

## HB 2481 -11 STAFF MEASURE SUMMARY

### Joint Committee On Addiction and Community Safety Response

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**Meeting Dates:** 4/23, 5/21

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#### WHAT THE MEASURE DOES:

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

#### ISSUES DISCUSSED:

#### EFFECT OF AMENDMENT:

-11 The amendment replaces the measure and facilitates the use of the office of the public guardian in aid and assist cases and modifies the procedure for appointing counsel for a person facing civil commitment.

#### Detailed Summary

##### **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.

##### **Appointment of Counsel**

Requires the Oregon Public Defense Commission to study and implement methods for increasing recruitment and training for attorneys specializing in civil commitment and to submit a report to the interim committees of the Legislative Assembly related to the judiciary and behavioral health by September 15, 2026. Requires the court to appoint counsel to represent a person facing civil commitment as soon as the court receives notice from the community mental health program director that the person has been alleged to be eligible for civil commitment unless the person is already represented by an attorney or refuses appointment of counsel. Modifies the requirements for notice of the right to appointment of counsel given to people facing civil commitment. Becomes operative on July 1, 2026.

*REVENUE: Revenue impact issued*

*FISCAL: Fiscal impact issued*

#### **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.

##### **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.

### **Civil Commitment**

A person diagnosed with a mental disorder who, because of that mental disorder, meets certain criteria based on their risk of harming other people, harming themselves, or being unable to meet their basic needs, can be hospitalized involuntarily by the state under a process called civil commitment. In Oregon, that process is established in [ORS chapter 426](#). Under Oregon's civil commitment laws, a court may commit a person to treatment if the person is "a person with mental illness," a legal term in the statute, and if the person is not able, willing, or likely to participate in treatment voluntarily. If the person meets the criteria, the court may commit the person for a period of up to 180 days.

"Person with mental illness" is defined as a person who, because of a mental disorder, is (A) "dangerous to self or others," (B) "unable to provide for basic personal needs that are necessary to avoid serious physical harm in the near future, and is not receiving such care as is necessary to avoid such harm," or (C) someone who meets certain expanded criteria related to chronic mental illness, previous commitments, and potential for deterioration. Under the civil commitment statutes, a person facing civil commitment may consent to a period of intensive treatment not exceeding 14 days instead of proceeding to a hearing to determine whether they will be civilly committed. A person facing civil commitment has a right to an attorney and may have an attorney appointed for them or may refuse having an attorney appointed to represent them. With some specific exceptions, a person who has been detained prior to a hearing to determine if they are eligible for civil commitment may be held for no more than five judicial days from when they were detained, and a hearing must be held within those five days. Appointment of counsel practices vary from county to county in Oregon, with some appointing counsel on the first of those five days and others appointing counsel on the third or fourth day. HB 2481-11 would require appointment of counsel to occur on the first day.