

Senate Bill 1575

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SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Defines terms related to fitness to proceed. Reorganizes and restructures statutes related to fitness to proceed.

Modifies procedures and criteria for committing defendant charged with felony to state mental hospital or other facility in order to gain or regain fitness to proceed. Requires court to find that defendant requires hospital level of care due to public safety concerns or acuity of symptoms of defendant's mental disorder, and that appropriate community restoration services are not provided.

Modifies procedures and criteria for committing defendant charged with misdemeanor to state mental hospital or other facility in order to gain or regain fitness to proceed. Requires either recommendation from certified evaluator that defendant requires hospital level of care and statement from community mental health program director concerning available community restoration services, or for court to make certain findings concerning severity of defendant's symptoms, present public safety concerns and whether appropriate community restoration services are provided.

Modifies procedures when circumstances authorizing commitment of defendant no longer exist.

A BILL FOR AN ACT

1
2 Relating to fitness to proceed; creating new provisions; and amending ORS 161.365, 161.370, 161.372,
3 161.373, 161.390, 161.392, 181A.290 and 430.230.

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

PRELIMINARY PROVISIONS

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7
8 **SECTION 1.** (1) Sections 2 to 5 of this 2020 Act are added to and made a part of ORS
9 161.290 to 161.373.

10 (2) ORS 161.360, 161.365 and 161.370 are added to and made a part of sections 2 to 5 of this
11 2020 Act.

12 **SECTION 2.** As used in sections 2 to 5 of this 2020 Act:

13 (1) "Certified evaluator" has the meaning given that term in ORS 161.309.

14 (2) "Community restoration services" means services and treatment necessary to safely
15 allow a defendant to gain or regain fitness to proceed in the community.

16 (3) "Hospital level of care" means that a defendant requires the type of care provided by
17 an inpatient hospital in order to gain or regain fitness to proceed.

18 (4) "Public safety concerns" means that the defendant presents a risk to the public if not
19 hospitalized or in custody.

20 **SECTION 3.** (1) A recommendation provided by a certified evaluator, pursuant to sections
21 2 to 5 of this 2020 Act, that a defendant requires a hospital level of care due to the acuity
22 of the defendant's symptoms must be based upon a review of appropriate community resto-
23 ration services, the defendant's current diagnosis and symptomology, the defendant's cur-
24 rent ability to engage in treatment and general safety concerns relating to the defendant.

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 The recommendation must state the relevant considerations supporting the determination
 2 that a hospital level of care is required and why a hospital level of care is appropriate.

3 (2) A determination by a community mental health program director, or director's
 4 designee, pursuant to sections 2 to 5 of this 2020 Act, that appropriate community restora-
 5 tion services are not provided in the community must include information concerning the
 6 community restoration services necessary to safely restore the defendant in the community
 7 and must specify those services that are not provided in the community.

8 (3) An entity or evaluator conducting an examination of a defendant under sections 2 to
 9 5 of this 2020 Act shall provide a copy of any report resulting from the examination to the
 10 community mental health program director or designee in:

- 11 (a) The county in which the defendant is charged; and
- 12 (b) The county of the defendant's last known residence.

13 (4)(a) Reports resulting from examinations performed by a certified evaluator, and docu-
 14 ments containing the recommendations of or resulting from consultations with a commu-
 15 nity mental health program director or the director's designee, prepared under sections 2 to
 16 5 of this 2020 Act are confidential and may be made available only:

17 (A) To the court, prosecuting attorney, defense attorney, agent of the prosecuting or
 18 defense attorney, defendant, community mental health program director or designee and any
 19 facility in which the defendant is housed; or

20 (B) As ordered by a court.

21 (b) Any facility in which a defendant is housed may not use a report or document de-
 22 scribed in paragraph (a) of this subsection to support a disciplinary action against the de-
 23 fendant.

24 (c) Nothing in this subsection prohibits the prosecuting attorney, defense attorney or
 25 agent of the prosecuting or defense attorney from discussing the contents of a report or
 26 document described in paragraph (a) of this subsection with witnesses or victims as other-
 27 wise permitted by law.

28 (5) The court shall ensure that an order entered under sections 2 to 5 of this 2020 Act
 29 is provided, by the end of the next judicial day, to any entity ordered to provide community
 30 restoration services.

31 (6) Unless the court orders otherwise or either party objects, a defendant committed to
 32 a state mental hospital or other facility, or a certified evaluator or other expert witness,
 33 may attend hearings held under sections 2 to 5 of this 2020 Act via simultaneous electronic
 34 transmission.

35
 36 **FITNESS TO PROCEED GENERALLY**

37
 38 **SECTION 4.** (1) If at any time the court determines that the defendant lacks the capacity
 39 to stand trial, the court shall further determine whether there is a substantial probability
 40 that the defendant, in the foreseeable future, will gain or regain the capacity to stand trial.
 41 If the court determines that there is no substantial probability that the defendant, in the
 42 foreseeable future, will gain or regain the capacity to stand trial, the court shall dismiss,
 43 without prejudice, all charges against the defendant and:

- 44 (a) Order that the defendant be discharged; or
- 45 (b) Initiate commitment proceedings under ORS 426.070 or 427.235 to 427.290.

1 (2) When the court, on its own motion or upon the application of the superintendent of
 2 the hospital or director of the facility in which the defendant is committed under ORS
 3 161.370, a person examining the defendant as a condition of release to community restoration
 4 services or either party, determines, after a hearing, if a hearing is requested, that the de-
 5 fendant has gained or regained fitness to proceed, the criminal proceeding shall be resumed.
 6 If, however, the court is of the view that so much time has elapsed since the commitment
 7 or release of the defendant to community restoration services that it would be unjust to
 8 resume the criminal 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 commenced
 10 forthwith under ORS 426.070 to 426.170, 426.701 or 427.235 to 427.290.

