

# Senate Bill 295

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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, 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; and declaring an emergency.

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 2021 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 2021 Act.

12 **SECTION 2.** As used in sections 2 to 5 of this 2021 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, which may include  
16 supervision by pretrial services.

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

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

3 **SECTION 3.** (1) A recommendation provided by a certified evaluator, pursuant to sections  
4 2 to 5 of this 2021 Act, that a defendant requires a hospital level of care due to the acuity  
5 of the defendant's symptoms must be based upon a review of necessary community restora-  
6 tion services, the defendant's current diagnosis and symptomology, the defendant's current  
7 ability to engage in treatment and present safety concerns relating to the defendant. The  
8 recommendation must state the relevant considerations supporting the determination that  
9 a hospital level of care is required and why a hospital level of care is appropriate.

10 (2) A determination by a community mental health program director, or the director's  
11 designee, pursuant to sections 2 to 5 of this 2021 Act, that appropriate community restora-  
12 tion services are not present and available in the community must include information con-  
13 cerning the specific services necessary to safely allow the defendant to gain or regain fitness  
14 to proceed in the community and must specify the necessary services that are not present  
15 and available in the community.

16 (3)(a) Reports resulting from examinations performed by a certified evaluator, and doc-  
17 uments containing the recommendations of or resulting from consultations with a commu-  
18 nity mental health program director or the director's designee, prepared under sections 2 to  
19 5 of this 2021 Act, and any document submitted to the court by a state mental hospital re-  
20 lated to the proceedings under sections 2 to 5 of this 2021 Act, are confidential and may be  
21 made available only:

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

25 (B) As ordered by a court.

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

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

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

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

#### 40 41 FITNESS TO PROCEED GENERALLY

42  
43 **SECTION 4.** (1) If at any time the court determines that the defendant lacks fitness to  
44 proceed, the court shall further determine whether there is a substantial probability that the  
45 defendant, in the foreseeable future, will gain or regain fitness to proceed. If the court de-

1 termines that there is no substantial probability that the defendant, in the foreseeable fu-  
2 ture, will gain or regain fitness to proceed, the court shall dismiss, without prejudice, all  
3 charges against the defendant and:

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

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

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

10 (b) A party to the case may notify the court if the defendant has gained or regained fit-  
11 ness to proceed.

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

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

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

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

#### 38 39 COMMITTED DEFENDANTS

40  
41 **SECTION 5.** (1) The superintendent of a state mental hospital or director of a facility to  
42 which the defendant is committed under ORS 161.370 shall cause the defendant to be evalu-  
43 ated within 60 days from the defendant's delivery into the superintendent's or director's  
44 custody, for the purpose of determining whether there is a substantial probability that, in  
45 the foreseeable future, the defendant will have fitness to proceed. In addition, the super-

1 **intendent or director shall:**

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

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

7 (A) **The defendant has present fitness to proceed;**

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

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

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

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

27 (b) **A progress report described in paragraph (a) of this subsection may consist of an**  
28 **update to:**

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

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

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

40 (A) **Consult with the defendant and with any local entity that would be responsible for**  
41 **providing community restoration services, if the defendant were to be released in the com-**  
42 **munity, to determine whether community restoration services are present and available in**  
43 **the community; and**

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

45 (b) **Notwithstanding subsection (2) of this section, if the most serious offense in the**

1 charging instrument is a felony, and the community mental health program director deter-  
2 mines that community restoration services that would mitigate any risk posed by the de-  
3 fendant are present and available in the community, the community mental health program  
4 director may file notice of the determination with the court. Upon receipt of the notice, the  
5 court shall order that the superintendent of the state mental hospital or director of the fa-  
6 cility to which the defendant is committed, within five judicial days:

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

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

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

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

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

30 (4)(a) Notwithstanding subsection (2) of this section, if the most serious offense in the  
31 charging instrument is a misdemeanor, and the superintendent of the state mental hospital  
32 or director of the facility to which the defendant is committed determines that the acuity  
33 of symptoms of the defendant's qualifying mental disorder is not severe or there are not  
34 present public safety concerns, the superintendent or director shall file notice of the deter-  
35 mination with the court, along with recommendations regarding the necessary community  
36 restoration services that would mitigate any risk presented by the defendant. Upon receipt  
37 of the notice, the court shall order that a community mental health program director or the  
38 director's designee, within five judicial days:

