mental health interventions, therapies or diagnostic procedures to be employed;

(C) The person's preferences for medications and therapies;

(D) Limitations on specific medications or therapies;

(E) The location of services; and

(F) Other conditions or limitations for treatment the practitioner determines are relevant.

(4) Immediately upon receipt of a notice under subsection (2) of this section, the court shall:

(a) Appoint legal counsel for the person, subject to ORS 426.100; and

(b) Provide notice of the offer of diversion from commitment to the person's legal counsel.

(5)(a) Not later than close of the judicial day immediately following receipt of the notice under subsection (4) of this section, the person's legal counsel, if any, shall review with the person the notice and the contents of the treatment plan.

(b) If the person, after consultation with the person's legal counsel, if any, does not consent to the offer of diversion from commitment, the hearing required by ORS 426.070 must be held no later than five judicial days following the person's date of detention.

(c) If the person, after consultation with the person's legal counsel, if any, consents to the offer of diversion from commitment as set forth in the notice, the court shall postpone the hearing required by ORS 426.070 for 14 days from the date of consent.

(6)(a) The community mental health program director may offer to extend the duration of a person's diversion from commitment for up to 14 additional days if the criteria under subsection (1) of this section continue to be met.

(b) If the person consents to the extension, the court shall postpone the hearing required under ORS 426.070 by an additional 14 days from the date of the person's consent to the extension.

(c) A person consenting to an extension under this subsection may not be held without a hearing as provided in ORS 426.070 for longer than 28 days from the date the person initially consented to the diversion from commitment.

(7) During the period of a person's diversion from commitment:

(a) The person may not be subjected to unusual or hazardous treatment procedures, including convulsive therapy, and shall receive usual and customary treatment in accordance with medical standards in the community.

(b) Except when the person expressly refuses treatment, the treating licensed independent practitioner shall treat the person within the scope of the treatment plan provided to the person with the notice of the offer of diversion from commitment.

(c) If the person expressly refuses treatment:

(A) The treating licensed independent practitioner shall notify the community mental health program director;

(B) The community mental health program director shall immediately notify the person and the person's legal counsel, if any, that the person's refusal of treatment may result in the recommencement of commitment proceedings; and

(C) If, after providing the person with at least one judicial day to resume treatment following receipt of the notice under subparagraph (B) of this paragraph, the community mental health program director determines that the person is likely to continue to refuse



treatment, the community mental health program director may request a hearing as provided in subsection (12) of this section.

(d)(A) If the person is in a hospital, the licensed independent practitioner who is treating the person shall discharge the person from the hospital and the community mental health program director shall transfer the person to the nonhospital facility for the remainder of the diversion from commitment if the community mental health program director and the treating licensed independent practitioner agree that the nonhospital facility can provide the care or treatment for mental illness that is necessary and sufficient to meet the emergency needs of the person.

(B) Notwithstanding subparagraph (A) of this paragraph, the treating licensed independent practitioner shall retain the person in the hospital if, in the opinion of the treating licensed independent practitioner, the person's condition requires the person to receive medical care or treatment in the hospital.

(e) If the person is in a nonhospital facility, the community mental health program director shall transfer the person to a hospital approved by the authority under the following conditions:

(A) If, in the opinion of a licensed independent practitioner, the person's condition requires the person to receive medical care or treatment in a hospital; and

(B) The licensed independent practitioner agrees to admit the person to a hospital, approved by the authority, where the licensed independent practitioner has admitting privileges.

(f) If the person is transferred as provided in paragraph (d) or (e) of this subsection, the community mental health program director shall provide notice of the person's location to the person's legal counsel, if any, and the circuit court in the county where the notice under subsection (2) of this section was filed. The person may appeal the transfer as provided by rules of the authority.

(8) A person may be discharged from the diversion from commitment at any time if:

(a) The person is in a hospital and the licensed independent practitioner who is treating the person has:

(A) Determined that the person no longer requires care in the hospital setting;

(B) Informed the community mental health program director; and

(C) Conferred with the person's next of kin and, if applicable, guardian, to the extent allowed under ORS 192.567.

(b) The person is in a nonhospital facility and the community mental health program director has:

(A) Determined that the person no longer requires care in the nonhospital facility;

(B) Conferred with the licensed independent practitioner who is treating the person; and

(C) Conferred with the person's next of kin and, if applicable, guardian, if the person consented to the consultation.

(9) Immediately upon a person's discharge from the diversion from commitment, if the person was discharged pursuant to subsection (8) of this section, the community mental health program director shall provide notice of the person's discharge to the person's legal counsel, if any, and the circuit court in the county in which the notice under subsection (2) of this section was initially filed.

(10) The person may agree to voluntary treatment at any time during the diversion from commitment. When a person agrees to voluntary treatment under this subsection, the community mental health program director shall immediately provide notice of the person's agreement to the person's legal counsel, if any, and the circuit court in the county in which the notice under subsection (2) of this section was initially filed.

(11) When the circuit court receives notification under subsection (9) or (10) of this section, the court shall dismiss the case.

(12) **The judge of the circuit court shall immediately commence proceedings under ORS 426.070 to 426.170 when the person consenting to a diversion from commitment or the community mental health program director requests a hearing. The hearing shall be held without unreasonable delay. In no case may the person be held in a hospital or nonhospital facility longer than five judicial days after the request for a hearing is made without a hearing being held under ORS 426.070 to 426.170.**

(13) **The authority shall adopt rules for the implementation of this section.**

**SECTION 9.** ORS 426.074 is amended to read:

426.074. The following is applicable to an investigation initiated by a community mental health program director, or a designee of the director, as part of commitment procedures under ORS 426.070 and 426.228 to 426.235:

(1) If the person alleged to have a mental illness **and to be in need of treatment** is held in custody before the hearing the investigation shall be completed at least 24 hours before the hearing under ORS 426.095, otherwise the investigation shall comply with the following time schedule:

(a) If the person can be located, the investigator shall contact the person within three judicial days from the date the community mental health program director or a designee receives a notice under ORS 426.070 alleging that the person has a mental illness and is in need of treatment.

(b) Within 15 days from the date the community mental health program director or a designee receives a notice under ORS 426.070, one of the following shall occur:

(A) The investigation shall be completed and submitted to the court.

(B) An application for extension shall be made to the court under paragraph (c) of this subsection.

(c) The community mental health program director, a designee or the investigator may file for an extension of the time under paragraph (b) of this subsection only if one of the following occurs:

(A) A treatment option less restrictive than involuntary inpatient commitment is actively being pursued.

(B) The person alleged to have a mental illness **and to be in need of treatment** cannot be located.

(d) A court may grant an extension under paragraph (c) of this subsection for a time and upon the terms and conditions the court considers appropriate.

(2) This subsection establishes a nonexclusive list of provisions applicable to the content of the investigation, as follows:

(a) The investigation conducted should, where appropriate, include an interview or examination of the person alleged to have a mental illness **and to be in need of treatment** in the home of the person or other place familiar to the person.

(b) Whether or not the person consents, the investigation should include interviews with any individuals that the investigator has probable cause to believe have pertinent information regarding the investigation. If the person objects to the contact with any individual, the objection shall be noted in the investigator's report.

(c) The investigator shall be allowed access to licensed independent practitioners, nurses or social workers and to medical records compiled during the current involuntary prehearing period of detention to determine probable cause and to develop alternatives to commitment. If commitment is proposed because the person appears to be [*a person with mental illness as defined in ORS 426.005 (1)(f)(C)*] **in need of treatment because of a chronic mental disorder as described in section 2 (5) of this 2025 Act**, the investigator shall be allowed access to medical records necessary to verify the existence of criteria described in [*ORS 426.005 (1)(f)(C)*] **sections 2 (5) and 3 (4) of this 2025 Act**. The investigator shall include pertinent parts of the medical record in the investigation report. Records and communications described in this paragraph and related communications are not privileged under ORS 40.230, 40.235, 40.240 or 40.250.

(3) A copy of the investigation report shall be provided as soon as possible, but in no event later than 24 hours prior to the hearing, to the person and to the person's counsel. Copies shall likewise

be provided to counsel assisting the court, to the examiners and to the court for use in questioning witnesses.

**(4) If an investigator has reasonable cause to believe that a person subject to investigation under this section has a declaration for mental health treatment as described in ORS 127.700 to 127.737, the investigator shall:**

**(a) Immediately provide the person subject to investigation and the person's legal counsel, if any, with information about the process under section 15 of this 2025 Act for determinations of capacity and related timelines.**

**(b) If the declaration appoints an attorney-in-fact, as defined in ORS 127.700, and the investigator is able to locate the attorney-in-fact:**

**(A) Immediately notify the attorney-in-fact that the person subject to investigation under this section has an active investigation;**

**(B) Immediately notify the attorney-in-fact that the investigator has reasonable cause to believe the person subject to investigation has a declaration for mental health treatment;**

**(C) Immediately provide the attorney-in-fact with a notice of the person's legal right to counsel and that legal counsel will be appointed by the court as provided in ORS 426.100; and**

**(D) Immediately provide the attorney-in-fact with a copy of the information provided under paragraph (a) of this subsection.**

**(c)(A) Immediately notify the court that the investigator has reasonable cause to believe that the person who is the subject of the investigation has executed a declaration for mental health treatment and provide the court with all information then available to the investigator regarding the declaration, including information regarding the factors relevant to a determination of incapacity as described in section 15 of this 2025 Act; and**

**(B) Serve a copy of the notification and information provided to the court on:**

**(i) Attorneys representing the state, as described in ORS 426.100;**

**(ii) The person subject to investigation and the person's legal counsel, if any; and**

**(iii) The person's attorney-in-fact, if any, described in paragraph (b) of this subsection.**

**(5) When, after providing the court with notice under subsection (4) of this section, the investigator receives a judgment described in section 15 of this 2025 Act:**

**(a) If the court does not determine that the person subject to investigation is incapable for purposes of ORS 127.700 to 127.737, the investigation shall continue as provided in subsections (1) to (3) of this section.**

**(b) If the court determines that the person is incapable for purposes of ORS 127.700 to 127.737:**

**(A) The investigator shall, after consultation with the licensed independent practitioner who is treating the person, notify the court regarding whether the investigator and the licensed independent practitioner agree that the treatment that is authorized under the declaration for mental health treatment is sufficient and available.**

**(B) If the investigator and the treating licensed independent practitioner agree that the treatment that is authorized under the declaration for mental health treatment is sufficient and available, and the court agrees, the court shall release the person from the warrant of detention, if applicable, dismiss the case and provide written findings in the judgment of dismissal supporting the reasons for dismissal.**

**(C) If the investigator and the treating licensed independent practitioner agree that the treatment that is authorized by the declaration for mental health treatment is insufficient or unavailable, or if the investigator and the treating licensed independent practitioner do not agree, the investigation shall continue as provided in subsections (1) to (3) of this section.**

**(6) A finding of incapacity under section 15 of this 2025 Act may not be used as evidence that a person subject to investigation has a mental illness and is in need of treatment, as described in section 2 (1) of this 2025 Act. However, evidence supporting a determination of incapacity under section 15 of this 2025 Act or evidence of a declaration of mental health**

**treatment may be considered by the court as the court deems relevant for any determinations made under ORS 426.005 to 426.390.**

**SECTION 10.** ORS 426.237 is amended to read:

426.237. (1) During a prehearing period of detention as provided in ORS 426.070, 426.140, 426.232 or 426.233, the community mental health program director shall *[do one of the following]*:

(a) Recommend, in an investigation report as provided in ORS 426.074, that the circuit court not proceed further in the matter if the community mental health program director does not believe the person is a person with mental illness or that the person is in need of assisted outpatient treatment[.];

*[(b) No later than three judicial days after initiation of a prehearing period of detention as provided in ORS 426.070, 426.140, 426.232 or 426.233, certify the detained person for a 14-day period of intensive treatment if:]*

*[(A) The community mental health program director and a licensed independent practitioner have probable cause to believe the person is a person with mental illness;]*

*[(B) The community mental health program director in the county where the person resides verbally approves the arrangements for payment for the services at the hospital or nonhospital facility; and]*

*[(C) The community mental health program director locates a hospital or nonhospital facility that:]*

*[(i) Is approved by the authority and the community mental health program director in the county where the person resides; and]*

*[(ii) Can, in the opinion of the community mental health program director and the licensed independent practitioner, provide intensive care or treatment for mental illness necessary and sufficient to meet the emergency psychiatric needs of the person.]*

**(b) File notice of an offer of diversion from commitment described in section 8 of this 2025 Act; or**

(c) Recommend, in an investigation report as provided in ORS 426.074, that the circuit court hold a hearing under ORS 426.070 to ~~[426.130]~~ **426.170** if the community mental health program director has probable cause to believe the person ~~[is a person with mental illness]~~ **has a mental illness and is in need of treatment** or that the person is in need of assisted outpatient treatment.

*[(2)(a) If the circuit court adopts the recommendation of the community mental health program director under subsection (1)(a) of this section, the circuit court shall enter an order releasing the person and dismissing the case. Unless the person agrees to voluntary treatment, if the person is being detained in a:]*

*[(A) Nonhospital facility, the community mental health program director shall make discharge plans and ensure the discharge of the person.]*

*[(B) Hospital, the licensed independent practitioner who is treating the person shall make discharge plans and discharge the person.]*

*[(b) Upon release of the person, the community mental health program director shall attempt to notify the person's next of kin if the person consents to the notification.]*

*[(3)(a) If the detained person is certified for treatment under subsection (1)(b) of this section, the community mental health program director shall:]*

*[(A) Deliver immediately a certificate to the court having jurisdiction under ORS 426.060; and]*

*[(B) Orally inform the person of the certification and deliver a copy of the certificate to the person.]*

*[(b) The certificate required by paragraph (a) of this subsection shall include:]*

*[(A) A written statement under oath by the community mental health program director and the licensed independent practitioner that they have probable cause to believe the person is a person with mental illness in need of care or treatment for mental illness;]*

*[(B) A treatment plan that describes, in general terms, the types of treatment and medication to be provided to the person during the 14-day period of intensive treatment;]*

*[(C) A notice of the person's right to an attorney and that an attorney will be appointed by the court or as otherwise obtained under ORS 426.100 (3);]*

*[(D) A notice that the person has a right to request and be provided a hearing under ORS 426.070 to 426.130 at any time during the 14-day period; and]*

*[(E) The date and time the copy of the certificate was delivered to the person.]*

*[(c) Immediately upon receipt of a certificate under paragraph (a) of this subsection, the court shall notify the person's attorney or appoint an attorney for the person if the person cannot afford one. Within 24 hours of the time the certificate is delivered to the court, the person's attorney shall review the certificate with the person. If the person and the person's attorney consent to the certification within one judicial day of the time the certificate is delivered to the circuit court and, except as provided in subsection (4) of this section, the court shall postpone the hearing required by ORS 426.070 to 426.130 for 14 days.]*

*[(d) When a person is certified for treatment under subsection (1)(b) of this section and accepts the certification:]*

*[(A) Except as otherwise provided in this paragraph, all methods of treatment, including the prescription and administration of drugs, shall be the sole responsibility of the licensed independent practitioner who is treating the person. However, the person shall not be subject to electroshock therapy or unduly hazardous treatment and shall receive usual and customary treatment in accordance with medical standards in the community.]*

*[(B) Except when the person expressly refuses treatment, the treating licensed independent practitioner shall treat the person within the scope of the treatment plan provided the person under paragraph (b) of this subsection. The person's refusal of treatment constitutes sufficient grounds for the community mental health program director to request a hearing as provided in subsection (4)(a) of this section.]*

*[(C) If the person is in a hospital and the community mental health program director locates a nonhospital facility, approved by the authority, that, in the opinion of the community mental health program director and the licensed independent practitioner who is treating the person, can provide care or treatment for mental illness necessary and sufficient to meet the emergency psychiatric needs of the person, the treating licensed independent practitioner shall discharge the person from the hospital and the community mental health program director shall remove the person to the nonhospital facility for the remainder of the 14-day intensive treatment period. If, however, in the opinion of the treating licensed independent practitioner, the person's condition requires the person to receive medical care or treatment, the licensed independent practitioner shall retain the person in the hospital.]*

*[(D) If the person is in a nonhospital facility, the community mental health program director shall transfer the person to a hospital approved by the authority under the following conditions:]*

*[(i) If, in the opinion of a licensed independent practitioner, the person's condition requires the person to receive medical care or treatment in a hospital; and]*

*[(ii) The licensed independent practitioner agrees to admit the person to a hospital, approved by the authority, where the licensed independent practitioner has admitting privileges.]*

*[(E) If the person is transferred as provided in subparagraph (C) or (D) of this paragraph, the community mental health program director shall notify the circuit court, in the county where the certificate was filed, of the location of the person. The person may appeal the transfer as provided by rules of the authority.]*

*[(e) If the person is in a hospital, the licensed independent practitioner who is treating the person may discharge the person at any time during the 14-day period. The treating licensed independent practitioner shall confer with the community mental health program director and the person's next of kin, if the person consents to the consultation, prior to discharging the person. Immediately upon discharge of the person, the treating licensed independent practitioner shall notify the court in the county in which the certificate was filed initially.]*

*[(f) If the person is in a nonhospital facility, the community mental health program director may discharge the person at any time during the 14-day period. The community mental health program director shall consult with the licensed independent practitioner who is treating the person and the person's next of kin, if the person consents to the consultation, prior to discharging the person. Imme-*

diately upon discharge of the person, the community mental health program director shall notify the court in the county in which the certificate was filed initially.]

[(g) The person may agree to voluntary treatment at any time during the 14-day period. When a person agrees to voluntary treatment under this paragraph, the community mental health program director immediately shall notify the court in the county in which the certificate was filed initially.]

[(h) A person consenting to 14 days of treatment under subsection (3)(c) of this section shall not be held longer than 14 days from the time of consenting without a hearing as provided in ORS 426.070 to 426.130.]

[(i) When the court receives notification under paragraph (e), (f) or (g) of this subsection, the court shall dismiss the case.]

