

**PROPOSED CONFERENCE COMMITTEE AMENDMENTS TO  
B-ENGROSSED SENATE BILL 24  
(INCLUDING AMENDMENTS TO RESOLVE CONFLICTS)**

1 On page 5 of the printed B-engrossed bill, delete lines 42 through 45 and  
2 delete pages 6 through 15 and insert:

3 **“SECTION 2.** ORS 161.370 is amended to read:

4 “161.370. (1)(a) When the defendant’s fitness to proceed is drawn in  
5 question, the issue shall be determined by the court.

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

14 **“(2)(a)** If the court determines that the defendant lacks fitness to proceed,  
15 the criminal proceeding against the defendant shall be suspended and[:]  
16 **the court shall, at a hearing, proceed in accordance with this subsection.**

17 **“(b)** After making the determination under paragraph (a) of this  
18 subsection, the court shall receive a recommendation, to be considered  
19 at the hearing, from a community mental health program director or  
20 the director’s designee, and from any local entity that would be re-  
21 sponsible for supervising the defendant if the defendant were to be

1 released in the community, concerning whether services and super-  
2 vision necessary to safely allow the defendant to gain or regain fitness  
3 to proceed are available in the community.

4 “(c) The court and the parties shall at the hearing determine an  
5 appropriate action in the case, and the court shall enter an order  
6 necessary to implement the action. In determining the appropriate  
7 action, the court shall consider the primary and secondary release  
8 criteria as defined in ORS 135.230, the least restrictive option appro-  
9 priate for the defendant, the needs of the defendant and the interests  
10 of justice. Actions may include but are not limited to:

11 “(A) Commitment for the defendant to gain or regain fitness to  
12 proceed under subsection (3) or (5) of this section;

13 “(B) Community restoration as recommended by the community  
14 mental health program director or designee;

15 “(C) Release on supervision;

16 “(D) Commencement of a civil commitment proceeding under ORS  
17 426.070 to 426.170, 426.701 or 427.235 to 427.290;

18 “(E) Commencement of protective proceedings under ORS chapter  
19 125; or

20 “(F) Dismissal of the charges pursuant to ORS 135.755.

21 “(d) If the court, while considering or ordering an appropriate  
22 action under this subsection, determines that the defendant does not  
23 require a hospital level of care due to the defendant’s dangerousness  
24 and the acuity of symptoms of the defendant’s qualifying mental dis-  
25 order, but that services and supervision necessary to safely allow the  
26 defendant to gain or regain fitness to proceed are not available in the  
27 community, for any defendant remaining in custody after such deter-  
28 mination, the court shall set a review hearing seven days from the  
29 date of the determination under paragraph (a) of this subsection. At  
30 the review hearing, the court shall consider all relevant information

1 **and determine an appropriate action in the case as described in para-**  
2 **graph (c) of this subsection. If the defendant remains in custody fol-**  
3 **lowing the initial review hearing, the court shall hold further review**  
4 **hearings every seven days thereafter until the defendant is no longer**  
5 **in custody.**

6 “[*a*] **(3)(a) Unless the court orders an action other than commit-**  
7 **ment under subsection (2) of this section, and except as otherwise**  
8 **provided in subsections (4) and (5) of this section, if the court finds that**  
9 **the defendant is dangerous to self or others as a result of a qualifying mental**  
10 **disorder, [*or*] that a hospital level of care is necessary due to the**  
11 **defendant’s dangerousness and the acuity of symptoms of the**  
12 **defendant’s qualifying mental disorder, and that, based on the findings**  
13 **resulting from the consultation described in ORS 161.365 (1) and from any**  
14 **information provided by community-based mental health providers or**  
15 **any other sources, the services and supervision necessary to [*restore*] allow**  
16 **the [*defendant’s*] defendant to gain or regain fitness to proceed are not**  
17 **available in the community, the court shall commit the defendant to the**  
18 **custody of the superintendent of a state mental hospital or director of a**  
19 **facility[,] designated by the Oregon Health Authority[,] if the defendant is**  
20 **at least 18 years of age, or to the custody of the director of a secure inten-**  
21 **sive community inpatient facility designated by the authority if the defend-**  
22 **ant is under 18 years of age; *or*].**

23 **“(b) If the defendant is committed under this subsection, the com-**  
24 **munity mental health program director shall at regular intervals,**  
25 **during any period of commitment, review available community re-**  
26 **sources and maintain communication with the defendant and the su-**  
27 **perintendent of the state mental hospital or director of the facility in**  
28 **order to facilitate an efficient transition to treatment in the commu-**  
29 **nity when ordered.**

30 “[*b*] **(4)(a) If the court does not make a finding described in [*paragraph***

1 (a) of this subsection,] **subsection (3) of this section, if commitment is**  
2 **precluded under subsection (5) of this section** or if the court determines  
3 that care other than commitment for incapacity to stand trial would better  
4 serve the defendant and the community, the court shall release the defendant  
5 on supervision for as long as the unfitness endures.

