

(To Resolve Conflicts)

B-Engrossed Senate Bill 295

Ordered by the House May 27
Including Senate Amendments dated April 1 and House Amendments
dated May 27 to resolve conflicts

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Chief Justice Martha L. Walters for Judicial Department, Senate Bill 24 Implementation Work Group)

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.

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 acuity of defendant's symptoms, public safety concerns and whether appropriate community restoration services are provided.

Modifies procedures when circumstances authorizing commitment of defendant no longer exist. Provides that if defendant is charged with felony, superintendent of state mental hospital or director of facility to which defendant is committed may notify court when hospital level of care is no longer necessary. Requires superintendent or director to notify court when specified circumstances have changed for defendant charged with misdemeanor. Authorizes community mental health program director to notify court if community restoration services become available for committed defendant charged with felony or misdemeanor.

Provides that documents related to involuntary medication of defendant are confidential and may be made available only to specified parties.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to fitness to proceed; creating new provisions; amending ORS 161.365, 161.370, 161.372,
3 161.373, 161.390, 161.392, 181A.290 and 430.230; repealing section 48, chapter __, Oregon Laws
4 2021 (Enrolled House Bill 3104); and declaring an emergency.

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

PRELIMINARY PROVISIONS

6
7
8
9 **SECTION 1. (1) Sections 2 to 5 of this 2021 Act are added to and made a part of ORS**
10 **161.290 to 161.373.**

11 **(2) ORS 161.360, 161.365 and 161.370 are added to and made a part of sections 2 to 5 of this**
12 **2021 Act.**

13 **SECTION 2. As used in sections 2 to 5 of this 2021 Act:**

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 (1) “Certified evaluator” has the meaning given that term in ORS 161.309.

2 (2) “Community restoration services” means services and treatment necessary to safely
3 allow a defendant to gain or regain fitness to proceed in the community, which may include
4 supervision by pretrial services.

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

7 (4) “Public safety concerns” means that the defendant presents a risk to self or to the
8 public if not hospitalized or in custody.

9 **SECTION 3.** (1) A recommendation provided by a certified evaluator, pursuant to sections
10 2 to 5 of this 2021 Act, that a defendant requires a hospital level of care due to the acuity
11 of the defendant’s symptoms must be based upon the defendant’s current diagnosis and
12 symptomology, the defendant’s current ability to engage in treatment, present safety con-
13 cerns relating to the defendant and any other pertinent information known to the evaluator.
14 If the defendant is in a placement in a facility, the evaluator may defer to the treatment
15 provider’s recommendation regarding whether a hospital level of care is needed.

16 (2) A determination by a community mental health program director, or the director’s
17 designee, pursuant to sections 2 to 5 of this 2021 Act, that appropriate community restora-
18 tion services are not present and available in the community must include information con-
19 cerning the specific services necessary to safely allow the defendant to gain or regain fitness
20 to proceed in the community and must specify the necessary services that are not present
21 and available in the community.

22 (3)(a) Reports resulting from examinations performed by a certified evaluator, and doc-
23 uments containing the recommendations of or resulting from consultations with a commu-
24 nity mental health program director or the director’s designee, prepared under sections 2 to
25 5 of this 2021 Act, and any document submitted to the court by a state mental hospital re-
26 lated to the proceedings under sections 2 to 5 of this 2021 Act, are confidential and may be
27 made available only:

28 (A) To the court, prosecuting attorney, defense attorney, agent of the prosecuting or
29 defense attorney, defendant, community mental health program director or designee, state
30 mental hospital and any facility in which the defendant is housed; or

31 (B) As ordered by a court.

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

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

39 (4) The court shall ensure that an order entered under sections 2 to 5 of this 2021 Act
40 is provided, by the end of the next judicial day, to any entity ordered to provide restoration
41 services.

42 (5) Unless the court orders otherwise or either party objects, a defendant committed to
43 a state mental hospital or other facility, or a certified evaluator or other expert witness,
44 may attend hearings held under sections 2 to 5 of this 2021 Act via simultaneous electronic
45 transmission.