[(4) (2) The judge of the circuit court shall immediately commence proceedings under ORS 426.070 to [426.130] **426.170** when[:]

[(a) The person consenting to 14 days of treatment or the community mental health program director requests a hearing. The hearing shall be held without unreasonable delay. In no case shall the person be held in a hospital or nonhospital facility longer than five judicial days after the request for a hearing is made without a hearing being held under ORS 426.070 to 426.130.]

[(b) the community mental health program director acts under subsection (1)(c) of this section. In no case [shall] **may** the person be held longer than five judicial days without a hearing under this subsection.

**SECTION 11.** ORS 426.090 is amended to read:

426.090. **If a court, following an investigation, concludes under ORS 426.070 (5) that there is probable cause to believe a person has a mental illness and is in need of treatment,** the judge shall issue a citation to the person [*alleged to have a mental illness*] stating the nature of the information filed concerning the person and the specific reasons the person is believed to [*be a person with*] **have a mental illness and to be in need of treatment.** The citation shall further contain a notice of the time and place of the commitment hearing, the right to legal counsel, the right to have legal counsel appointed if the person is unable to afford legal counsel, and, if requested, to have legal counsel immediately appointed, the right to subpoena witnesses in behalf of the person to the hearing and other information as the court may direct. [*The citation shall be served upon the person by delivering a duly certified copy of the original thereof to the person in*] **A certified copy of the citation shall be personally served on the person** prior to the hearing. The person shall have an opportunity to consult with legal counsel prior to being brought before the court.

**SECTION 12.** ORS 426.100 is amended to read:

426.100. (1) At the time the person alleged to have a mental illness **and to be in need of treatment** is brought before the court, the court shall advise the person of the following:

- (a) The reason for being brought before the court;
- (b) The nature of the proceedings;
- (c) The possible results of the proceedings;
- (d) The right to subpoena witnesses; and
- (e) The person's rights regarding representation by or appointment of counsel.

(2) Subsection (3) of this section establishes the rights of persons alleged to have a mental illness **and to be in need of treatment** in each of the following circumstances:

- (a) When the person is held by warrant of detention issued under ORS 426.070.
- (b) In commitment hearings under ORS 426.095.
- (c) When the person is detained as provided under ORS 426.228, 426.232 or 426.233.
- (d) In recommitment hearings under ORS 426.307.

(3) When provided under subsection (2) of this section, a person alleged to have a mental illness **and to be in need of treatment** has the following rights relating to representation by or appointment of counsel:

(a) The right to obtain suitable legal counsel possessing skills and experience commensurate with the nature of the allegations and complexity of the case during the proceedings.

(b) If the person is determined to be financially eligible for appointed counsel at state expense, the court will appoint legal counsel to represent the person. If counsel is appointed at state expense, payment of expenses and compensation relating to legal counsel shall be made as provided under ORS 426.250.

(c) If the person [*alleged to have a mental illness*] does not request legal counsel, [*the*] a legal guardian, relative or friend may request the assistance of suitable legal counsel on behalf of the person.

(d) If no request for legal counsel is made, the court shall appoint suitable legal counsel unless counsel is expressly, knowingly and intelligently refused by the person.

(e) If the person is being involuntarily detained before a hearing on the issue of commitment, the right under paragraph (a) of this subsection to contact [*an attorney*] **legal counsel** or under paragraph (b) of this subsection to have [*an attorney*] **legal counsel** appointed may be exercised as soon as reasonably possible.

(f) In all cases suitable legal counsel shall be present at the hearing and may be present at examination and may examine all witnesses offering testimony, and otherwise represent the person.

**(4) When the court is required to appoint counsel for a person under ORS 426.005 to 426.390, the court shall appoint suitable legal counsel for the person unless:**

**(a) The person is already represented by legal counsel; or**

**(b) The person expressly, knowingly and intelligently refuses appointment of legal counsel.**

[~~(4)~~] **(5)** The responsibility for representing the state's interest in commitment proceedings, including, but not limited to, preparation of the state's case and appearances at commitment hearings is as follows:

(a) The Attorney General's office shall have the responsibility relating to proceedings initiated by state hospital staff that are any of the following:

(A) Recommitment proceedings under ORS 426.307; or

(B) Proceedings under ORS 426.228, 426.232 or 426.233.

(b) The district attorney if requested to do so by the governing body of the county.

(c) In lieu of the district attorney under paragraph (b) of this subsection, a counsel designated by the governing body of a county shall take the responsibility. A county governing body may designate counsel to take responsibility under this paragraph either for single proceedings or for all such proceedings the county will be obligated to pay for under ORS 426.250. If a county governing body elects to proceed under this paragraph, the county governing body shall so notify the district attorney. The expenses of an attorney appointed under this paragraph shall be paid as provided under ORS 426.250.

**SECTION 13.** ORS 426.301 is amended to read:

426.301. (1) At the end of the 180-day period of commitment, any person whose status has not been changed to voluntary shall be released unless the Oregon Health Authority certifies to the court in the county where the treating facility is located that the person is still a person with mental illness and is in need of further treatment. The authority, pursuant to its rules, may delegate to the director of the treating facility the responsibility for making the certification. The director of the treating facility shall consult with the community mental health program director of the county of residence prior to making the certification. If the certification is made, the person will not be released, but the director of the treating facility shall immediately issue a copy of the certification to the person and to the community mental health program director of the county of residence.

[~~(2)~~] *The certification shall be served upon the person by the director of the facility where the person is confined or by the designee of the director. The director of the facility shall inform the court in writing that service has been made and the date thereof.*

[~~(3)~~] **(2)** The certification [*shall*] **must** advise the person of all the following:

(a) That the authority or facility has requested that commitment be continued for an additional period of time.

(b) That the person may consult with legal counsel and that legal counsel will be provided for the person without cost if the person is unable to afford legal counsel.

(c) That the person may protest this further period of commitment within 14 days, and if the person does not protest the further commitment, commitment will be continued for an indefinite period of time up to 180 days.

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

(e) That the person may protest either orally or in writing by signing the form accompanying the certification.

(f) That the person is entitled to have a physician or other qualified professional as recommended by the authority, other than a member of the staff at the facility where the person is confined, examine the person and report to the court the results of the examination.

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

(h) That if the person is without funds to retain legal counsel or an examining physician or qualified professional as recommended by the authority, the court will appoint legal counsel, a physician or other qualified professional.

[4] (3) Nothing in subsection [(3)] (2) of this section requires the giving of the warning under ORS 426.123.

**(4)(a) The director of the facility where the person is confined or the director's designee shall personally serve the copy of the certification on the person.**

**(b) The director of the facility shall file the certification with the court and inform the court in writing that service has been made and the date thereof.**

(5)(a) When serving the certification upon the person, the authority shall read and deliver the certification to the person and ask whether the person protests a further period of commitment.

(b) The person may protest further commitment either orally or by signing a simple protest form to be given to the person with the certification.

(c) If the person does not protest a further period of commitment within 14 days [of] **after receiving** service of the certification, the authority or facility shall so notify the court [and].

**(6) Upon receiving the notification under subsection (5)(c) of this section that the person does not protest the further period of commitment, the court shall, without further hearing, order the commitment of the person for an additional indefinite period of time up to 180 days.**

#### **(Declaration for Mental Health Treatment)**

**SECTION 14. Section 15 of this 2025 Act is added to and made a part of ORS 127.700 to 127.737.**

**SECTION 15. (1) A person is incapable for purposes of ORS 127.700 to 127.737 if:**

**(a) The person's ability to receive and evaluate information effectively or communicate decisions is impaired to such an extent that the person currently lacks capacity to make mental health treatment decisions, taking into consideration such factors as those described in subsection (2) of this section; and**

**(b)(A) The court in a proceeding under this section has determined that the person is incapable, as described under paragraph (a) of this subsection; or**

**(B) In the professional opinions of two individuals, each of whom must be either a licensed independent practitioner, as defined in ORS 426.005, or a licensed psychologist, the person is incapable as described in paragraph (a) of this subsection.**

**(2) Information relevant to a determination of incapacity under this section may include factors such as whether the person:**

**(a) Understands the courses of available mental health treatment, including the applicable risks and benefits of participating or not participating in the treatment;**



(b) Understands the risks and benefits of alternative courses of treatment, if any, that are preferred by the person;

(c) Is able to identify nontreatment factors that may improve or worsen the person's mental health;

(d) Is able to weigh and compare available treatment options based on information available to the person and the person's personal preferences or values;

(e) Is able to effectively communicate the person's preferred treatment outcome;

(f) Is able to identify rational reasons for the person's preferred treatment outcome;

(g) Is able to learn and incorporate into the person's decision-making new information relevant to available treatment options;

(h) Understands the impact of the person's preferred outcome on important areas of the person's life, including relationships, housing, ability to work or ability to exercise future civil rights; or

(i) Is able to identify behaviors the person needs to adopt to achieve the person's preferred treatment outcome.

(3)(a) Any person, including the person whose capacity is being determined, who is interested in the affairs or welfare of a respondent may file a petition for a determination of capacity for purposes of a respondent's declaration for mental health treatment in the circuit court of the county in which the respondent resides or is present.

(b) The petition must include a copy of the respondent's declaration for mental health treatment and set forth:

(A) The name of the respondent;

(B) The names of the respondent's parents, spouse, legal guardian, conservator or attorney-in-fact, if any;

(C) A statement of the facts describing the respondent's alleged capacity or incapacity;

(D) A statement of facts indicating the likelihood that the respondent, without mental health treatment, will have the ability to make mental health treatment decisions in the foreseeable future;

(E) A statement of the reasons for which a determination of capacity is sought; and

(F) The name and statement of interest of the person initiating the petition or any person assisting the respondent with a self-initiated petition.

(c) The petitioner shall provide a copy of the petition to the respondent and the respondent's attorney, if any.

(d) After providing the respondent with an opportunity to be heard in person or through counsel, the court, upon receiving a petition under paragraph (a) of this subsection or upon receiving notice from an investigator under ORS 426.074, shall enter a judgment determining by a preponderance of the evidence whether the respondent is incapable, as described in subsection (1)(a) of this section.

(e) At the request of the petitioner or the respondent or on the court's own initiative, the court shall include written findings, by a preponderance of the evidence, regarding:

(A) Whether the respondent has executed a declaration for mental health treatment;

(B) Whether the respondent's declaration was validly executed;

(C) Whether the declaration has been revoked or has expired; and

(D) What treatment is authorized or prohibited under the declaration.

(f) If the determination of capacity is made following notice from an investigator under ORS 426.074:

(A) The court shall enter the judgment under this section not later than one judicial day after receiving the notice;

(B) The court shall include the written findings described in paragraph (e) of this subsection in the judgment; and

(C) The court shall immediately provide the investigator with a copy of the judgment.

(4) A determination of incapacity under this section is applicable solely to the validity of the respondent's declaration and the authority of the respondent's attorney-in-fact, if any, under the declaration, to make mental health treatment decisions on the respondent's behalf.

**SECTION 16.** ORS 127.700, as amended by section 34, chapter 73, Oregon Laws 2024, is amended to read:

127.700. As used in ORS 127.700 to 127.737:

(1) "Attending physician" shall have the same meaning as provided in ORS 127.505.

(2) "Attorney-in-fact" means an adult validly appointed under ORS 127.540, 127.700 to 127.737 and 426.385 to make mental health treatment decisions for a principal under a declaration for mental health treatment and also means an alternative attorney-in-fact.

(3) "Declaration" means a document making a declaration of preferences or instructions regarding mental health treatment.

(4) "Health care facility" shall have the same meaning as provided in ORS 127.505.

(5) "Health care provider" shall have the same meaning as provided in ORS 127.505.

(6) "Incapable" [*means that, in the opinion of the court in a protective proceeding under ORS chapter 125, or the opinion of two physicians, a person's ability to receive and evaluate information effectively or communicate decisions is impaired to such an extent that the person currently lacks the capacity to make mental health treatment decisions*] **has the meaning described in section 15 of this 2025 Act.**

(7) "Mental health treatment" means convulsive treatment, treatment of mental illness with psychoactive medication, admission to and retention in a health care facility [*for a period not to exceed 17 days*] for care or treatment of mental illness, and outpatient services.

(8) "Outpatient services" means treatment for a mental or emotional disorder that is obtained by appointment and is provided by an outpatient service as defined in ORS 430.010.

(9) "Provider" means a mental health treatment provider, a physician associate licensed under ORS 677.505 to 677.525 or a nurse practitioner licensed under ORS 678.375 to 678.390.

(10) "Representative" means "attorney-in-fact" as defined in this section.

(11) **"Respondent" means a person who is the subject of a petition for determination of capacity under section 15 of this 2025 Act.**

**SECTION 17.** ORS 127.736 is amended to read:

127.736. A declaration for mental health treatment shall be in substantially the following form:

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#### DECLARATION FOR MENTAL HEALTH TREATMENT

I, \_\_\_\_\_, being an adult of sound mind, willfully and voluntarily make this declaration for mental health treatment. I want this declaration to be followed if a court or two [*physicians*] **capacity evaluators** determine that I am unable to make decisions for myself because my ability to receive and evaluate information effectively or communicate decisions is impaired to such an extent that I lack the capacity to refuse or consent to mental health treatment. "Mental health treatment" means treatment of mental illness with psychoactive medication, admission to and retention in a health care facility for a **given** period [*up to 17 days*], convulsive treatment and outpatient services that are specified in this declaration. **"Health care facility" could include an inpatient setting, a residential facility, an adult foster home or a hospice program.** **"Capacity evaluator" means a licensed independent practitioner or a licensed psychologist.**

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#### CHOICE OF DECISION MAKER

If I become incapable of giving or withholding informed consent for mental health treatment, I want these decisions to be made by: (INITIAL ONLY ONE)

— My appointed representative consistent with my desires, or, if my desires are unknown by my representative, in what my representative believes to be my best interests.

— By the mental health treatment provider who requires my consent in order to treat me, but only as specifically authorized in this declaration.

APPOINTED REPRESENTATIVE

If I have chosen to appoint a representative to make mental health treatment decisions for me when I am incapable, I am naming that person here. I may also name an alternate representative to serve. Each person I appoint must accept my appointment in order to serve. I understand that I am not required to appoint a representative in order to complete this declaration.

I hereby appoint:

NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

TELEPHONE # \_\_\_\_\_ to act as my representative to make decisions regarding my mental health treatment if I become incapable of giving or withholding informed consent for that treatment.

(OPTIONAL)

If the person named above refuses or is unable to act on my behalf, or if I revoke that person's authority to act as my representative, I authorize the following person to act as my representative:

NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

TELEPHONE # \_\_\_\_\_

My representative is authorized to make decisions that are consistent with the wishes I have expressed in this declaration or, if not expressed, as are otherwise known to my representative. If my desires are not expressed and are not otherwise known by my representative, my representative is to act in what he or she believes to be my best interests. My representative is also authorized to receive information regarding proposed mental health treatment and to receive, review and consent to disclosure of medical records relating to that treatment.

DIRECTIONS FOR MENTAL HEALTH TREATMENT

This declaration permits me to state my wishes regarding mental health treatments including psychoactive medications, admission to and retention in a health care facility for mental health treatment for a period not to exceed [17 days] the number of days specified below, convulsive treatment and outpatient services.

**If I become incapable of giving or withholding informed consent to be admitted for inpatient mental health treatment, I CONSENT TO BE ADMITTED TO THE FOLLOWING HEALTH CARE FACILITIES:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**If I become incapable of giving or withholding informed consent to be admitted to a health care facility for mental health treatment, and am admitted to a facility listed above, I consent to be admitted when medically necessary for up to (INITIAL ONLY ONE):**

- \_\_\_\_\_ 14 days.
- \_\_\_\_\_ 30 days.
- \_\_\_\_\_ 60 days.
- \_\_\_\_\_ \_\_\_\_ days.

If I become incapable of giving or withholding informed consent for mental health treatment, [my wishes are:] I CONSENT TO THE FOLLOWING MENTAL HEALTH TREATMENTS: (May include types and dosage of medications, short-term inpatient treatment, a preferred provider or facility, transport to a provider or facility, convulsive treatment or alternative outpatient treatments.)

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I DO NOT CONSENT TO THE FOLLOWING MENTAL HEALTH TREATMENT: (Consider including your reasons, such as past adverse reaction, allergies or misdiagnosis. Be aware that a person may be treated without consent if the person is held pursuant to [civil commitment law] a court order.)

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ADDITIONAL INFORMATION ABOUT MY MENTAL HEALTH TREATMENT NEEDS: (Consider including mental or physical health history, dietary requirements, religious concerns, people to notify and other matters of importance.)

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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

YOU MUST SIGN HERE FOR THIS DECLARATION TO BE EFFECTIVE:

\_\_\_\_\_  
(Signature/Date)

NOTARY OR WITNESSES

(Have this document notarized by a notary public OR have 2 competent adult witnesses complete the Affirmation of Witnesses.)

NOTARIAL CERTIFICATE:

State of \_\_\_\_\_  
County of \_\_\_\_\_  
Signed or attested before me on \_\_\_\_\_,  
2\_\_\_\_\_, by \_\_\_\_\_.  
\_\_\_\_\_  
Notary Public - State of Oregon

OR

AFFIRMATION OF WITNESSES

I affirm that the person signing this declaration:  
(a) Is personally known to me;  
(b) Signed or acknowledged his or her signature on this declaration in my presence;  
(c) Appears to be of sound mind and not under duress, fraud or undue influence;  
(d) Is not related to me by blood, marriage or adoption;  
(e) Is not a patient or resident in a facility that I or my relative owns or operates;  
(f) Is not my patient and does not receive mental health services from me or my relative; and  
(g) Has not appointed me as a representative in this document.