6 **“(b) The court may order a community mental health program di-**  
7 **rector providing treatment to the defendant in the community to**  
8 **provide the court with status reports on the defendant’s progress in**  
9 **gaining or regaining fitness to proceed.**

10 **“(c) A community mental health program director providing treat-**  
11 **ment to the defendant in the community shall notify the court if the**  
12 **defendant gains or regains fitness to proceed.**

13 **“(5)(a) If the most serious offense in the charging instrument is a**  
14 **violation, the court may not commit the defendant under subsection**  
15 **(3) of this section.**

16 **“(b) If the most serious offense in the charging instrument is a**  
17 **misdemeanor, the court may not commit the defendant under sub-**  
18 **section (3) of this section unless the finding that the defendant re-**  
19 **quires a hospital level of care due to the defendant’s dangerousness**  
20 **and the acuity of symptoms of the defendant’s qualifying mental dis-**  
21 **order is based on a recommendation by a certified evaluator as defined**  
22 **in ORS 161.309, or a community mental health program director or the**  
23 **director’s designee, that the defendant requires such level of care.**

24 **“(c) If at the time of determining the appropriate action for the**  
25 **case the court has not received a recommendation as to whether the**  
26 **defendant requires a hospital level of care due to the defendant’s**  
27 **dangerousness and the acuity of symptoms of the defendant’s qualify-**  
28 **ing mental disorder, the court shall order a certified evaluator or a**  
29 **community mental health program director, or the director’s designee,**  
30 **to make such a recommendation.**

1       “(d) If the court does not order the commitment of a defendant  
2 described in this subsection to the state mental hospital or other fa-  
3 cility, the court shall hold a hearing in accordance with subsection  
4 (2)(c) of this section to determine and order an appropriate action  
5 other than commitment.

6       “[(3)] (6) When a defendant is released on supervision under subsection  
7 [(2)(b)] (4) of this section, the court may place conditions that the court  
8 deems appropriate on the release, including the requirement that the de-  
9 fendant regularly report to the authority or a community mental health  
10 program for examination to determine if the defendant has gained or re-  
11 gained capacity to stand trial.

12       “[(4)] (7) When the court, on its own motion or upon the application of  
13 the superintendent of the hospital or director of the facility in which the  
14 defendant 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, **426.701** or 427.235 to  
23 427.290.

24       “[(5)] (8) The superintendent of a state hospital or director of a facility  
25 to which the defendant is committed shall cause the defendant to be evalu-  
26 ated within 60 days from the defendant’s delivery into the superintendent’s  
27 or director’s custody, for the purpose of determining whether there is a  
28 substantial probability that, in the foreseeable future, the defendant will  
29 have the capacity to stand trial. In addition, the superintendent or director  
30 shall:

1       “(a) Immediately notify the committing court if the defendant, at any  
2 time, gains or regains the capacity to stand trial or will never have the ca-  
3 pacity to stand trial.

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

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

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

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

14       “[(6)(a)] **(9)(a)** If the superintendent or director determines that there is  
15 a substantial probability that, in the foreseeable future, the defendant will  
16 gain or regain the capacity to stand trial, unless the court otherwise orders,  
17 the defendant shall remain in the superintendent’s or director’s custody  
18 where the defendant shall receive treatment designed for the purpose of en-  
19 abling the defendant to gain or regain capacity. In keeping with the notice  
20 requirement under subsection [(5)(b)] **(8)(b)** of this section, the superinten-  
21 dent or director shall, for the duration of the defendant’s period of commit-  
22 ment, submit a progress report to the committing court, concerning the  
23 defendant’s capacity or incapacity, at least once every 180 days as measured  
24 from the date of the defendant’s delivery into the superintendent’s or  
25 director’s custody.