FITNESS TO PROCEED GENERALLY

SECTION 4. (1) If at any time the court determines that the defendant lacks fitness to proceed, the court shall further determine whether there is a substantial probability that the defendant, in the foreseeable future, will gain or regain fitness to proceed. If the court determines that there is no substantial probability that the defendant, in the foreseeable future, will gain or regain fitness to proceed, the court shall dismiss, without prejudice, all charges against the defendant and:

(a) Order that the defendant be discharged; or

(b) Initiate commitment proceedings under ORS 426.070, 426.701 or 427.235 to 427.290.

(2)(a) The superintendent of the hospital or director of the facility in which the defendant is committed under ORS 161.370 or a person examining the defendant as a condition of release to community restoration services shall notify the court if the defendant gains or regains fitness to proceed.

(b) A party to the case may notify the court if the defendant has gained or regained fitness to proceed.

(c) The court may, upon its own motion or the request of either party, hold a hearing to determine whether the defendant has gained or regained fitness to proceed. If the court determines that the defendant has gained or regained fitness to proceed, the court shall resume the criminal proceeding unless the court determines that so much time has elapsed since the commitment or release of the defendant to community restoration services that it would be unjust to resume the criminal proceeding. If the court determines that it would be unjust to resume the criminal proceeding, the court, on motion of either party, may dismiss the charge and may order the defendant to be discharged or cause a proceeding to be commenced forthwith under ORS 426.070 to 426.170, 426.701 or 427.235 to 427.290.

(3) If the defendant gains or regains fitness to proceed, the defendant shall be given credit against each charge alleged in the accusatory instrument for each day the defendant was committed under ORS 161.370 to the custody of a state mental hospital, or to the custody of a secure intensive community inpatient facility designated by the Oregon Health Authority.

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

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

COMMITTED DEFENDANTS

1 **SECTION 5.** (1) The superintendent of a state mental hospital or director of a facility to
2 which the defendant is committed under ORS 161.370 shall cause the defendant to be evalu-
3 ated within 60 days from the defendant's delivery into the superintendent's or director's
4 custody, for the purpose of determining whether there is a substantial probability that, in
5 the foreseeable future, the defendant will have fitness to proceed. In addition, the super-
6 intendent or director shall:

7 (a) Immediately notify the committing court if the defendant, at any time, gains or re-
8 gains fitness to proceed or if there is no substantial probability that, within the foreseeable
9 future, the defendant will gain or regain fitness to proceed.

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

12 (A) The defendant has present fitness to proceed;

13 (B) There is no substantial probability that, in the foreseeable future, the defendant will
14 gain or regain fitness to proceed; or

15 (C) There is a substantial probability that, in the foreseeable future, the defendant will
16 gain or regain fitness to proceed. If the probability exists, the superintendent or director
17 shall give the court an estimate of the time in which the defendant, with appropriate treat-
18 ment, is expected to gain or regain fitness to proceed.

19 (c) Notify the court if court-ordered involuntary medication is necessary for the defend-
20 ant to gain or regain fitness to proceed and, if appropriate, submit a report to the court
21 under ORS 161.372.

22 (2)(a) If the superintendent of the state mental hospital or director of the facility to
23 which the defendant is committed determines that there is a substantial probability that, in
24 the foreseeable future, the defendant will gain or regain fitness to proceed, unless the court
25 otherwise orders, the defendant shall remain in the superintendent's or director's custody
26 where the defendant shall receive treatment designed for the purpose of enabling the de-
27 fendant to gain or regain fitness to proceed. In keeping with the notice requirement under
28 subsection (1)(b) of this section, the superintendent or director shall, for the duration of the
29 defendant's period of commitment, submit a progress report to the committing court, con-
30 cerning the defendant's fitness to proceed, at least once every 180 days as measured from
31 the date of the defendant's delivery into the superintendent's or director's custody.

