

**HB 2476 -1 STAFF MEASURE SUMMARY**

**House Committee On Judiciary**

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**Meeting Dates:** 3/27

**WHAT THE MEASURE DOES:**

The measure requires the Oregon Health Authority to study ways to reduce the number of people committed to a state hospital after being found unfit to proceed in a criminal proceeding and to submit a report to the legislature by December 21, 2026.

**ISSUES DISCUSSED:**

**EFFECT OF AMENDMENT:**

-1 The amendment establishes time limits for how long a person may be committed to a state hospital or ordered to participate in community restoration after being found unfit to proceed in a criminal case and establishes procedural requirements governing community restoration. Sunsets on January 2, 2028.

Detailed Summary

**A. Time Limits for Restoration (based on most serious charge)**

Imposes the following maximum time limits on how long a defendant may be committed to a state hospital or other facility, ordered to participate in community restoration, or a combination of the two after the defendant has been found unfit to proceed:

<i>Most Serious Offense</i>	<b>Commitment to State Hospital or Other Facility</b>	<b>Community Restoration After a Period of Commitment</b>	<b>Community Restoration Without a Period of Commitment</b>
<i>Violation or a Class B or Class C misdemeanor</i>	Ineligible	N/A	180 days (extension up to 365 days total)
<i>Class A misdemeanor or "contempt charge"</i>	180 days	180 days (extension up to 365 days total)	365 days (extension up to 18 months total)
<i>Felony (other than aggravated murder, a violent felony, or a crime listed in ORS 137.700(2))</i>	24 months	365 days (extension up to 18 months total)	24 months

**HB 2476 -1 STAFF MEASURE SUMMARY**

<i>Aggravated murder, violent felony, or a crime in ORS 137.700(2)</i>	24 months*	Total of 36 months when combined with time at OSH (may be extended by 180 days)	36 months
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Imposes the following time limits on restoration of a defendant's fitness to proceed: **\*Extension for aggravated murder, violent felony, or charge listed in ORS 137.700(2):** Permits a 180-day extension of the time limit for commitment to a state hospital or facility if the person is charged with a violent felony, aggravated murder, or a crime listed in ORS 137.700(2). Establishes judicial procedure for granting such an extension:

- Requires state hospital superintendent or facility director to provide notice to the court and others that the defendant will reach the end of their maximum period of commitment at least 60 days before the end of the period.
- Permits the district attorney to petition the court for an extension within 30 days of receiving the notice above.
- Permits the court to grant the petition only if the court determines
  - By clear and convincing evidence, that there is danger of physical injury or sexual victimization to the victim or a member of the public if the defendant is discharged from the hospital or other facility;
  - The defendant meets the requirements for commitment in ORS 161.370(a); and
  - There is a substantial probability that the defendant's continued commitment will lead to the defendant gaining or regaining fitness to proceed within the 180-day extension.
- Lists factors the court must consider when deciding whether to grant the extension.
- Requires the court to review the defendant's fitness to proceed status within 180 days, upon which the court may renew the extension up to a total commitment period, including the extensions, of 36 months.

**Extension of Community Restoration Limits (in parentheses above):** Permits a court to extend the maximum restoration time limit up to certain totals or by a certain amount depending on the most serious offense charged and the type of restoration, noted in parentheses in the chart. Requires the court to find clear evidence of progress toward the defendant gaining or regaining fitness to proceed and that appropriate services are being made available to the defendant to grant the extension if the most serious offense is a violation or Class B or Class C misdemeanor. If the offense is more serious, the court must find that the purposes of community restoration services are being served by the extension.

**Extension for Defendants under an Involuntary Administration of Medication Order:** Permits the district attorney to file for an extension of the maximum period of commitment of a defendant for whom a report for involuntary administration of medication under ORS 161.372 has been filed. Permits the court to grant a 180-day extension if the court orders the involuntary administration of medication and to renew the extension so long as the criteria in ORS 161.372(3)(c) continue to be met. Requires the total commitment period, including such extensions, to be no longer than 36 months.

