

SENATE AMENDMENTS TO SENATE BILL 380

By COMMITTEE ON JUDICIARY

April 13

1 In line 2 of the printed bill, after “proceedings” insert “; creating new provisions; amending ORS
2 125.683, 161.362 and 161.370; and prescribing an effective date”.

3 Delete lines 4 through 8 and insert:

4 **“SECTION 1. Section 2 of this 2023 Act is added to and made a part of ORS 125.675 to
5 125.691.**

6 **“SECTION 2. (1) The Oregon Public Guardian and Conservator shall develop and admin-
7 ister a program to provide guardianship services to defendants whose criminal cases may be
8 or have been suspended or dismissed under ORS 161.370.**

9 **“(2) Participants in the program must satisfy the requirements under ORS 125.680 (2) for
10 public guardian and conservator services.**

11 **“(3) A defendant’s eligibility to participate in the program may be determined at any time
12 after a defendant’s fitness to proceed is drawn in question or, if the court found there was
13 no substantial probability that the defendant would, within the foreseeable future, gain or
14 regain the capacity to stand trial, no later than one year following the date on which the
15 defendant’s case is dismissed.**

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

19 **“(b) The Oregon Public Guardian and Conservator may provide services under this sec-
20 tion at any point after the defendant’s fitness to proceed is drawn into question.**

21 **“SECTION 3. ORS 125.683 is amended to read:**

22 **“125.683. (1) In providing public guardian and conservator services, the Oregon Public Guardian
23 and Conservator shall conduct a needs assessment for a person who claims or is claimed not to have
24 relatives or friends willing or able to assume the duties of guardianship or conservatorship and who
25 claims or is claimed to lack the financial resources to obtain a private guardian or conservator. The
26 purpose of the needs assessment is to determine the person’s eligibility to receive public guardian
27 and conservator services and to determine the appropriateness of filing a petition for the appoint-
28 ment of a fiduciary or other pleading on behalf of the person in a court having probate jurisdiction.
29 The needs assessment shall, at a minimum:**

30 **“(a) Assess the person’s capacity to:**

31 **“(A) Care for the person’s own safety;**

32 **“(B) Manage the person’s own financial affairs; and**

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

34 **“(b) Assess the person’s financial resources;**

35 **“(c) Determine whether information that is available about the person is sufficient to support**

1 a finding that the person is incapacitated or financially incapable and the entry of a court order for
2 the appointment of a fiduciary under ORS 125.010;

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

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

8 “(f) Determine how best to provide public guardian and conservator services to the person that
9 are least restrictive to the person’s liberty, that are least intrusive to the person and that provide
10 for the greatest degree of independence that the person is capable of exercising.

11 “(2)(a) If the person is a resident of a nursing home as defined in ORS 678.710 or a residential
12 facility as defined in ORS [441.402] **443.400**, the nursing home or residential facility shall provide the
13 Oregon Public Guardian and Conservator access to the person’s records as is necessary to conduct
14 the needs assessment required under this section.

15 “(b) Any other public agency that has provided or is providing care or services to the person
16 shall disclose to the Oregon Public Guardian and Conservator, upon request, a minimum amount of
17 information about the person for whom the needs assessment is being conducted, including protected
18 health information as defined in ORS 192.556 and financial information, as is reasonably necessary
19 to prevent or lessen a serious and imminent threat to the health or safety of the person who is the
20 subject of the needs assessment. For purposes of this paragraph, a request from the Oregon Public
21 Guardian and Conservator for the purpose of conducting a needs assessment is presumed to be a
22 situation that will prevent or lessen a serious and imminent threat to the health or safety of the
23 person.