39 (A) Consult with the defendant and with any local entity that would be responsible for  
40 providing community restoration services, if the defendant were to be released in the com-  
41 munity, to determine whether appropriate community restoration services are present and  
42 available in the community; and

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

44 (b) Notwithstanding subsection (2) of this section, if the most serious offense in the  
45 charging instrument is a misdemeanor, and the community mental health program director

1 determines that the community restoration services that would mitigate any risk posed by  
2 the defendant are present and available in the community, the community mental health  
3 program director may file notice of the determination with the court. Upon receipt of the  
4 notice, the court shall order that the superintendent of the state mental hospital or director  
5 of the facility to which the defendant is committed, within five judicial days:

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

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

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

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

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

26 (5)(a) If a defendant remains committed under this section, the court shall determine  
27 within a reasonable period of time whether there is a substantial probability that, in the  
28 foreseeable future, the defendant will gain or regain fitness to proceed. However, regardless  
29 of the number of charges with which the defendant is accused, in no event shall the defend-  
30 ant be committed for longer than whichever of the following, measured from the defendant's  
31 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  
34 defendant had been convicted.

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

37 (A) The initial custody date is the date on which the defendant is first committed under  
38 this section 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  
42 consecutive or are interrupted by a period of time during which the defendant has gained or  
43 regained fitness to proceed; and

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

1 the date the defendant is first committed, whether the days are consecutive or are inter-  
2 rupted by a period of time during which the defendant lacks fitness to proceed.

3 (c) The superintendent of the state mental hospital or director of the facility to which  
4 the defendant is committed 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  
6 discharge the defendant under this subsection.

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

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

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

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

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

## 22 EXAMINATION OF DEFENDANT

23  
24  
25 **SECTION 6.** ORS 161.365 is amended to read:

26 161.365. (1)(a) When the court has reason to doubt the defendant's fitness to proceed by reason  
27 of incapacity as described in ORS 161.360, the court may call any witness to assist it in reaching  
28 its decision and, **except as provided in paragraph (b) of this subsection**, shall order that a com-  
29 munity mental health program director, or the director's designee, consult with the defendant and  
30 with any local entity that would be responsible for [*supervising*] **providing community restoration**  
31 **services to** the defendant if the defendant were to be released in the community, to determine  
32 whether [*services and supervision necessary to safely allow the defendant to gain or regain fitness to*  
33 *proceed*] **appropriate community restoration services are present and** available in the commu-  
34 nity. After the consultation, the program director or the director's designee shall provide to the  
35 court a copy of the findings resulting from the consultation.

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

39 (A) **Aggravated murder;**

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

41 (C) **Attempted aggravated murder;**

42 (D) **Attempted murder in any degree;**

43 (E) **Manslaughter in any degree;**

44 (E) **Aggravated vehicular homicide;**

45 (F) **Arson in the first degree when classified as crime category 10 of the sentencing**

1 **guidelines grid of the Oregon Criminal Justice Commission;**

2 **(G) Assault in the first degree;**

3 **(H) Assault in the second degree;**

4 **(I) Kidnapping in the first degree;**

5 **(J) Kidnapping in the second degree;**

6 **(K) Rape in the first degree;**

7 **(L) Sodomy in the first degree;**

8 **(M) Unlawful sexual penetration in the first degree;**

9 **(N) Robbery in the first degree; or**

10 **(O) Robbery in the second degree.**

11 **(c)** If the court determines the assistance of a psychiatrist or psychologist would be helpful, the  
12 court may:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 [*A*] *The county in which the defendant is charged; and*

15 [*B*] *The county of the defendant's last known residence.*

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

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

20 [*B*] *As ordered by a court.*

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

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

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

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

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

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

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

41 [*9*] *As used in this section and ORS 161.370, "certified evaluator" has the meaning given that term*  
 42 *in ORS 161.309.*

43  
 44 **DISPOSITION UPON FINDING OF LACK OF FITNESS**  
 45

1       **SECTION 7.** ORS 161.370 is amended to read:

2       161.370. (1)(a) When the defendant's fitness to proceed is drawn in question, the issue shall be  
3 determined by the court.