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

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

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

37 (3)(a) Notwithstanding subsection (2) of this section, if the most serious offense in the
38 charging instrument is a felony, and the superintendent of the state mental hospital or di-
39 rector of the facility to which the defendant is committed determines that a hospital level
40 of care is no longer necessary due to present public safety concerns and the acuity of
41 symptoms of the defendant's qualifying mental disorder, the superintendent or director may
42 file notice of the determination with the court. Upon receipt of the notice, the court shall
43 order that a community mental health program director or the director's designee, within
44 five judicial days:

45 (A) Consult with the defendant and with any local entity that would be responsible for

1 providing community restoration services, if the defendant were to be released in the com-
2 munity, to determine whether community restoration services are present and available in
3 the community; and

4 (B) Provide the court and the parties with recommendations from the consultation.

5 (b) Notwithstanding subsection (2) of this section, if the most serious offense in the
6 charging instrument is a felony, and the community mental health program director deter-
7 mines that community restoration services that would mitigate any risk posed by the de-
8 fendant are present and available in the community, the community mental health program
9 director may file notice of the determination with the court. Upon receipt of the notice, the
10 court shall order that the superintendent of the state mental hospital or director of the fa-
11 cility to which the defendant is committed, within five judicial days:

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

15 (B) Provide the court and the parties with recommendations from the evaluation.

16 (c) Within 10 judicial days of receiving the recommendations described in paragraph (a)
17 or (b) of this subsection, the court shall hold a hearing to determine an appropriate action
18 in accordance with ORS 161.370 (2)(c) as follows:

19 (A) If, after consideration of the factors and possible actions described in ORS 161.370
20 (2)(c) and any recommendations received under paragraph (a) or (b) of this subsection, the
21 court determines that a hospital level of care is necessary due to public safety concerns or
22 the acuity of symptoms of the defendant's qualifying mental disorder, and that based on the
23 consultation or evaluation described in paragraph (a) or (b) of this subsection, any informa-
24 tion provided by community-based mental health providers or any other sources, primary
25 and secondary release criteria as defined in ORS 135.230, and any other information the court
26 finds to be trustworthy and reliable, the appropriate community restoration services are not
27 present and available in the community, the court may continue the commitment of the de-
28 fendant.

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

35 (4)(a) Notwithstanding subsection (2) of this section, if the most serious offense in the
36 charging instrument is a misdemeanor, and the superintendent of the state mental hospital
37 or director of the facility to which the defendant is committed determines that the defendant
38 no longer needs a hospital level of care due to the acuity of symptoms of the defendant's
39 qualifying mental disorder or there are not present public safety concerns, the superinten-
40 dent or director shall file notice of the determination with the court, along with recommen-
41 dations regarding the necessary community restoration services that would mitigate any risk
42 presented by the defendant. Upon receipt of the notice, the court shall order that a com-
43 munity mental health program director or the director's designee, within five judicial days:

44 (A) Consult with the defendant and with any local entity that would be responsible for
45 providing community restoration services, if the defendant were to be released in the com-

1 munity, to determine whether appropriate community restoration services are present and
2 available in the community; and

3 (B) Provide the court and the parties with recommendations from the consultation.

4 (b) Notwithstanding subsection (2) of this section, if the most serious offense in the
5 charging instrument is a misdemeanor, and the community mental health program director
6 determines that the community restoration services that would mitigate any risk posed by
7 the defendant are present and available in the community, the community mental health
8 program director may file notice of the determination with the court. Upon receipt of the
9 notice, the court shall order that the superintendent of the state mental hospital or director
10 of the facility to which the defendant is committed, within five judicial days:

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

14 (B) Provide the court and the parties with recommendations from the evaluation.