26       “(b)(A) Notwithstanding paragraph (a) of this subsection, if the super-  
27 intendent or director determines that a defendant committed under this sec-  
28 tion is no longer dangerous to self or others as a result of a qualifying  
29 mental disorder, **that a hospital level of care is not necessary due to the**  
30 **defendant’s dangerousness and the acuity of symptoms of the**

1 **defendant’s qualifying mental disorder**, or that the services and super-  
2 vision necessary to [*restore*] **allow** the [*defendant’s*] **defendant to gain or**  
3 **regain** fitness to proceed are available in the community, the superintendent  
4 or director shall file notice of that determination with the court.

5 “(B) Upon receipt of the notice, [*the court shall order the person released*  
6 *on supervision as described in subsection (3) of this section.*] **the court shall**  
7 **order that a community mental health program director or the**  
8 **director’s designee, within five judicial days:**

9 “(i) **Consult with the defendant and with any local entity that would**  
10 **be responsible for supervising the defendant if the defendant were to**  
11 **be released in the community to determine whether services and**  
12 **supervision necessary to safely allow the defendant to gain or regain**  
13 **fitness to proceed are available in the community; and**

14 “(ii) **Provide the court and the parties with recommendations from**  
15 **the consultation.**

16 “(C) **Within 10 judicial days of receiving the recommendations from**  
17 **the consultation, the court shall hold a hearing to determine an ap-**  
18 **propriate action in accordance with subsection (2)(c) of this section**  
19 **as follows:**

20 “(i) **If, after consideration of the factors and possible actions de-**  
21 **scribed in subsection (2)(c) of this section, and any recommendations**  
22 **from the consultation described in this paragraph, the court deter-**  
23 **mines that the defendant remains dangerous to self or others as a re-**  
24 **sult of a qualifying mental disorder, a hospital level of care is**  
25 **necessary due to the defendant’s dangerousness and the acuity of**  
26 **symptoms of the defendant’s qualifying mental disorder, and the ser-**  
27 **vices and supervision necessary to allow the defendant to gain or re-**  
28 **gain fitness to proceed are not available in the community, the court**  
29 **may, after making specific findings to that effect, continue the com-**  
30 **mitment.**

1       “(ii) If the court does not make the findings described in sub-  
2 subparagraph (i) of this subparagraph, the court shall terminate the  
3 commitment and shall set a review hearing seven days from the date  
4 of the commitment termination for any defendant remaining in cus-  
5 tody. At the review hearing, the court shall consider all relevant in-  
6 formation and determine an appropriate action in the case as  
7 described in subsection (2)(c) of this section. If the defendant remains  
8 in custody following the initial review hearing, the court shall hold  
9 further review hearings every seven days thereafter until the defend-  
10 ant is no longer in custody.

11       “(c) A progress report described in paragraph (a) of this subsection may  
12 consist of an update to:

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

14       “(B) An evaluation conducted under subsection [(5)] (8) of this section,  
15 if the defendant did not receive an examination under ORS 161.365.

16       “[(7)(a)] (10)(a) A defendant who remains committed under subsection  
17 [(6)] (9) of this section shall be discharged within a period of time that is  
18 reasonable for making a determination concerning whether or not, and when,  
19 the defendant may gain or regain capacity. However, regardless of the num-  
20 ber of charges with which the defendant is accused, in no event shall the  
21 defendant be committed for longer than whichever of the following, measured  
22 from the defendant’s initial custody date, is shorter:

23       “(A) Three years; or

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

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

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



1       “(B) The defendant shall be given credit against each charge alleged in  
2 the accusatory instrument:

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

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

11       “[(8)] **(11)** The superintendent or director shall notify the committing  
12 court of the defendant’s impending discharge 30 days before the date on  
13 which the superintendent or director is required to discharge the defendant  
14 under subsection [(7)] **(10)** of this section.

15       “[(9)] **(12)** When the committing court receives a notice from the super-  
16 intendent or director under subsection [(5)] **(8)** or [(8)] **(11)** of this section  
17 concerning the defendant’s progress or lack thereof, the committing court  
18 shall determine, after a hearing, if a hearing is requested, whether the de-  
19 fendant presently has the capacity to stand trial.