11 (3) If the defendant gains or regains fitness to proceed, the term of any sentence received
 12 by the defendant for conviction of the crime charged shall be reduced by the amount of time
 13 the defendant was committed under ORS 161.370 to the custody of a state mental hospital,
 14 or to the custody of a secure intensive community inpatient facility designated by the Oregon
 15 Health Authority.

16 (4) Notwithstanding the suspension of the criminal proceeding under ORS 161.370 (2), the
 17 fact that the defendant is unfit to proceed does not preclude any objection through counsel
 18 and without the personal participation of the defendant on the grounds that the indictment
 19 is insufficient, that the statute of limitations has run, that double jeopardy principles apply
 20 or upon any other ground at the discretion of the court which the court deems susceptible
 21 of fair determination prior to trial.

22 (5) At the time that the court determines that the defendant lacks fitness to proceed
 23 under ORS 161.370 (2), the court shall notify the defendant that federal law prohibits the
 24 defendant from purchasing or possessing a firearm unless the person obtains relief from the
 25 prohibition under federal law. The court shall again notify the defendant of the prohibition
 26 if the court finds that the defendant has gained or regained fitness to proceed under sub-
 27 section (2) of this section.

28 COMMITTED DEFENDANTS

29
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 31 **SECTION 5.** (1) The superintendent of a state mental hospital or director of a facility to
 32 which the defendant is committed under ORS 161.370 shall cause the defendant to be evalu-
 33 ated within 60 days from the defendant's delivery into the superintendent's or director's
 34 custody, for the purpose of determining whether there is a substantial probability that, in
 35 the foreseeable future, the defendant will have the capacity to stand trial. In addition, the
 36 superintendent or director shall:

37 (a) Immediately notify the committing court if the defendant, at any time, gains or re-
 38 gains the capacity to stand trial or will never have the capacity to stand trial.

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

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

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

44 (C) There is a substantial probability that, in the foreseeable future, the defendant will
 45 gain or regain the capacity to stand trial. If the probability exists, the superintendent or di-

1 rector shall give the court an estimate of the time in which the defendant, with appropriate
2 treatment, is expected to gain or regain capacity.

3 (c) Notify the court if court-ordered involuntary medication is necessary for the defend-
4 ant to gain or regain the capacity to stand trial and, if appropriate, submit a report to the
5 court under ORS 161.372.

6 (2)(a) If the superintendent or director determines that there is a substantial probability
7 that, in the foreseeable future, the defendant will gain or regain the capacity to stand trial,
8 unless the court otherwise orders, the defendant shall remain in the superintendent's or
9 director's custody where the defendant shall receive treatment designed for the purpose of
10 enabling the defendant to gain or regain capacity. In keeping with the notice requirement
11 under subsection (1)(b) of this section, the superintendent or director shall, for the duration
12 of the defendant's period of commitment, submit a progress report to the committing court,
13 concerning the defendant's capacity or incapacity, at least once every 180 days as measured
14 from the date of the defendant's delivery into the superintendent's or director's custody.

15 (b) A progress report described in paragraph (a) of this subsection may consist of an
16 update to:

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

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

20 (3)(a) Notwithstanding subsection (2) of this section, if the most serious offense in the
21 charging instrument is a felony, and the superintendent or director determines that a hos-
22 pital level of care is no longer necessary due to present public safety concerns, or no longer
23 necessary due to the acuity of symptoms of the defendant's qualifying mental disorder, the
24 superintendent or director shall file notice of the determination with the court.

25 (b) Upon receipt of the notice, the court shall order:

26 (A) That a community mental health program director or the director's designee, within
27 five judicial days:

28 (i) Consult with the defendant and with any local entity that would be responsible for
29 providing community restoration services, if the defendant were to be released in the com-
30 munity, to determine whether community restoration services are provided in the commu-
31 nity; and

32 (ii) Provide the court and the parties with recommendations from the consultation.

33 (B) That the superintendent or director, within five judicial days:

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

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

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

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

1 (b) of this subsection, any information provided by community-based mental health providers
2 or any other sources, and primary and secondary release criteria as defined in ORS 135.230,
3 the appropriate community restoration services are not provided in the community, the
4 court may continue the commitment of the defendant.

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

11 (4)(a) Notwithstanding subsection (2) of this section, if the most serious offense in the
12 charging instrument is a misdemeanor, and the superintendent or director determines that
13 the acuity of symptoms of the defendant's qualifying mental disorder is not severe and there
14 are not present public safety concerns, the superintendent or director shall file notice of that
15 determination with the court, along with recommendations regarding the community resto-
16 ration services that would mitigate any risk presented by the defendant.

17 (b) Upon receipt of the notice, the court shall order that a community mental health
18 program director or the director's designee, within five judicial days:

19 (i) Consult with the defendant and with any local entity that would be responsible for
20 providing community restoration services, if the defendant were to be released in the com-
21 munity, to determine whether community restoration services are provided in the commu-
22 nity; and

23 (ii) Provide the court and the parties with recommendations from the consultation.

24 (c) Within 10 judicial days of receiving the recommendations described in paragraph (b)
25 of this subsection, the court shall hold a hearing to determine an appropriate action in ac-
26 cordance with ORS 161.370 (2)(c) as follows:

27 (A) After consideration of the factors and possible actions described in ORS 161.370 (2)(c),
28 and any recommendations from the consultation described paragraph (b) of this subsection,
29 the court may continue the commitment of the defendant if the court makes written findings
30 that appropriate community restoration services are not provided in the community and that
31 there are present public safety concerns.