15 (c) Within 10 judicial days of receiving the recommendations described in paragraph (a)
16 or (b) of this subsection, the court shall hold a hearing to determine an appropriate action
17 in accordance with ORS 161.370 (2)(c) as follows:

18 (A) After consideration of the factors and possible actions described in ORS 161.370 (2)(c),
19 the consultation or evaluation and any recommendations described in paragraph (a) or (b)
20 of this subsection, and any other information the court finds to be trustworthy and reliable,
21 the court may continue the commitment of the defendant if the court makes written findings
22 that a hospital level of care is necessary due to public safety concerns and the acuity of
23 symptoms of the defendant's qualifying mental disorder, and that appropriate community
24 restoration services are not present and available in the community.

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

31 (5)(a) If a defendant remains committed under this section, the court shall determine
32 within a reasonable period of time whether there is a substantial probability that, in the
33 foreseeable future, the defendant will gain or regain fitness to proceed. However, regardless
34 of the number of charges with which the defendant is accused, in no event shall the defend-
35 ant be committed for longer than whichever of the following, measured from the defendant's
36 initial custody date, is shorter:

37 (A) Three years; or

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

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

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

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

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

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

8 (c) The superintendent of the state mental hospital or director of the facility to which
9 the defendant is committed shall notify the committing court of the defendant's impending
10 discharge 30 days before the date on which the superintendent or director is required to
11 discharge the defendant under this subsection.

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

15 (b) When the committing court receives a notice from the superintendent or director
16 under subsection (1) of this section concerning the defendant's progress or lack thereof, or
17 under subsection (5) of this section concerning the defendant's impending discharge, the
18 committing court shall determine, after a hearing if a hearing is requested, whether the de-
19 fendant presently has fitness to proceed.

20 (7) If at any time the court determines that the defendant lacks fitness to proceed, the
21 court shall further determine whether the defendant is entitled to discharge under sub-
22 section (5) of this section. If the court determines that the defendant is entitled to discharge
23 under subsection (5) of this section, the court shall dismiss, without prejudice, all charges
24 against the defendant and:

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

26 (b) Initiate commitment proceedings under ORS 426.070, 426.701 or 427.235 to 427.290.

27
28 **EXAMINATION OF DEFENDANT**

29
30 **SECTION 6.** ORS 161.365 is amended to read:

31 161.365. (1)(a) When the court has reason to doubt the defendant's fitness to proceed by reason
32 of incapacity as described in ORS 161.360, the court may call any witness to assist it in reaching
33 its decision and, **except as provided in paragraph (b) of this subsection**, shall order that a com-
34 munity mental health program director, or the director's designee, consult with the defendant and
35 with any local entity that would be responsible for [*supervising*] **providing community restoration**
36 **services to** the defendant if the defendant were to be released in the community, to determine
37 whether [*services and supervision necessary to safely allow the defendant to gain or regain fitness to*
38 *proceed*] **appropriate community restoration services are present and** available in the commu-
39 nity. After the consultation, the program director or the director's designee shall provide to the
40 court a copy of the findings resulting from the consultation.

41 (b) **If the defendant is charged with one or more of the following offenses the court is**
42 **not required to, but may in its discretion, order the consultation described in paragraph (a)**
43 **of this subsection:**

44 (A) **Aggravated murder;**

45 (B) **Murder in any degree;**

- 1 **(C) Attempted aggravated murder;**
- 2 **(D) Attempted murder in any degree;**
- 3 **(E) Manslaughter in any degree;**
- 4 **(E) Aggravated vehicular homicide;**
- 5 **(F) Arson in the first degree when classified as crime category 10 of the sentencing**
- 6 **guidelines grid of the Oregon Criminal Justice Commission;**
- 7 **(G) Assault in the first degree;**
- 8 **(H) Assault in the second degree;**
- 9 **(I) Kidnapping in the first degree;**
- 10 **(J) Kidnapping in the second degree;**
- 11 **(K) Rape in the first degree;**
- 12 **(L) Sodomy in the first degree;**
- 13 **(M) Unlawful sexual penetration in the first degree;**
- 14 **(N) Robbery in the first degree; or**
- 15 **(O) Robbery in the second degree.**

16 (c) If the court determines the assistance of a psychiatrist or psychologist would be helpful, the
17 court may:

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

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

27 [(b)] (d) The court shall provide a copy of any order entered under this subsection to the com-
28 munity mental health program director or designee and to the state mental hospital or other facility
29 by the end of the next judicial day.