24 “(c) Any health care provider not identified in either paragraph (a) or (b) of this subsection may
25 disclose protected health information to the Oregon Public Guardian and Conservator in accordance
26 with 45 C.F.R. 164.512 (j) to prevent or lessen a serious or imminent threat to the health or safety
27 of a person if the health care provider, in good faith, believes the disclosure is necessary to prevent
28 or lessen the threat. For purposes of this paragraph, a request from the Oregon Public Guardian and
29 Conservator for disclosure under this paragraph for the purposes of conducting a needs assessment,
30 or the good faith belief and disclosure of the health care provider under this paragraph, are pre-
31 sumed to be situations that will prevent or lessen a serious and imminent threat to the health or
32 safety of the person.

33 **“(d) If the person is currently or was previously a defendant subject to ORS 161.370, the**
34 **Oregon Public Guardian and Conservator may have access to any reports resulting from**
35 **examinations of the defendant, documents containing recommendations of or resulting from**
36 **consultations with community mental health programs, documents submitted to the court**
37 **by a state mental hospital related to the proceedings under ORS 161.370 and any other court**
38 **records relating to the defendant.**

39 “(3) For each person determined to be eligible for public guardian and conservator services un-
40 der this section, the Oregon Public Guardian and Conservator shall develop a written plan setting
41 forth the type and duration of services to be provided by the Oregon Public Guardian and
42 Conservator. The plan shall be included in any nonemergency petition or pleading filed with the
43 court.

44 **“SECTION 4.** ORS 161.362 is amended to read:

45 **“161.362. (1) A recommendation provided by a certified evaluator, pursuant to ORS 161.355 to**

1 161.371, that a defendant requires a hospital level of care due to the acuity of the defendant's
2 symptoms must be based upon the defendant's current diagnosis and symptomology, the defendant's
3 current ability to engage in treatment, present safety concerns relating to the defendant and any
4 other pertinent information known to the evaluator. If the defendant is in a placement in a facility,
5 the evaluator may defer to the treatment provider's recommendation regarding whether a hospital
6 level of care is needed.

7 "(2) A determination by a community mental health program director, or the director's designee,
8 pursuant to ORS 161.355 to 161.371, that appropriate community restoration services are not present
9 and available in the community must include information concerning the specific services necessary
10 to safely allow the defendant to gain or regain fitness to proceed in the community and must specify
11 the necessary services that are not present and available in the community.

12 "(3)(a) Reports resulting from examinations performed by a certified evaluator, and documents
13 containing the recommendations of or resulting from consultations with a community mental health
14 program director or the director's designee, prepared under ORS 161.355 to 161.371, and any docu-
15 ment submitted to the court by a state mental hospital related to the proceedings under ORS 161.355
16 to 161.371, are confidential and may be made available only:

17 "(A) To the court, prosecuting attorney, defense attorney, agent of the prosecuting or defense
18 attorney, defendant, **Oregon Public Guardian and Conservator**, community mental health program
19 director or designee, state mental hospital and any facility in which the defendant is housed; or

20 "(B) As ordered by a court.

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

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

26 "(4) The court shall ensure that an order entered under ORS 161.355 to 161.371 is provided, by
27 the end of the next judicial day, to any entity ordered to provide restoration services.

28 "(5) Unless the court orders otherwise or either party objects, a defendant committed to a state
29 mental hospital or other facility, or a certified evaluator or other expert witness, may attend
30 hearings held under ORS 161.355 to 161.371 via simultaneous electronic transmission.

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

32 "161.370. (1)(a) When the defendant's fitness to proceed is drawn in question, the issue shall be
33 determined by the court.

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

40 "(2)(a) If the court determines that the defendant lacks fitness to proceed, the criminal pro-
41 ceeding against the defendant shall be suspended and the court shall proceed in accordance with
42 this subsection.

43 "(b) After making the determination under paragraph (a) of this subsection, the court shall re-
44 ceive a recommendation from a community mental health program director or the director's
45 designee, and from any local entity that would be responsible for treating the defendant if the de-

1 defendant were to be released in the community, concerning whether appropriate community restora-
2 tion services are present and available in the community.