32 (B) If the court does not make the findings described in subparagraph (A) of this para-
33 graph, the court shall terminate the commitment and shall set a review hearing seven days
34 from the date of the commitment termination for any defendant remaining in custody. At
35 the review hearing, the court shall consider all relevant information, determine an appro-
36 priate action in the case as described in ORS 161.370 (2)(c) and enter an order in accordance
37 with the defendant's constitutional rights to due process.

38 (5)(a) A defendant who remains committed under this section shall be discharged within
39 a period of time that is reasonable for making a determination concerning whether, and
40 when, the defendant may gain or regain capacity. However, regardless of the number of
41 charges with which the defendant is accused, in no event shall the defendant be committed
42 for longer than whichever of the following, measured from the defendant's initial custody
43 date, is shorter:

44 (A) Three years; or

45 (B) A period of time equal to the maximum sentence the court could have imposed if the

1 defendant had been convicted.

2 (b) For purposes of calculating the maximum period of commitment described in para-
3 graph (a) of this subsection:

4 (A) The initial custody date is the date on which the defendant is first committed under
5 this section on any charge alleged in the accusatory instrument; and

6 (B) The defendant shall be given credit against each charge alleged in the accusatory
7 instrument:

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

11 (ii) Unless the defendant is charged on any charging instrument with aggravated murder
12 or a crime listed in ORS 137.700 (2), for each day the defendant is held in jail before and after
13 the date the defendant is first committed, whether the days are consecutive or are inter-
14 rupted by a period of time during which the defendant lacks fitness to proceed.

15 (c) The superintendent or director shall notify the committing court of the defendant's
16 impending discharge 30 days before the date on which the superintendent or director is re-
17 quired to discharge the defendant under this subsection.

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

21 (b) When the committing court receives a notice from the superintendent or director
22 under subsection (1) of this section concerning the defendant's progress or lack thereof, or
23 under subsection (5) of this section concerning the defendant's impending discharge, the
24 committing court shall determine, after a hearing if a hearing is requested, whether the de-
25 fendant presently has the capacity to stand trial.

26 (7) If at any time the court determines that the defendant lacks the capacity to stand
27 trial, the court shall further determine whether the defendant is entitled to discharge under
28 subsection (5) of this section. If the court determines that the defendant is entitled to dis-
29 charge under subsection (5) of this section, the court shall dismiss, without prejudice, all
30 charges against the defendant and:

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

32 (b) Initiate commitment proceedings under ORS 426.070 or 427.235 to 427.290.

33
34 **EXAMINATION OF DEFENDANT**
35

36 **SECTION 6.** ORS 161.365 is amended to read:

37 161.365. (1)(a) When the court has reason to doubt the defendant's fitness to proceed by reason
38 of incapacity as described in ORS 161.360, the court may call any witness to assist it in reaching
39 its decision and shall order that a community mental health program director, or the director's
40 designee, consult with the defendant and with any local entity that would be responsible for
41 [*supervising*] **providing community restoration services** to the defendant if the defendant were
42 to be released in the community, to determine whether [*services and supervision necessary to safely*
43 *allow the defendant to gain or regain fitness to proceed*] **community restoration services** are
44 [*available*] **provided** in the community. After the consultation, the program director or the director's
45 designee shall provide to the court a copy of the findings resulting from the consultation. If the

1 court determines the assistance of a psychiatrist or psychologist would be helpful, the court may:

2 (A) Order that a psychiatric or psychological examination of the defendant be conducted by a
3 certified evaluator and a report of the examination be prepared; or

4 (B) Order the defendant to be committed for the purpose of an examination to a state mental
5 hospital or other facility designated by the Oregon Health Authority if the defendant is at least 18
6 years of age, or to a secure intensive community inpatient facility designated by the authority if the
7 defendant is under 18 years of age. The state mental hospital or other facility may retain custody
8 of a defendant committed under this paragraph for the duration necessary to complete the exam-
9 ination of the defendant, not to exceed 30 days. The examination may include a period of observa-
10 tion.

11 (b) The court shall provide a copy of any order entered under this subsection to the community
12 mental health program director or designee and to the state mental hospital or other facility by the
13 end of the next judicial day.

14 (2)(a) A defendant committed under subsection (1)(a)(B) of this section shall be transported to
15 the state mental hospital or other facility for the examination.

16 (b) At the conclusion of the examination, the superintendent of the state mental hospital or the
17 superintendent's designee or the director of the facility may:

18 (A) Return the defendant to the facility from which the defendant was transported; or

19 (B) Inform the court and the parties that the defendant requires a hospital level of care due to
20 [*the defendant's dangerousness and*] the acuity of symptoms of the defendant's qualifying mental
21 disorder and request that the defendant remain at the state mental hospital or other facility pending
22 a hearing or order under ORS 161.370.

23 (c) If both parties consent, the court may, without holding a hearing, enter any order authorized
24 by ORS 161.370 based on a report resulting from an examination conducted under this section.

25 (3) The report of an examination described in this section must include, but is not necessarily
26 limited to, the following:

27 (a) A description of the nature of the examination;

28 (b) A statement of the mental condition of the defendant;

29 (c) If the defendant suffers from a qualifying mental disorder, an opinion as to whether the de-
30 fendant is incapacitated within the description set out in ORS 161.360; and

31 (d) If the defendant is incapacitated within the description set out in ORS 161.360, a recom-
32 mendation of treatment and services necessary to allow the defendant to gain or regain capacity,
33 including whether a hospital level of care is required due to [*the defendant's dangerousness and*] the
34 acuity of symptoms of the defendant's qualifying mental disorder.