**Other Provisions on Time Limits**

- Establishes that the maximum period of commitment is calculated beginning on the initial day of commitment.
- Excludes from the maximum period of commitment any day the defendant is held in jail before the initial date of commitment.
- Requires credit given to the maximum period of commitment for any day the defendant is committed to a state hospital or other secure residential treatment facility.
- Clarifies that for calculation of the maximum period of commitment, periods of commitment or community restoration counting toward the whole do not have to be consecutive.

## HB 2476 -1 STAFF MEASURE SUMMARY

- Clarifies that when a defendant has been found unfit, is then restored to fitness after a period subject to the time limits on restoration, and then is found unfit again, the time limits for restoration start anew, subject to the maximum period of commitment in ORS 161.371(5)(a).

### **B. Community Restoration Standards**

Imposes procedural standards for community restoration, including:

- Requires the court to conduct a status review of reports on defendant's progress toward restoration at least every 45 days.
- Requires the court to conduct a review hearing at least every 180 days, or every 90 days for a violation or Class B or Class C misdemeanor, to determine whether the purposes of community restoration services are being met. Permits the court to take actions under ORS 161.370(2)(c) at the hearing (which includes orders of commitment or community restoration as well as commencement of civil commitment or protective proceedings and dismissal of the charges).
- Requires an evaluation of the defendant's fitness to proceed at least every 180 days
- Requires an updated evaluation be conducted and a report submitted to the court prior to 180 days after an order to engage in community restoration on a violation or Class B or Class C misdemeanor.
- Permits a court to recommit a defendant to a state hospital or other facility if the person was discharged from the hospital or facility to participate in community restoration and violates a condition of the release agreement.

### **C. Tolling of Time Limits for Community Restoration**

Excludes the following time periods from counting toward the time limits in section A of this summary:

- Time between a failure to appear for court and the next time the defendant appears in court for a purpose other than addressing the failure to appear.
- Time between a scheduled fitness to proceed evaluation and the next scheduled court appearance the defendant attends.
- Time determined by the court during which the defendant is in violation of a release agreement condition that the court finds negatively impacts the defendant's ability to participate or engage in community restoration services.
- Time when the defendant is in custody of a local state or correctional facility.
- Time determined by the court during which the defendant fails to make reasonable efforts toward gaining or regaining fitness to proceed.
- Time following the court's receipt of a notice from a community restoration services provider of 14 days of noncompliance with or unexcused absence from community restoration services and the next scheduled court appearance the defendant attends.
- Time between notice from a community restoration services provider of the defendant's noncompliance for more than 14 days with taking prescribed medications and the next scheduled court appearance the defendant attends if the court finds that the failure to take medications is negatively impacting progress toward restoration and there is not good cause for the noncompliance.
- Time between the defendant's unauthorized absence from a secured residential treatment facility or other secure placement and the next scheduled court appearance the defendant attends.

Requires community restoration services providers to notify the court following a defendant's noncompliance with medications or unexcused absence from restoration services treatments for more than 14 days.

### **D. Definitions and Other Provisions**

Requires the Oregon Health Authority to collect and maintain data concerning the efficacy of community restoration services and the impact of the restoration time limits. Applies the provisions of the measure notwithstanding any contrary provisions in ORS 161.370 and 161.371.

## HB 2476 -1 STAFF MEASURE SUMMARY

Defines the following terms:

- "Authority" means the Oregon Health Authority
- "Contempt charge" means a contempt charge under ORS 107.700 to 107.735, 124.005 to 142.040, 133.035, 163.760 to 163.777 or 166.525 to 166.542.
- "Violent felony" means a felony offense in which there was an actual or threatened serious physical injury to the victim or a felony sexual offense

Sunsets on January 2, 2028.