Witnessed by:  
\_\_\_\_\_  
(Signature of Witness/ (Printed Name of Witness)  
Date)  
\_\_\_\_\_  
(Signature of Witness/ (Printed Name of Witness)  
Date)

ACCEPTANCE OF APPOINTMENT  
AS REPRESENTATIVE

I accept this appointment and agree to serve as representative to make mental health treatment decisions. I understand that I must act consistently with the desires of the person I represent, as expressed in this declaration or, if not expressed, as otherwise known by me. If I do not know the desires of the person I represent, I have a duty to act in what I believe in good faith to be that person's best interest. I understand that this document gives me authority to make decisions about mental health treatment only while that person has been determined to be incapable of making those decisions by a court or two [*physicians*] **capacity evaluators**. I understand that the person who appointed me may revoke this declaration in whole or in part by communicating the revocation to the attending physician or other provider when the person is not incapable.

\_\_\_\_\_  
(Signature of Representative/Date)                      (Printed name)

\_\_\_\_\_  
(Signature of Alternate Representative/Date)                      (Printed name)

NOTICE TO PERSON  
MAKING A DECLARATION FOR  
MENTAL HEALTH TREATMENT

This is an important legal document. It creates a declaration for mental health treatment. Before signing this document, you should know these important facts:

This document allows you to make decisions in advance about certain types of mental health treatment: psychoactive medication, short-term (not to exceed [*17 days*] **the number of days you indicate above**) admission to a treatment facility, convulsive treatment and outpatient services. Outpatient services are mental health services provided by appointment by licensed professionals and programs. The instructions that you include in this declaration will be followed only if a court or two [*physicians*] **capacity evaluators** believe that you are incapable of making treatment decisions. Otherwise, you will be considered capable to give or withhold consent for the treatments. Your instructions may be overridden if you are being held pursuant to [*civil commitment law*] **a court order**.

You may also appoint a person as your representative to make treatment decisions for you if you become incapable. The person you appoint has a duty to act consistently with your desires as stated in this document or, if not stated, as otherwise known by the representative. If your representative does not know your desires, he or she must make decisions in your best interests. For the appointment to be effective, the person you appoint must accept the appointment in writing. The person also has the right to withdraw from acting as your representative at any time. A "representative" is also referred to as an "attorney-in-fact" in state law but this person does not need to be an attorney at law.

This document will continue in effect for a period of three years unless you become incapable of participating in mental health treatment decisions. If this occurs, the directive will continue in effect until you are no longer incapable.

You have the right to revoke this document in whole or in part at any time you have not been determined to be incapable. **YOU MAY NOT REVOKE THIS DECLARATION WHEN YOU ARE CONSIDERED INCAPABLE BY A COURT OR TWO [*PHYSICIANS*] CAPACITY EVALUATORS.** A revocation is effective when it is communicated to your attending physician or other provider.

If there is anything in this document that you do not understand, you should ask a lawyer to explain it to you. This declaration will not be valid unless it is signed by **a notary or** two qualified witnesses who are personally known to you and who are present when you sign or acknowledge your signature.

NOTICE TO PHYSICIAN OR PROVIDER

Under Oregon law, a person may use this declaration to provide consent for mental health treatment or to appoint a representative to make mental health treatment decisions when the person

is incapable of making those decisions. A person is “incapable” when, in the opinion of a court or two [*physicians*] **capacity evaluators**, the person’s ability to receive and evaluate information effectively or communicate decisions is impaired to such an extent that the person currently lacks the capacity to make mental health treatment decisions. This document becomes operative when it is delivered to the person’s physician or other provider and remains valid until revoked or expired. Upon being presented with this declaration, a physician or provider must make it a part of the person’s medical record. When acting under authority of the declaration, a physician or provider must comply with it to the fullest extent possible. If the physician or provider is unwilling to comply with the declaration, the physician or provider may withdraw from providing treatment consistent with professional judgment and must promptly notify the person and the person’s representative and document the notification in the person’s medical record. A physician or provider who administers or does not administer mental health treatment according to and in good faith reliance upon the validity of this declaration is not subject to criminal prosecution, civil liability or professional disciplinary action resulting from a subsequent finding of the declaration’s invalidity.

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### (Information Sharing)

**SECTION 18.** ORS 426.155 is amended to read:

426.155. (1) The provisions of this section apply to the release of information about a person who is held in custody either pending a commitment proceeding under ORS 426.070, 426.140, 426.228, 426.232, 426.233 or [426.237 (1)(b)] **section 8 of this 2025 Act** or while committed or recommitted under ORS 426.005 to 426.390.

(2) Notwithstanding the provisions of ORS 179.495, 179.505 or 192.355 (2) and notwithstanding any other provision of ORS 426.005 to 426.390, a facility or nonhospital facility where a person is held shall establish procedures for releasing information as required under subsections (3) and (4) of this section.

(3)(a) If a person described in subsection (1) of this section authorizes disclosure as provided in subsection (5) of this section, upon request of a member of the family of the person, or any other designee of the person, a facility or nonhospital facility where the person is held shall provide the family member or the designee with the following information:

- (A) The person’s diagnosis;
- (B) The person’s prognosis;
- (C) The medications prescribed for the person and the side effects of medications prescribed, if any;
- (D) The person’s progress;
- (E) Information about any civil commitment process, including the date, time and location of the person’s commitment hearing; and
- (F) Where and when the person may be visited.

(b) If a request for information is made under this subsection and the person is unable to authorize disclosure as provided in subsection (5) of this section, the requester shall be provided notice of the presence of the person in any facility or nonhospital facility. Information shall not be provided under this paragraph if the licensed independent practitioner who is treating the person determines that it would not be in the person’s best interest to provide the information or if providing the information is prohibited by federal law.

(4) Upon the admission of any person to a facility or nonhospital facility under ORS 426.005 to 426.390, the facility or nonhospital facility shall make reasonable attempts to notify the person’s next of kin, or any other designee of the person, of the person’s admission, unless the person requests that this information not be provided. The facility or nonhospital facility shall make reasonable attempts to notify the person’s next of kin, or any other designee of the person, of the person’s release, transfer, serious illness, injury or death upon request of the family member or designee,

unless the person requests that this information not be provided. The person shall be advised by the facility or nonhospital facility that the person has the right to request that this information not be provided.

(5) The person who is held in custody shall be notified by the facility or nonhospital facility that information about the person has been requested. Except as provided in subsection (3) of this section, the consent of the person who is held is required for release of information under subsections (3) and (4) of this section. If, when initially informed of the request for information, the person is unable to give voluntary and informed consent to authorize the release of information, notation of the attempt shall be made in the person's treatment record and daily efforts shall be made to secure the person's consent or refusal of authorization.

(6) Notwithstanding any other provision of this section, an individual eligible to receive information under subsection (3) of this section may not receive information unless the individual first agrees to make no further disclosure of the information. The agreement may be made orally.

(7) A facility or nonhospital facility that releases information under subsection (3) or (4) of this section shall:

(a) Notify the person who is held to whom, when and what information was released; and

(b) Note in the medical record of the person who is held:

(A) The basis for finding that the person gave voluntary and informed consent;

(B) The oral or written consent of the person who is held;

(C) To whom, when and what information was released;

(D) The agreement to the requirements of subsection (6) of this section by the requester; and

(E) Any determination made by the licensed independent practitioner under subsection (3)(b) of this section regarding the provision of notice of the presence of the person in any facility or nonhospital facility.

(8) A facility or nonhospital facility, including the staff of such facilities and nonhospital facilities, that releases information under this section or rules adopted under ORS 426.236 may not be held civilly or criminally liable for damages caused or alleged to be caused by the release of information or the failure to release information as long as the release was done in good faith and in compliance with subsections (3) and (4) of this section or rules adopted under ORS 426.236.

(9) The provisions of subsections (3) and (4) of this section do not limit the ability or obligation of facilities, nonhospital facilities, licensed independent practitioners, mental health care providers or licensed mental health professionals to provide information:

**(a) To other health care services providers, the Department of Corrections, the Oregon Health Authority or a local correctional facility when necessary or beneficial to the person's treatment, as provided under ORS 179.505 (6); or**

**(b) As otherwise allowed or required by state or federal law or by order of the court.**

#### (Conforming Amendments)

**SECTION 19.** ORS 426.060 is amended to read:

426.060. (1) Commitments to the Oregon Health Authority shall be made only by the judge of a circuit court in a county of this state.

(2) The following is a nonexclusive list of powers the authority may exercise concerning the placement of persons committed or persons receiving emergency care and treatment under ORS 426.070, 426.228 to 426.235 or [426.237] **section 8 of this 2025 Act:**

(a) In its discretion and for reasons which are satisfactory to the authority, the authority may direct any court-committed person to the facility best able to treat the person. The decision of the authority on such matters shall be final.

(b) At any time, for good cause and in the best interest of the person with mental illness, the authority may transfer a committed person from one facility to another. When transferring a person under this paragraph, the authority shall make the transfer:



(A) If the transfer is from a facility in one class to a facility of the same class, as provided by rule of the authority;

(B) If the transfer is from a facility in one class to a facility in a less restrictive class, by following the procedures for trial visits under ORS 426.273; and

(C) If the transfer is from a facility in one class to a facility in a more restrictive class, by following the procedures under ORS 426.275.

(c) At any time, for good cause and in the best interest of the person with mental illness, the authority may transfer a person receiving emergency care and treatment under ORS 426.070 or 426.228 to 426.235, or [*intensive treatment under ORS 426.237*] **diversion from commitment under section 8 of this 2025 Act**, between hospitals and nonhospital facilities approved by the authority to provide emergency care or treatment as defined by rule of the authority.

(d) Pursuant to its rules, the authority may delegate to a community mental health program director the responsibility for assignment of persons with mental illness to suitable facilities or transfer between such facilities under conditions which the authority may define.

**SECTION 20.** ORS 426.072 is amended to read:

426.072. (1) A hospital or nonhospital facility must comply with provisions of subsection (2) of this section when a person alleged to have a mental illness **and to be in need of treatment** is placed in custody at the hospital or nonhospital facility:

(a) By a warrant of detention under ORS 426.070;

(b) By a peace officer under ORS 426.228 or other individual authorized under ORS 426.233; or

(c) By a licensed independent practitioner under ORS 426.232.

(2) In circumstances described under subsection (1) of this section, the hospital or nonhospital facility and a treating licensed independent practitioner must comply with all the following:

(a) The person shall receive the care, custody and treatment required for mental and physical health and safety.

(b) The treating licensed independent practitioner shall report any care, custody and treatment to the court as required in ORS 426.075.

(c) All methods of treatment, including the prescription and administration of drugs, shall be the sole responsibility of the treating licensed independent practitioner. However, the person [*shall not be subject to electroshock therapy or unduly hazardous treatment*] **may not be subjected to unusual or hazardous treatment procedures, including convulsive therapy**, and shall receive usual and customary treatment in accordance with medical standards in the community.

(d) The treating licensed independent practitioner shall be notified immediately of any seclusion of the person or use of mechanical restraints on the person. Every use of seclusion or mechanical restraint and the reasons for the use shall be made a part of the clinical record of the person over the signature of the treating licensed independent practitioner.

(e) The treating licensed independent practitioner shall give the person the warning under ORS 426.123 at times the treating licensed independent practitioner determines the person will reasonably understand the notice. This paragraph only requires the notice to be given as often as the licensed independent practitioner determines is necessary to assure that the person is given an opportunity to be aware of the notice.

(3) The Oregon Health Authority shall adopt rules necessary to carry out this section, including rules regarding the content of the medical record compiled during the current period of custody.

**SECTION 21.** ORS 426.075 is amended to read:

426.075. This section establishes procedures that are required to be followed before the hearing if a court, under ORS 426.070, orders a hearing under ORS 426.095. The following apply as described:

(1) The court shall be fully advised of all drugs and other treatment known to have been administered to the person alleged to have a mental illness **and to be in need of treatment** that may substantially affect the ability of the person to prepare for or function effectively at the hearing. The following shall advise the court as required by this subsection:

(a) When not otherwise provided by paragraph (b) of this subsection, the community mental health program director or designee.

(b) When the person has been detained by a warrant of detention under ORS 426.070[,] **or under ORS 426.180, 426.228, 426.232 or 426.233**, the treating licensed independent practitioner.

(2) The court shall appoint examiners under ORS 426.110 sufficiently in advance of the hearing so that the examiners may begin their preparation for the hearing. The records established by the Oregon Health Authority by rule and the investigation report shall be made available to the examiners at least 24 hours before the hearing in order that the examiners may review the medical record and have an opportunity to inquire of the medical personnel concerning the treatment [of the person alleged to have a mental illness] during the detention period prior to the hearing **of the person alleged to have a mental illness and to be in need of treatment**.

(3) The medical record described in subsection (2) of this section shall be made available **at least 24 hours prior to the hearing** to counsel for the person alleged to have a mental illness **and to be in need of treatment** [at least 24 hours prior to the hearing].

(4) When requested by a party to the action, the party's attorney shall subpoena licensed independent practitioners who are or have been treating the person. Any treating licensed independent practitioner subpoenaed under this subsection shall be subpoenaed as an expert witness.

**SECTION 22.** ORS 426.133 is amended to read:

426.133. (1) As used in ORS 426.005 to 426.390, "assisted outpatient treatment" may not be construed to be a commitment under ORS 426.130 and does not include taking a person into custody or the forced medication of a person.

(2) A court may issue an order requiring a person to participate in assisted outpatient treatment if the court finds that the person:

(a)(A) Is 18 years of age or older;

(B) Has a mental disorder;

(C) Will not obtain treatment in the community voluntarily; and

(D) Is unable to make an informed decision to seek or to comply with voluntary treatment; and

(b) As a result of being a person described in paragraph (a) of this subsection:

(A) Is incapable of surviving safely in the community without treatment; and

(B) Requires treatment to prevent a deterioration in the person's condition that will predictably result in the person becoming a person with mental illness.

(3) In determining whether to issue the order under subsection (2) of this section, the court shall consider, but is not limited to considering, the following factors:

(a) The person's ability to access finances in order to get food or medicine.

(b) The person's ability to obtain treatment for the person's medical condition.

(c) The person's ability to access necessary resources in the community without assistance.

(d) The degree to which there are risks to the person's safety.

(e) The likelihood that the person will decompensate without immediate care or treatment.

(f) The person's previous attempts to inflict physical injury on self or others.

(g) The person's history of mental health treatment in the community.

(h) The person's patterns of decompensation in the past.

(i) The person's risk of being victimized or harmed by others.

(j) The person's access to the means to inflict harm on self or others.

(4) The community mental health program director may recommend to the court a treatment plan for a person participating in assisted outpatient treatment. The court may adopt the plan as recommended or with modifications.

(5) As part of the order under subsection (2) of this section, the court may prohibit the person from purchasing or possessing a firearm during the period of assisted outpatient treatment if, in the opinion of the court, there is a reasonable likelihood the person [would constitute] **is** a danger to self or others, or to the community at large, as a result of the person's mental or psychological state, as demonstrated by past behavior or participation in incidents involving unlawful violence or threats of unlawful violence, or by reason of a single incident of extreme, violent, unlawful conduct. When a court adds a firearm prohibition to an order under subsection (2) of this section, the court shall

cause a copy of the order to be delivered to the sheriff of the county, who shall enter the information into the Law Enforcement Data System.

(6) The court retains jurisdiction over the person until the earlier of the end of the period of the assisted outpatient treatment established under ORS 426.130 [(2)] or until the court finds that the person no longer meets the criteria in subsection (2) of this section.

(7) This section does not:

(a) Prevent a court from appointing a guardian ad litem to act for the person; or

(b) Require a community mental health program to provide treatment or services to, or supervision of, the person:

(A) If the county lacks sufficient funds for such purposes; or

(B) In the case of a county that has declined to operate or contract for a community mental health program, if the public agency or private corporation that contracts with the Oregon Health Authority to provide the program, as described in ORS 430.640, lacks sufficient funds for such purposes.

**SECTION 23.** ORS 426.160 is amended to read:

426.160. (1) The court having jurisdiction over any proceeding conducted pursuant to ORS 426.005, 426.060 to 426.170, 426.217, 426.228, 426.255 to 426.292, 426.300 to 426.309, 426.385, 426.395, 426.701 [and] or 426.702 may not disclose any part of the record of the proceeding or commitment to any person except:

(a) The court shall, pursuant to rules adopted by the Department of State Police, transmit the minimum information necessary, as defined in ORS 181A.290, to the Department of State Police for persons described in ORS 181A.290 (1)(a) or (b) to enable the department to access and maintain the information and transmit the information to the federal government as required under federal law;

(b) As provided in ORS 426.070 (5)(c), 426.130 [(3)] (4) or 426.170;

(c) On request of the person subject to the proceeding;

(d) On request of the person's legal representative or [*the attorney for the person or*] **legal counsel or the attorney for the state**; or

(e) Pursuant to court order.

(2) In any proceeding described in subsection (1) of this section that is before the Supreme Court or the Court of Appeals, the limitations on disclosure imposed by this section apply to the appellate court record and to the trial court record while it is in the appellate court's custody. The appellate court may disclose information from the trial or appellate court record in a decision, as defined in ORS 19.450, provided that the court uses initials, an alias or some other convention for protecting against public disclosure the identity of the person subject to the proceeding.

**SECTION 24.** ORS 426.180 is amended to read:

426.180. (1) ORS 426.180 to 426.210 apply to the commitment of an individual in Indian country if a federally recognized Indian tribe that has Indian country located within this state chooses to exercise the tribe's authority over the commitment.

(2) As used in this section and ORS 426.200 and 426.210, "hospital" means a hospital that is licensed under ORS chapter 441, other than an institution listed in ORS 426.010.

(3) If the court of a tribe having jurisdiction over an individual issues an order finding that the individual is [*dangerous*] **a danger** to self or [*to any other person*] **others** and is in need of immediate care, custody or treatment for mental illness, a person may request that the individual be taken by a tribal police officer or other peace officer to a hospital or nonhospital facility by submitting to the officer a certified copy of the order and an affidavit that includes:

(a) The name and address of the nearest relative or legal guardian of the individual; and

(b) A medical history completed by one of the following, who may not be related to the individual by blood or marriage:

(A) The tribe's mental health authority, if the tribe has entered into an agreement with the state pursuant to ORS 430.630 (9)(a)(B);

(B) A qualified mental health professional; or

(C) A licensed independent practitioner.