35 (4) Except when the defendant and the court both request to the contrary, the report may not
36 contain any findings or conclusions as to whether the defendant as a result of a qualifying mental
37 disorder was subject to the provisions of ORS 161.295 or 161.300 at the time of the criminal act
38 charged.

39 (5) If the examination by the certified evaluator cannot be conducted by reason of the unwill-
40 ingness of the defendant to participate in the examination, the report must so state and must in-
41 clude, if possible, an opinion as to whether the unwillingness of the defendant was the result of a
42 qualifying mental disorder affecting capacity to proceed.

43 (6)[(a)] The report resulting from the examination of a defendant under this section may be filed
44 electronically and must be filed with the clerk of the court, who shall cause copies to be delivered
45 to the district attorney and to counsel for defendant.

1 ***[(b) The entity or evaluator conducting the examination shall provide a copy of the report resulting***
 2 ***from the examination to the community mental health program director or designee in:]***

3 ***[(A) The county in which the defendant is charged; and]***

4 ***[(B) The county of the defendant's last known residence.]***

5 ***[(c) Reports prepared under this section are confidential and may be made available only:]***

6 ***[(A) To the court, prosecuting attorney, defense attorney, agent of the prosecuting or defense attor-***
 7 ***ney, defendant, community mental health program director or designee and any facility in which the***
 8 ***defendant is housed; or]***

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

10 ***[(d) Any facility in which a defendant is housed may not use a report prepared under this section***
 11 ***to support a disciplinary action against the defendant.]***

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

15 **(7)(a)** When upon motion of the court or a financially eligible defendant, the court has ordered
 16 a psychiatric or psychological examination of the defendant, a county or justice court shall order
 17 the county to pay, and a circuit court shall order the public defense services executive director to
 18 pay from funds available for the purpose:

19 **(A)** A reasonable fee if the examination of the defendant is conducted by a certified evaluator
 20 in private practice; and

21 **(B)** All costs including transportation of the defendant if the examination is conducted by a
 22 certified evaluator in the employ of the Oregon Health Authority or a community mental health
 23 program established under ORS 430.610 to 430.670.

24 **(b)** When an examination is ordered at the request or with the acquiescence of a defendant who
 25 is determined not to be financially eligible, the examination shall be performed at the defendant's
 26 expense. When an examination is ordered at the request of the prosecution, the county shall pay for
 27 the expense of the examination.

28 **(8)** The Oregon Health Authority shall establish by rule standards for the consultation described
 29 in subsection (1) of this section.

30 **[(9) As used in this section and ORS 161.370, "certified evaluator" has the meaning given that term**
 31 **in ORS 161.309.]**

32
 33 **DISPOSITION UPON FINDING OF LACK OF FITNESS**

34
 35 **SECTION 7.** ORS 161.370 is amended to read:

36 **161.370. (1)(a)** When the defendant's fitness to proceed is drawn in question, the issue shall be
 37 determined by the court.

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

44 **(2)(a)** If the court determines that the defendant lacks fitness to proceed, the criminal proceeding
 45 against the defendant shall be suspended and the court shall, at a hearing, proceed in accordance

1 with this subsection.

2 (b) After making the determination under paragraph (a) of this subsection, the court shall re-
 3 ceive a recommendation, to be considered at the hearing, from a community mental health program
 4 director or the director's designee, and from any local entity that would be responsible for super-
 5 vising the defendant if the defendant were to be released in the community, concerning whether
 6 *[services and supervision necessary to safely allow the defendant to gain or regain fitness to proceed*
 7 *are available]* **community restoration services are provided** in the community.

8 (c) The court and the parties shall at the hearing *[determine]* **consider** an appropriate action in
 9 the case, and the court shall **determine the appropriate action and** enter an order necessary to
 10 implement the action. In determining the appropriate action, the court shall consider the primary
 11 and secondary release criteria as defined in ORS 135.230, the least restrictive option appropriate for
 12 the defendant, the needs of the defendant and the interests of justice. Actions may include but are
 13 not limited to:

14 (A) Commitment for the defendant to gain or regain fitness to proceed under subsection (3) or
 15 ~~[(5)]~~ **(4)** of this section;

16 (B) Community restoration as recommended by the community mental health program director
 17 or designee;

18 (C) Release *[on supervision]* **under subsection (6) of this section;**

19 (D) Commencement of a civil commitment proceeding under ORS 426.070 to 426.170, 426.701 or
 20 427.235 to 427.290;

21 (E) Commencement of protective proceedings under ORS chapter 125; or

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

23 (d) If the court, while considering or ordering an appropriate action under this subsection, *[de-*
 24 *termines that the defendant does not require a hospital level of care due to the defendant's*
 25 *dangerousness and the acuity of symptoms of the defendant's qualifying mental disorder, but that ser-*
 26 *vices and supervision necessary to safely allow the defendant to gain or regain fitness to proceed are*
 27 *not available]* **does not order the defendant committed to a state mental hospital or other fa-**
 28 **facility, but finds that community restoration services are not provided** in the community, for
 29 any defendant remaining in custody after such determination, the court shall set a review hearing
 30 seven days from the date of the determination under paragraph (a) of this subsection. At the review
 31 hearing, the court shall consider all relevant information and determine *[an appropriate action in the*
 32 *case as described in paragraph (c) of this subsection. If the defendant remains in custody following the*
 33 *initial review hearing, the court shall hold further review hearings every seven days thereafter until the*
 34 *defendant is no longer in custody.]* **if commitment to the state mental hospital or other facility**
 35 **is appropriate under subsection (3) or (4) of this section, or if another action described in**
 36 **paragraph (c) of this subsection is appropriate. At the conclusion of the hearing the court**
 37 **shall enter an order in accordance with the defendant's constitutional rights to due process.**