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

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

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

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

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

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

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

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

45 (c) If the defendant suffers from a qualifying mental disorder, an opinion as to whether the de-

1 defendant is incapacitated within the description set out in ORS 161.360; and

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

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

10 (5) If the examination by the certified evaluator cannot be conducted by reason of the unwill-
11 ingness of the defendant to participate in the examination, the report must so state and must in-
12 clude, if possible, an opinion as to whether the unwillingness of the defendant was the result of a
13 qualifying mental disorder affecting *[capacity]* **fitness** to proceed.

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

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

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

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

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

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

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

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

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

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

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

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

40 (b) When an examination is ordered at the request or with the acquiescence of a defendant who
41 is determined not to be financially eligible, the examination shall be performed at the defendant's
42 expense. When an examination is ordered at the request of the prosecution, the county shall pay for
43 the expense of the examination.

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

1 *not available*] **does not order the defendant committed to a state mental hospital or other fa-**
 2 **ility, but finds that appropriate community restoration services are not present and avail-**
 3 **able** in the community, for any defendant remaining in custody after such determination, the court
 4 shall set a review hearing seven days from the date of the determination under paragraph (a) of this
 5 subsection. At the review hearing, the court shall consider all relevant information and determine
 6 *[an appropriate action in the case as described in paragraph (c) of this subsection. If the defendant*
 7 *remains in custody following the initial review hearing, the court shall hold further review hearings*
 8 *every seven days thereafter until the defendant is no longer in custody.]* **if commitment to the state**
 9 **mental hospital or other facility is appropriate under subsection (3) or (4) of this section, or**
 10 **if another action described in paragraph (c) of this subsection is appropriate. At the conclu-**
 11 **sion of the hearing the court shall enter an order in accordance with the defendant's con-**
 12 **stitutional rights to due process.**

13 **(e) If the court determines that the appropriate action in the case is an order for the**
 14 **defendant to engage in community restoration services, but the defendant has a pending**
 15 **criminal case, warrant or hold in one or more other jurisdictions, the other jurisdictions**
 16 **shall, within two judicial days of becoming aware of the proceeding under this section, com-**
 17 **municate with the court and the other jurisdictions, if applicable, to develop a plan to ad-**
 18 **dress the interests of all jurisdictions in the defendant in a timely manner.**

19 *[(3)(a) Unless the court orders an action other than commitment under subsection (2) of this section,*
 20 *and except as otherwise provided in subsections (4) and (5) of this section, if the court finds that the*
 21 *defendant is dangerous to self or others as a result of a qualifying mental disorder, that a hospital level*
 22 *of care is necessary due to the defendant's dangerousness and the acuity of symptoms of the defendant's*
 23 *qualifying mental disorder, and that, based on the findings resulting from the consultation described*
 24 *in ORS 161.365 (1) and from any information provided by community-based mental health providers*
 25 *or any other sources, the services and supervision necessary to allow the defendant to gain or regain*
 26 *fitness to proceed are not available in the community, the court shall commit the defendant to the cus-*
 27 *tody of the superintendent of a state mental hospital or director of a facility designated by the Oregon*
 28 *Health Authority if the defendant is at least 18 years of age, or to the custody of the director of a secure*
 29 *intensive community inpatient facility designated by the authority if the defendant is under 18 years*
 30 *of age.]*

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

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

40 **(B) Based on the findings resulting from a consultation described in ORS 161.365 (1), if**
 41 **applicable, from any information provided by community-based mental health providers or**
 42 **any other sources, and primary and secondary release criteria as defined in ORS 135.230, the**
 43 **appropriate community restoration services are not present and available in the community.**

44 **(b) If the defendant is committed under this subsection, the community mental health program**
 45 **director, or director's designee, shall at regular intervals, during any period of commitment, re-**

1 view available community [*resources*] **restoration services** and maintain communication with the
2 defendant and the superintendent of the state mental hospital or director of the facility in order to
3 facilitate an efficient transition to treatment in the community when ordered.

