

Senate Bill 579

Sponsored by Senator DEMBROW, Representatives WILDE, PRUSAK (Pre-session filed.)

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**.

Directs Oregon Public Guardian and Conservator to develop and administer a community restoration program for providing guardianship services to defendants who are unable to aid and assist in their defense and who will be released into community. Appropriates moneys to Oregon Public Guardian and Conservator for program.

Authorizes court in criminal proceeding to appoint temporary guardian.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to guardianship services for defendants who are unable to aid and assist; creating new
3 provisions; amending ORS 125.683, 161.365 and 161.370; and prescribing an effective date.

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

5 **SECTION 1. Section 2 of this 2021 Act is added to and made a part of ORS 125.675 to**
6 **125.691.**

7 **SECTION 2. (1) The Oregon Public Guardian and Conservator shall develop and adminis-**
8 **ter a community restoration program to provide guardianship services to defendants whose**
9 **criminal cases may be or have been suspended or discharged under ORS 161.370 and who may**
10 **be or have been released into the community.**

11 **(2) The program shall prioritize eligibility for defendants:**

12 **(a) Who are at high risk of suffering serious harm following release into the community;**

13 **(b) For whom the court has found or is likely to find there is no substantial probability**
14 **that the defendant would, within the foreseeable future, gain or regain the capacity to stand**
15 **trial; or**

16 **(c) Who are at high risk for reoffending and reentering the ORS 161.370 process.**

17 **(3) A defendant's eligibility to participate in the program may be determined at any time**
18 **after a defendant's fitness to proceed is drawn into question under ORS 161.370 or, if the**
19 **court found there was no substantial probability that the defendant would, within the fore-**
20 **seeable future, gain or regain the capacity to stand trial, no later than one year following**
21 **the date on which the defendant's case is dismissed under ORS 161.370.**

22 **(4)(a) In administering the program, the Oregon Public Guardian and Conservator shall**
23 **collaborate and coordinate with district attorneys, community mental health programs and**
24 **facilities in which defendants are housed, including the Oregon State Hospital.**

25 **(b) The Oregon Public Guardian and Conservator may provide services under this section**
26 **at any point after the defendant's fitness to proceed is drawn into question.**

27 **SECTION 3. ORS 125.683 is amended to read:**

28 125.683. (1) In providing public guardian and conservator services, the Oregon Public Guardian
29 and Conservator shall conduct a needs assessment for a person who claims or is claimed not to have

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 relatives or friends willing or able to assume the duties of guardianship or conservatorship and who
2 claims or is claimed to lack the financial resources to obtain a private guardian or conservator. The
3 purpose of the needs assessment is to determine the person's eligibility to receive public guardian
4 and conservator services and to determine the appropriateness of filing a petition for the appoint-
5 ment of a fiduciary or other pleading on behalf of the person in a court having probate jurisdiction.
6 The needs assessment shall, at a minimum:

7 (a) Assess the person's capacity to:

8 (A) Care for the person's own safety;

9 (B) Manage the person's own financial affairs; and

10 (C) Attend to and provide for necessities such as food, shelter, clothing and medical care;

11 (b) Assess the person's financial resources;

12 (c) Determine whether information that is available about the person is sufficient to support a
13 finding that the person is incapacitated or financially incapable and the entry of a court order for
14 the appointment of a fiduciary under ORS 125.010;

15 (d) Determine whether any other person may be willing and able to serve as the person's
16 guardian or conservator and, if appropriate, locate and contact that other person;

17 (e) Determine the type of fiduciary, if any, to request in a petition filed under ORS 125.055,
18 giving preference to the least intrusive form of fiduciary relationship consistent with the best in-
19 terests of the person; and

20 (f) Determine how best to provide public guardian and conservator services to the person that
21 are least restrictive to the person's liberty, that are least intrusive to the person and that provide
22 for the greatest degree of independence that the person is capable of exercising.

23 (2)(a) If the person is a resident of a nursing home as defined in ORS 678.710 or a residential
24 facility as defined in ORS [441.402] 443.400, the nursing home or residential facility shall provide the
25 Oregon Public Guardian and Conservator access to the person's records as is necessary to conduct
26 the needs assessment required under this section.

27 (b) Any other public agency that has provided or is providing care or services to the person
28 **under assessment** shall disclose to the Oregon Public Guardian and Conservator, upon request, a
29 minimum amount of information about the person for whom the needs assessment is being conducted,
30 including protected health information as defined in ORS 192.556 and financial information, as is
31 reasonably necessary to prevent or lessen a serious and imminent threat to the health or safety of
32 the person who is the subject of the needs assessment. For purposes of this paragraph, a request
33 from the Oregon Public Guardian and Conservator for the purpose of conducting a needs assessment
34 is presumed to be a situation that will prevent or lessen a serious and imminent threat to the health
35 or safety of the person.