20       “[(10)] **(13)** If at any time the court determines that the defendant lacks  
21 the capacity to stand trial, the court shall further determine whether there  
22 is a substantial probability that the defendant, in the foreseeable future, will  
23 gain or regain the capacity to stand trial and whether the defendant is en-  
24 titled to discharge under subsection [(7)] **(10)** of this section. If the court  
25 determines that there is no substantial probability that the defendant, in the  
26 foreseeable future, will gain or regain the capacity to stand trial or that the  
27 defendant is entitled to discharge under subsection [(7)] **(10)** of this section,  
28 the court shall dismiss, without prejudice, all charges against the defendant  
29 and:

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

1 “(b) Initiate commitment proceedings under ORS 426.070 or 427.235 to  
2 427.290.

3 “[~~(11)~~] **(14)** All notices required under this section shall be filed with the  
4 clerk of the court and delivered to both the district attorney and the counsel  
5 for the defendant.

6 “[~~(12)~~] **(15)** If the defendant gains or regains fitness to proceed, the term  
7 of any sentence received by the defendant for conviction of the crime charged  
8 shall be reduced by the amount of time the defendant was committed under  
9 this section to the custody of a state mental hospital, or to the custody of  
10 a secure intensive community inpatient facility[,] designated by the Oregon  
11 Health Authority.

12 “[~~(13)~~] **(16)** Notwithstanding the suspension of the criminal proceeding  
13 under subsection (2) of this section, the fact that the defendant is unfit to  
14 proceed does not preclude any objection through counsel and without the  
15 personal participation of the defendant on the grounds that the indictment  
16 is insufficient, that the statute of limitations has run, that double jeopardy  
17 principles apply or upon any other ground at the discretion of the court  
18 which the court deems susceptible of fair determination prior to trial.

19 “[~~(14)~~] **(17)** At the time that the court determines that the defendant lacks  
20 fitness to proceed under subsection (2) of this section, the court shall notify  
21 the defendant that federal law prohibits the defendant from purchasing or  
22 possessing a firearm unless the person obtains relief from the prohibition  
23 under federal law. The court shall again notify the defendant of the prohi-  
24 bition if the court finds that the defendant has gained or regained fitness to  
25 proceed under subsection [~~(4)~~] **(7)** of this section.

26 “**(18)(a) The entity or evaluator conducting an examination of a**  
27 **defendant under this section shall provide a copy of any report de-**  
28 **scribed in this section to the community mental health program di-**  
29 **rector or designee in:**

30 “**(A) The county in which the defendant is charged; and**

1       **“(B) The county of the defendant’s last known residence.**

2       **“(b) Reports prepared under this section are confidential and may**  
3 **be made available only:**

4       **“(A) To the court, prosecuting attorney, defense attorney, agent of**  
5 **the prosecuting or defense attorney, defendant, community mental**  
6 **health program director or designee and any facility in which the de-**  
7 **fendant is housed; or**

8       **“(B) As ordered by a court.**

9       **“(c) Any facility in which a defendant is housed may not use a re-**  
10 **port prepared under this section to support a disciplinary action**  
11 **against the defendant.**

12       **“(d) Nothing in this subsection prohibits the prosecuting attorney,**  
13 **defense attorney or agent of the prosecuting or defense attorney from**  
14 **discussing the contents of a report prepared under this section with**  
15 **witnesses or victims as otherwise permitted by law.**

16       **“(19) Unless the court orders otherwise or either party objects, a**  
17 **defendant committed to a state hospital or other facility, or a certified**  
18 **evaluator or other expert witness, may attend hearings held under this**  
19 **section via simultaneous electronic transmission.**

20       **“(20) The Oregon Health Authority shall establish by rule standards**  
21 **for the recommendation provided to the court described in subsection**  
22 **(2) of this section.**

23       **“SECTION 2a. If Senate Bill 25 becomes law, section 2 of this 2019**  
24 **Act (amending ORS 161.370) is repealed and ORS 161.370, as amended**  
25 **by section 5, chapter 311, Oregon Laws 2019 (Enrolled Senate Bill 25),**  
26 **is amended to read:**

27       **“161.370. (1)(a) When the defendant’s fitness to proceed is drawn in**  
28 **question, the issue shall be determined by the court.**

29       **“(b) If neither the prosecuting attorney nor counsel for the defendant**  
30 **contests the finding of the report filed under ORS 161.365, the court may**

1 make the determination on the basis of the report. If the finding is contested,  
2 the court shall hold a hearing on the issue. If the report is received in evi-  
3 dence in the hearing, the party who contests the finding has the right to  
4 summon and to cross-examine any psychiatrist or psychologist who submitted  
5 the report and to offer evidence upon the issue. Other evidence regarding the  
6 defendant's fitness to proceed may be introduced by either party.