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

10       (2)(a) If the court determines that the defendant lacks fitness to proceed, the criminal proceeding  
11 against the defendant shall be suspended and the court shall, at a hearing, proceed in accordance  
12 with this subsection.

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

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

26       (A) Commitment for the defendant to gain or regain fitness to proceed under subsection (3) or  
27 [~~(5)~~] **(4)** of this section;

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

30       [~~(C) Release on supervision;~~]

31       [~~(D)~~] **(C)** Commencement of a civil commitment proceeding under ORS 426.070 to 426.170, 426.701  
32 or 427.235 to 427.290;

33       [~~(E)~~] **(D)** Commencement of protective proceedings under ORS chapter 125; or

34       [~~(F)~~] **(E)** Dismissal of the charges pursuant to ORS 135.755.

35       (d) If the court, while considering or ordering an appropriate action under this subsection, [*de-*  
36 *termines that the defendant does not require a hospital level of care due to the defendant's*  
37 *dangerousness and the acuity of symptoms of the defendant's qualifying mental disorder, but that ser-*  
38 *VICES and supervision necessary to safely allow the defendant to gain or regain fitness to proceed are*  
39 *not available*] **does not order the defendant committed to a state mental hospital or other fa-**  
40 **facility, but finds that appropriate community restoration services are not present and avail-**  
41 **able** in the community, for any defendant remaining in custody after such determination, the court  
42 shall set a review hearing seven days from the date of the determination under paragraph (a) of this  
43 subsection. At the review hearing, the court shall consider all relevant information and determine  
44 [*an appropriate action in the case as described in paragraph (c) of this subsection. If the defendant*  
45 *remains in custody following the initial review hearing, the court shall hold further review hearings*

1 every seven days thereafter until the defendant is no longer in custody.] **if commitment to the state**  
 2 **mental hospital or other facility is appropriate under subsection (3) or (4) of this section, or**  
 3 **if another action described in paragraph (c) of this subsection is appropriate. At the conclu-**  
 4 **sion of the hearing the court shall enter an order in accordance with the defendant's con-**  
 5 **stitutional rights to due process.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

42        **(d)** If the defendant is committed under this subsection, the community mental health  
43       program director, or director's designee, shall at regular intervals, during any period of  
44       commitment, review available community restoration services and maintain communication  
45       with the defendant and the superintendent of the state mental hospital or director of the

1 **facility in order to facilitate an efficient transition to treatment in the community when or-**  
 2 **dered.**

3 **(5) If the most serious offense in the charging instrument is a violation, the court may**  
 4 **not commit the defendant to the custody of the superintendent of a state mental hospital**  
 5 **or director of a facility designated by the Oregon Health Authority if the defendant is at least**  
 6 **18 years of age, or to the custody of the director of a secure intensive community inpatient**  
 7 **facility designated by the authority if the defendant is under 18 years of age.**

8 **(6)(a) If the court does not order the commitment of the defendant under subsection (3)**  
 9 **or (4) of this section, if commitment is precluded under subsection (5) of this section or if**  
 10 **the court determines that care other than commitment would better serve the defendant and**  
 11 **the community, the court shall release the defendant, pursuant to an order that the de-**  
 12 **fendant engage in community restoration services, until the defendant has gained or re-**  
 13 **gained fitness to proceed, or until the court finds there is no substantial probability that the**  
 14 **defendant will, within the foreseeable future, gain or regain fitness to proceed.**

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

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

24 **[(6) (d) When a defendant is [released on supervision] ordered to engage in community res-**  
 25 **toration services under [subsection (4) of this section] this subsection, the court may place condi-**  
 26 **tions that the court deems appropriate on the release, including the requirement that the defendant**  
 27 **regularly report to [the authority or a community mental health program] a state mental hospital**  
 28 **or a certified evaluator for examination to determine if the defendant has gained or regained [ca-**  
 29 **capacity to stand trial] fitness to proceed.**