(4) Upon receipt of the order and affidavit described in subsection (3) of this section, the tribal police officer or other peace officer shall immediately transport the individual to a hospital or a nonhospital facility and present the individual to the hospital or nonhospital facility accompanied by the court order and affidavit.

(5) The director of the hospital or nonhospital facility may refuse to admit the individual if a licensed independent practitioner, after reviewing the documents accompanying the individual, is not satisfied that an emergency exists or that the individual is [*dangerous*] **a danger** to self or others and **is** in need of immediate care, custody or treatment for mental illness.

(6) If the hospital or nonhospital facility admits the individual, the director or a licensed independent practitioner shall notify the community mental health program director for the area and the circuit court with jurisdiction in the area where the facility is located. Upon receipt of the notice, the community mental health program director shall initiate commitment proceedings in accordance with ORS 426.070.

(7) If an individual is admitted to a hospital or nonhospital facility under this section, any licensed independent practitioner who is treating the individual shall give the individual the warning under ORS 426.123.

(8) This section may be applied as provided by agreement with the governing body of the reservation. Payment of costs for a commitment made under this section shall be as provided under ORS 426.250.

(9) The director of the hospital or nonhospital facility or licensed independent practitioner shall notify the appropriate tribe regarding all actions taken under ORS 426.180 to 426.210 no later than 24 hours after the action is taken, except for information protected from disclosure by state or federal law.

**SECTION 25.** ORS 426.223 is amended to read:

426.223. In retaking custody of a person with mental illness who has been committed to the Oregon Health Authority under ORS 426.130 and who has, without lawful authority, left the custody of the facility to which the person has been assigned under ORS 426.060, or in the case of a person alleged to have a mental illness **and to be in need of treatment** who is in custody under ORS 426.070, 426.095, 426.228 to 426.235 or [426.237] **section 8 of this 2025 Act** at a hospital or nonhospital facility and who has, without lawful authority, left the hospital or nonhospital facility, the facility director or designee has all the powers provided by ORS 133.225 and 161.255 and may require the assistance of any peace officer or other authorized individual.

**SECTION 26.** ORS 426.225 is amended to read:

426.225. (1) If any person who has been committed to the Oregon Health Authority under ORS 426.127 or 426.130 [(1)(a)(B)] **(2)(a)(B)** or (C) requests, during this period of commitment, voluntary admission to a state hospital, the superintendent shall cause the person to be examined immediately by a licensed independent practitioner. If the licensed independent practitioner finds the person to be in need of immediate care or treatment for mental illness, the person shall be voluntarily admitted.

(2) If any person who has been committed to the authority under ORS 426.127 or 426.130 [(1)(a)(B)] **(2)(a)(B)** or (C) requests, during this period of commitment, voluntary admission to a facility approved by the authority, the administrator of the facility shall cause the person to be examined immediately by a licensed independent practitioner. If the licensed independent practitioner finds the person to be in need of immediate care or treatment for mental illness, and the authority grants approval, the person shall be voluntarily admitted.

**SECTION 27.** ORS 426.228 is amended to read:

426.228. (1) A peace officer may take into custody a person who the officer has probable cause to believe is [*dangerous*] **a danger** to self or [*to any other person*] **others** and is in need of immediate care, custody or treatment for mental illness. As directed by the community mental health program director, a peace officer shall remove a person taken into custody under this section to the nearest hospital or nonhospital facility approved by the Oregon Health Authority. The officer shall prepare

a written report and deliver it to the licensed independent practitioner who is treating the person. The report shall state:

- (a) The reason for custody;
- (b) The date, time and place the person was taken into custody; and
- (c) The name of the community mental health program director and a telephone number where the director may be reached at all times.

(2) A peace officer shall take a person into custody when the community mental health program director, pursuant to ORS 426.233, notifies the peace officer that the director has probable cause to believe that the person is [*imminently dangerous*] **an imminent danger** to self or [*to any other person*] **others**. As directed by the community mental health program director, the peace officer shall remove the person to a hospital or nonhospital facility approved by the authority. The community mental health program director shall prepare a written report that the peace officer shall deliver to the licensed independent practitioner who is treating the person. The report shall state:

- (a) The reason for custody;
- (b) The date, time and place the person was taken into custody; and
- (c) The name of the community mental health program director and a telephone number where the director may be reached at all times.

(3) If more than one hour will be required to transport the person to the hospital or nonhospital facility from the location where the person was taken into custody, the peace officer shall obtain, if possible, a certificate from a licensed independent practitioner stating that the travel will not be detrimental to the person's physical health and that the person is [*dangerous*] **a danger** to self or [*to any other person*] **others** and is in need of immediate care or treatment for mental illness. The licensed independent practitioner shall have personally examined the person within 24 hours prior to signing the certificate.

(4) When a peace officer or other authorized individual, acting under this section, delivers a person to a hospital or nonhospital facility, a licensed independent practitioner shall examine the person immediately. If the licensed independent practitioner finds the person to be in need of emergency care or treatment for mental illness, the licensed independent practitioner shall proceed under ORS 426.232, otherwise the person may not be retained in custody. If the person is to be released from custody, the peace officer or the community mental health program director shall return the person to the place where the person was taken into custody unless the person declines that service.

(5) A peace officer may transfer a person in custody under this section to the custody of an individual authorized by the community mental health program director under ORS 426.233 (3). The peace officer may meet the authorized individual at any location that is in accordance with ORS 426.140 to effect the transfer. When transferring a person in custody to an authorized individual, the peace officer shall deliver the report required under subsections (1) and (2) of this section to the authorized individual.

(6) An individual authorized under ORS 426.233 (3) shall take a person into custody when directed to do so by a peace officer or by a community mental health program director under ORS 426.233.

(7) An individual authorized under ORS 426.233 (3) shall perform the duties of the peace officer or the community mental health program director required by this section and ORS 426.233 if the peace officer or the director has not already done so.

(8) An individual authorized under ORS 426.233 (3) may transfer a person in custody under this section to the custody of another individual authorized under ORS 426.233 (3) or a peace officer. The individual transferring custody may meet another authorized individual or a peace officer at any location that is in accordance with ORS 426.140 to effect the transfer.

(9)(a) When a peace officer takes a person into custody under this section, and the peace officer reasonably suspects that the person is a foreign national, the peace officer shall inform the person of the person's right to communicate with an official from the consulate of the person's country.

(b) A peace officer is not civilly or criminally liable for failure to provide the information required by this subsection. Failure to provide the information required by this subsection does not in itself constitute grounds for the exclusion of evidence that would otherwise be admissible in a proceeding.

**SECTION 28.** ORS 426.231 is amended to read:

426.231. (1) A licensed independent practitioner may hold a person for transportation to a treatment facility for up to 12 hours in a health care facility licensed under ORS chapter 441 and approved by the Oregon Health Authority if:

(a) The licensed independent practitioner believes the person is [*dangerous*] **a danger** to self or [*to any other person*] **others** and is in need of emergency care or treatment for mental illness;

(b) The licensed independent practitioner is not related to the person by blood or marriage; and

(c) A licensed independent practitioner with admitting privileges at the receiving facility consents to the transporting.

(2) Before transporting the person, the licensed independent practitioner shall prepare a written statement that:

(a) The licensed independent practitioner has examined the person within the preceding 12 hours;

(b) A licensed independent practitioner with admitting privileges at the receiving facility has consented to the transporting of the person for examination and admission if appropriate; and

(c) The licensed independent practitioner believes the person is [*dangerous*] **a danger** to self or [*to any other person*] **others** and is in need of emergency care or treatment for mental illness.

(3) The written statement required by subsection (2) of this section authorizes a peace officer, an individual authorized under ORS 426.233 or the designee of a community mental health program director to transport a person to the treatment facility indicated on the statement.

**SECTION 29.** ORS 426.232 is amended to read:

426.232. (1) If a licensed independent practitioner believes a person who is brought to a hospital or nonhospital facility by a peace officer under ORS 426.228 or by an individual authorized under ORS 426.233, or believes a person who is at a hospital or nonhospital facility, is [*dangerous*] **a danger** to self or [*to any other person*] **others** and is in need of emergency care or treatment for mental illness, and the licensed independent practitioner is not related to the person by blood or marriage, the licensed independent practitioner may do one of the following:

(a) Detain the person and cause the person to be admitted or, if the person is already admitted, cause the person to be retained in a hospital where the licensed independent practitioner has admitting privileges or is on staff.

(b) Approve the person for emergency care or treatment at a nonhospital facility approved by the authority.

(2) When approving a person for emergency care or treatment at a nonhospital facility under this section, the licensed independent practitioner shall notify immediately the community mental health program director in the county where the person was taken into custody and maintain the person, if the person is being held at a hospital, for as long as is feasible given the needs of the person for mental or physical health or safety. However, under no circumstances may the person be held for longer than five judicial days.

**SECTION 30.** ORS 426.233 is amended to read:

426.233. (1)(a) A community mental health program director operating under ORS 430.610 to 430.695 or a designee of the director may take one of the actions listed in paragraph (b) of this subsection when the community mental health program director or designee has probable cause to believe a person:

(A) Is [*dangerous*] **a danger** to self or [*to any other person*] **others** and is in need of immediate care, custody or treatment for mental illness; or

(B)(i) Is a person with mental illness placed on conditional release under ORS 426.125, outpatient commitment under ORS 426.127 or trial visit under ORS 426.273; and

(ii) Is [*dangerous*] **a danger** to self or [*to any other person*] **others** or is unable to provide for basic personal needs and is not receiving the care that is necessary for health and safety and is in need of immediate care, custody or treatment for mental illness.

(b) The community mental health program director or designee under the circumstances set out in paragraph (a) of this subsection may:

(A) Notify a peace officer to take the person into custody and direct the officer to remove the person to a hospital or nonhospital facility approved by the Oregon Health Authority;

(B) Authorize involuntary admission of, or, if already admitted, cause to be involuntarily retained in a nonhospital facility approved by the authority, a person approved for care or treatment at a nonhospital facility by a licensed independent practitioner under ORS 426.232;

(C) Notify an individual authorized under subsection (3) of this section to take the person into custody and direct the authorized individual to remove the person in custody to a hospital or nonhospital facility approved by the authority;

(D) Direct an individual authorized under subsection (3) of this section to transport a person in custody from a hospital or a nonhospital facility approved by the authority to another hospital or nonhospital facility approved by the authority as provided under ORS 426.235; or

(E) Direct an individual authorized under subsection (3) of this section to transport a person in custody from a facility approved by the authority to another facility approved by the authority as provided under ORS 426.060.

(2) A designee under subsection (1) of this section must meet the standards established by rule of the authority and be approved by the community mental health program director before assuming the authority permitted under subsection (1) of this section.

(3) The community mental health program director may authorize any individual to provide custody and secure transportation services for a person in custody under ORS 426.228. In authorizing an individual under this subsection, the community mental health program director shall grant the individual the authority to do the following:

(a) Accept custody from a peace officer of a person in custody under ORS 426.228;

(b) Take custody of a person upon notification by the community mental health program director under the provisions of this section;

(c) Remove a person in custody to an approved hospital or nonhospital facility as directed by the community mental health program director;

(d) Transfer a person in custody to another individual authorized under this subsection or a peace officer;

(e) Transfer a person in custody from a hospital or nonhospital facility to another hospital facility or nonhospital facility when directed to do so by the community mental health program director; and

(f) Retain a person in custody at the approved hospital or nonhospital facility until a licensed independent practitioner makes a determination under ORS 426.232.

(4) An individual authorized under subsection (3) of this section must meet the standards established by rule of the authority and be approved by the community mental health program director before assuming the authority granted under this section.

(5) The costs of transporting a person under ORS 426.060, 426.228 or 426.235 by an individual authorized under subsection (3) of this section shall be the responsibility of the community mental health program in the county in which the authorized individual is directed by a peace officer or a community mental health program director to take custody of a person and to transport the person to a facility approved by the authority, but the community mental health program shall not be responsible for costs that exceed the amount provided by the state for that transportation. An individual authorized to act under subsection (3) of this section shall charge the cost of emergency medical transportation to, and collect that cost from, the person, third party payers or other legally or financially responsible individuals or entities in the same manner that costs for the transportation of other persons are charged and collected.

**SECTION 31.** ORS 426.234 is amended to read:

426.234. (1) At the time a person alleged to have a mental illness is admitted to or retained in a hospital or nonhospital facility under ORS 426.232 or 426.233, a licensed independent practitioner, nurse or qualified mental health professional at the hospital or nonhospital facility shall:

(a) Inform the person of the person's right to representation by or appointment of counsel as described in ORS 426.100;

(b) Give the person the warning under ORS 426.123;

(c) Immediately examine the person;

(d) Set forth, in writing, the condition of the person and the need for emergency care or treatment; and

(e) If the licensed independent practitioner, nurse or qualified mental health professional reasonably suspects that the person is a foreign national, inform the person of the person's right to communicate with an official from the consulate of the person's country. A licensed independent practitioner, nurse or qualified mental health professional is not civilly or criminally liable for failure to provide the information required by this paragraph. Failure to provide the information required by this paragraph does not in itself constitute grounds for the exclusion of evidence that would otherwise be admissible in a proceeding.

(2)(a) At the time the person is admitted to or retained in a hospital under ORS 426.232, the licensed independent practitioner shall contact the community mental health program director of the county in which the person resides, if the county of residence is different from the county in which the hospital is located. The community mental health program director may request that the licensed independent practitioner notify the circuit court in the county in which the person resides. If the community mental health program director does not make the request, the licensed independent practitioner shall notify, immediately and in writing, the circuit court in the county in which the person is hospitalized.

(b) At the time the person is admitted to a hospital under ORS 426.232 after being brought to the hospital by a peace officer under ORS 426.228, the licensed independent practitioner shall contact the community mental health program director of the county in which the person is hospitalized. The community mental health program director of the county in which the person is hospitalized may request that the licensed independent practitioner notify the circuit court in the county in which the person is hospitalized. If the community mental health program director does not make the request, the licensed independent practitioner shall notify, immediately and in writing, the circuit court in the county in which the person was taken into custody.

(c) If, at any time prior to the hearing under ORS 426.070 to [426.130] **426.170**, the licensed independent practitioner responsible for a person admitted or retained under ORS 426.232 determines that the person is not [*dangerous*] **a danger** to self or [*to any other person*] **others** and is not in need of emergency care or treatment for mental illness, the licensed independent practitioner may release the person from the detention authorized by ORS 426.232. The licensed independent practitioner shall immediately notify the circuit court notified under this subsection and the community mental health program director of the person's release from detention.

(3)(a) At the time the person is admitted to or retained in a nonhospital facility under ORS 426.233, the community mental health program director in the county where the person was taken into custody shall contact the community mental health program director of the county in which the person resides, if the county of residence is different from the county in which the person was taken into custody. The community mental health program director of the county in which the person resides may request that the community mental health program director of the county in which the person was taken into custody notify the circuit court in the county where the person resides. Otherwise, the community mental health program director of the county in which the person was taken into custody shall notify, immediately and in writing, the circuit court in the county in which the person was taken into custody.

(b) If, at any time prior to the hearing under ORS 426.070 to [426.130] **426.170**, a community mental health program director, after consultation with a licensed independent practitioner, determines that a person admitted or retained under ORS 426.233 is not [*dangerous*] **a danger** to self or



[to any other person] **others** and is not in need of immediate care, custody or treatment for mental illness, the community mental health program director may release the person from detention. The community mental health program director shall immediately notify the circuit court originally notified under paragraph (a) of this subsection of the person's release from detention.

(4) When the judge of the circuit court receives notice under subsection (2) or (3) of this section, the judge immediately shall commence proceedings under ORS 426.070 to [426.130] **426.170**. In a county having a population of 100,000 or more, and when feasible in a county with a lesser population, the community mental health program director or designee who directs the peace officer or other authorized individual to take a person into custody under ORS 426.233 [shall] **may** not also conduct the investigation as provided for under ORS 426.074. Except when a person is [being held under ORS 426.237 (1)(b)] **participating in diversion from commitment under section 8 of this 2025 Act**, a person [shall] **may** not be held under ORS 426.232 or 426.233 for more than five judicial days without a hearing being held under ORS 426.070 to [426.130] **426.170**.

(5) When the judge of the circuit court receives notice under subsection (2)(c) or (3)(b) of this section that a person has been released, and unless the court receives the recommendation required by ORS 426.070 (4), the judge shall dismiss the case no later than 14 days after the date the person was initially detained.

**SECTION 32.** ORS 426.235 is amended to read:

426.235. (1) The community mental health program director may transfer a person in custody under ORS 426.232, 426.233 or [426.237 (1)(b)] **section 8 of this 2025 Act** to a hospital or nonhospital facility approved by the Oregon Health Authority at any time during the period of detention.

(2) A person in custody at a hospital may be transferred from the hospital only with the consent of the licensed independent practitioner who is treating the person and when the director of a nonhospital facility approved by the authority agrees to admit the person.

(3) A person in custody at a nonhospital facility approved by the authority may be transferred to a hospital approved by the authority only when a licensed independent practitioner with admitting privileges agrees to admit the person.

(4) In transporting a person between a hospital and nonhospital facility under this section, the community mental health program director has all the powers provided in ORS 133.225 and 161.255 and may compel the assistance of any peace officer or other authorized individual.

(5) When a person is transferred under this section, the community mental health program director shall notify immediately the court notified under ORS 426.234 (2) or (3) of the fact of the transfer and of the location of the person.

**SECTION 33.** ORS 426.236 is amended to read:

426.236. The Oregon Health Authority shall adopt rules necessary to carry out the provisions of ORS 426.155 [and], 426.228 to **426.235, 426.237 and** 426.238.