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

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

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

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

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

18 *[(b)]* **(4)(a)** If the most serious offense in the charging instrument is a misdemeanor, the court
19 may not commit the defendant [*under subsection (3) of this section*] **to the custody of the super-**
20 **intendent of a state mental hospital or director of a facility designated by the Oregon Health**
21 **Authority if the defendant is at least 18 years of age, or to the custody of the director of a**
22 **secure intensive community inpatient facility designated by the authority if the defendant is**
23 **under 18 years of age,** unless the [*finding that the defendant requires a hospital level of care due to*
24 *the defendant's dangerousness and the acuity of symptoms of the defendant's qualifying mental disorder*
25 *is based on a recommendation by a certified evaluator as defined in ORS 161.309, or a community*
26 *mental health program director or the director's designee, that the defendant requires such level of*
27 *care.*] **court:**

28 **(A)(i) Receives a recommendation from a certified evaluator that the defendant requires**
29 **a hospital level of care due to the acuity of symptoms of the defendant's qualifying mental**
30 **disorder; and**

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

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

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

38 **(ii) There are public safety concerns; and**

39 **(iii) The appropriate community restoration services are not present and available in the**
40 **community.**

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

43 **(A)** Has not received a recommendation **from a certified evaluator** as to whether the defend-
44 ant requires a hospital level of care due to [*the defendant's dangerousness and*] the acuity of symp-
45 toms of the defendant's qualifying mental disorder, the court shall order a certified evaluator [*or a*

1 *community mental health program director, or the director's designee,*] to make such a recommen-
2 dation.

3 **(B) Has not received a recommendation from the community mental health program di-**
4 **rector or designee concerning whether appropriate community restoration services are**
5 **present and available in the community, the court shall order the director or designee to**
6 **make such a recommendation.**

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

11 **(d) If the defendant is committed under this subsection, the community mental health**
12 **program director, or director's designee, shall at regular intervals, during any period of**
13 **commitment, review available community restoration services and maintain communication**
14 **with the defendant and the superintendent of the state mental hospital or director of the**
15 **facility in order to facilitate an efficient transition to treatment in the community when or-**
16 **dered.**

17 **(5) If the most serious offense in the charging instrument is a violation, the court may**
18 **not commit the defendant to the custody of the superintendent of a state mental hospital**
19 **or director of a facility designated by the Oregon Health Authority if the defendant is at least**
20 **18 years of age, or to the custody of the director of a secure intensive community inpatient**
21 **facility designated by the authority if the defendant is under 18 years of age.**

22 **(6)(a) If the court does not order the commitment of the defendant under subsection (3)**
23 **or (4) of this section, if commitment is precluded under subsection (5) of this section or if**
24 **the court determines that care other than commitment would better serve the defendant and**
25 **the community, the court shall release the defendant, pursuant to an order that the de-**
26 **fendant engage in community restoration services, until the defendant has gained or re-**
27 **gained fitness to proceed, or until the court finds there is no substantial probability that the**
28 **defendant will, within the foreseeable future, gain or regain fitness to proceed. The court**
29 **may not order the defendant to engage in community restoration services in another county**
30 **without permission from the other county.**

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

35 **(c) A community mental health program director coordinating the defendant's treatment**
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*] **ordered to engage in community res-**
41 **toration services** under [*subsection (4) of this section*] **this subsection**, the court may place condi-
42 tions that the court deems appropriate on the release, including the requirement that the defendant
43 regularly report to [*the authority or a community mental health program*] **a state mental hospital**
44 **or a certified evaluator** for examination to determine if the defendant has gained or regained [*ca-*
45 *capacity to stand trial*] **fitness to proceed.**

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

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

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

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

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

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

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

26 [(c) Notify the court if court-ordered involuntary medication is necessary for the defendant to gain
27 or regain the capacity to proceed and, if appropriate, submit a report to the court under ORS
28 161.372.]

