

House Bill 3058

Sponsored by Representative MANNIX (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: The Act tells courts to make a finding when committing a person to the state hospital for fitness to proceed. (Flesch Readability Score: 68.0).

Directs a court to make a finding on dangerousness when committing a person who lacks fitness to proceed to a state mental hospital.

A BILL FOR AN ACT

1
2 Relating to commitment for fitness to proceed; amending ORS 161.370.

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

4 **SECTION 1.** ORS 161.370 is amended to read:

5 161.370. (1)(a) When the defendant's fitness to proceed is drawn in question, the issue shall be
6 determined by the court.

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

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

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

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

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

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

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

3 (C) Commencement of a civil commitment proceeding under ORS 426.070 to 426.170, 426.701 or
4 427.235 to 427.292;

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

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

7 (d) If the court, while considering or ordering an appropriate action under this subsection, does
8 not order the defendant committed to a state mental hospital or other facility, but finds that ap-
9 propriate community restoration services are not present and available in the community, for any
10 defendant remaining in custody after such determination, the court shall set a review hearing seven
11 days from the date of the determination under paragraph (a) of this subsection. At the review
12 hearing, the court shall consider all relevant information and determine if commitment to the state
13 mental hospital or other facility is appropriate under subsection (3) or (4) of this section, or if an-
14 other action described in paragraph (c) of this subsection is appropriate. At the conclusion of the
15 hearing the court shall enter an order in accordance with the defendant's constitutional rights to
16 due process.

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

23 (3)(a) If the most serious offense in the charging instrument is a felony, the court shall commit
24 the defendant to the custody of the superintendent of a state mental hospital or director of a facility
25 designated by the Oregon Health Authority if the defendant is at least 18 years of age, or to the
26 custody of the director of a secure intensive community inpatient facility designated by the author-
27 ity if the defendant is under 18 years of age, if the court makes the following findings:

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

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

35 (b) If the defendant is committed under this subsection[,]:

36 (A) The community mental health program director, or director's designee, shall at regular in-
37 tervals, during any period of commitment, review available community restoration services and
38 maintain communication with the defendant and the superintendent of the state mental hospital or
39 director of the facility in order to facilitate an efficient transition to treatment in the community
40 when ordered.

41 **(B) The court shall additionally make a finding as to whether the defendant is dangerous.**
42 **For purposes of this section, "dangerous" means that there is a substantial risk that physical**
43 **harm will be inflicted by the defendant upon the defendant's self or another person, based**
44 **upon historical patterns of behavior as those patterns relate to the current risk of harm. A**
45 **finding of dangerousness under this subparagraph does not require that the defendant pres-**

1 **ent an imminent risk of harm. If the court finds that the defendant is dangerous, the finding**
 2 **may be considered by a mental health or other medical provider when determining whether**
 3 **medications may be administered involuntarily to the defendant.**

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

7 (4)(a) If the most serious offense in the charging instrument is a misdemeanor, the court may
 8 not commit the defendant to the custody of the superintendent of a state mental hospital or director
 9 of a facility designated by the Oregon Health Authority if the defendant is at least 18 years of age,
 10 or to the custody of the director of a secure intensive community inpatient facility designated by
 11 the authority if the defendant is under 18 years of age, unless the court:

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

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

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

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

21 (ii) There are public safety concerns; and

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

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

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

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

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

35 (d) If the defendant is committed under this subsection[,]:

36 (A) The community mental health program director, or director's designee, shall at regular in-
 37 tervals, during any period of commitment, review available community restoration services and
 38 maintain communication with the defendant and the superintendent of the state mental hospital or
 39 director of the facility in order to facilitate an efficient transition to treatment in the community
 40 when ordered.

41 **(B) The court shall additionally make a finding as to whether the defendant is dangerous**
 42 **as described in subsection (3)(b)(B) of this section.**

43 (5) If the most serious offense in the charging instrument is a violation, the court may not
 44 commit the defendant to the custody of the superintendent of a state mental hospital or director of
 45 a facility designated by the Oregon Health Authority if the defendant is at least 18 years of age,

1 or to the custody of the director of a secure intensive community inpatient facility designated by
 2 the authority if the defendant is under 18 years of age.

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

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

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

19 (d) When a defendant is ordered to engage in community restoration services under this sub-
 20 section, the court may place conditions that the court deems appropriate on the release, including
 21 the requirement that the defendant regularly report to a state mental hospital or a certified evalu-
 22 ator for examination to determine if the defendant has gained or regained fitness to proceed.

23 (7) The Oregon Health Authority shall establish by rule standards for the recommendation pro-
 24 vided to the court described in subsection (2) of this section.

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