**SECTION 34.** ORS 426.238 is amended to read:

426.238. The Oregon Health Authority may assign classifications, as defined by rule of the authority, to facilities that provide care and treatment for persons committed to the authority under ORS 426.130 or provide emergency care or treatment for persons pursuant to ORS 426.070, 426.228 to 426.235 or [426.237] **section 8 of this 2025 Act**. The authority may authorize a facility to retake custody of a person who unlawfully leaves a facility as provided in ORS 426.223.

**SECTION 35.** ORS 426.241 is amended to read:

426.241. (1) The cost of emergency psychiatric care, custody and treatment related to or resulting from such psychiatric condition, provided by a hospital or other facility approved by the Oregon Health Authority and the community mental health program director of the county in which the facility is located, except a state hospital, for a person alleged to have a mental illness **and to be in need of treatment** who is admitted or detained under ORS 426.070, 426.140, 426.228, 426.232 or 426.233, or for a person with mental illness who is admitted or detained under ORS 426.150, 426.223, 426.273, 426.275 or 426.292, shall be paid by the community mental health program in the county of which the person is a resident from state funds provided to the community mental health program for this purpose. The community mental health program is responsible for the cost when state funds

provided to the community mental health program are exhausted. The hospital or other facility shall charge to and collect from the person, third party payers or other legally or financially responsible individuals or entities the costs of the emergency care, custody and treatment, as it would for any other patient, and any funds received shall be applied as an offset to the cost of the services provided under this section.

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

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

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

(5)(a) The authority may deny payment for part or all of the emergency psychiatric services provided by a hospital or nonhospital facility under ORS 426.232, 426.233 or [426.237] **section 8 of this 2025 Act** when the authority finds, upon review, that the condition of the person alleged to have a mental illness did not meet the admission criteria in ORS 426.232 (1), 426.233 (1) or [426.237 (1)(b)(A)] **section 8 (1)(a) of this 2025 Act**. The payer responsible under this section shall make a request for denial of payment for emergency psychiatric services provided under ORS 426.232, 426.233 or [426.237] **section 8 of this 2025 Act** in writing to the authority.

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

(A) A hospital or nonhospital facility approved under ORS 426.228 to 426.235 or [426.237] **section 8 of this 2025 Act**.

(B) A physician or a person providing emergency psychiatric services under ORS 426.228 to 426.235 or [426.237] **section 8 of this 2025 Act**.

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

**SECTION 36.** ORS 426.385 is amended to read:

426.385. (1) Every person with mental illness committed to the Oregon Health Authority shall have the right to:

- (a) Communicate freely in person and by reasonable access to telephones;
- (b) Send and receive sealed mail, except that this right may be limited for security reasons in state institutions as described in ORS 426.010;
- (c) Wear the clothing of the person;
- (d) Keep personal possessions, including toilet articles;
- (e) Religious freedom;
- (f) A private storage area with free access thereto;
- (g) Be furnished with a reasonable supply of writing materials and stamps;
- (h) A written treatment plan, kept current with the progress of the person;
- (i) Be represented by counsel whenever the substantial rights of the person may be affected;
- (j) Petition for a writ of habeas corpus;
- (k) Not be required to perform routine labor tasks of the facility except those essential for treatment;

(L) Be given reasonable compensation for all work performed other than personal housekeeping duties;

(m) Daily access to fresh air and the outdoors, except that this right may be limited when it would create significant risk of harm to the person or others;

(n) Reasonable privacy and security in resting, sleeping, dressing, bathing, personal hygiene and toileting, except that this right may be limited when it would create significant risk of harm to the person or others;

(o) Such other rights as may be specified by rule; and

(p) Exercise all civil rights in the same manner and with the same effect as one not admitted to the facility, including, but not limited to, the right to dispose of real property, execute instruments, make purchases, enter contractual relationships, and vote, unless the person has been adjudicated incompetent and has not been restored to legal capacity. Disposal of personal property in possession of the person in a state institution described in ORS 426.010 is subject to limitation for security reasons.

(2)(a) A person must be immediately informed, orally and in writing, of any limitation:

(A) Of the right to send or receive sealed mail under subsection (1)(b) of this section;

(B) Regarding the disposal of personal property under subsection (1)(p) of this section;

(C) Of the right to reasonable privacy and security in resting, sleeping, dressing, bathing, personal hygiene and toileting under subsection (1)(n) of this section; and

(D) Of the right to daily access to fresh air and the outdoors under subsection (1)(m) of this section.

(b) Any limitation under this subsection and the reasons for the limitation must be stated in the person's written treatment plan.

(c) The person has the right to challenge any limitation under this subsection pursuant to rules adopted by the authority. The person must be informed, orally and in writing, of this right.

(3) A person with mental illness committed to the authority shall have the right to be free from potentially unusual or hazardous treatment procedures, including convulsive therapy, unless the person has given express and informed consent or authorized the treatment pursuant to **a declaration for mental health treatment described in ORS 127.700 to 127.737**. This right may be denied to a person for good cause as defined in administrative rule only by the director of the facility in which the person is confined, but only after consultation with and approval of an independent examining physician. Any denial shall be entered into the person's treatment record and shall include the reasons for the denial. A person with mental illness may not be subjected to psychosurgery, as defined in ORS 677.190 (21)(b).

(4) Mechanical restraints [*shall*] **may** not be applied to a person admitted to a facility unless it is determined by the chief medical officer of the facility or designee to be required by the medical needs of the person. Every use of a mechanical restraint and the reasons for using a mechanical restraint shall be made a part of the clinical record of the person over the signature of the chief medical officer of the facility or designee.

(5) Nothing in this section prevents the authority from acting to exclude contraband from its facilities and to prevent possession or use of contraband in its facilities.

(6) As used in this section:

(a) "Contraband" has the meaning given that term in ORS 162.135.

(b) "Security reasons" means the protection of the person with mental illness from serious and immediate harm and the protection of others from threats or harassment as defined by rule of the authority.

## COMMITMENT OF EXTREMELY DANGEROUS PERSONS

**SECTION 37.** ORS 426.701 is amended to read:

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

(a) A person is "extremely dangerous" if the person:

(A) Is at least 18 years of age;  
(B) Is exhibiting symptoms or behaviors of a qualifying mental disorder substantially similar to those that preceded the act described in subsection (3)(a)(C) of this section; and

(C) Because of a qualifying mental disorder:

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

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

(b) "Qualifying mental disorder" does not include:

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

(B) A disorder constituting solely a personality disorder.

(c) A qualifying mental disorder is "resistant to treatment" if, after receiving care from a licensed psychiatrist and exhausting all reasonable psychiatric treatment, or after refusing psychiatric treatment, the person continues to be significantly impaired in the person's ability to make competent decisions and to be aware of and control extremely dangerous behavior.

**(d) A person "attempted to" cause a result or engage in specified conduct if the person intentionally engaged in conduct that constituted a substantial step toward causing the result or completing the specified conduct, and the substantial step created an actual and extreme risk of grave or potentially lethal physical injury to another person.**

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

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

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

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

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

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

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

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

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

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

(e) Upon receipt of the petition, the court shall schedule a hearing and shall appoint an examiner as described in ORS 426.110 to evaluate the person. If the person is in custody or committed while the hearing is pending, the hearing must commence within 30 days of filing the petition unless good cause is found by the court. If the court finds good cause, the hearing must commence no later than 60 days after the filing of the petition or, if the district attorney provided notice under para-

graph (b) of this subsection, the date of the notice, whichever occurs first. As used in this paragraph, “good cause” means:

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

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

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

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

(f)(A) The court may order that the person be committed to the custody of the superintendent of a state hospital or the director of a secure mental health facility while the petition is pending if the court finds probable cause that:

- (i) The person is at least 18 years of age;
- (ii) The person has a qualifying mental disorder that is resistant to treatment;
- (iii) The person committed an act described in subsection (3)(a)(C) of this section; and
- (iv) Failure to commit the person while the hearing is pending would pose serious harm or danger to the person or others.

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

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

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

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

- (A) The person is extremely dangerous;
- (B) The person suffers from a qualifying mental disorder that is resistant to treatment; and
- (C) Because of the qualifying mental disorder that is resistant to treatment, the person committed one of the following acts:
  - (i) Caused **or attempted to cause** the death of another person;
  - (ii) Caused **or attempted to cause** serious physical injury to another person by means of a dangerous weapon;

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

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

(v) Forcibly compelled **or attempted to forcibly compel** sexual intercourse, oral-genital contact or the penetration of another person's anus or vagina; or

(vi) Caused **or attempted to cause** a fire or explosion that damaged, **or was reasonably likely to damage**, the protected property of another, as those terms are defined in ORS 164.305, or **that** placed another person in danger of physical injury, and the fire or explosion **or attempted fire or explosion** was not the incidental result of normal and usual daily activities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(D) The right to subpoena witnesses;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(11) The board shall make reasonable efforts to notify any person described in subsection (3)(c) of this section of any order or hearing, conditional release, discharge or escape of the person committed under this section.

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

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

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

## TRIBAL/STATE COURT INTERSECTION

**SECTION 38. (1)(a) The Judicial Department shall study tribal and state interactions relating to the involuntary hospitalization and mental or behavioral health treatment of tribal members in the state civil or criminal justice systems.**

**(b) The department shall collect the following existing data:**

**(A) Data related to civil commitment proceedings involving members of one or more federally recognized tribes;**

**(B) Data related to competency proceedings for criminal defendants who are members of one or more federally recognized tribes;**

**(C) Data related to findings of guilt except for insanity for criminal defendants who are members of one or more federally recognized tribes;**



(D) Data related to the participation of members of one or more federally recognized tribes in specialty courts, including regarding culturally specific services provided or available to those members in relation to their participation in the specialty court; and

(E) Other data determined by the department to be relevant to the intersection between state and tribal mental and behavioral health judicial proceedings.

(c)(A) The department shall prepare a report analyzing the data collected under this subsection. The department shall include in the report a descriptive analysis of the barriers, if any, the department encounters collecting or analyzing the data described in this subsection.

(B) Data contained in the report must be aggregated at the statewide, countywide and tribal level for each subject identified in subsection (1) of this section.

(C) The report may not include personally identifiable information regarding any individual.

(2)(a) The Oregon Health Authority shall assist the department in the collection of the data described in subsection (1) of this section and, to the extent permitted by state and federal law, provide the department with information the department considers necessary to conduct the study described in subsection (1) of this section.

(b) Information and data collected by the department or the authority under this section may be used only for statistical purposes.

(3) The department shall submit the report described in subsection (1) of this section in the manner provided by ORS 192.245, and may include recommendations for legislation, to the interim committees of the Legislative Assembly related to the judiciary and behavioral health no later than December 15, 2025.

**SECTION 39.** (1) The Task Force on the Intersection of Tribal and State Forensic Behavioral Health is established.

(2) The task force consists of 17 members appointed as follows:

(a) The Governor shall appoint four members, as follows:

(A) One member who represents the office of the Governor;

(B) One member who represents the Oregon Health Authority;

(C) One member who represents the Department of Justice; and

(D) One member who represents community mental health providers.

(b) The Governor, in consultation with the Commission on Indian Services, shall appoint 11 members, as follows:

(A) Nine members who are tribal court judges or staff or other individuals designated by an Indian tribe, and who shall each represent one of the nine federally recognized Indian tribes located in Oregon; and

(B) Two members who represent tribal service providers.

(c) The Chief Justice of the Supreme Court shall appoint two members, as follows:

(A) One member who is a judge with expertise in the competency to proceed process; and

(B) One member who is a representative of the Tribal, State, and Federal Court Forum.

(3) The task force shall examine tribal and state interactions relating to involuntary hospitalization and mental or behavioral health treatment of tribal members in the state civil and criminal systems and:

(a) Identify data sharing needs between tribal service providers, tribal courts and non-tribal service providers, the Oregon Health Authority and Oregon courts, and identify methods for resolving barriers to data sharing;

(b) Examine mental and behavioral health care services provided within tribal lands and to tribal members and identify barriers to providing care to tribal individuals;

(c) Determine barriers to tribal members receiving care at the Oregon State Hospital pursuant to competency restoration orders or civil commitment;

(d) Examine models for tribal and state interactions relating to mental or behavioral health;

(e) Examine the results of the study described in section 38 of this 2025 Act; and  
(f) Develop recommendations concerning tribal court needs that intersect with state services and barriers to services.

(4) The task force shall invite and consider perspectives involving forensic or mental health matters before tribal courts, including prosecutors, defenders, people with lived experience, family members of persons with unmet behavioral needs and members of tribal governments.

(5) Members of the task force who are appointed by the Chief Justice of the Supreme Court are nonvoting members and may act in an advisory capacity only.

(6) Members of the task force who are tribal court judges or staff appointed under subsection (2)(b)(A) of this section shall act as liaisons between the task force and the tribal government of the tribal court on which the member serves if the tribal government designates the member to act as a liaison and, if so designated, the member shall coordinate with a person designated by the relevant tribal government, if any, to facilitate inviting and considering the perspectives of tribal members and to consult with the tribal government on the activities of the task force.

(7) A majority of the voting members of the task force constitutes a quorum for the transaction of business.

(8) Official action by the task force requires the approval of a majority of the voting members of the task force.

(9) The Governor shall select one member of the task force to serve as chairperson and another to serve as vice chairperson, for the terms and with the duties and powers necessary for the performance of the functions of the offices as the Governor determines.

(10) If there is a vacancy for any cause, the appointing authority shall make an appointment to become immediately effective.

(11) The task force shall meet at times and places specified by the call of the chairperson or of a majority of the voting members of the task force.

(12) The task force may adopt rules necessary for the operation of the task force.

(13) The task force shall submit a report in the manner provided in ORS 192.245 regarding the task force's examinations, identifications, determinations and recommendations described in subsection (3) of this section, and may include recommendations for legislation, to the interim committees of the Legislative Assembly related to the judiciary and behavioral health no later than December 15, 2026.

(14) The Judicial Department shall provide staff support to the task force.

(15) Members of the task force serve as volunteers on the task force and, unless they are qualified members, as defined in ORS 292.495, are not entitled to compensation or reimbursement for expenses.

(16) All agencies of state government, as defined in ORS 174.111, are directed to assist the task force in the performance of the duties of the task force and, to the extent permitted by laws relating to confidentiality, to furnish information and advice the members of the task force consider necessary to perform their duties.

(17) All appointments to the task force made under subsection (2) of this section must be completed on or before December 31, 2025.

(18) The task force shall have its first meeting on or before February 1, 2026.

**SECTION 40.** Sections 38 and 39 of this 2025 Act are repealed on January 2, 2027.

#### **ADMINISTRATIVE LAW JUDGE EXEMPTION**

**SECTION 41.** ORS 183.635 is amended to read:

183.635. (1) Except as provided in this section, all agencies must use administrative law judges assigned from the Office of Administrative Hearings established under ORS 183.605 to conduct con-

tested case hearings, without regard to whether those hearings are subject to the procedural requirements for contested case hearings.

(2) The following agencies need not use administrative law judges assigned from the office:

- (a) Attorney General.
- (b) Boards of stewards appointed by the Oregon Racing Commission.
- (c) Bureau of Labor and Industries and the Commissioner of the Bureau of Labor and Industries.
- (d) Department of Corrections.
- (e) Department of Education, State Board of Education and Superintendent of Public Instruction.
- (f) Department of Human Services for vocational rehabilitation services cases under 29 U.S.C. 722(c) and disability determination cases under 42 U.S.C. 405.
- (g) Department of Revenue.
- (h) Department of State Police.
- (i) Employment Appeals Board.
- (j) Employment Relations Board.
- (k) Energy Facility Siting Council.
- (L) Fair Dismissal Appeals Board.
- (m) Governor.
- (n) Land Conservation and Development Commission.
- (o) Land Use Board of Appeals.
- (p) Local government boundary commissions created pursuant to ORS 199.430.
- (q) Public universities listed in ORS 352.002.
- (r) Oregon Youth Authority.
- (s) Psychiatric Security Review Board.
- (t) Oregon Health Authority, for purposes of contested case hearings involving informed consent at the Oregon State Hospital.**

[(t)] (u) Public Utility Commission.

[(u)] (v) State Accident Insurance Fund Corporation.

[(v)] (w) State Apprenticeship and Training Council.

[(w)] (x) State Board of Parole and Post-Prison Supervision.

[(x)] (y) State Land Board.

[(y)] (z) State Treasurer, except the State Treasurer shall use an administrative law judge for contested cases involving claims arising under ORS 98.302 to 98.436, 98.992 or 116.253 or any other claim to escheated or unclaimed property.

(3) The Workers' Compensation Board is exempt from using administrative law judges assigned from the office for any hearing conducted by the board under ORS chapters 147, 654 and 656. Except as specifically provided in this subsection, the Department of Consumer and Business Services must use administrative law judges assigned from the office only for contested cases arising out of the department's powers and duties under:

(a) ORS 86A.095 to 86A.198, 86A.990 and 86A.992 and ORS chapter 59;

(b) ORS chapter 455;

(c) ORS chapter 674;

(d) ORS chapters 706 to 716;

(e) ORS chapter 717;

(f) ORS chapters 723, 725 and 726; and

(g) ORS chapters 731, 732, 733, 734, 735, 737, 742, 743, 743A, 743B, 744, 746, 748 and 750.

(4) Notwithstanding any other provision of law, in any proceeding in which an agency is required to use an administrative law judge assigned from the office, an officer or employee of the agency may not conduct the hearing on behalf of the agency.

(5) Notwithstanding any other provision of ORS 183.605 to 183.690, an agency is not required to use an administrative law judge assigned from the office if:

(a) Federal law requires that a different administrative law judge or hearing officer be used; or

(b) Use of an administrative law judge from the office could result in a loss of federal funds.

(6) Notwithstanding any other provision of this section, the Department of Environmental Quality must use administrative law judges assigned from the office only for contested case hearings conducted under the provisions of ORS 183.413 to 183.470.

**SECTION 42.** The amendments to ORS 183.635 by section 41 of this 2025 Act apply to contested case hearings occurring on or after the effective date of this 2025 Act.

