

HB 3051 -4 STAFF MEASURE SUMMARY**Joint Committee On Addiction and Community Safety Response****Prepared By:** Jules Dellinger**Meeting Dates:** 4/23**WHAT THE MEASURE DOES:**

The measure directs the Oregon Health Authority to study whether legislative changes are needed concerning fitness to proceed and community restoration and requires the Oregon Health Authority to provide the results of the study to the Legislative Assembly by May 1, 2026. The measure sunsets January 2, 2027.

ISSUES DISCUSSED:**EFFECT OF AMENDMENT:**

-4 Replaces the measure. The amendment imposes maximum timelines for restoring an adult criminal defendant's fitness to proceed for both the Oregon State Hospital and for restoration in the community and the amendment restricts the types of crimes for which a defendant may be committed to the Oregon State Hospital for restoration of fitness to proceed.

Detailed Summary

Prohibits committing defendants to the Oregon State Hospital for restoration of fitness to proceed where the defendant's most serious crime charged is a violation, misdemeanor, or contempt charge other than a "person misdemeanor or contempt charge." Defines "person misdemeanor or contempt charge" to include "person class A misdemeanor," a term defined by the Oregon Criminal Justice Commission in OAR 213-003-0001(15), and a contempt charge under ORS 107.700 to 107.735 (Family Abuse Prevention Act), 124.005 to 124.040 (Elderly Persons and Persons With Disabilities Abuse Prevention Act), 133.035 (Ex parte emergency protective orders), 163.760 to 163.777 (Restraining orders), or 166.525 to 166.543 (Extreme risk protection order).

Imposes the following limits on the amount of time an adult defendant may be committed to the Oregon State Hospital, ordered to engage in community restoration, or some combination of the two, for the purpose of restoring the person's fitness to proceed in a criminal case:

<i>Most Serious Offense</i>	Time Limits for Restoration of Adults			
	At OSH	In Community after OSH	Total OSH+Community	In Community Only
<i>Violation, misdemeanor, or contempt charge other than a "person misdemeanor or contempt charge"</i>	Ineligible	N/A	N/A	90 days

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"Person misdemeanor or contempt charge"	90 days	90 days	180 days	90 days
Felony	180 days*	90 days	270 days	180 days
Aggravated Murder or a crime in ORS 137.700(2)	360 days*	180 days	540 days	360 days

***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.

Mandates that the total restoration time at the Oregon State Hospital and in community restoration combined cannot exceed the length of the maximum sentence the court could have imposed if the defendant had been convicted.

Requires the court to end restoration of fitness to proceed if the court finds that there is no "substantial probability that the defendant will" be restored to fitness within the maximum restoration time limits and requires an opinion on such probability be included in forensic evaluations. Limits community restoration after a defendant's commitment to the Oregon State Hospital to cases where "a forensic evaluation indicates that there is a substantial probability that additional restoration efforts will cause the defendant to gain or regain fitness to proceed." Requires forensic evaluations to be conducted for defendants in community restoration at the same frequency as those done for defendants at the Oregon State Hospital for restoration.

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. 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. The amendment to the measure would make the legislative changes recommended by Dr. Pinals in her 10th report.

PRELIMINARY