

HB 2481 -2, -3, -5, -6 STAFF MEASURE SUMMARY

Joint Committee On Addiction and Community Safety Response

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Meeting Dates: 4/23

WHAT THE MEASURE DOES:

The measure requires the Oregon Health Authority to study behavioral health.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

-2 The amendment replaces the measure and facilitates the use of the office of the public guardian in aid and assist cases, provides clarity to courts on what should be considered when determining whether someone is unfit to proceed, establishes a position at the Oregon State Hospital to facilitate transferring people from the hospital to restoration in the community, redefines treatment services under the aid and assist statutes, directs the Oregon Health Authority to establish one or more secured forensic restoration centers for providing treatment services to people found unfit to proceed, directs the Oregon Judicial Department to study tribal and state interactions relating to the involuntary hospitalization and mental or behavioral health treatment of tribal members in the state civil or criminal justice systems, creates the Task Force on the Intersection of Tribal and State Forensic Behavioral Health to receive the study and to examine the issues and report to the legislature, and clarifies the authority to share health information between health care service providers, the Department of Corrections, the Oregon Health Authority, and local correctional facilities when necessary or beneficial to the person's treatment.

Detailed Summary

Legislative Findings

Finds that "the most long lasting and effective form of restoration of fitness to proceed includes treating the whole person."

Guardianships for Defendants Lacking Fitness to Proceed

Directs the Oregon Public Guardian and Conservator (OPGC) to develop and administer a program to provide guardianship services to defendants who lack fitness to proceed and who meet the requirements for receiving public guardian and conservator services. Allows the OPGC to have access to relevant records from the aid and assist process. Clarifies that the provisions in ORS 161.362 do not prohibit the disclosure of records as permitted under statute or for the purpose of continuity of care as authorized by law or ordered by the court.

Fitness to Proceed Liaison

Requires the Oregon Health Authority to employ at least one person to serve as a liaison for defendants committed to a state hospital or other facility under ORS 161.370 who are discharged from the hospital or facility to engage in treatment services in the community.

Fitness to Proceed Changes

Replaces "community restoration services" with "treatment services," and changes the definition to "fitness restoration services, medical services, medication management, supportive services, case management services, substance use disorder treatment and any other services that address a person's fitness to proceed or conditions

and circumstances that contribute to a person's lack of fitness." Makes necessary changes to statutes to conform to the change.

States that the court may consider the following when determining whether a defendant has fitness to proceed:

- Evidence of a defendant's prior diagnosis made by a certified evaluator or qualified mental health practitioner;
- A prior evaluation conducted under ORS 161.315 or 161.365;
- Prior determinations that a defendant lacked fitness to proceed;
- Prior commitments of the defendant under ORS chapter 426 or 427;
- The defendant's conduct as observed by the court;
- Prior court records or assessments relating to actions involving the defendant that contain a mental health diagnosis of the defendant;
- Relevant information on the defendant's mental health diagnosis in the possession of the local supervisory authority, if the defendant is under active supervision; and
- Any other information the court deems relevant.

Permits the court to appoint a temporary fiduciary if the court determines that the appropriate action in the case is the commencement of protective proceedings under ORS 125.600 and 125.605.

Permits the court to order that a defendant be placed in the facility established by Section 14 of the amendment if the placement is appropriate pursuant to a level of care utilization system or if a defendant does not require a hospital level of care but, due to public safety concerns, it is not appropriate for defendant to receive treatment in the community.

Secured Forensic Restoration Center

Directs the Oregon Health Authority to establish one or more secured forensic restoration centers to provide treatment services to people who lack fitness to proceed and who either:

- Cannot be released to engage in treatment services in the community because the court determines that the defendant presents public safety concerns and the person does not require a hospital level of care; or
- Pursuant to a level of care utilization system, the appropriate placement for the person is a secured residential treatment facility.

Requires the Oregon Health Authority to ensure that the established centers have sufficient capacity to accept the persons described.

Tribal/State Court Intersection

Directs the Oregon Judicial Department to study tribal and state interactions relating to forensic behavioral health and to collect and analyze specified data relating to civil commitment, aid and assist, guilty except for insanity, and specialty courts. Directs the department to submit a report on the data to the interim committees on judiciary and behavioral health and prohibits the report from including personally identifiable information.