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

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

45 [(B) Upon receipt of the notice, the court shall order that a community mental health program di-

1 *rector or the director's designee, within five judicial days:]*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 *[(ii) Unless the defendant is charged on any charging instrument with aggravated murder or a*

1 *crime listed in ORS 137.700 (2), for each day the defendant is held in jail before and after the date the*
2 *defendant is first committed, whether the days are consecutive or are interrupted by a period of time*
3 *during which the defendant lacks fitness to proceed.]*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 as the medication; and

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

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

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

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

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

13 **(4)(a) Reports, motions and orders concerning the involuntary medication of a defendant**
14 **under this section are confidential and may be made available only:**

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

18 **(B) As ordered by a court.**

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

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

26
27 **CONFORMING AMENDMENTS**
28

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

30 161.373. (1) Unless otherwise prohibited by law or for good cause, all public bodies, as defined
31 in ORS 174.109, and any private medical provider in possession of records concerning the defendant,
32 shall, within five business days of receipt of the order, comply with a court order for the release
33 of records to the state mental hospital or other facility designated by the Oregon Health Authority
34 for the purpose of conducting an examination or evaluation under [*ORS 161.365 or 161.370*] **sections**
35 **2 to 5 of this 2021 Act.**

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

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

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

1 161.390. (1) The Oregon Health Authority shall adopt rules for the assignment of persons to state
2 mental hospitals or secure intensive community inpatient facilities **after commitment** under ORS
3 161.365 and 161.370 and for establishing standards for evaluation and treatment of persons commit-
4 ted to a state hospital or a secure intensive community inpatient facility or ordered to a community
5 mental health program under ORS 161.315 to 161.351.

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

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

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

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

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

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

24 161.392. (1) The Oregon Health Authority shall adopt rules necessary to certify psychiatrists and
25 licensed psychologists for the purpose of performing evaluations and examinations described in ORS
26 161.309[161.365] and 419C.524 **and sections 2 to 5 of this 2021 Act.** The rules must include a de-
27 scription of the standards and qualifications necessary for certification. The authority may charge
28 a fee for certification under this section in an amount determined by rule.

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

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

33 181A.290. (1) The Department of Human Services, the Oregon Health Authority, the Psychiatric
34 Security Review Board and the Judicial Department shall provide the Department of State Police
35 with the minimum information necessary to identify persons who:

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

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

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

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

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

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

1 (g) Have been placed under the jurisdiction of the Psychiatric Security Review Board under ORS
2 161.315 to 161.351; or

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

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

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

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

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

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

17 (5) As used in this section, “minimum information necessary” means data elements or nominal
18 information that is necessary or required under federal law to accurately identify a person described
19 in this section and includes the person’s name, date of birth, gender and reference information that
20 identifies the originating agency or court and enables the originating agency or court to locate an
21 underlying record or file of a person described in this section. “Minimum information necessary”
22 does not include any medical, psychiatric or psychological information, case histories or files of a
23 person described in this section or any record or file of an originating agency or court.

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

25 430.230. As used in ORS 430.230 to 430.236:

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

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

28 (b) [*Community-based services necessary to restore a defendant’s fitness to proceed, as described*
29 *in ORS 161.370 (2)(a)*] **Community restoration services as defined in section 2 of this 2021**
30 **Act;**

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

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

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

36 **SECTION 13a.** If House Bill 3104 becomes law, section 48, chapter __, Oregon Laws 2021
37 (Enrolled House Bill 3104) (amending ORS 430.230), is repealed.

38
39 **MISCELLANEOUS**

40
41 **SECTION 14.** The unit captions used in this 2021 Act are provided only for the conven-
42 ience of the reader and do not become part of the statutory law of this state or express any
43 legislative intent in the enactment of this 2021 Act.

44
45 **EMERGENCY CLAUSE**

1 **SECTION 15.** This 2021 Act being necessary for the immediate preservation of the public
2 peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect
3 on its passage.

4