**FITNESS TO PROCEED PROCESS CHANGES  
(Restoration Time Limits)**

**SECTION 43.** Sections 44 to 46 of this 2025 Act are added to and made a part of ORS 161.355 to 161.371.

**SECTION 44.** (1) As used in this section and section 45 of this 2025 Act:

(a) “Authority” means the Oregon Health Authority.

(b) “Contempt charge” means a contempt charge alleging the violation of a court order issued under ORS 30.866, 107.700 to 107.735, 124.005 to 124.040, 133.035, 163.730 to 163.750, 163.760 to 163.777 or 166.525 to 166.543.

(c) “Person Class A misdemeanor” has the meaning given that term in the rules of the Oregon Criminal Justice Commission.

(d) “Violent felony” means a felony offense in which there was an actual or threatened serious physical injury to the victim, or a felony sexual offense.

(2) When the court has determined that a defendant lacks fitness to proceed under ORS 161.370 (2), the provisions of this section and section 45 of this 2025 Act apply notwithstanding any provision to the contrary in ORS 161.370 and 161.371.

(3) Notwithstanding ORS 161.370 (4) and 161.371 (8)(a):

(a) If the most serious offense in the charging instrument is a violation or a misdemeanor other than a person Class A misdemeanor, the court may not commit the defendant to the custody of the superintendent of a state mental hospital or director of a facility designated by the authority if the defendant is at least 18 years of age, or to the custody of the director of a secure intensive community inpatient facility designated by the authority if the defendant is under 18 years of age, under any circumstances.

(b) If the most serious offense in the charging instrument is a person Class A misdemeanor or a contempt charge, the maximum time period that the defendant may be committed to the custody of the superintendent of a state mental hospital or director of a facility designated by the authority if the defendant is at least 18 years of age, or to the custody of the director of a secure intensive community inpatient facility designated by the authority if the defendant is under 18 years of age, is 90 days. The time period may be extended by the court as described in subsection (5) of this section by an additional 90 days, up to a total of 180 days.

(c) If the most serious offense in the charging instrument is a felony other than aggravated murder, a violent felony or a crime listed in ORS 137.700 (2), the maximum time period that the defendant may be committed to the custody of the superintendent of a state mental hospital or director of a facility designated by the authority if the defendant is at least 18 years of age, or to the custody of the director of a secure intensive community inpatient facility designated by the authority if the defendant is under 18 years of age, is six months. The time period may be extended by the court as described in subsection (5) of this section by an additional six months, up to a total of 12 months.

(d) If the most serious offense in the charging instrument is aggravated murder, a violent felony or a crime listed in ORS 137.700 (2), the maximum time period that the defendant may be committed to the custody of the superintendent of a state mental hospital or director of a facility designated by the authority if the defendant is at least 18 years of age, or to the custody of the director of a secure intensive community inpatient facility designated by the authority if the defendant is under 18 years of age, is 12 months. The time period may be

extended by the court as described in subsection (5) of this section by an additional six months, up to a total of 18 months.

(4)(a) The superintendent of the state mental hospital or director of another facility to which a defendant is committed shall provide notice to the court and the parties that the defendant is reaching the end of the initial maximum period of commitment described in subsection (3)(b) to (d) of this section at least 60 days before the end of the period.

(b) Upon the receipt by the court of a petition or other request for an extension of a maximum period of commitment under subsections (5) to (9) of this section, the defendant shall remain committed at the state mental hospital or other facility pending a decision on the request.

(c) Upon reaching a decision on a request for an extension of a maximum commitment period under subsections (5) to (9) of this section, the court shall prepare a written order, and shall include in the order the reasons for granting or denying the request.

(5)(a) The court may extend the initial maximum period of commitment, up to the total amounts specified in subsection (3)(b) to (d) of this section, upon the request of a party as provided in this subsection.

(b) Upon receipt of the notice described in subsection (4)(a) of this section, a party may petition for an extension to the initial maximum period of commitment. If the most serious offense in the charging instrument is a felony, the petition must be filed within 30 days of receipt of the notice. If the most serious offense in the charging instrument is a misdemeanor, the petition must be filed no later than five days prior to the end of the initial maximum period of commitment.

(c) Notwithstanding paragraph (b) of this subsection, if the most serious offense in the charging instrument is a misdemeanor and the evaluation and notice required under ORS 161.371 (1) is submitted to the court within five days before the expiration of the initial maximum commitment period, the commitment of the defendant is automatically extended by five days to allow for the filing of a petition under this subsection.

(d) The court may grant the petition and extend the initial maximum commitment period, up to the total amounts specified in subsection (3)(b) to (d) of this section, if the court finds:

(A) The person continues to meet the requirements for commitment under ORS 161.370 (3)(a) or (4)(a), as applicable; and

(B) There is a substantial probability that continued commitment will lead to a determination that the defendant has gained or regained fitness to proceed within the extension time period.

(e) When making the determinations described in paragraph (d) of this subsection, the court shall consider:

(A) Clinical data of the defendant's progress toward gaining or regaining fitness to proceed;

(B) Evidence that the defendant's lack of fitness is not due to a condition that is unlikely to result in the defendant gaining or regaining fitness to proceed, such as a significant neurocognitive disorder or a significant neurodevelopmental disability disorder;

(C) Evidence regarding the outcome of prior efforts at restoring the defendant's fitness to proceed; and

(D) Any other relevant information the court decides to consider.

(f) If the court grants the petition and:

(A) The most serious offense in the charging instrument is a felony, the superintendent or director must receive any order extending the commitment under this subsection prior to the expiration of the initial maximum commitment period described in subsection (3) of this section or, if the report required by ORS 161.371 (2)(a) is submitted to the court fewer than 10 days prior to the expiration of the initial maximum commitment period, no later than 10 days after the receipt of the report.

**(B)** The most serious offense in the charging instrument is a misdemeanor, the superintendent or director must receive any order extending the commitment under this subsection prior to the expiration of the initial maximum commitment period described in subsection (3) of this section or, if the evaluation and notice required under ORS 161.371 (1) is submitted to the court fewer than five days prior to the expiration of the initial maximum commitment period, no later than five days after the petition for the extension is filed.

**(6)(a)** The court may extend the period of commitment by up to 30 days for the purposes of discharge planning and coordination, as provided in this subsection.

**(b)** The superintendent of the state mental hospital, the director of the facility to which the defendant is committed, or the designee of the superintendent or director, shall provide notice to the court and to the parties if the defendant cannot be placed immediately in an identified placement after a referral has been submitted, but there is a reasonable expectation that the placement will be secured within 30 days.

**(c)** Prior to the end of the commitment period, either party, or the court on its own motion, may request an extension of the period of commitment of up to 30 days. Either party may object to the extension.

**(d)** The court may grant the request for an extension if the court determines that the defendant cannot be placed immediately in an identified placement after a referral has been submitted, but there is a reasonable expectation that the placement will be secured within 30 days.

**(e)** The failure of the community mental health program director to coordinate discharge planning does not constitute justification for granting a request for an extension under this subsection.

**(f)** An order granting a request for an extension under this subsection must be received by the superintendent of the state mental hospital, or the director of the facility to which the defendant is committed, at least five days prior to the expiration of the applicable maximum period of commitment described in subsection (3) of this section and any extensions previously authorized, or within five days of the request for an extension under this subsection, if fewer than five days remained in the maximum commitment and extension period when the request was submitted.

**(g)** An extension of commitment under this subsection is independent of and may be authorized in addition to any other extension authorized under this section, but when combined with other extensions the total period of commitment may not exceed the time period described in subsection (10)(d) of this section.

**(7)(a)** Notwithstanding subsection (3) of this section, any maximum periods of commitment described in subsection (3)(b) to (d) of this section may be extended when there is evidence that the defendant is engaging in malingering or impression management as provided in this subsection.

**(b)** Upon receipt of the notice described in subsection (4)(a) of this section, the district attorney may petition for an extension to the maximum period of commitment. The petition must be submitted within 30 days of receipt of the notice.

**(c)** The court may grant the petition if the court finds that an evaluation prepared by a certified evaluator states that there is evidence that the defendant is engaging in malingering or impression management and the evaluator has determined that additional time is necessary to resolve the defendant's clinical picture for restoration.

**(d)** If the court grants the petition:

**(A)** The superintendent or director must receive any order extending the commitment under this subsection prior to the expiration of the applicable maximum commitment and extension period.

**(B)** The court shall conduct a review hearing on the status of the defendant's fitness to proceed at least every 180 days in accordance with ORS 161.371. At each review hearing, the court may continue the commitment for an additional 180 days if the court makes the

findings described in paragraph (c) of this subsection, but under no circumstances may the total commitment period, including any other extension authorized under this section, exceed the time period described subsection (10)(d) of this section.

(8)(a) Notwithstanding subsection (3) of this section, if the most serious charge in the charging instrument is aggravated murder, a violent felony or a crime listed in ORS 137.700 (2), any maximum period of commitment described in subsection (3)(d) of this section may be extended as provided in this subsection.

(b) Upon receipt of the notice described in subsection (4)(a) of this section, the district attorney may petition for an extension to the maximum period of commitment. The petition must be submitted within 30 days of receipt of the notice.

(c) The court may grant the petition if the court determines:

(A) By clear and convincing evidence, that there is a danger of physical injury or sexual victimization to the victim or a member of the public if the defendant is discharged from the hospital or other facility;

(B) The defendant meets the requirements for commitment described in ORS 161.370 (3)(a); and

(C) There is a substantial probability that continued commitment will lead to a determination that the defendant has gained or regained fitness to proceed within the 180-day extension.

(d) When making the determinations described in paragraph (c) of this subsection, the court shall consider:

(A) Clinical data of the defendant's progress toward gaining or regaining fitness to proceed;

(B) Evidence that the defendant's lack of fitness is not due to a condition that is unlikely to result in the defendant gaining or regaining fitness to proceed, such as a significant neurocognitive disorder or a significant neurodevelopmental disability disorder;

(C) Evidence regarding the outcome of prior efforts at restoring the defendant's fitness to proceed; and

(D) Any other relevant information the court decides to consider.

(e) If the court grants the petition:

(A) The superintendent or director must receive any order extending the commitment under this subsection prior to the expiration of the applicable maximum commitment period described in subsection (3) of this section and any extensions previously authorized.

(B) The court shall conduct a review hearing on the status of the defendant's fitness to proceed at least every 180 days in accordance with ORS 161.371. At each review hearing, the court may continue the commitment for an additional 180 days if the court makes the determinations described in paragraph (d) of this subsection, but under no circumstances may the total commitment period, including any other extension authorized under this section, exceed 36 months.

(9)(a) Upon receipt of a report filed under ORS 161.372 (1) concerning the involuntary administration of medication to the defendant, the district attorney may file a petition requesting an extension to any maximum periods of commitment described in subsection (3)(b) to (d) of this section as provided in this section.

(b) If the report filed under ORS 161.372 (1) is received within 10 days prior to the end of a maximum commitment period described in subsection (3)(b) to (d) of this section, the district attorney may file the petition within 10 days after receipt of the report, and the commitment of the defendant shall continue until the end of the 10-day time period.

(c) Upon receipt of a petition described in paragraph (a) of this subsection, the court shall hold a hearing. If the court orders the involuntary administration of medication under ORS 161.372 at the hearing, the court may extend any maximum periods of commitment described in subsection (3)(b) to (d) of this section by up to 180 days. The court may renew the

extension if the court finds that the criteria described in ORS 161.372 (3)(c) continue to be met.

(d) The superintendent or director must receive any order extending the commitment under this subsection within 30 days of entry of the order.

(e) An extension of commitment under this subsection is independent of and may be authorized in addition to any other extension authorized under this section, but when combined with other extensions the total period of commitment may not exceed the time limits described in subsection (10)(d) of this section.

(10) Notwithstanding ORS 161.371 (8):

(a) The maximum periods for commitment described in this section shall be calculated beginning on the initial day of commitment.

(b) The defendant may not receive credit toward the maximum period of commitment for any day the defendant is held in jail before or after the initial date of commitment.

(c) The defendant shall be given credit toward the maximum period of commitment for any day the defendant is committed to a state mental hospital or other secure residential treatment facility.

(d) Under no circumstances may the total commitment period, including any extensions authorized under this section, exceed whichever of the following is shorter:

(A) The statutory maximum sentence of imprisonment the court could have imposed if the defendant had been convicted of the offense; or

(B) Thirty-six months.

**SECTION 45.** (1) For purposes of this section, the purpose of community restoration is the restoration of the defendant's fitness to proceed in order to continue the criminal case.

(2)(a) If the most serious offense in the charging instrument is a violation or a misdemeanor other than a Class A misdemeanor, the maximum time period that the defendant may be ordered to engage in community restoration services is 90 days. The time period may be extended by the court as described in subsection (3) of this section by an additional 90 days, up to a total of 180 days.

(b) If the most serious offense in the charging instrument is a Class A misdemeanor other than a person Class A misdemeanor, the maximum time period that the defendant may be ordered to engage in community restoration services is 90 days. The time period may be extended by the court as described in subsection (3) of this section by additional increments of 90 days, to up to a total of 365 days.

(c) If the most serious offense in the charging instrument is a person Class A misdemeanor or a contempt charge, the maximum time period that the defendant may be ordered to engage in community restoration services is six months. The time period may be extended by the court as described in subsection (3) of this section by additional increments of six months, to up to a total of 18 months.

(d) If the most serious offense in the charging instrument is a felony other than aggravated murder, a violent felony or a crime listed in ORS 137.700 (2), the maximum time period that the defendant may be ordered to engage in community restoration services is 12 months. The time period may be extended by the court as described in subsection (3) of this section by additional increments of six months, to up to a total of 24 months.

(e) If the most serious offense in the charging instrument is aggravated murder, a violent felony or a crime listed in ORS 137.700 (2), the maximum time period that the defendant may be ordered to engage in community restoration services is 18 months. The time period may be extended by the court as described in subsection (3) of this section by additional increments of six months, to up to a total of 24 months.

(3)(a) The court may extend the maximum time periods of community restoration services, up to the total amounts specified in subsection (2) this section, upon the request of a party as provided in this subsection.



(b) A party may petition for an extension to the maximum period of community restoration described in subsection (2) of this section. The petition must be submitted at least five days prior to the expiration of the maximum period of community restoration. The court may extend the deadline for filing a petition for good cause.

(c) Upon receipt of a petition described in paragraph (b) of this subsection, the court shall hold a hearing. The hearing must occur within 30 days after the filing of the petition.

(d) The court may extend the community restoration period if the court finds:

(A) There is clear evidence of progress toward the defendant gaining or regaining fitness to proceed; and

(B) That appropriate services are being made available to the defendant.

(e) The petitioning party has the burden of proof.

(f) The court may continue the order for the defendant to participate in community restoration services pending the outcome of the petition.

(4) The following time periods may not be considered when calculating the maximum period of community restoration services under subsection (2) of this section:

(a) A period of time between a scheduled court appearance at which the defendant fails to appear and the next scheduled court appearance at which the defendant appears, other than an appearance that occurs for the purpose of addressing the failure to appear;

(b) A period of time between a scheduled fitness to proceed evaluation at which the defendant fails to appear and the next scheduled court appearance at which the defendant appears;

(c) A period of time during which the defendant is in violation of a release agreement condition that the court finds negatively impacts the defendant's ability to participate or engage in community restoration services, as determined by the court;

(d) A period of time during which the defendant is in the custody of a local or state correctional facility;

(e) A period of time during which the defendant fails to make reasonable efforts toward gaining or regaining fitness to proceed, as determined by the court;

(f) A period of time during which the defendant is not attending or complying with community restoration services treatment, and any nonattendance is not excused, as determined by the court;

(g) A period of time during which the defendant is noncompliant with taking or receiving, or verbally refuses to take or receive, prescribed medications, as determined by the court; and

(h) A period of time between the defendant's absconion from a secure residential treatment facility or other secure placement and the next scheduled court appearance at which the defendant appears.

(5) When a defendant has been ordered to engage in community restoration services:

(a) The court shall conduct regular status reviews at least every 45 days. The status review may consist of the court reviewing a report to the court by the community mental health program director concerning the defendant's progress. Any report provided to the court for a status review must include information concerning whether the defendant is making progress toward gaining or regaining fitness to proceed, what services that are being provided to the defendant and the identification of any additional services that are required to meet the defendant's restoration needs.

(b) The court shall conduct a review hearing at least every 180 days, or every 90 days if the most serious offense in the charging instrument is a violation, a Class B or Class C misdemeanor or a Class A misdemeanor other than a person Class A misdemeanor. At the review hearing, the court shall determine whether the purpose of community restoration is being met, and the court may take any action authorized under ORS 161.370 (2)(c) at the hearing.

(c) The defendant shall be evaluated to determine whether the defendant has gained or regained fitness to proceed at least every 180 days.

(d) If the most serious offense in the charging instrument is a violation, a Class B or Class C misdemeanor or a Class A misdemeanor other than a person Class A misdemeanor, the court shall order that an updated evaluation, to determine whether the defendant has gained or regained fitness to proceed, be conducted and a report submitted to the court prior to the review hearing occurring 90 days after the order to engage in community restoration services is entered.

(e) A community restoration services provider shall immediately notify the court following the defendant's noncompliance with taking or receiving, or verbal refusal to take or receive, prescribed medications, or noncompliance or unexcused absence from community restoration services treatment. The notice shall contain a description of efforts taken to engage the defendant in taking or receiving medication or attending and complying with treatment services. The community restoration services provider shall additionally notify the court if the defendant thereafter begins taking or receiving prescribed medications or attending and complying with treatment services.

**SECTION 46.** (1) Upon the issuance of a court order directed to the Oregon Health Authority or the Oregon State Hospital, pursuant to section 44 or 45 of this 2025 Act, continuing the maximum periods of commitment or community restoration services, or continuing commitment to a state mental hospital or other facility under ORS 161.371, the authority or the hospital, by and through counsel, may file a report with the court. The report must be submitted no later than 10 days after entry of the order. The report may consist of a review of the procedural facts of the case and an analysis of those facts under any applicable federal court order or statute.