38 *[(3)(a) Unless the court orders an action other than commitment under subsection (2) of this section,*
 39 *and except as otherwise provided in subsections (4) and (5) of this section, if the court finds that the*
 40 *defendant is dangerous to self or others as a result of a qualifying mental disorder, that a hospital level*
 41 *of care is necessary due to the defendant's dangerousness and the acuity of symptoms of the defendant's*
 42 *qualifying mental disorder, and that, based on the findings resulting from the consultation described*
 43 *in ORS 161.365 (1) and from any information provided by community-based mental health providers*
 44 *or any other sources, the services and supervision necessary to allow the defendant to gain or regain*
 45 *fitness to proceed are not available in the community, the court shall commit the defendant to the cus-*

1 *tody of the superintendent of a state mental hospital or director of a facility designated by the Oregon*
 2 *Health Authority if the defendant is at least 18 years of age, or to the custody of the director of a secure*
 3 *intensive community inpatient facility designated by the authority if the defendant is under 18 years*
 4 *of age.]*

5 **(3)(a) If the most serious offense in the charging instrument is a felony, the court shall**
 6 **commit the defendant to the custody of the superintendent of a state mental hospital or di-**
 7 **rector of a facility designated by the Oregon Health Authority if the defendant is at least 18**
 8 **years of age, or to the custody of the director of a secure intensive community inpatient**
 9 **facility designated by the authority if the defendant is under 18 years of age, if the court**
 10 **makes the following findings:**

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

14 **(B) Based on the findings resulting from the consultation described in ORS 161.365 (1),**
 15 **from any information provided by community-based mental health providers or any other**
 16 **sources, and primary and secondary release criteria as defined in ORS 135.230, the appropri-**
 17 **ate community restoration services are not provided in the community.**

18 (b) If the defendant is committed under this subsection, the community mental health program
 19 director, **or director's designee**, shall at regular intervals, during any period of commitment, re-
 20 view available community [*resources*] **restoration services** and maintain communication with the
 21 defendant and the superintendent of the state mental hospital or director of the facility in order to
 22 facilitate an efficient transition to treatment in the community when ordered.

23 **(c) If the court does not order the commitment of the defendant under this subsection,**
 24 **the court shall proceed in accordance with subsection (2)(c) of this section to determine and**
 25 **order an appropriate action other than commitment.**

26 [(4)(a) *If the court does not make a finding described in subsection (3) of this section, if commitment*
 27 *is precluded under subsection (5) of this section or if the court determines that care other than com-*
 28 *mitment for incapacity to stand trial would better serve the defendant and the community, the court*
 29 *shall release the defendant on supervision for as long as the unfitness endures.]*

30 [(b) *The court may order a community mental health program director providing treatment to the*
 31 *defendant in the community to provide the court with status reports on the defendant's progress in*
 32 *gaining or regaining fitness to proceed.]*

33 [(c) *A community mental health program director providing treatment to the defendant in the com-*
 34 *munity shall notify the court if the defendant gains or regains fitness to proceed.]*

35 [(5)(a) *If the most serious offense in the charging instrument is a violation, the court may not*
 36 *commit the defendant under subsection (3) of this section.]*

37 [(b)] **(4)(a)** If the most serious offense in the charging instrument is a misdemeanor, the court
 38 may not commit the defendant [*under subsection (3) of this section*] **to a state mental hospital or**
 39 **other facility** unless the [*finding that the defendant requires a hospital level of care due to the*
 40 *defendant's dangerousness and the acuity of symptoms of the defendant's qualifying mental disorder is*
 41 *based on a recommendation by a certified evaluator as defined in ORS 161.309, or a community mental*
 42 *health program director or the director's designee, that the defendant requires such level of care.]*
 43 **court:**

44 **(A)(i) Receives a recommendation from a certified evaluator that the defendant requires**
 45 **a hospital level of care due to the acuity of symptoms of the defendant's qualifying mental**

1 **disorder; and**

2 **(ii) Receives a recommendation from a community mental health program director, or**
 3 **director's designee, that the appropriate community restoration services are not provided in**
 4 **the community; or**

5 **(B) Determines that the defendant requires a hospital level of care after making all of**
 6 **the following written findings:**

7 **(i) The acuity of symptoms of the defendant's qualifying mental disorder are severe;**

8 **(ii) There are present public safety concerns if the defendant is not hospitalized or in**
 9 **custody; and**

10 **(iii) The appropriate community restoration services are not provided in the community.**

11 **[(c)] (b) If at the time of determining the appropriate action for the case, the court is consid-**
 12 **ering commitment under paragraph (a)(A) of this subsection and:**

13 **(A) Has not received a recommendation from a certified evaluator** as to whether the defend-
 14 ant requires a hospital level of care due to [*the defendant's dangerousness and*] the acuity of symp-
 15 toms of the defendant's qualifying mental disorder, the court shall order a certified evaluator [*or a*
 16 *community mental health program director, or the director's designee,*] to make such a recommen-
 17 dation.