3 “(c) If the parties agree as to the appropriate action under this section, the court may, after
4 making all findings required by law, enter any order authorized by this section. If the parties do not
5 agree as to the appropriate action, the court and the parties shall, at a hearing, consider an ap-
6 propriate action in the case, and the court shall make a determination and enter an order necessary
7 to implement the action. In determining the appropriate action, the court shall consider the primary
8 and secondary release criteria as defined in ORS 135.230, the least restrictive option appropriate for
9 the defendant, the needs of the defendant and the interests of justice. Actions may include but are
10 not limited to:

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

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

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

17 “(D) Commencement of protective proceedings under ORS chapter 125; or

18 “(E) Dismissal of the charges pursuant to ORS 135.755.

19 “(d) If the court, while considering or ordering an appropriate action under this subsection, does
20 not order the defendant committed to a state mental hospital or other facility, but finds that ap-
21 propriate community restoration services are not present and available in the community, for any
22 defendant remaining in custody after such determination, the court shall set a review hearing seven
23 days from the date of the determination under paragraph (a) of this subsection. At the review
24 hearing, the court shall consider all relevant information and determine if commitment to the state
25 mental hospital or other facility is appropriate under subsection (3) or (4) of this section, or if an-
26 other action described in paragraph (c) of this subsection is appropriate. At the conclusion of the
27 hearing the court shall enter an order in accordance with the defendant’s constitutional rights to
28 due process.

29 “(e) If the court determines that the appropriate action in the case is an order for the defendant
30 to engage in community restoration services, but the defendant has a pending criminal case, warrant
31 or hold in one or more other jurisdictions, the other jurisdictions shall, within two judicial days of
32 becoming aware of the proceeding under this section, communicate with the court and the other
33 jurisdictions, if applicable, to develop a plan to address the interests of all jurisdictions in the de-
34 fendant in a timely manner.

35 **“(f) If the court determines that the appropriate action in the case is the commencement**
36 **of a protective proceeding under ORS chapter 125, the court may, subject to ORS 125.600 and**
37 **125.605, appoint a temporary guardian for the defendant until a permanent guardian can be**
38 **appointed.**

39 “(3)(a) If the most serious offense in the charging instrument is a felony, the court shall commit
40 the defendant to the custody of the superintendent of a state mental hospital or director of a facility
41 designated by the Oregon Health Authority if the defendant is at least 18 years of age, or to the
42 custody of the director of a secure intensive community inpatient facility designated by the author-
43 ity if the defendant is under 18 years of age, if the court makes the following findings:

44 “(A) The defendant requires a hospital level of care due to public safety concerns if the de-
45 fendant is not hospitalized or in custody or the acuity of symptoms of the defendant’s qualifying

1 mental disorder; and

2 “(B) Based on the findings resulting from a consultation described in ORS 161.365 (1), if appli-
3 cable, from any information provided by community-based mental health providers or any other
4 sources, and primary and secondary release criteria as defined in ORS 135.230, the appropriate
5 community restoration services are not present and available in the community.

6 “(b) If the defendant is committed under this subsection, the community mental health program
7 director, or director’s designee, shall at regular intervals, during any period of commitment, review
8 available community restoration services and maintain communication with the defendant and the
9 superintendent of the state mental hospital or director of the facility in order to facilitate an effi-
10 cient transition to treatment in the community when ordered.

11 “(c) If the court does not order the commitment of the defendant under this subsection, the court
12 shall proceed in accordance with subsection (2)(c) of this section to determine and order an appro-
13 priate action other than commitment.