(2) Upon the request of the court, the Department of Justice may appear on behalf of the authority or hospital to present the report.

(3) Nothing in this section is intended to make the Oregon Health Authority or the Oregon State Hospital a party to the underlying criminal proceeding.

(4) Nothing in this section requires or obligates the court to modify an order described in subsection (1) of this section.

**SECTION 47.** (1) Sections 44 to 46 of this 2025 Act become operative on September 29, 2025.

(2) Section 44 of this 2025 Act applies to persons:

(a) Who currently lack fitness to proceed, as previously determined by a court under ORS 161.370, on September 29, 2025; and

(b) Who are determined by a court, under ORS 161.370 and section 50 of this 2025 Act, to lack fitness to proceed on or after September 29, 2025.

(3) Section 45 of this 2025 Act applies to persons who are determined by a court, under ORS 161.370 and section 50 of this 2025 Act, to lack fitness to proceed on or after September 29, 2025.

**SECTION 48.** Sections 44 to 46 of this 2025 Act are repealed on January 1, 2028.

(Fitness to Proceed Determinations)

**SECTION 49.** Section 50 of this 2025 Act is added to and made a part of ORS 161.355 to 161.371.

**SECTION 50.** (1) When the defendant's fitness to proceed is drawn in question, the issue shall be determined by the court. In making the determination, the court may consider:

(a) An examination ordered under ORS 161.365 (1)(c);

(b) Evidence of a prior diagnosis of the defendant made by a certified evaluator or a qualified mental health practitioner;

(c) A prior examination or evaluation of the defendant conducted under ORS 161.309, 161.315, 161.365, 161.370 or 161.371;

(d) Prior judicial determinations that the defendant lacked fitness to proceed;

(e) Prior commitments of the defendant under ORS 427.235 to 427.292 or ORS chapter 426;

(f) The defendant's conduct as observed by the court;

(g) Prior court records or assessments relating to actions involving the defendant that contain a mental health diagnosis of the defendant;

(h) Relevant information on the defendant's mental health diagnosis in the possession of the local supervisory authority, if the defendant is under active supervision; and

(i) Any other information the court deems relevant.

(2)(a) The court may hear a motion to find that the defendant is fit to proceed or lacks fitness to proceed from either party. The motion may be made orally or in writing.

(b) If a motion under this subsection is uncontested, the court may make the determination of fitness based on the motion and any supporting evidence. If the motion is contested, the moving party shall file a written motion and supporting evidence with the court, if a written motion has not already been filed.

(3)(a) The court shall hold a hearing on a contested motion as soon as practicable and in accordance with this subsection. If either party requests, or upon the court's own motion, the court shall hold a status conference to determine when the contested motion hearing will occur and take up any preliminary matters, including whether to order an examination under ORS 161.365 or to allow additional time for either party to seek an examination or evaluation, or to make any other orders as necessary to ensure expedient resolution of the motion.

(b) When determining when to schedule a contested motion hearing for the purpose of determining whether a defendant is fit or unfit to proceed, the court shall consider:

(A) The condition of the defendant and whether allowing more time will result in the deterioration of the defendant's mental or physical condition;

(B) Whether allowing more time will impact the state of the evidence supporting the motion;

(C) Whether there are any pending evaluations, and the time needed to complete the examinations or evaluations if ordered or approved by the court;

(D) The nature of the charges; and

(E) Any other factor determined to be relevant to the court.

(4) At the hearing:

(a) The moving party has the burden of proving that the defendant is fit to proceed or lacks fitness to proceed, as applicable, by a preponderance of the evidence.

(b) Either party may call and cross-examine witnesses. Unless the court orders otherwise or either party objects, any party or witness may appear at the hearing by simultaneous electronic transmission at the hearing.

(c) ORS 40.450 to 40.475, 40.505, 40.510 and 40.515 do not apply to the following evidence, if offered for the purpose of establishing a prior diagnosis:

(A) A report from an examination or evaluation of the defendant filed with the court under ORS 161.365, 161.370 or 161.371 for the same defendant from the preceding five years; or

(B) Records from a civil commitment proceeding under ORS 427.235 to 427.292 or ORS chapter 426 concerning the defendant from the preceding five years.

(5) Notwithstanding ORS 161.362 and 426.160, the court may enter an order allowing either party to access or use one or more reports from examinations or evaluations of the defendant filed with the court under ORS 161.365, 161.370 or 161.371 in any case concerning the defendant from the preceding five years, or records from a civil commitment proceeding under ORS 427.235 to 427.292 or ORS chapter 426 concerning the defendant from the preced-

ing five years. Records disclosed under this subsection may only be used for the determination of fitness to proceed.

(6) After the hearing described in this subsection, the court may enter a finding that the defendant is fit to proceed or lacks fitness to proceed, or may request additional information to aid in its determination.

(7) If the court determines that the defendant lacks fitness to proceed, and the court did not receive an examination or evaluation from a certified evaluator for the proceeding before the court, there is a presumption that there is a substantial probability that the defendant may gain or regain fitness to proceed in the foreseeable future.

(8) The failure to contest any issue relating to a fitness to proceed determination under this section does not preclude either party from contesting the same issue at a later time.

**SECTION 51.** ORS 161.365 is amended to read:

161.365. (1)(a) When the court has reason to doubt the defendant's fitness to proceed by reason of incapacity as described in ORS 161.360, the court may call any witness to assist it in reaching its decision. [and,] Except as provided in paragraph (b) of this subsection, **the court** shall order that a community mental health program director, or the director's designee, consult with the defendant and with any local entity that would be responsible for providing community restoration services to the defendant if the defendant were to be released in the community, to determine whether appropriate community restoration services are present and available in the community. **The court may order the consultation either before or after determining the issue of fitness to proceed.** After the consultation, the program director or the director's designee shall provide to the court a copy of the findings resulting from the consultation.

(b) If the defendant is charged with one or more of the following offenses the court is not required to, but may in its discretion, order the consultation described in paragraph (a) of this subsection:

- (A) Aggravated murder;
- (B) Murder in any degree;
- (C) Attempted aggravated murder;
- (D) Attempted murder in any degree;
- (E) Manslaughter in any degree;
- (F) Aggravated vehicular homicide;

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

- (H) Assault in the first degree;
- (I) Assault in the second degree;
- (J) Kidnapping in the first degree;
- (K) Kidnapping in the second degree;
- (L) Rape in the first degree;
- (M) Sodomy in the first degree;
- (N) Unlawful sexual penetration in the first degree;
- (O) Robbery in the first degree; or
- (P) Robbery in the second degree.

(c) If the court determines the assistance of a psychiatrist or psychologist would be helpful **to the court in making a determination under section 50 of this 2025 Act**, the court may:

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

(B) Order the defendant to be committed for the purpose of an examination to a state mental hospital or other facility designated by the Oregon Health Authority if the defendant is at least 18 years of age, or to a secure intensive community inpatient facility designated by the authority if the defendant is under 18 years of age. The state mental hospital or other facility may retain custody of a defendant committed under this paragraph for the duration necessary to complete the exam-

ination of the defendant, not to exceed 30 days. The examination may include a period of observation.

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

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

(b) At the conclusion of the examination, the superintendent of the state mental hospital or the superintendent's designee or the director of the facility may:

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

(B) Inform the court and the parties that the defendant requires a hospital level of care due to the acuity of symptoms of the defendant's qualifying mental disorder and request that the defendant remain at the state mental hospital or other facility pending a hearing or order under ORS 161.370 **and section 50 of this 2025 Act.**

(3) The report of an examination described in this section must include, but is not necessarily limited to, the following:

(a) A description of the nature of the examination;

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

(c) If the defendant suffers from a qualifying mental disorder, an opinion as to whether the defendant is incapacitated within the description set out in ORS 161.360; and

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

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

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

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

(7)(a) When upon motion of the court or a financially eligible defendant, the court has ordered a psychiatric or psychological examination of the defendant, a county or justice court shall order the county to pay, a municipal court shall order the city to pay, and a circuit court shall order the executive director of the Oregon Public Defense Commission to pay from funds available for the purpose:

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

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

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

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

**SECTION 52.** ORS 161.370 is amended to read:

161.370. [(1)(a)] (1) When the defendant's fitness to proceed is drawn in question, the issue shall be determined by the court **as described in section 50 of this 2025 Act.**

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

(2)(a) If the court determines **under section 50 of this 2025 Act** that the defendant lacks fitness to proceed, the criminal proceeding against the defendant shall be suspended and the court shall proceed in accordance with this subsection.

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

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

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

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

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

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

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

(d) If the court, while considering or ordering an appropriate action under this subsection, does not order the defendant committed to a state mental hospital or other facility, but finds that appropriate community restoration services are not present and available in the community, for any defendant remaining in custody after such determination, the court shall set a review hearing seven days from the date of the determination under paragraph (a) of this subsection. At the review hearing, the court shall consider all relevant information and determine if commitment to the state mental hospital or other facility is appropriate under subsection (3) or (4) of this section, or if another action described in paragraph (c) of this subsection is appropriate. At the conclusion of the hearing the court shall enter an order in accordance with the defendant's constitutional rights to due process.

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

(3)(a) If the most serious offense in the charging instrument is a felony, the court shall commit the defendant to the custody of the superintendent of a state mental hospital or director of a facility designated by the Oregon Health Authority if the defendant is at least 18 years of age, or to the

custody of the director of a secure intensive community inpatient facility designated by the authority if the defendant is under 18 years of age, if the court makes the following findings:

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

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

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

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

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

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

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

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

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

(ii) There are public safety concerns; and

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

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

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

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

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

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

(5) If the most serious offense in the charging instrument is a violation, the court may not commit the defendant to the custody of the superintendent of a state mental hospital or director of

a facility designated by the Oregon Health Authority if the defendant is at least 18 years of age, or to the custody of the director of a secure intensive community inpatient facility designated by the authority if the defendant is under 18 years of age.

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

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

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

(d) When a defendant is ordered to engage in community restoration services under this subsection[,]:

(A) The court may place conditions that the court deems appropriate on the release, including the requirement that the defendant regularly report to a state mental hospital or a certified evaluator for examination to determine if the defendant has gained or regained fitness to proceed.

**(B) Following discharge from commitment at a state mental hospital or other facility, and the court finds that the defendant has violated a condition of the release agreement, the court may order that the defendant be recommitted to the custody of the superintendent of the state mental hospital or director of the facility.**

(7)(a) **As part of an order committing the defendant under this section, the court shall additionally determine whether the defendant may only be discharged to a facility that is of the most restrictive class under the classification system described in ORS 426.238, if the superintendent of the state mental hospital or director of the facility to which the defendant is committed determines that the defendant no longer requires a hospital level of care due to the acuity of the symptoms of the defendant's qualifying mental disorder.**

(b) **When making the determination described in this subsection, the court shall consider the charges, primary and secondary release criteria as defined in ORS 135.230 and public safety concerns, and may consider any other information relevant to the court's determination.**

(c) **A determination described in this subsection is a critical stage of the proceeding for purposes of ORS 147.500 to 147.550.**

(d) **The court may reconsider a determination described in this subsection under the same circumstances in which the court may modify a release decision as defined in ORS 135.230.**

(e) **A defendant whose release was denied under ORS 135.240 is not eligible for discharge, from the state hospital or other facility to which the defendant was committed under this section, to any other facility for treatment to gain or regain fitness to proceed.**

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

**(Placement after Commitment)**

**SECTION 53.** ORS 161.371 is amended to read:



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

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

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

(A) The defendant has present fitness to proceed;

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

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

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

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

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

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

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

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

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

**(B) Determine, if the defendant is subject to a secure placement determination under ORS 161.370 (7), whether a placement at a facility that is of the most restrictive class under the classification system described in ORS 426.238 is present and available; and**

[(B)] (C) Provide the court and the parties with **a report with** recommendations from the consultation.

[(b) *Notwithstanding subsection (2) of this section, if the most serious offense in the charging instrument is a felony, and the community mental health program director determines that community restoration services that would mitigate any risk posed by the defendant are present and available in the community, the community mental health program director may file notice of the determination with*

*the court. Upon receipt of the notice, the court shall order that the superintendent of the state mental hospital or director of the facility to which the defendant is committed, within five judicial days:]*

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

*[(B) Provide the court and the parties with recommendations from the evaluation.]*

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

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

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

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

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

*[(B) Provide the court and the parties with recommendations from the consultation.]*

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

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

*[(B) Provide the court and the parties with recommendations from the evaluation.]*

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

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

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

**(b) As part of the consultation described in paragraph (a) of this subsection, the director or designee may be assisted by any staff member of the Oregon Health Authority who is able to assist in identifying and securing placements. If the director or designee identifies one or more appropriate placements for the defendant, the director or designee shall specify the placements in the consultation report.**

**(c) If the defendant is subject to a secure placement determination under ORS 161.370 (7), the director or designee may recommend a placement option other than a placement at a facility that is of the most restrictive class under the classification system described in ORS 426.238 only if, in the opinion of the director, the defendant may be appropriately served in such an environment.**

**(d)(A) If, during the consultation, the director or designee determines that there are one or more appropriate placements for the defendant, the consultation report must contain information, when available, on whether the proposed placements are currently accepting referrals or have an open waiting list.**

**(B) If, during the consultation, the director or designee determines that there are no appropriate placements for the defendant, the director shall notify the Oregon Health Authority. The director or designee shall provide in the consultation report information concerning why there are no appropriate placements. Upon the court's receipt of the report, the defendant's commitment is continued, and no further action of the court is required except as described in subsection (6) of this section.**

**(4)(a) Upon the provision to the court and the parties of a consultation report with recommended placements under subsection (3)(d)(A) of this section, either party may object to any placement option by filing a motion within 10 days after the date the consultation report was provided.**

**(b) Except as otherwise provided in paragraphs (c) and (d) of this subsection, the court shall, within 10 days after the filing of an objection under paragraph (a) of this subsection, set a hearing for the purpose of hearing the objection.**

**(c) At either party's request, or on the court's own motion, the court may defer hearing the objection until the placement hearing described in subsection (5) of this section.**

**(d) If both parties object to all proposed placements, the defendant's commitment is continued, and no further action of the court is required except as described in subsection (6) of this subsection.**

**(e) If both parties indicate, prior to the expiration of the time period for filing an objection, that neither party will be filing an objection, the court shall notify the community mental health program director and proceed as described in subsection (5) of this section.**

**(f) At the hearing on the objection, the court shall determine whether to grant the objection to a proposed placement. If the court:**

**(A) Finds that a proposed placement subject to the objection is not appropriate, the court shall grant the objection motion with respect to that placement. If a proposed placement**

option remains following the court's decision on the motion, the court shall proceed as described in subsection (5) of this section. If no proposed placement options remain following the court's decision, the commitment of the defendant is continued, and no further action of the court is required except as described in subsection (6) of this section.

(B) Finds that a proposed placement subject to an objection is appropriate, the court shall deny the motion with respect to that placement and proceed as described in subsection (5) of this section.

(g) At a hearing described in this subsection, the court may enter an order continuing the defendant's commitment and directing the community mental health program director to discontinue attempts to identify appropriate placements for the defendant.

(h) A hearing described in this subsection is a critical stage of the proceeding for purposes of ORS 147.500 to 147.550.

(5)(a) If a motion to object to a proposed placement is not filed, if the court defers hearing an objection to a proposed placement or if an appropriate placement option remains following a hearing described in subsection (4) of this section, the community mental health program director shall continue to attempt to secure all proposed placements for the defendant that were not subject to a granted objection and shall provide a placement status update, in the form of a written memo or report, to the court no less frequently than every 30 days.

(b) As soon as the director has secured a placement for the defendant and obtained an anticipated availability date for the placement, the director shall immediately notify the court and the parties, and when possible provide information concerning the availability date and the timing of transfer to the placement.

(c) The court shall hold a hearing as soon as practicable after receiving the notice described in paragraph (b) of this subsection to confirm the placement and set any conditions of release. The court may hear an objection filed under subsection (4) of this section that was deferred, or may hear a new or renewed objection upon the showing of changed circumstances or new information by the objecting party.

(d) A hearing described in this subsection is a critical stage of the proceeding for purposes of ORS 147.500 to 147.550.

(6)(a) If the report from the consultation described in subsection (3) of this section does not identify any appropriate placements for the defendant, if no appropriate placement options remain following the granting of a motion objecting to a proposed placement, or if both parties object to all proposed placements:

(A) The community mental health program director shall continue to regularly evaluate placement options for the defendant, using guidance from the consultation report, and provide status updates to the court, in the form of a written memo or report, no less frequently than every 30 days.

(B) The court may at any time set a hearing on the case and enter appropriate orders, including an order directing the community mental health program director to discontinue evaluating placement options for the defendant until a new notice is received under subsection (3)(a) of this section. If the court enters such an order, the superintendent of the state mental hospital or director of the facility to which the defendant is committed may only issue a new notice under subsection (3)(a) of this section if circumstances regarding the defendant or available placement options have changed.

(b) If the community mental health program director identifies an appropriate placement for the defendant while evaluating placement options under paragraph (a)(A) of this subsection, the director shall immediately notify the court and the parties. If the defendant is subject to a secure placement determination under ORS 161.370 (7), the director or designee may recommend a placement option other than a placement at a facility that is of the most restrictive class under the classification system described in ORS 426.238 only if, in the opinion of the director, the defendant may be appropriately served in such an environment.

The parties may file a motion objecting to any of the placement options as described in subsection (4) of this section.

(7)(a) Notwithstanding ORS 161.370 (7)(d), the determination by a court under ORS 161.370 (7), that the defendant may only be discharged to a facility that is of the most restrictive class under the classification system described in ORS 426.238, may be reconsidered by the court at the request of either party, or on the court's own motion, as part of a hearing on an objection to a placement under subsection (4) of this section or during a hearing described in subsection (5) of this section, only when there has been a substantial change in the defendant's circumstances since the original determination.