18 **(B) Has not received a recommendation from the community mental health program di-**
 19 **rector or designee that appropriate community restoration services are not provided in the**
 20 **community, the court shall order the director or designee to make such a recommendation.**

21 **[(d)] (c) If the court does not order the commitment of [a] the defendant [described in this sub-**
 22 **section to the state mental hospital or other facility] under this subsection, the court shall [hold a**
 23 **hearing] proceed** in accordance with subsection (2)(c) of this section to determine and order an ap-
 24 propriate action other than commitment.

25 **(5) If the most serious offense in the charging instrument is a violation, the court may**
 26 **not commit the defendant to a state mental hospital or other facility.**

27 **(6)(a) If the court does not order the commitment of the defendant under subsection (3)**
 28 **or (4) of this section, if commitment is precluded under subsection (5) of this section or if**
 29 **the court determines that care other than commitment for incapacity to stand trial would**
 30 **better serve the defendant and the community, the court shall release the defendant for**
 31 **community restoration services for as long as the unfitness endures.**

32 **(b) The court may order a community mental health program director providing treat-**
 33 **ment to the defendant in the community to provide the court with status reports on the**
 34 **defendant's progress in gaining or regaining fitness to proceed.**

35 **(c) A community mental health program director providing treatment to the defendant**
 36 **in the community shall notify the court if the defendant gains or regains fitness to proceed.**
 37 **The notice shall be filed with the court and may be filed electronically. The clerk of the court**
 38 **shall cause copies of the notice to be delivered to both the district attorney and the counsel**
 39 **for the defendant.**

40 **[(6)] (d) When a defendant is released [on supervision] to community restoration services**
 41 **under [subsection (4) of this section] this subsection, the court may place conditions that the court**
 42 **deems appropriate on the release, including the requirement that the defendant regularly report to**
 43 **the authority or a community mental health program for examination to determine if the defendant**
 44 **has gained or regained capacity to stand trial.**

45 **[(7) When the court, on its own motion or upon the application of the superintendent of the hospital**

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

9 [(8) The superintendent of a state hospital or director of a facility to which the defendant is com-
10 mitted shall cause the defendant to be evaluated within 60 days from the defendant's delivery into the
11 superintendent's or director's custody, for the purpose of determining whether there is a substantial
12 probability that, in the foreseeable future, the defendant will have the capacity to stand trial. In addi-
13 tion, the superintendent or director shall:]

14 [(a) Immediately notify the committing court if the defendant, at any time, gains or regains the ca-
15 pacity to stand trial or will never have the capacity to stand trial.]

16 [(b) Within 90 days of the defendant's delivery into the superintendent's or director's custody, notify
17 the committing court that:]

18 [(A) The defendant has the present capacity to stand trial;]

19 [(B) There is no substantial probability that, in the foreseeable future, the defendant will gain or
20 regain the capacity to stand trial; or]

21 [(C) There is a substantial probability that, in the foreseeable future, the defendant will gain or
22 regain the capacity to stand trial. If the probability exists, the superintendent or director shall give the
23 court an estimate of the time in which the defendant, with appropriate treatment, is expected to gain
24 or regain capacity.]

25 [(c) Notify the court if court-ordered involuntary medication is necessary for the defendant to gain
26 or regain the capacity to proceed and, if appropriate, submit a report to the court under ORS
27 161.372.]

28 [(9)(a) If the superintendent or director determines that there is a substantial probability that, in
29 the foreseeable future, the defendant will gain or regain the capacity to stand trial, unless the court
30 otherwise orders, the defendant shall remain in the superintendent's or director's custody where the
31 defendant shall receive treatment designed for the purpose of enabling the defendant to gain or regain
32 capacity. In keeping with the notice requirement under subsection (8)(b) of this section, the superinten-
33 dent or director shall, for the duration of the defendant's period of commitment, submit a progress re-
34 port to the committing court, concerning the defendant's capacity or incapacity, at least once every 180
35 days as measured from the date of the defendant's delivery into the superintendent's or director's cus-
36 tody.]

37 [(b)(A) Notwithstanding paragraph (a) of this subsection, if the superintendent or director deter-
38 mines that a defendant committed under this section is no longer dangerous to self or others as a result
39 of a qualifying mental disorder, that a hospital level of care is not necessary due to the defendant's
40 dangerousness and the acuity of symptoms of the defendant's qualifying mental disorder, or that the
41 services and supervision necessary to allow the defendant to gain or regain fitness to proceed are
42 available in the community, the superintendent or director shall file notice of that determination with
43 the court.]

44 [(B) Upon receipt of the notice, the court shall order that a community mental health program di-
45 rector or the director's designee, within five judicial days:]

1 *[(i) Consult with the defendant and with any local entity that would be responsible for supervising*
 2 *the defendant if the defendant were to be released in the community to determine whether services and*
 3 *supervision necessary to safely allow the defendant to gain or regain fitness to proceed are available*
 4 *in the community; and]*

5 *[(ii) Provide the court and the parties with recommendations from the consultation.]*

6 *[(C) Within 10 judicial days of receiving the recommendations from the consultation, the court shall*
 7 *hold a hearing to determine an appropriate action in accordance with subsection (2)(c) of this section*
 8 *as follows:]*

9 *[(i) If, after consideration of the factors and possible actions described in subsection (2)(c) of this*
 10 *section, and any recommendations from the consultation described in this paragraph, the court deter-*
 11 *mines that the defendant remains dangerous to self or others as a result of a qualifying mental disor-*
 12 *der, a hospital level of care is necessary due to the defendant's dangerousness and the acuity of*
 13 *symptoms of the defendant's qualifying mental disorder, and the services and supervision necessary to*
 14 *allow the defendant to gain or regain fitness to proceed are not available in the community, the court*
 15 *may, after making specific findings to that effect, continue the commitment.]*