7       “(2)(a) If the court determines that the defendant lacks fitness to proceed,  
8 the criminal proceeding against the defendant shall be suspended and[:]  
9 **the court shall, at a hearing, proceed in accordance with this subsection.**

10       **“(b) After making the determination under paragraph (a) of this**  
11 **subsection, the court shall receive a recommendation, to be considered**  
12 **at the hearing, from a community mental health program director or**  
13 **the director's designee, and from any local entity that would be re-**  
14 **sponsible for supervising the defendant if the defendant were to be**  
15 **released in the community, concerning whether services and super-**  
16 **vision necessary to safely allow the defendant to gain or regain fitness**  
17 **to proceed are available in the community.**

18       **“(c) The court and the parties shall at the hearing determine an**  
19 **appropriate action in the case, and the court shall enter an order**  
20 **necessary to implement the action. In determining the appropriate**  
21 **action, the court shall consider the primary and secondary release**  
22 **criteria as defined in ORS 135.230, the least restrictive option appro-**  
23 **priate for the defendant, the needs of the defendant and the interests**  
24 **of justice. Actions may include but are not limited to:**

25       **“(A) Commitment for the defendant to gain or regain fitness to**  
26 **proceed under subsection (3) or (5) of this section;**

27       **“(B) Community restoration as recommended by the community**  
28 **mental health program director or designee;**

29       **“(C) Release on supervision;**

30       **“(D) Commencement of a civil commitment proceeding under ORS**

1 426.070 to 426.170, 426.701 or 427.235 to 427.290;

2 “(E) Commencement of protective proceedings under ORS chapter  
3 125; or

4 “(F) Dismissal of the charges pursuant to ORS 135.755.

5 “(d) If the court, while considering or ordering an appropriate  
6 action under this subsection, determines that the defendant does not  
7 require a hospital level of care due to the defendant’s dangerousness  
8 and the acuity of symptoms of the defendant’s qualifying mental dis-  
9 order, but that services and supervision necessary to safely allow the  
10 defendant to gain or regain fitness to proceed are not available in the  
11 community, for any defendant remaining in custody after such deter-  
12 mination, the court shall set a review hearing seven days from the  
13 date of the determination under paragraph (a) of this subsection. At  
14 the review hearing, the court shall consider all relevant information  
15 and determine an appropriate action in the case as described in para-  
16 graph (c) of this subsection. If the defendant remains in custody fol-  
17 lowing the initial review hearing, the court shall hold further review  
18 hearings every seven days thereafter until the defendant is no longer  
19 in custody.

20 “[A] (3)(a) Unless the court orders an action other than commit-  
21 ment under subsection (2) of this section, and except as otherwise  
22 provided in subsections (4) and (5) of this section, if the court finds that  
23 the defendant is dangerous to self or others as a result of a qualifying mental  
24 disorder, [or] that a hospital level of care is necessary due to the  
25 defendant’s dangerousness and the acuity of symptoms of the  
26 defendant’s qualifying mental disorder, and that, based on the findings  
27 resulting from the consultation described in ORS 161.365 (1) and from any  
28 information provided by community-based mental health providers or  
29 any other sources, the services and supervision necessary to [restore] allow  
30 the [defendant’s] defendant to gain or regain fitness to proceed are not

1 available in the community, the court shall commit the defendant to the  
2 custody of the superintendent of a state mental hospital or director of a  
3 facility[,] designated by the Oregon Health Authority[,] if the defendant is  
4 at least 18 years of age, or to the custody of the director of a secure inten-  
5 sive community inpatient facility designated by the authority if the defend-  
6 ant is under 18 years of age[: *or*].

7 **“(b) If the defendant is committed under this subsection, the com-  
8 munity mental health program director shall at regular intervals,  
9 during any period of commitment, review available community re-  
10 sources and maintain communication with the defendant and the su-  
11 perintendent of the state mental hospital or director of the facility in  
12 order to facilitate an efficient transition to treatment in the commu-  
13 nity when ordered.**

14 “[*(B)*] **(4)(a) If the court does not make a finding described in [*subpara-*  
15 *graph (A) of this paragraph,*] subsection (3) of this section, if commit-  
16 ment is precluded under subsection (5) of this section or if the court  
17 determines that care other than commitment for incapacity to stand trial  
18 would better serve the defendant and the community, the court shall release  
19 the defendant on supervision for as long as the unfitness endures.**