(b) The court shall consider the criteria described in ORS 161.370 (7)(b) when reconsidering the determination under this subsection.

(c) A hearing at which the court reconsiders the determination under this subsection is a critical stage of the proceeding for purposes of ORS 147.500 to 147.550.

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

(A) Three years; or

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

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

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

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

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

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

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

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

(b) When the committing court receives a notice from the superintendent or director under subsection (1) of this section concerning the defendant's progress or lack thereof, or under subsection [(5)] (8) of this section concerning the defendant's impending discharge, the committing court shall determine, after a hearing if a hearing is requested, whether the defendant presently has fitness to proceed.

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

- (a) Order that the defendant be discharged; or
- (b) Initiate commitment proceedings under ORS 426.070, 426.701 or 427.235 to 427.292.

**(Information Sharing)**

**SECTION 54.** ORS 161.362 is amended to read:

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

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

(3)(a) Reports resulting from examinations performed by a certified evaluator, and documents containing the recommendations of or resulting from consultations with a community mental health program director or the director's designee, prepared under ORS 161.355 to 161.371, and any document submitted to the court by a state mental hospital **or other facility to which the defendant is committed or in which the defendant is placed**, related to the proceedings under ORS 161.355 to 161.371, are confidential and may be made available only:

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

(B) As ordered by a court.

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

(c) Nothing in this subsection prohibits:

(A) The prosecuting attorney, defense attorney or agent of the prosecuting or defense attorney from discussing the contents of a report or document described in paragraph (a) of this subsection with witnesses or victims as otherwise permitted by law.

**(B) The disclosure of reports or documents described in paragraph (a) of this subsection, information contained in such reports or documents and any records or information used in the preparation of such reports or documents, as permitted under ORS 192.567 or for the purpose of continuity of care as authorized by law or ordered by the court.**

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

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

**(Conforming Amendments)**

**SECTION 55.** ORS 135.748 is amended to read:

135.748. (1) All applicable periods of elapsed time as follows are excluded from the time limits described in ORS 135.746:

(a) A period of time during which the defendant is:

(A) Under observation or examination for fitness to proceed under ORS 161.365, beginning when the issue of the defendant's possible lack of fitness to proceed has been raised by the defendant or

the defendant's counsel, until a final determination regarding the defendant's fitness to proceed has been made by the court;

(B) Determined to be unfit to proceed by the court pursuant to ORS 161.360 and 161.370 **and section 50 of this 2025 Act**;

(C) Under observation or examination after notice of the issue of the defendant's qualifying mental disorder, partial responsibility, diminished capacity, insanity or other mental defense is raised by the defendant or the defendant's counsel, until the trial date; or

(D) Unable to appear by reason of illness or physical disability.

(b) A period of time following the filing of an interlocutory appeal or an appeal from the dismissal of the charge or charging instrument, or that results from a stay issued by an appellate court in a mandamus or habeas proceeding, until the appellate judgment is issued or the stay is lifted by the appellate court.

(c) A period of time between a scheduled court appearance at which the defendant fails to appear and the next scheduled court appearance other than an appearance that occurs for the purpose of addressing a warrant resulting from the defendant's failure to appear.

(d) A period of time during which the defendant's location is known but the defendant's presence for trial cannot be obtained, or during which the defendant is outside this state and resists being returned to this state for trial.

(e) A period of time during which the defendant's location is unknown and:

(A) The defendant has attempted to avoid apprehension or prosecution; or

(B) The defendant's location cannot be determined by due diligence.

(f) A period of time while the defendant is on trial or engaged in court proceedings in an unrelated matter, whether in the same court or a different court, and was therefore physically unavailable for trial.

(g) A period of time between a mistrial on the charging instrument and a subsequent trial on the charging instrument, not to exceed three months for each mistrial. The three-month limit may be extended by the court for good cause upon request from either party or upon the court's own motion.

(h) A period of time between a continuance or a rescheduling of a trial date, granted at the request of, or with the consent of, the defendant or the defendant's counsel, and the new trial date. A defendant who is proceeding without counsel may not consent to a continuance or a rescheduling unless the court has advised the defendant of the defendant's right to a speedy trial within the time limit required in ORS 135.746 and the consequences of the defendant's consent to the continuance or rescheduling.

(2) Any period of time excluded pursuant to subsection (1) of this section from the time limits described in ORS 135.746 that applies to a defendant shall apply to all other defendants charged in the charging instrument. However, if the court finds that it is clearly inappropriate to apply the time exclusion to all of the other defendants, the court may order any relief that justice requires.

**SECTION 56.** ORS 166.273 is amended to read:

166.273. (1) A person barred from transporting, shipping, possessing or receiving a firearm may file a petition with the Psychiatric Security Review Board for relief from the bar if:

(a) The person is barred from possessing a firearm under ORS 166.250 (1)(c)(D) or (E);

(b) The person is barred from receiving a firearm under ORS 166.470 (1)(e) or (f) or, if the person has been found guilty except for insanity of a misdemeanor involving violence, ORS 166.470 (1)(g); or

(c) The person is barred from possessing, receiving, shipping or transporting a firearm under 18 U.S.C. 922(d)(4) or (g)(4) as the result of a state mental health determination.

(2) The petitioner shall serve a copy of the petition on:

(a) The Department of Human Services and the Oregon Health Authority; and

(b) The district attorney in each county in which:

(A) The person was committed by a court to the Oregon Health Authority, or adjudicated by a court as a person with mental illness, under ORS 426.130;

- (B) The person was committed by a court to the Department of Human Services, or adjudicated by a court as in need of commitment for residential care, treatment and training, under ORS 427.290;
- (C) The person was found guilty except for insanity under ORS 161.295;
- (D) The person was found responsible except for insanity under ORS 419C.411; or
- (E) The person was found by a court to lack fitness to proceed under ORS 161.370 **and section 50 of this 2025 Act.**

(3) Following receipt of the petition, the board shall conduct a contested case hearing, make written findings of fact and conclusions of law on the issues before the board and issue a final order. Board members from the adult panel, the juvenile panel or a combination of both panels of the board may conduct the hearings described in this section.

(4) The state and any person or entity described in subsection (2) of this section may appear and object to and present evidence relevant to the relief sought by the petitioner.

(5) The board shall grant the relief requested in the petition if the petitioner demonstrates, based on the petitioner's reputation, the petitioner's record, the circumstances surrounding the firearm disability and any other evidence in the record, that the petitioner will not be likely to act in a manner that is dangerous to public safety and that granting the relief would not be contrary to the public interest.

(6) If the board grants the relief requested in the petition, the board shall provide to the Department of State Police the minimum information necessary, as defined in ORS 181A.290, to enable the department to:

(a) Maintain the information and transmit the information to the federal government as required under federal law; and

(b) Maintain a record of the person's relief from the disqualification to possess or receive a firearm under ORS 166.250 (1)(c)(D) or (E) or 166.470 (1)(e), (f) or (g).

(7) The petitioner may petition for judicial review of a final order of the board. The petition shall be filed in the circuit court of a county described in subsection (2)(b) of this section. The review shall be conducted de novo and without a jury.

(8) A petitioner may take an appeal from the circuit court to the Court of Appeals. Review by the Court of Appeals shall be conducted in accordance with ORS 183.500.

(9) A person may file a petition for relief under this section no more than once every two years.

(10) The board shall adopt procedural rules to carry out the provisions of this section.

(11) As used in this section, "state mental health determination" means:

(a) A finding by a court that a person lacks fitness to proceed under ORS 161.370 **and section 50 of this 2025 Act;**

(b) A finding that a person is guilty except for insanity of a crime under ORS 161.295 or responsible except for insanity of an act under ORS 419C.411 or any determination by the Psychiatric Security Review Board thereafter;

(c) A commitment by a court to the Oregon Health Authority, or an adjudication by a court that a person is a person with mental illness, under ORS 426.130; or

(d) A commitment by a court to the Department of Human Services, or an adjudication by a court that a person is in need of commitment for residential care, treatment and training, under ORS 427.290.

**SECTION 57.** ORS 181A.290 is amended to read:

181A.290. (1) The Department of Human Services, the Oregon Health Authority, the Psychiatric Security Review Board and the Judicial Department shall provide the Department of State Police with the minimum information necessary to identify persons who:

(a) Have been committed by a court to the Oregon Health Authority under ORS 426.130, based on a finding that the person is [*dangerous*] **a danger** to self or others;

(b) Are subject to a court order under ORS 426.130 or 426.133 prohibiting the person from purchasing or possessing a firearm;

(c) Have been committed by a court to the Department of Human Services under ORS 427.290, based on a finding that the person is [*dangerous*] **a danger** to self or others;



(d) Have been found by a court to lack fitness to proceed under ORS 161.370 **and section 50 of this 2025 Act;**

(e) Have been found guilty except for insanity of a crime under ORS 161.290 to 161.373;

(f) Have been found responsible except for insanity for an act under ORS 419C.411;

(g) Have been placed under the jurisdiction of the Psychiatric Security Review Board under ORS 161.315 to 161.351; or

(h) Have been committed to a state hospital or facility under ORS 161.315 to 161.351 or 419C.529 to 419C.544.

(2) Upon receipt of the information described in this section, the Department of State Police shall access and maintain the information and transmit the information to the federal government as required under federal law.

(3) The Department of Human Services, the Oregon Health Authority, the Psychiatric Security Review Board and the Judicial Department shall enter into agreements with the Department of State Police describing the access to information provided under this section.

(4) The Department of State Police shall adopt rules:

(a) After consulting with the Department of Human Services, the Oregon Health Authority, the Psychiatric Security Review Board and the Judicial Department, describing the type of information provided to the Department of State Police under this section; and

(b) Describing the method and manner of maintaining the information described in this section and transmitting the information to the federal government.

(5) As used in this section, "minimum information necessary" means data elements or nominal information that is necessary or required under federal law to accurately identify a person described in this section and includes the person's name, date of birth, gender and reference information that identifies the originating agency or court and enables the originating agency or court to locate an underlying record or file of a person described in this section. "Minimum information necessary" does not include any medical, psychiatric or psychological information, case histories or files of a person described in this section or any record or file of an originating agency or court.

## **FACILITY SITING**

**SECTION 58. Sections 59 and 60 of this 2025 Act are added to and made a part of ORS chapter 197A.**

**SECTION 59. (1) Within an urban growth boundary, a local government shall allow a residential treatment facility or residential treatment home, as those terms are defined in ORS 443.400, without requiring a plan amendment, zone change or conditional use permit for property that is:**

**(a) Owned by a public body, as defined in ORS 174.109; or**

**(b) Zoned for:**

**(A) Residential uses;**

**(B) Commercial uses;**

**(C) Employment uses;**

**(D) Public lands, not including park land; or**

**(E) Industrial uses, provided that if the property is:**

**(i) Publicly owned or owned by a public benefit corporation as defined in ORS 65.001;**

**(ii) Within 250 feet of lands zoned for residential use; and**

**(iii) Not specifically designated for heavy industrial uses.**

**(2) This section does not apply on land where the local government determines that:**

**(a) The facility cannot be adequately served by water, sewer, storm water drainage or streets, or will not be adequately served at the time that development on the property is complete; or**

**(b) The development of the property is constrained by land use regulations based on statewide land use planning goals relating to:**

- (A) Natural disasters and hazards; or
- (B) Natural resources, including air, water, land or natural areas, but not including open spaces or historic resources.

(3) This section does not trigger any requirement that a local government consider or update an analysis as required by a statewide land use planning goal relating to economic development.

(4) A decision made under this section is not a land use decision as defined in ORS 197.015 and is not subject to the jurisdiction of the Land Use Board of Appeals. A decision under this section may only be appealed by writ of review under ORS 34.010 to 34.100.

(5) A local government shall issue a final decision under this section within 120 days after a completed application is filed with the local government.

**SECTION 60.** (1) Within an urban growth boundary, a local government shall allow a crisis stabilization center as defined in ORS 430.626 and licensed under ORS 430.627, and may not require a plan amendment, zone change or conditional use permit for the property on which the facility is sited if the property is:

- (a) Owned by a public body, as defined in ORS 174.109; and
- (b) Adjacent to where a mental or psychiatric hospital licensed under ORS 441.025 is or will be located as established by a pending development application.

(2) Within an urban growth boundary, a local government shall allow a mental or psychiatric hospital licensed under ORS 441.025, and may not require a plan amendment, zone change or conditional use permit for the property on which the facility is sited if the property is:

- (a) Zoned for:
  - (A) Commercial uses;
  - (B) Employment uses;
  - (C) Public lands, not including park land; or
  - (D) Industrial uses; and
- (b) Adjacent to where a crisis stabilization center as defined in ORS 430.626 and licensed under ORS 430.627 is or will be located as established by a pending development application.

(3) This section does not apply on land where the local government determines that the facility cannot be adequately served by water, sewer, storm water drainage or streets, or will not be adequately served at the time that development on the property is complete.

(4) This section does not trigger any requirement that a local government consider or update an analysis as required by a statewide land use planning goal relating to economic development.

(5) A decision made under this section is not a land use decision as defined in ORS 197.015 and is not subject to the jurisdiction of the Land Use Board of Appeals. A decision under this section may only be appealed by writ of review under ORS 34.010 to 34.100.

(6) A local government shall issue a final decision under this section within 30 days after a completed application is filed with the local government.

**SECTION 61.** ORS 197.670 is repealed.

**SECTION 61a.** Notwithstanding section 14, chapter 38, Oregon Laws 2025 (Enrolled House Bill 2347) (amending ORS 197.670), if House Bill 2347 becomes law, ORS 197.670 is repealed by section 61 of this 2025 Act.

**SECTION 62.** ORS 197.660 is amended to read:

197.660. As used in ORS 197.660 to 197.670[, 215.213, 215.263, 215.283, 215.284 and 443.422]:

(1) "Residential facility" means a residential care[, *residential training or residential treatment*] or **residential training** facility, as those terms are defined in ORS 443.400, that provides residential care alone or in conjunction with treatment or training or a combination thereof for six to fifteen individuals who need not be related. Staff persons required to meet licensing requirements shall not be counted in the number of facility residents, and need not be related to each other or to any resident of the residential facility.

(2) "Residential home" means a residential treatment or training home, as defined in ORS 443.400, a residential facility registered under ORS 443.480 to 443.500 or an adult foster home licensed under ORS 443.705 to 443.825 that provides residential care alone or in conjunction with treatment or training or a combination thereof for five or fewer individuals who need not be related. Staff persons required to meet licensing requirements shall not be counted in the number of facility residents, and need not be related to each other or to any resident of the residential home.

(3) "Zoning requirement" means any standard, criteria, condition, review procedure, permit requirement or other requirement adopted by a city or county under the authority of ORS chapter 215 or 227 that applies to the approval or siting of a residential facility or residential home. A zoning requirement does not include a state or local health, safety, building, occupancy or fire code requirement.

**SECTION 63.** ORS 197.665 is amended to read:

**197.665. In addition to allowing residential homes within an urban growth boundary under section 59 of this 2025 Act:**

(1) Residential homes shall be a permitted use in:

- (a) Any residential zone, including a residential zone which allows a single-family dwelling; and
- (b) Any commercial zone which allows a single-family dwelling.

(2) A city or county may not impose any zoning requirement on the establishment and maintenance of a residential home in a zone described in subsection (1) of this section that is more restrictive than a zoning requirement imposed on a single-family dwelling in the same zone.

(3) A city or county may:

(a) Allow a residential home in an existing dwelling in any area zoned for farm use, including an exclusive farm use zone established under ORS 215.203;

(b) Impose zoning requirements on the establishment of a residential home in areas described in paragraph (a) of this subsection, provided that these requirements are no more restrictive than those imposed on other nonfarm single-family dwellings in the same zone; and

(c) Allow a division of land for a residential home in an exclusive farm use zone only as described in ORS 215.263 (9).

## **APPROPRIATIONS**

**SECTION 64.** In addition to and not in lieu of any other appropriation, there is appropriated to the Oregon Health Authority, for the biennium beginning July 1, 2025, out of the General Fund, the amount of \$5,431,896, for the Behavioral Health Division, for payments made to community mental health programs regarding civil commitments to carry out the purposes of sections 2 and 3 of this 2025 Act and the amendments to statutes by sections 4 to 6, 9, 22, 24 and 26 to 31 of this 2025 Act.

**SECTION 65.** In addition to and not in lieu of any other appropriation, there is appropriated to the Oregon Public Defense Commission, for the biennium beginning July 1, 2025, out of the General Fund, the amount of \$1,111,456, for the Adult Trial Division, for the purpose of providing public defense to financially eligible persons under provisions of sections 2 and 3 of this 2025 Act and the amendments to statutes by sections 4 to 6, 9, 22, 24 and 26 to 31 of this 2025 Act.

## **OPERATIVE DATE**

**SECTION 66.** (1) Sections 2, 3, 8, 15 and 50 of this 2025 Act and the amendments to statutes by sections 4 to 6, 9 to 13, 16 to 37, 41 and 51 to 57 of this 2025 Act become operative on January 1, 2026.

(2) The Oregon Health Authority may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the authority, on and after the

operative date specified in subsection (1) of this section, to undertake and exercise all of the duties, functions and powers conferred on the authority by this 2025 Act.

**CAPTIONS**

**SECTION 67.** The unit captions used in this 2025 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2025 Act.

**EMERGENCY CLAUSE**

**SECTION 68.** This 2025 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2025 Act takes effect on its passage.

**Passed by House June 25, 2025**

**Received by Governor:**

**Repassed by House June 27, 2025**

.....M.,....., 2025

**Approved:**

.....  
Timothy G. Sekerak, Chief Clerk of House

.....M.,....., 2025

.....  
Julie Fahey, Speaker of House

.....  
Tina Kotek, Governor

**Passed by Senate June 26, 2025**

**Filed in Office of Secretary of State:**

.....  
Rob Wagner, President of Senate

.....M.,....., 2025

.....  
Tobias Read, Secretary of State