

Requested by SENATE COMMITTEE ON JUDICIARY

**PROPOSED AMENDMENTS TO  
A-ENGROSSED SENATE BILL 714**

1 On page 1 of the printed A-engrossed bill, line 2, after “ORS” delete the  
2 rest of the line and insert “137.540, 144.102 and 161.370.”.

3 On page 8, after line 41, insert:

4 **“SECTION 3.** ORS 161.370 is amended to read:

5 “161.370. (1) When the defendant’s fitness to proceed is drawn in question,  
6 the issue shall be determined by the court. If neither the prosecuting attor-  
7 ney nor counsel for the defendant contests the finding of the report filed  
8 under ORS 161.365, the court may make the determination on the basis of the  
9 report. If the finding is contested, the court shall hold a hearing on the issue.  
10 If the report is received in evidence in the hearing, the party who contests  
11 the finding has the right to summon and to cross-examine any psychiatrist  
12 or psychologist who submitted the report and to offer evidence upon the is-  
13 sue. Other evidence regarding the defendant’s fitness to proceed may be in-  
14 troduced by either party.

15 “(2)(a) If the court determines that the defendant lacks fitness to proceed,  
16 the criminal proceeding against the defendant shall be suspended and[:]  
17 **the court shall determine where the defendant will receive treatment to**  
18 **enable the defendant to gain or regain fitness to proceed as described**  
19 **in this subsection.**

20 “(b) **Prior to making any determination concerning where the de-**  
21 **endant will receive treatment, the court shall:**

1       “(A) Confer with the community mental health program director,  
2 or the director’s designee, who conducted the consultation described  
3 in ORS 161.365; and

4       “(B) Notify the Oregon Health Authority of the pending determi-  
5 nation, including the time and place of any hearing on the matter.

6       “[(a)] (c) If the court finds that the defendant is dangerous to self or  
7 others as a result of mental disease or defect, or that, based on the findings  
8 resulting from the consultation described in ORS 161.365 (1), the services and  
9 supervision necessary to restore the defendant’s fitness to proceed are not  
10 available in the community, the court shall commit the defendant to the  
11 custody of the superintendent of a state mental hospital or director of a fa-  
12 cility, designated by the Oregon Health Authority, if the defendant is at least  
13 18 years of age, or to the custody of the director of a secure intensive com-  
14 munity inpatient facility designated by the authority if the defendant is un-  
15 der 18 years of age[; *or*]. **If the defendant is charged with a crime other**  
16 **than a person felony or a person Class A misdemeanor, as those terms**  
17 **are defined in the rules of the Oregon Criminal Justice Commission,**  
18 **the court shall additionally determine whether, if the services and**  
19 **supervision necessary to restore the defendant’s fitness to proceed**  
20 **become available in the community at a later time, the authority may**  
21 **release the defendant on supervision.**

22       “[(b)] (d) If the court does not make a finding described in paragraph  
23 [(a)] (c) of this subsection, or if the court determines that care other than  
24 commitment for incapacity to stand trial would better serve the defendant  
25 and the community, the court shall release the defendant on supervision for  
26 as long as the unfitness endures.

27       “(3)(a) When a defendant is released on supervision under subsection  
28 [(2)(b)] (2)(d) of this section, **or if the court authorizes the Oregon Health**  
29 **Authority to release the defendant on supervision under subsection**  
30 **(2)(c) of this section,** the court may place conditions that the court deems

1 appropriate on the release, including the requirement that the defendant  
2 regularly report to the authority or a community mental health program for  
3 examination to determine if the defendant has gained or regained capacity  
4 to stand trial.

5 **“(b) If the court authorizes the Oregon Health Authority to release**  
6 **the defendant on supervision under subsection (2)(c) of this section,**  
7 **the authority may release the defendant on supervision if the author-**  
8 **ity determines that services and supervision necessary to restore the**  
9 **defendant’s fitness to proceed are available in the community. The**  
10 **authority shall notify the court, the district attorney and the defense**  
11 **attorney of the release.**

12 “(4) When the court, on its own motion or upon the application of the  
13 superintendent of the hospital or director of the facility in which the de-  
14 fendant is committed, a person examining the defendant as a condition of  
15 release on supervision, or either party, determines, after a hearing, if a  
16 hearing is requested, that the defendant has gained or regained fitness to  
17 proceed, the criminal proceeding shall be resumed. If, however, the court is  
18 of the view that so much time has elapsed since the commitment or release  
19 of the defendant on supervision that it would be unjust to resume the crim-  
20 inal proceeding, the court on motion of either party may dismiss the charge  
21 and may order the defendant to be discharged or cause a proceeding to be  
22 commenced forthwith under ORS 426.070 to 426.170 or 427.235 to 427.290.

23 “(5) The superintendent of a state hospital or director of a facility to  
24 which the defendant is committed shall cause the defendant to be evaluated  
25 within 60 days from the defendant’s delivery into the superintendent’s or  
26 director’s custody, for the purpose of determining whether there is a sub-  
27 stantial probability that, in the foreseeable future, the defendant will have  
28 the capacity to stand trial. In addition, the superintendent or director shall:

29 “(a) Immediately notify the committing court if the defendant, at any  
30 time, gains or regains the capacity to stand trial or will never have the ca-

1    capacity to stand trial.