20 **“(b) The court may order a community mental health program di-  
21 rector providing treatment to the defendant in the community to  
22 provide the court with status reports on the defendant’s progress in  
23 gaining or regaining fitness to proceed.**

24 **“(c) A community mental health program director providing treat-  
25 ment to the defendant in the community shall notify the court if the  
26 defendant gains or regains fitness to proceed.**

27 **“(5)(a) If the most serious offense in the charging instrument is a  
28 violation, the court may not commit the defendant under subsection  
29 (3) of this section.**

30 **“(b) If the most serious offense in the charging instrument is a**

1 **misdemeanor, the court may not commit the defendant under sub-**  
2 **section (3) of this section unless the finding that the defendant re-**  
3 **quires a hospital level of care due to the defendant’s dangerousness**  
4 **and the acuity of symptoms of the defendant’s qualifying mental dis-**  
5 **order is based on a recommendation by a certified evaluator as defined**  
6 **in ORS 161.309, or a community mental health program director or the**  
7 **director’s designee, that the defendant requires such level of care.**

8 **“(c) If at the time of determining the appropriate action for the**  
9 **case the court has not received a recommendation as to whether the**  
10 **defendant requires a hospital level of care due to the defendant’s**  
11 **dangerousness and the acuity of symptoms of the defendant’s qualify-**  
12 **ing mental disorder, the court shall order a certified evaluator or a**  
13 **community mental health program director, or the director’s designee,**  
14 **to make such a recommendation.**

15 **“(d) If the court does not order the commitment of a defendant**  
16 **described in this subsection to the state mental hospital or other fa-**  
17 **ility, the court shall hold a hearing in accordance with subsection**  
18 **(2)(c) of this section to determine and order an appropriate action**  
19 **other than commitment.**

20 *“(b) The court shall ensure that an order entered under this subsection is*  
21 *provided, by the end of the next judicial day, to any entity ordered to provide*  
22 *services and supervision necessary to restore the defendant’s fitness to*  
23 *proceed.]*

24 **“[(3)] (6) When a defendant is released on supervision under subsection**  
25 **[(2)(a)(B)] (4) of this section, the court may place conditions that the court**  
26 **deems appropriate on the release, including the requirement that the de-**  
27 **fendant regularly report to the authority or a community mental health**  
28 **program for examination to determine if the defendant has gained or re-**  
29 **gained capacity to stand trial.**

30 **“[(4)] (7) When the court, on its own motion or upon the application of**

1 the superintendent of the hospital or director of the facility in which the  
2 defendant is committed, a person examining the defendant as a condition of  
3 release on supervision, or either party, determines, after a hearing, if a  
4 hearing is requested, that the defendant has gained or regained fitness to  
5 proceed, the criminal proceeding shall be resumed. If, however, the court is  
6 of the view that so much time has elapsed since the commitment or release  
7 of the defendant on supervision that it would be unjust to resume the crim-  
8 inal proceeding, the court on motion of either party may dismiss the charge  
9 and may order the defendant to be discharged or cause a proceeding to be  
10 commenced forthwith under ORS 426.070 to 426.170, **426.701** or 427.235 to  
11 427.290.

12 “[5] (8) The superintendent of a state hospital or director of a facility  
13 to which the defendant is committed shall cause the defendant to be evalu-  
14 ated within 60 days from the defendant’s delivery into the superintendent’s  
15 or director’s custody, for the purpose of determining whether there is a  
16 substantial probability that, in the foreseeable future, the defendant will  
17 have the capacity to stand trial. In addition, the superintendent or director  
18 shall:

19 “(a) Immediately notify the committing court if the defendant, at any  
20 time, gains or regains the capacity to stand trial or will never have the ca-  
21 pacity to stand trial.

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

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

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

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



1 or regain capacity.

2 “[6)(a)] **(9)(a)** If the superintendent or director determines that there is  
3 a substantial probability that, in the foreseeable future, the defendant will  
4 gain or regain the capacity to stand trial, unless the court otherwise orders,  
5 the defendant shall remain in the superintendent’s or director’s custody  
6 where the defendant shall receive treatment designed for the purpose of en-  
7 abling the defendant to gain or regain capacity. In keeping with the notice  
8 requirement under subsection [(5)(b)] **(8)(b)** of this section, the superinten-  
9 dent or director shall, for the duration of the defendant’s period of commit-  
10 ment, submit a progress report to the committing court, concerning the  
11 defendant’s capacity or incapacity, at least once every 180 days as measured  
12 from the date of the defendant’s delivery into the superintendent’s or  
13 director’s custody.