36 (c) Any health care provider not identified in either paragraph (a) or (b) of this subsection may
37 disclose protected health information to the Oregon Public Guardian and Conservator in accordance
38 with 45 C.F.R. 164.512 (j) to prevent or lessen a serious or imminent threat to the health or safety
39 of a person if the health care provider, in good faith, believes the disclosure is necessary to prevent
40 or lessen the threat. For purposes of this paragraph, a request from the Oregon Public Guardian and
41 Conservator for disclosure under this paragraph for the purposes of conducting a needs assessment,
42 or the good faith belief and disclosure of the health care provider under this paragraph, are pre-
43 sumed to be situations that will prevent or lessen a serious and imminent threat to the health or
44 safety of the person.

45 **(d) If the person under assessment is currently or was previously a defendant subject to**

1 **ORS 161.370, the Oregon Public Guardian and Conservator may have access to any reports**
 2 **resulting from examinations of the defendant, documents containing recommendations of or**
 3 **resulting from consultations with community mental health programs, documents submitted**
 4 **to the court by a state mental hospital related to the proceedings under ORS 161.370 and any**
 5 **other court records relating to the defendant.**

6 (3) For each person determined to be eligible for public guardian and conservator services under
 7 this section, the Oregon Public Guardian and Conservator shall develop a written plan setting forth
 8 the type and duration of services to be provided by the Oregon Public Guardian and Conservator.
 9 The plan shall be included in any nonemergency petition or pleading filed with the court.

10 **SECTION 4.** ORS 161.365 is amended to read:

11 161.365. (1)(a) When the court has reason to doubt the defendant's fitness to proceed by reason
 12 of incapacity as described in ORS 161.360, the court may call any witness to assist it in reaching
 13 its decision and shall order that a community mental health program director, or the director's
 14 designee, consult with the defendant and with any local entity that would be responsible for super-
 15 vising the defendant if the defendant were to be released in the community, to determine whether
 16 services and supervision necessary to safely allow the defendant to gain or regain fitness to proceed
 17 are available in the community. After the consultation, the program director or the director's
 18 designee shall provide to the court a copy of the findings resulting from the consultation. If the
 19 court determines the assistance of a psychiatrist or psychologist would be helpful, the court may:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (b) The entity or evaluator conducting the examination shall provide a copy of the report re-
20 sulting from the examination to the community mental health program director or designee in:

21 (A) The county in which the defendant is charged; and

22 (B) The county of the defendant's last known residence.

23 (c) Reports prepared under this section are confidential and may be made available only:

24 (A) To the court, prosecuting attorney, defense attorney, agent of the prosecuting or defense
25 attorney, defendant, **Oregon Public Guardian and Conservator**, community mental health program
26 director or designee and any facility in which the defendant is housed; or

27 (B) As ordered by a court.

28 (d) Any facility in which a defendant is housed may not use a report prepared under this section
29 to support a disciplinary action against the defendant.

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

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

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

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

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

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

3 (9) As used in this section and ORS 161.370, “certified evaluator” has the meaning given that
4 term in ORS 161.309.

5 **SECTION 5.** ORS 161.370 is amended to read:

6 161.370. (1)(a) When the defendant’s fitness to proceed is drawn in question, the issue shall be
7 determined by the court.

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

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

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

23 (c) The court and the parties shall at the hearing determine an appropriate action in the case,
24 and the court shall enter an order necessary to implement the action. In determining the appropriate
25 action, the court shall consider the primary and secondary release criteria as defined in ORS
26 135.230, the least restrictive option appropriate for the defendant, the needs of the defendant and
27 the interests of justice. Actions may include but are not limited to:

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

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

32 (C) Release on supervision;

33 (D) Commencement of a civil commitment proceeding under ORS 426.070 to 426.170, 426.701 or
34 427.235 to 427.290;

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

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

37 (d) If the court, while considering or ordering an appropriate action under this subsection, de-
38 termines that the defendant does not require a hospital level of care due to the defendant’s
39 dangerousness and the acuity of symptoms of the defendant’s qualifying mental disorder, but that
40 services and supervision necessary to safely allow the defendant to gain or regain fitness to proceed
41 are not available in the community, for any defendant remaining in custody after such determi-
42 nation, the court shall set a review hearing seven days from the date of the determination under
43 paragraph (a) of this subsection. At the review hearing, the court shall consider all relevant infor-
44 mation and determine an appropriate action in the case as described in paragraph (c) of this sub-
45 section. If the defendant remains in custody following the initial review hearing, the court shall hold

1 further review hearings every seven days thereafter until the defendant is no longer in custody.