2       “(b) Within 90 days of the defendant’s delivery into the superintendent’s  
3    or director’s custody, notify the committing court that:

4       “(A) The defendant has the present capacity to stand trial;

5       “(B) There is no substantial probability that, in the foreseeable future, the  
6    defendant will gain or regain the capacity to stand trial; or

7       “(C) There is a substantial probability that, in the foreseeable future, the  
8    defendant will gain or regain the capacity to stand trial. If the probability  
9    exists, the superintendent or director shall give the court an estimate of the  
10   time in which the defendant, with appropriate treatment, is expected to gain  
11   or regain capacity.

12       “(6)(a) If the superintendent or director determines that there is a sub-  
13   stantial probability that, in the foreseeable future, the defendant will gain  
14   or regain the capacity to stand trial, unless the court otherwise orders, the  
15   defendant shall remain in the superintendent’s or director’s custody where  
16   the defendant shall receive treatment designed for the purpose of enabling  
17   the defendant to gain or regain capacity. In keeping with the notice re-  
18   quirement under subsection (5)(b) of this section, the superintendent or di-  
19   rector shall, for the duration of the defendant’s period of commitment, submit  
20   a progress report to the committing court, concerning the defendant’s ca-  
21   pacity or incapacity, at least once every 180 days as measured from the date  
22   of the defendant’s delivery into the superintendent’s or director’s custody.

23       “(b) Notwithstanding paragraph (a) of this subsection, if the superinten-  
24   dent or director determines that a defendant committed under this section  
25   is no longer dangerous to self or others as a result of mental disease or de-  
26   fect, or that the services and supervision necessary to restore the defendant’s  
27   fitness to proceed are available in the community, the superintendent or di-  
28   rector shall file notice of that determination with the court. Upon receipt  
29   of the notice, the court shall order the person released on supervision as  
30   described in subsection (3)(a) of this section.

1 “(7)(a) A defendant who remains committed under subsection (6) of this  
2 section shall be discharged within a period of time that is reasonable for  
3 making a determination concerning whether or not, and when, the defendant  
4 may gain or regain capacity. However, regardless of the number of charges  
5 with which the defendant is accused, in no event shall the defendant be  
6 committed for longer than whichever of the following, measured from the  
7 defendant’s initial custody date, is shorter:

8 “(A) Three years; or

9 “(B) A period of time equal to the maximum sentence the court could have  
10 imposed if the defendant had been convicted.

11 “(b) For purposes of calculating the maximum period of commitment de-  
12 scribed in paragraph (a) of this subsection:

13 “(A) The initial custody date is the date on which the defendant is first  
14 committed under this section on any charge alleged in the accusatory in-  
15 strument; and

16 “(B) The defendant shall be given credit against each charge alleged in  
17 the accusatory instrument for each day the defendant is committed under  
18 this section, whether the days are consecutive or are interrupted by a period  
19 of time during which the defendant has gained or regained fitness to proceed.

20 “(8) The superintendent or director shall notify the committing court of  
21 the defendant’s impending discharge 30 days before the date on which the  
22 superintendent or director is required to discharge the defendant under sub-  
23 section (7) of this section.

24 “(9) When the committing court receives a notice from the superintendent  
25 or director under subsection (5) or (8) of this section concerning the  
26 defendant’s progress or lack thereof, the committing court shall determine,  
27 after a hearing, if a hearing is requested, whether the defendant presently  
28 has the capacity to stand trial.

29 “(10) If at any time the court determines that the defendant lacks the  
30 capacity to stand trial, the court shall further determine whether there is a

1 substantial probability that the defendant, in the foreseeable future, will  
2 gain or regain the capacity to stand trial and whether the defendant is en-  
3 titled to discharge under subsection (7) of this section. If the court deter-  
4 mines that there is no substantial probability that the defendant, in the  
5 foreseeable future, will gain or regain the capacity to stand trial or that the  
6 defendant is entitled to discharge under subsection (7) of this section, the  
7 court shall dismiss, without prejudice, all charges against the defendant and:

8 “(a) Order that the defendant be discharged; or

9 “(b) Initiate commitment proceedings under ORS 426.070 or 427.235 to  
10 427.290.

11 “(11) All notices required under this section shall be filed with the clerk  
12 of the court and delivered to both the district attorney and the counsel for  
13 the defendant.

14 “(12) If the defendant gains or regains fitness to proceed, the term of any  
15 sentence received by the defendant for conviction of the crime charged shall  
16 be reduced by the amount of time the defendant was committed under this  
17 section to the custody of a state mental hospital, or to the custody of a se-  
18 cure intensive community inpatient facility, designated by the Oregon Health  
19 Authority.

20 “(13) Notwithstanding the suspension of the criminal proceeding under  
21 subsection (2) of this section, the fact that the defendant is unfit to proceed  
22 does not preclude any objection through counsel and without the personal  
23 participation of the defendant on the grounds that the indictment is insuffi-  
24 cient, that the statute of limitations has run, that double jeopardy principles  
25 apply or upon any other ground at the discretion of the court which the  
26 court deems susceptible of fair determination prior to trial.”.

27 In line 42, delete “3” and insert “4”.

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