16 *[(ii) If the court does not make the findings described in sub-subparagraph (i) of this subparagraph,*
 17 *the court shall terminate the commitment and shall set a review hearing seven days from the date of*
 18 *the commitment termination for any defendant remaining in custody. At the review hearing, the court*
 19 *shall consider all relevant information and determine an appropriate action in the case as described in*
 20 *subsection (2)(c) of this section. If the defendant remains in custody following the initial review hearing,*
 21 *the court shall hold further review hearings every seven days thereafter until the defendant is no longer*
 22 *in custody.]*

23 *[(c) A progress report described in paragraph (a) of this subsection may consist of an update to:]*

24 *[(A) The original examination report conducted under ORS 161.365; or]*

25 *[(B) An evaluation conducted under subsection (8) of this section, if the defendant did not receive*
 26 *an examination under ORS 161.365.]*

27 *[(10)(a) A defendant who remains committed under subsection (9) of this section shall be discharged*
 28 *within a period of time that is reasonable for making a determination concerning whether or not, and*
 29 *when, the defendant may gain or regain capacity. However, regardless of the number of charges with*
 30 *which the defendant is accused, in no event shall the defendant be committed for longer than whichever*
 31 *of the following, measured from the defendant's initial custody date, is shorter:]*

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

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

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

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

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

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

44 *[(ii) Unless the defendant is charged on any charging instrument with aggravated murder or a*
 45 *crime listed in ORS 137.700 (2), for each day the defendant is held in jail before and after the date the*

1 *defendant is first committed, whether the days are consecutive or are interrupted by a period of time*
2 *during which the defendant lacks fitness to proceed.]*

3 *[(11) The superintendent or director shall notify the committing court of the defendant's impending*
4 *discharge 30 days before the date on which the superintendent or director is required to discharge the*
5 *defendant under subsection (10) of this section.]*

6 *[(12) When the committing court receives a notice from the superintendent or director under sub-*
7 *section (8) or (11) of this section concerning the defendant's progress or lack thereof, the committing*
8 *court shall determine, after a hearing, if a hearing is requested, whether the defendant presently has*
9 *the capacity to stand trial.]*

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

17 *[(a) Order that the defendant be discharged; or]*

18 *[(b) Initiate commitment proceedings under ORS 426.070 or 427.235 to 427.290.]*

19 *[(14) All notices required under this section shall be filed with the court and may be filed elec-*
20 *tronically. The clerk of the court shall cause copies of the notices to be delivered to both the district*
21 *attorney and the counsel for the defendant.]*

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

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

31 *[(17) At the time that the court determines that the defendant lacks fitness to proceed under sub-*
32 *section (2) of this section, the court shall notify the defendant that federal law prohibits the defendant*
33 *from purchasing or possessing a firearm unless the person obtains relief from the prohibition under*
34 *federal law. The court shall again notify the defendant of the prohibition if the court finds that the*
35 *defendant has gained or regained fitness to proceed under subsection (7) of this section.]*

36 *[(18)(a) The entity or evaluator conducting an examination of a defendant under this section shall*
37 *provide a copy of any report described in this section to the community mental health program director*
38 *or designee in:]*

39 *[(A) The county in which the defendant is charged; and]*

40 *[(B) The county of the defendant's last known residence.]*

41 *[(b) Reports prepared under this section are confidential and may be made available only:]*

42 *[(A) To the court, prosecuting attorney, defense attorney, agent of the prosecuting or defense attor-*
43 *ney, defendant, community mental health program director or designee and any facility in which the*
44 *defendant is housed; or]*

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

1 (E) Administration of the medication is medically appropriate because it is in the defendant's
2 best medical interest in light of the defendant's medical condition.

3 (d) A court order authorizing the involuntary administration of medication to a defendant under
4 this section must specify:

5 (A) The specific medication or type of medications permitted to be administered to the defend-
6 ant;

7 (B) The maximum dosage that may be administered; and

8 (C) The duration of time that the state mental hospital may involuntarily medicate the defendant
9 before reporting back to the court on the defendant's mental condition and progress toward gaining
10 or regaining fitness to proceed. The duration of time shall not exceed the maximum period of the
11 defendant's commitment to the state mental hospital, or 180 calendar days, whichever is shorter.

12 **SECTION 9.** ORS 161.373 is amended to read:

13 161.373. (1) Unless otherwise prohibited by law or for good cause, all public bodies, as defined
14 in ORS 174.109, and any private medical provider in possession of records concerning the defendant,
15 shall, within five business days of receipt of the order, comply with a court order for the release
16 of records to the state mental hospital or other facility designated by the Oregon Health Authority
17 for the purpose of conducting an examination or evaluation under [ORS 161.365 or 161.370] **sections**
18 **2 to 5 of this 2020 Act.**

19 (2) Notwithstanding subsection (1) of this section, the Oregon Youth Authority, the Department
20 of Corrections, a community college district, a community college service district, a public univer-
21 sity, a school district or an education service district may, after notifying the state hospital or other
22 facility designated by the Oregon Health Authority, comply with the court order within 15 business
23 days of receipt of the order without good cause.

24 (3) As used in this section, in the case of a community college district, a community college
25 service district, a public university, a school district or an education service district, "business
26 day" does not include any day on which the central administration offices of the district or univer-
27 sity are closed.

28 **SECTION 10.** ORS 161.390 is amended to read:

29 161.390. (1) The Oregon Health Authority shall adopt rules for the assignment of persons to state
30 mental hospitals or secure intensive community inpatient facilities **after commitment** under ORS
31 161.365 and 161.370 and for establishing standards for evaluation and treatment of persons commit-
32 ted to a state hospital or a secure intensive community inpatient facility or ordered to a community
33 mental health program under ORS 161.315 to 161.351.