2 **(e) If the court determines that the commencement of a protective proceeding under**
3 **ORS chapter 125 is the appropriate action under this subsection, the court may, subject to**
4 **ORS 125.600 and 125.605, appoint a temporary guardian for the defendant until a permanent**
5 **guardian can be appointed under ORS chapter 125.**

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

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

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

27 (b) The court may order a community mental health program director providing treatment to the
28 defendant in the community to provide the court with status reports on the defendant's progress in
29 gaining or regaining fitness to proceed.

30 (c) A community mental health program director providing treatment to the defendant in the
31 community shall notify the court if the defendant gains or regains fitness to proceed.

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

34 (b) If the most serious offense in the charging instrument is a misdemeanor, the court may not
35 commit the defendant under subsection (3) of this section unless the finding that the defendant re-
36 quires a hospital level of care due to the defendant's dangerousness and the acuity of symptoms of
37 the defendant's qualifying mental disorder is based on a recommendation by a certified evaluator
38 as defined in ORS 161.309, or a community mental health program director or the director's
39 designee, that the defendant requires such level of care.

40 (c) If at the time of determining the appropriate action for the case the court has not received
41 a recommendation as to whether the defendant requires a hospital level of care due to the
42 defendant's dangerousness and the acuity of symptoms of the defendant's qualifying mental disorder,
43 the court shall order a certified evaluator or a community mental health program director, or the
44 director's designee, to make such a recommendation.

45 (d) If the court does not order the commitment of a defendant described in this subsection to the

1 state mental hospital or other facility, the court shall hold a hearing in accordance with subsection
2 (2)(c) of this section to determine and order an appropriate action other than commitment.

3 (6) When a defendant is released on supervision under subsection (4) of this section, the court
4 may place conditions that the court deems appropriate on the release, including the requirement
5 that the defendant regularly report to the authority or a community mental health program for ex-
6 amination to determine if the defendant has gained or regained capacity to stand trial.

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

16 (8) The superintendent of a state hospital or director of a facility to which the defendant is
17 committed shall cause the defendant to be evaluated within 60 days from the defendant's delivery
18 into the superintendent's or director's custody, for the purpose of determining whether there is a
19 substantial probability that, in the foreseeable future, the defendant will have the capacity to stand
20 trial. In addition, the superintendent or director shall:

21 (a) Immediately notify the committing court if the defendant, at any time, gains or regains the
22 capacity to stand trial or will never have the capacity to stand trial.

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

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

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

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

32 (c) Notify the court if court-ordered involuntary medication is necessary for the defendant to
33 gain or regain the capacity to proceed and, if appropriate, submit a report to the court under ORS
34 161.372.

35 (9)(a) If the superintendent or director determines that there is a substantial probability that,
36 in the foreseeable future, the defendant will gain or regain the capacity to stand trial, unless the
37 court otherwise orders, the defendant shall remain in the superintendent's or director's custody
38 where the defendant shall receive treatment designed for the purpose of enabling the defendant to
39 gain or regain capacity. In keeping with the notice requirement under subsection (8)(b) of this sec-
40 tion, the superintendent or director shall, for the duration of the defendant's period of commitment,
41 submit a progress report to the committing court, concerning the defendant's capacity or incapacity,
42 at least once every 180 days as measured from the date of the defendant's delivery into the
43 superintendent's or director's custody.

44 (b)(A) Notwithstanding paragraph (a) of this subsection, if the superintendent or director deter-
45 mines that a defendant committed under this section is no longer dangerous to self or others as a

1 result of a qualifying mental disorder, that a hospital level of care is not necessary due to the
2 defendant's dangerousness and the acuity of symptoms of the defendant's qualifying mental disorder,
3 or that the services and supervision necessary to allow the defendant to gain or regain fitness to
4 proceed are available in the community, the superintendent or director shall file notice of that de-
5 termination with the court.

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

8 (i) Consult with the defendant and with any local entity that would be responsible for supervis-
9 ing the defendant if the defendant were to be released in the community to determine whether ser-
10 vices and supervision necessary to safely allow the defendant to gain or regain fitness to proceed
11 are available in the community; and

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

13 (C) Within 10 judicial days of receiving the recommendations from the consultation, the court
14 shall hold a hearing to determine an appropriate action in accordance with subsection (2)(c) of this
15 section as follows:

16 (i) If, after consideration of the factors and possible actions described in subsection (2)(c) of this
17 section, and any recommendations from the consultation described in this paragraph, the court de-
18 termines that the defendant remains dangerous to self or others as a result of a qualifying mental
19 disorder, a hospital level of care is necessary due to the defendant's dangerousness and the acuity
20 of symptoms of the defendant's qualifying mental disorder, and the services and supervision neces-
21 sary to allow the defendant to gain or regain fitness to proceed are not available in the community,
22 the court may, after making specific findings to that effect, continue the commitment.