14 “(b)(A) Notwithstanding paragraph (a) of this subsection, if the super-  
15 intendent or director determines that a defendant committed under this sec-  
16 tion is no longer dangerous to self or others as a result of a qualifying  
17 mental disorder, **that a hospital level of care is not necessary due to the**  
18 **defendant’s dangerousness and the acuity of symptoms of the**  
19 **defendant’s qualifying mental disorder**, or that the services and super-  
20 vision necessary to [restore] **allow the [defendant’s] defendant to gain or**  
21 **regain** fitness to proceed are available in the community, the superintendent  
22 or director shall file notice of that determination with the court.

23 “(B) Upon receipt of the notice, [*the court shall order the person released*  
24 *on supervision as described in subsection (3) of this section.*] **the court shall**  
25 **order that a community mental health program director or the**  
26 **director’s designee, within five judicial days:**

27 “(i) **Consult with the defendant and with any local entity that would**  
28 **be responsible for supervising the defendant if the defendant were to**  
29 **be released in the community to determine whether services and**  
30 **supervision necessary to safely allow the defendant to gain or regain**

1 fitness to proceed are available in the community; and

2 “(ii) Provide the court and the parties with recommendations from  
3 the consultation.

4 “(C) Within 10 judicial days of receiving the recommendations from  
5 the consultation, the court shall hold a hearing to determine an ap-  
6 propriate action in accordance with subsection (2)(c) of this section  
7 as follows:

8 “(i) If, after consideration of the factors and possible actions de-  
9 scribed in subsection (2)(c) of this section, and any recommendations  
10 from the consultation described in this paragraph, the court deter-  
11 mines that the defendant remains dangerous to self or others as a re-  
12 sult of a qualifying mental disorder, a hospital level of care is  
13 necessary due to the defendant’s dangerousness and the acuity of  
14 symptoms of the defendant’s qualifying mental disorder, and the ser-  
15 vices and supervision necessary to allow the defendant to gain or re-  
16 gain fitness to proceed are not available in the community, the court  
17 may, after making specific findings to that effect, continue the com-  
18 mitment.

19 “(ii) If the court does not make the findings described in sub-  
20 subparagraph (i) of this subparagraph, the court shall terminate the  
21 commitment and shall set a review hearing seven days from the date  
22 of the commitment termination for any defendant remaining in cus-  
23 tody. At the review hearing, the court shall consider all relevant in-  
24 formation and determine an appropriate action in the case as  
25 described in subsection (2)(c) of this section. If the defendant remains  
26 in custody following the initial review hearing, the court shall hold  
27 further review hearings every seven days thereafter until the defend-  
28 ant is no longer in custody.

29 “(c) A progress report described in paragraph (a) of this subsection may  
30 consist of an update to:

1       “(A) The original examination report conducted under ORS 161.365; or  
2       “(B) An evaluation conducted under subsection [(5)] (8) of this section,  
3 if the defendant did not receive an examination under ORS 161.365.

4       “[(7)(a)] (10)(a) A defendant who remains committed under subsection  
5 [(6)] (9) of this section shall be discharged within a period of time that is  
6 reasonable for making a determination concerning whether or not, and when,  
7 the defendant may gain or regain capacity. However, regardless of the num-  
8 ber of charges with which the defendant is accused, in no event shall the  
9 defendant be committed for longer than whichever of the following, measured  
10 from the defendant’s initial custody date, is shorter:

11       “(A) Three years; or

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

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

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

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

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

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

29       “[(8)] (11) The superintendent or director shall notify the committing  
30 court of the defendant’s impending discharge 30 days before the date on

1 which the superintendent or director is required to discharge the defendant  
2 under subsection [(7)] (10) of this section.

3 “[9] (12) When the committing court receives a notice from the super-  
4 intendent or director under subsection [(5)] (8) or [(8)] (11) of this section  
5 concerning the defendant’s progress or lack thereof, the committing court  
6 shall determine, after a hearing, if a hearing is requested, whether the de-  
7 fendant presently has the capacity to stand trial.