Establishes the Task Force on the Intersection of Tribal and State Forensic Behavioral Health with the following members:

- Appointed by the Governor
 - One member representing the Office of the Governor
 - One member representing the Oregon Health Authority
 - One member representing the Oregon Department of Justice
 - One member representing community mental health providers
 - One member, representing the tribal court of each of the nine federally recognized tribes, that is a tribal court judge or staff or has been designated by the tribe

- Two members representing tribal service providers
- Appointed by Chief Justice
 - One judge with experience in competency to proceed process
 - One Oregon Tribal, State, and Federal Court Forum representative

Requires the task force to examine tribal and state interactions relating to involuntary hospitalization and mental or behavioral health treatment of tribal members in the state civil and criminal systems, and:

- Identify data sharing needs between tribal service providers, tribal courts, and non-tribal service providers, Oregon Health Authority, and Oregon courts and identify methods for resolving barriers to data sharing.
- Examine mental and behavioral health care services provided within tribal lands and to tribal members and identify barriers to providing care to tribal individuals.
- Determine barriers to tribal members receiving care at OSH pursuant to competency restoration orders or civil commitment.
- Examine models for tribal and state interactions relating to mental or behavioral health.
- Examine the results of the study described in section 15 of the amendment.
- Develop recommendations concerning tribal court needs that intersect with state services and barriers to services.

Requires the task force to invite and consider perspectives involving forensic or mental health matters before tribal courts, including prosecutors, defenders, people with lived experience, family members of persons with unmet behavioral needs, and members of tribal governments.

Requires the task force to submit a report no later than December 15, 2026 to the interim committees on judiciary and behavioral health and to make recommendations about the above items.

Requires that each member that is a tribal court judge or staff appointed to the Task Force act as a liaison between the task force and the tribal government of the tribal court on which the member serves and shall coordinate with a person designated by the relevant tribal government, if such a person has been designated, to facilitate inviting and considering the perspectives of tribal members and to consult the tribal government on the activities of the task force.

Requires appointments to be made by December 31, 2025, and for the Task Force's first meeting to take place on or before February 1, 2026.

Information Sharing

Clarifies in the civil commitment statutes that the provisions therein do not limit the ability or obligation of the listed healthcare entities to provide information (a) to other health care services providers, the Department of Corrections, the Oregon Health Authority, or a local correctional facility when necessary or beneficial to the person's treatment as provided by statute or (b) as allowed or required by federal or state law or by order of the court.

Conforming Amendments

Makes conforming amendments to statutes.

Miscellaneous

Makes the section establishing the Task Force on the Intersection of Tribal and State Forensic Behavioral Health effective January 1, 2026.

Declares an emergency, effective on passage.

-3 The amendment replaces the measure and creates a procedure for parties to a criminal case to move the court to find that a defendant either lacks fitness to proceed or is fit to proceed. If the motion is contested, the amendment establishes a process for a contested hearing, to be held within 14 days, where the court shall determine whether the moving party has proved that it is more likely than not that the defendant is fit or lacks fitness to proceed, as applicable.

-5 The amendment replaces the measure and modifies the procedure for finding that someone is "ready to place" in community restoration after being committed to the Oregon State Hospital.

-6 The amendment replaces the measure and adds the Oregon Health Authority to the list of agencies that are exempt from the requirement to use administrative law judges assigned by the Office of Administrative Hearings to conduct contested case hearings when the hearing is for the purpose of a contested case hearing involving informed consent at the Oregon State Hospital.

BACKGROUND:

The [Oregon Health Authority](#), established by ORS 413.032, is a government agency created to, among other things, carry out policies adopted by the Oregon Health Policy Board, develop policies for and provision of publicly funded medical care and assistance, develop policies for and provision of mental health and addiction treatment, assess, promote, and protect the health of the public, and other healthcare-related duties.

Administrative Law Judges

Generally, agencies of the Oregon Government must use administrative law judges from the Office of Administrative Hearings to conduct contested case hearings about disputes related to administrative decisions of the agency. However, under ORS 183.635, certain agencies are exempt from this requirement, allowing them to contract with administrative law judges not assigned by the Office of Administrative Hearings, including, but not limited to, the following agencies:

- Attorney General
- Department of Corrections
- Department of Revenue
- Governor
- Oregon Youth Authority
- Psychiatric Security review Board
- State Land Board

House Bill 2311 would add the Oregon Health Authority to that list of agencies for purposes of contested case hearings involving the Oregon State Hospital.

Aid & Assist and the Office of the Public Guardian and Conservator

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."

The Oregon Health Authority Behavioral Health Residential + Facility Study, published in 2024, found that, based on their finding that Oregon should have 35.98 inpatient psychiatric beds per 100,000 people, Oregon would have to add 486 inpatient psychiatric beds to meet the need. Currently Oregon has 22.54 beds per 100,000 people. The Oregon Public Guardian and Conservator, among other duties, provides "public guardian and conservator services

for persons who do not have relatives or friends willing or able to assume the duties of guardianship or conservatorship and who lack the financial resources to obtain a private guardian or conservator." ORS 125.680. Under current Oregon law, a defendant who lacks fitness to proceed may be committed to a state hospital or other facility or ordered to community restoration to engage in services to restore their fitness, but restoration services are not provided in jails.