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

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

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

32 (B) An evaluation conducted under subsection (8) of this section, if the defendant did not receive
33 an examination under ORS 161.365.

34 (10)(a) A defendant who remains committed under subsection (9) of this section shall be dis-
35 charged within a period of time that is reasonable for making a determination concerning whether
36 or not, and when, the defendant may gain or regain capacity. However, regardless of the number
37 of charges with which the defendant is accused, in no event shall the defendant be committed for
38 longer than whichever of the following, measured from the defendant's initial custody date, is
39 shorter:

40 (A) Three years; or

41 (B) A period of time equal to the maximum sentence the court could have imposed if the de-
42 fendant had been convicted.

43 (b) For purposes of calculating the maximum period of commitment described in paragraph (a)
44 of this subsection:

45 (A) The initial custody date is the date on which the defendant is first committed under this

1 section on any charge alleged in the accusatory instrument; and

2 (B) The defendant shall be given credit against each charge alleged in the accusatory instru-
3 ment:

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

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

11 (11) The superintendent or director shall notify the committing court of the defendant's im-
12 pending discharge 30 days before the date on which the superintendent or director is required to
13 discharge the defendant under subsection (10) of this section.

14 (12) When the committing court receives a notice from the superintendent or director under
15 subsection (8) or (11) of this section concerning the defendant's progress or lack thereof, the com-
16 mitting court shall determine, after a hearing, if a hearing is requested, whether the defendant
17 presently has the capacity to stand trial.

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

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

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

27 (14) All notices required under this section shall be filed with the court and may be filed elec-
28 tronically. The clerk of the court shall cause copies of the notices to be delivered to both the dis-
29 trict attorney and the counsel for the defendant.

30 (15) If the defendant gains or regains fitness to proceed, the term of any sentence received by
31 the defendant for conviction of the crime charged shall be reduced by the amount of time the de-
32 fendant was committed under this section to the custody of a state mental hospital, or to the custody
33 of a secure intensive community inpatient facility designated by the Oregon Health Authority.

34 (16) Notwithstanding the suspension of the criminal proceeding under subsection (2) of this
35 section, the fact that the defendant is unfit to proceed does not preclude any objection through
36 counsel and without the personal participation of the defendant on the grounds that the indictment
37 is insufficient, that the statute of limitations has run, that double jeopardy principles apply or upon
38 any other ground at the discretion of the court which the court deems susceptible of fair determi-
39 nation prior to trial.

40 (17) At the time that the court determines that the defendant lacks fitness to proceed under
41 subsection (2) of this section, the court shall notify the defendant that federal law prohibits the de-
42 fendant from purchasing or possessing a firearm unless the person obtains relief from the prohibition
43 under federal law. The court shall again notify the defendant of the prohibition if the court finds
44 that the defendant has gained or regained fitness to proceed under subsection (7) of this section.

45 (18)(a) The entity or evaluator conducting an examination of a defendant under this section shall

1 provide a copy of any report described in this section to the community mental health program di-
2 rector or designee in:

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

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

5 (b) Reports prepared under this section are confidential and may be made available only:

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

9 (B) As ordered by a court.

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

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

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

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

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

23 **SECTION 6. In addition to and not in lieu of any other appropriation, there is appropri-**
24 **ated to the Oregon Public Guardian and Conservator, for the biennium beginning July 1, 2021,**
25 **out of the General Fund, the amount of \$1,696,450 for deposit in the Oregon Public Guardian**
26 **and Conservator Fund established under ORS 125.689, to carry out the purposes of section 2**
27 **of this 2021 Act.**

28 **SECTION 7. (1) Section 2 of this 2021 Act becomes operative on January 1, 2022.**

29 **(2) The Oregon Public Guardian and Conservator may take any action before the opera-**
30 **tive date specified in subsection (1) of this section that is necessary for the Oregon Public**
31 **Guardian and Conservator to exercise, on and after the operative date specified in subsection**
32 **(1) of this section, all of the duties, functions and powers conferred on the Oregon Public**
33 **Guardian and Conservator by section 2 of this 2021 Act.**

34 **SECTION 8. This 2021 Act takes effect on the 91st day after the date on which the 2021**
35 **regular session of the Eighty-first Legislative Assembly adjourns sine die.**

36