14 “(4)(a) If the most serious offense in the charging instrument is a misdemeanor, the court may
15 not commit the defendant to the custody of the superintendent of a state mental hospital or director
16 of a facility designated by the Oregon Health Authority if the defendant is at least 18 years of age,
17 or to the custody of the director of a secure intensive community inpatient facility designated by
18 the authority if the defendant is under 18 years of age, unless the court:

19 “(A)(i) Receives a recommendation from a certified evaluator that the defendant requires a
20 hospital level of care due to the acuity of symptoms of the defendant’s qualifying mental disorder;
21 and

22 “(ii) Receives a recommendation from a community mental health program director, or director’s
23 designee, that the appropriate community restoration services are not present and available in the
24 community; or

25 “(B) Determines that the defendant requires a hospital level of care after making all of the fol-
26 lowing written findings:

27 “(i) The defendant needs a hospital level of care due to the acuity of the symptoms of the
28 defendant’s qualifying mental disorder;

29 “(ii) There are public safety concerns; and

30 “(iii) The appropriate community restoration services are not present and available in the com-
31 munity.

32 “(b) If at the time of determining the appropriate action for the case, the court is considering
33 commitment under paragraph (a)(A) of this subsection and:

34 “(A) Has not received a recommendation from a certified evaluator as to whether the defendant
35 requires a hospital level of care due to the acuity of symptoms of the defendant’s qualifying mental
36 disorder, the court shall order a certified evaluator to make such a recommendation.

37 “(B) Has not received a recommendation from the community mental health program director
38 or designee concerning whether appropriate community restoration services are present and avail-
39 able in the community, the court shall order the director or designee to make such a recommen-
40 dation.

41 “(c) If the court does not order the commitment of the defendant under this subsection, the court
42 shall proceed in accordance with subsection (2)(c) of this section to determine and order an appro-
43 priate action other than commitment.

44 “(d) If the defendant is committed under this subsection, the community mental health program
45 director, or director’s designee, shall at regular intervals, during any period of commitment, review

1 available community restoration services and maintain communication with the defendant and the
2 superintendent of the state mental hospital or director of the facility in order to facilitate an effi-
3 cient transition to treatment in the community when ordered.

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

9 “(6)(a) If the court does not order the commitment of the defendant under subsection (3) or (4)
10 of this section, if commitment is precluded under subsection (5) of this section or if the court de-
11 termines that care other than commitment would better serve the defendant and the community, the
12 court shall release the defendant, pursuant to an order that the defendant engage in community
13 restoration services, until the defendant has gained or regained fitness to proceed, or until the court
14 finds there is no substantial probability that the defendant will, within the foreseeable future, gain
15 or regain fitness to proceed. The court may not order the defendant to engage in community resto-
16 ration services in another county without permission from the other county.

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

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

25 “(d) When a defendant is ordered to engage in community restoration services under this sub-
26 section, the court may place conditions that the court deems appropriate on the release, including
27 the requirement that the defendant regularly report to a state mental hospital or a certified evalu-
28 ator for examination to determine if the defendant has gained or regained fitness to proceed.

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

31 **“SECTION 6. In addition to and not in lieu of any other appropriation, there is appro-
32 priated to the Oregon Public Guardian and Conservator, for the biennium beginning July 1,
33 2023, out of the General Fund, the amount of \$1,696,450 for deposit in the Oregon Public
34 Guardian and Conservator Fund established under ORS 125.689, to carry out the purposes
35 of section 2 of this 2023 Act.**

36 **“SECTION 7. (1) Section 2 of this 2023 Act and the amendments to ORS 125.683, 161.362
37 and 161.370 by sections 3 to 5 of this 2023 Act become operative on January 1, 2024.**

38 **“(2) The Oregon Public Guardian and Conservator may take any action before the oper-
39 ative date specified in subsection (1) of this section that is necessary for the Oregon Public
40 Guardian and Conservator to exercise, on and after the operative date specified in subsection
41 (1) of this section, all of the duties, functions and powers conferred on the Oregon Public
42 Guardian and Conservator by section 2 of this 2023 Act and the amendments to ORS 125.683,
43 161.362 and 161.370 by sections 3 to 5 of this 2023 Act.**

44 **“SECTION 8. This 2023 Act takes effect on the 91st day after the date on which the 2023
45 regular session of the Eighty-second Legislative Assembly adjourns sine die.”**