30 **[(7) When the court, on its own motion or upon the application of the superintendent of the hospital**  
 31 **or director of the facility in which the defendant is committed, a person examining the defendant as a**  
 32 **condition of release on supervision, or either party, determines, after a hearing, if a hearing is re-**  
 33 **quested, that the defendant has gained or regained fitness to proceed, the criminal proceeding shall be**  
 34 **resumed. If, however, the court is of the view that so much time has elapsed since the commitment or**  
 35 **release of the defendant on supervision that it would be unjust to resume the criminal proceeding, the**  
 36 **court on motion of either party may dismiss the charge and may order the defendant to be discharged**  
 37 **or cause a proceeding to be commenced forthwith under ORS 426.070 to 426.170, 426.701 or 427.235 to**  
 38 **427.290.]**

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

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

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

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

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

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

10       ***[(c) Notify the court if court-ordered involuntary medication is necessary for the defendant to gain***  
11 ***or regain the capacity to proceed and, if appropriate, submit a report to the court under ORS***  
12 ***161.372.]***

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

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

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

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

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

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

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

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

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

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

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

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

17       *[(A) Three years; or]*

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

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

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

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

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

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

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

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

40       *[(13) If at any time the court determines that the defendant lacks the capacity to stand trial, the*  
 41 *court shall further determine whether there is a substantial probability that the defendant, in the fore-*  
 42 *seeable future, will gain or regain the capacity to stand trial and whether the defendant is entitled to*  
 43 *discharge under subsection (10) of this section. If the court determines that there is no substantial*  
 44 *probability that the defendant, in the foreseeable future, will gain or regain the capacity to stand trial*  
 45 *or that the defendant is entitled to discharge under subsection (10) of this section, the court shall dis-*

1 *miss, without prejudice, all charges against the defendant and:]*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 *[(19) The court shall ensure that an order entered under this section is provided, by the end of the*  
 37 *next judicial day, to any entity ordered to provide services and supervision necessary to restore the*  
 38 *defendant's fitness to proceed.]*

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

42 *[(21)] (7) The Oregon Health Authority shall establish by rule standards for the recommendation*  
 43 *provided to the court described in subsection (2) of this section.*

44  
 45 **INVOLUNTARY MEDICATION**

**SECTION 8.** ORS 161.372 is amended to read:

161.372. (1) If, at any point while the defendant is in the custody of the superintendent of the state mental hospital **after commitment** under ORS 161.370, the superintendent determines that medication is the recommended treatment in order to allow the defendant to gain or regain fitness to proceed, the defendant is refusing to take the recommended medication and the defendant cannot be involuntarily medicated without a court order, the superintendent shall submit a report of the determination to the court.

(2) The report described in subsection (1) of this section shall include:

(a) Information regarding the benefits and side effects of each recommended medication;

(b) Information concerning the defendant's refusal to take the recommended medication; and

(c) The likelihood that the medication will allow the defendant to gain or regain fitness to proceed.

(3)(a) Based upon the report described in subsection (1) of this section, the prosecuting attorney may file a motion requesting that the court authorize the involuntary administration of medication to the defendant. The prosecuting attorney shall provide a copy of the motion to the defendant.

(b) The court shall hold a hearing on the motion if either the prosecuting attorney or the defendant requests a hearing. At the hearing, the court shall determine whether to issue an order authorizing the involuntary administration of medication to the defendant.

(c) In order to enter an order authorizing the involuntary administration of medication to the defendant, the court must find that:

(A) Involuntary medication of the defendant is not otherwise authorized by law;

(B) There are important state interests at stake in the prosecution of the defendant;

(C) The recommended medication will significantly further the important state interests because:

(i) It is substantially likely that the medication will render the defendant fit to proceed; and

(ii) It is substantially unlikely that the medication will cause side effects that will impair the fairness of the criminal proceeding;

(D) Involuntary administration of medication is necessary to further the important state interests because there are no alternative, less intrusive treatments that would produce the same result as the medication; and

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

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

(A) The specific medication or type of medications permitted to be administered to the defendant;

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

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

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

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



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 2021 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 2021**  
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 2021 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 2021 Act.**

25  
26 **EMERGENCY CLAUSE**

27  
28 **SECTION 15.** **This 2021 Act being necessary for the immediate preservation of the public**  
29 **peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect**  
30 **on its passage.**

31 \_\_\_\_\_