### BACKGROUND:

Under ORS 161.360(2), a criminal defendant "may be found incapacitated if, as a result of a qualifying mental disorder, the defendant is unable: (a) To understand the nature of the proceedings...; (b) To assist and cooperate with [their attorney]; or (c) To participate in the defense...." If a defendant is incapacitated in such a way, the court may find that "the defendant lacks fitness to proceed," upon which "the criminal proceeding against the defendant shall be suspended," and the court engages in a process to restore the defendant's fitness to proceed. ORS 161.370. This process is often called "aid and assist."

Under the aid and assist process, the court in some circumstances may involuntarily commit a defendant to the Oregon State Hospital (OSH) to undergo restoration. The court may also order a defendant to engage in community restoration services outside of a custodial setting. In relatively rare cases, the court may order the involuntary administration of medication to a person committed to the state hospital. ORS 161.372. The court may only do so if

- The hospital submits a report that includes the likelihood that the medication will restore the defendant's fitness to proceed and
- Only if the court finds
  - That involuntary medication is not otherwise authorized;
  - There are important state interests in the prosecution of the defendant;
  - The medication is likely to restore the defendant unlikely to cause side effects that will impair the fairness of the criminal proceeding;
  - Involuntary administration of the medication is necessary because there are no alternative, less intrusive treatments that would suffice; and
  - Administration of the medication is medically appropriate because it is in the defendant's best medical interest in light of their condition.

The current law states that a defendant may not be committed for longer than three years or the maximum sentence the court could have imposed if the defendant had been convicted, whichever is shorter. ORS 161.371. However, litigation in federal courts over the past two-and-a-half decades has resulted in stricter timelines being imposed on a defendant's commitment to the Oregon State Hospital.

Over two decades ago, defendants waiting in jail to be transported to OSH under commitment orders for restoration sued OSH and the Oregon Health Authority (OHA), arguing that their extended detention while awaiting transport violated their due process rights under the Fourteenth Amendment to the U.S. Constitution. In 2002, federal Judge Owen Panner agreed and issued an injunction requiring OSH and OHA to admit defendants within seven days of an order to commit them to OSH. Since that injunction, OSH and OHA have gone in and out of compliance with the seven-day requirement, and the litigation has continued. More recently, the federal court appointed a neutral expert, Dr. Debra A. Pinals, M.D., to "make recommendations to address capacity issues at the Oregon State Hospital."

On August 29, 2022, U.S. District Judge Michael Mosman found in a [court order](#) that OSH and OHA were out of compliance with the seven-day injunction and ordered them to follow new time limits for restoration of

defendants. The new restoration limits were based on the recommendations of Dr. Pinals in her [Second Report](#) and they limit the amount of time a defendant may be committed to OSH based on the severity of the defendant's most serious charge. On July 3, 2023, the court updated the timelines in a new [order](#) based on recommendations from Dr. Pinals. That order imposed the following restrictions on restoration at OSH, currently in effect:

**Admission Limits**

- Limited misdemeanor admissions to person misdemeanors only, including violation of certain contempt statutes, including Extreme Risk Protective Orders, Family Abuse Prevention Act Restraining Orders, and other similar statutes.
- Imposed "expedited admissions" criteria under which civil commitments must qualify in order to be admitted.
- Imposed other similar restrictions to non-forensic admissions.

**Time Limits for Restoration (based on most serious charge)**

- Person misdemeanor or qualifying contempt charge: lesser of maximum sentence or 90 days
- Felony: six months (unless listed in ORS 137.700(2))
- Felony listed in ORS 137.700(2): one year
- Violent felony extension: for defendants charged with a violent felony under ORS 135.240(5) who meet certain requirements, 180 additional days (renewable with certain requirements)

[Dr. Pinals's 10th Report](#) notes that "OHA is obligated under the federal court order to make recommendations for legislative change based on Dr. Pinals's reports" and that OHA would submit legislation to implement the time limits on restoration at OSH laid out by the 2023 court order, limit admission to OSH on non-person misdemeanors, limit the time allowed for community restoration depending on whether a defendant was previously committed to OSH for restoration or not, require defendants in community restoration to be evaluated regularly, and require evaluations to provide an opinion of whether or not a defendant can be restored within the time limits.