8 “[10] (13) If at any time the court determines that the defendant lacks  
9 the capacity to stand trial, the court shall further determine whether there  
10 is a substantial probability that the defendant, in the foreseeable future, will  
11 gain or regain the capacity to stand trial and whether the defendant is en-  
12 titled to discharge under subsection [(7)] (10) of this section. If the court  
13 determines that there is no substantial probability that the defendant, in the  
14 foreseeable future, will gain or regain the capacity to stand trial or that the  
15 defendant is entitled to discharge under subsection [(7)] (10) of this section,  
16 the court shall dismiss, without prejudice, all charges against the defendant  
17 and:

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

19 “(b) Initiate commitment proceedings under ORS 426.070 or 427.235 to  
20 427.290.

21 “[11] (14) All notices required under this section shall be filed with the  
22 court and may be filed electronically. The clerk of the court shall cause  
23 copies of the notices to be delivered to both the district attorney and the  
24 counsel for the defendant.

25 “[12] (15) If the defendant gains or regains fitness to proceed, the term  
26 of any sentence received by the defendant for conviction of the crime charged  
27 shall be reduced by the amount of time the defendant was committed under  
28 this section to the custody of a state mental hospital, or to the custody of  
29 a secure intensive community inpatient facility[,] designated by the Oregon  
30 Health Authority.

1       “[(13)] **(16)** Notwithstanding the suspension of the criminal proceeding  
2 under subsection (2) of this section, the fact that the defendant is unfit to  
3 proceed does not preclude any objection through counsel and without the  
4 personal participation of the defendant on the grounds that the indictment  
5 is insufficient, that the statute of limitations has run, that double jeopardy  
6 principles apply or upon any other ground at the discretion of the court  
7 which the court deems susceptible of fair determination prior to trial.

8       “[(14)] **(17)** At the time that the court determines that the defendant lacks  
9 fitness to proceed under subsection (2) of this section, the court shall notify  
10 the defendant that federal law prohibits the defendant from purchasing or  
11 possessing a firearm unless the person obtains relief from the prohibition  
12 under federal law. The court shall again notify the defendant of the prohi-  
13 bition if the court finds that the defendant has gained or regained fitness to  
14 proceed under subsection [(4)] **(7)** of this section.

15       “[(15)(a) *Reports and evaluations conducted under this section are confi-*  
16 *dential and may be made available only:*]

17       “[(A) *To the court, prosecuting attorney, defense attorney, defendant, com-*  
18 *munity mental health program director or designee and facility in which the*  
19 *defendant is housed; or]*

20       “[(B) *As ordered by a court.*]

21       “[(b) *A facility in which a defendant is housed may not use a report or*  
22 *evaluation conducted under this section to support a disciplinary action*  
23 *against the defendant.*]

24       “**(18)(a) The entity or evaluator conducting an examination of a**  
25 **defendant under this section shall provide a copy of any report de-**  
26 **scribed in this section to the community mental health program di-**  
27 **rector or designee in:**

28       “**(A) The county in which the defendant is charged; and**

29       “**(B) The county of the defendant’s last known residence.**

30       “**(b) Reports prepared under this section are confidential and may**

1 **be made available only:**

2 **“(A) To the court, prosecuting attorney, defense attorney, agent of**  
3 **the prosecuting or defense attorney, defendant, community mental**  
4 **health program director or designee and any facility in which the de-**  
5 **fendant is housed; or**

6 **“(B) As ordered by a court.**

7 **“(c) Any facility in which a defendant is housed may not use a re-**  
8 **port prepared under this section to support a disciplinary action**  
9 **against the defendant.**

10 **“(d) Nothing in this subsection prohibits the prosecuting attorney,**  
11 **defense attorney or agent of the prosecuting or defense attorney from**  
12 **discussing the contents of a report prepared under this section with**  
13 **witnesses or victims as otherwise permitted by law.**

14 **“(19) The court shall ensure that an order entered under this sec-**  
15 **tion is provided, by the end of the next judicial day, to any entity or-**  
16 **dered to provide services and supervision necessary to restore the**  
17 **defendant’s fitness to proceed.**

18 **“(20) Unless the court orders otherwise or either party objects, a**  
19 **defendant committed to a state hospital or other facility, or a certified**  
20 **evaluator or other expert witness, may attend hearings held under this**  
21 **section via simultaneous electronic transmission.**

22 **“(21) The Oregon Health Authority shall establish by rule standards**  
23 **for the recommendation provided to the court described in subsection**  
24 **(2) of this section.”.**

25 **On page 16, delete lines 1 through 31.**

26