34 (2) When the Psychiatric Security Review Board requires the preparation of a predischarge or
35 preconditional release plan before a hearing or as a condition of granting discharge or conditional
36 release for a person committed under ORS 161.315 to 161.351 to a state hospital or a secure inten-
37 sive community inpatient facility for custody, care and treatment, the authority is responsible for
38 and shall prepare the plan.

39 (3) In carrying out a conditional release plan prepared under subsection (2) of this section, the
40 authority may contract with a community mental health program, other public agency or private
41 corporation or an individual to provide supervision and treatment for the conditionally released
42 person.

43 (4)(a) The board shall maintain and keep current the medical, social and criminal history of all
44 persons committed to its jurisdiction. The confidentiality of records maintained by the board shall
45 be determined pursuant to ORS 192.338, 192.345, 192.355 and 192.398.

1 (b) Except as otherwise provided by law, upon request of the board, a state hospital, a commu-
 2 nity mental health program and any other health care service provider shall provide the board with
 3 all medical records pertaining to a person committed to the jurisdiction of the board.

4 (5) The evidentiary phase of a hearing conducted by the board under ORS 161.315 to 161.351 is
 5 not a deliberation for purposes of ORS 192.690.

6 **SECTION 11.** ORS 161.392 is amended to read:

7 161.392. (1) The Oregon Health Authority shall adopt rules necessary to certify psychiatrists and
 8 licensed psychologists for the purpose of performing evaluations and examinations described in ORS
 9 161.309[*161.365*] and 419C.524 **and sections 2 to 5 of this 2020 Act.** The rules must include a de-
 10 scription of the standards and qualifications necessary for certification. The authority may charge
 11 a fee for certification under this section in an amount determined by rule.

12 (2) The authority shall consult with the Psychiatric Security Review Board about proposed rules
 13 described in subsection (1) of this section before issuing the proposed rules for public comment and
 14 before adopting the rules.

15 **SECTION 12.** ORS 181A.290 is amended to read:

16 181A.290. (1) The Department of Human Services, the Oregon Health Authority, the Psychiatric
 17 Security Review Board and the Judicial Department shall provide the Department of State Police
 18 with the minimum information necessary to identify persons who:

19 (a) Have been committed by a court to the Oregon Health Authority under ORS 426.130, based
 20 on a finding that the person is dangerous to self or others;

21 (b) Are subject to a court order under ORS 426.130 or 426.133 prohibiting the person from pur-
 22 chasing or possessing a firearm;

23 (c) Have been committed by a court to the Department of Human Services under ORS 427.290,
 24 based on a finding that the person is dangerous to self or others;

25 (d) Have been found by a court to lack fitness to proceed under ORS 161.370;

26 (e) Have been found guilty except for insanity of a crime under ORS [*161.295 to 161.370*] **161.290**
 27 **to 161.373;**

28 (f) Have been found responsible except for insanity for an act under ORS 419C.411;

29 (g) Have been placed under the jurisdiction of the Psychiatric Security Review Board under ORS
 30 161.315 to 161.351; or

31 (h) Have been committed to a state hospital or facility under ORS 161.315 to 161.351 or 419C.529
 32 to 419C.544.

33 (2) Upon receipt of the information described in this section, the Department of State Police
 34 shall access and maintain the information and transmit the information to the federal government
 35 as required under federal law.

36 (3) The Department of Human Services, the Oregon Health Authority, the Psychiatric Security
 37 Review Board and the Judicial Department shall enter into agreements with the Department of State
 38 Police describing the access to information provided under this section.

39 (4) The Department of State Police shall adopt rules:

40 (a) After consulting with the Department of Human Services, the Oregon Health Authority, the
 41 Psychiatric Security Review Board and the Judicial Department, describing the type of information
 42 provided to the Department of State Police under this section; and

43 (b) Describing the method and manner of maintaining the information described in this section
 44 and transmitting the information to the federal government.

45 (5) As used in this section, "minimum information necessary" means data elements or nominal

1 information that is necessary or required under federal law to accurately identify a person described
 2 in this section and includes the person’s name, date of birth, gender and reference information that
 3 identifies the originating agency or court and enables the originating agency or court to locate an
 4 underlying record or file of a person described in this section. “Minimum information necessary”
 5 does not include any medical, psychiatric or psychological information, case histories or files of a
 6 person described in this section or any record or file of an originating agency or court.

7 **SECTION 13.** ORS 430.230 is amended to read:

8 430.230. As used in ORS 430.230 to 430.236:

9 (1) “Comprehensive community supports and services” includes:

10 (a) Community-based mental health or substance use disorder treatment programs;

11 (b) [*Community-based services necessary to restore a defendant’s fitness to proceed, as described*
 12 *in ORS 161.370 (2)(a)*] **Community restoration services as defined in section 2 of this 2020**
 13 **Act;**

14 (c) Evidence-based and tribal-based programs designed to reduce hospital and jail utilization by
 15 target populations; and

16 (d) Programs aimed at diverting individuals with nonperson criminal charges experiencing men-
 17 tal illness or substance use disorders from the criminal justice system.

18 (2) “County” includes a single county or a regional consortium of counties.

19
 20 **MISCELLANEOUS**

21
 22 **SECTION 14.** **The unit captions used in this 2020 Act are provided only for the conven-**
 23 **ience of the reader and do not become part of the statutory law of this state or express any**
 24 **legislative intent in the enactment of this 2020 Act.**

25 _____