

House Bill 2470

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Judiciary for Oregon District Attorneys Association)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: The Act changes laws about mental health findings. The Act takes effect on the 91st day after sine die. (Flesch Readability Score: 81.4).

Directs the Oregon Health Authority to expand the capacity of the Oregon State Hospital.

Requires certain updates and reports when a defendant has been ordered to engage in community restoration services due to lacking fitness to proceed. Authorizes the release of the defendant's fitness to proceed records upon request in specified circumstances. Authorizes the court to order the defendant to participate in an in-custody jail-based restoration treatment program when the defendant lacks fitness to proceed.

Authorizes the Oregon Public Guardian and Conservator to establish a program for persons found to lack fitness to proceed and to receive records concerning the defendant.

Modifies the criteria for the commitment of an extremely dangerous person with mental illness.

Takes effect on the 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to mental health; creating new provisions; amending ORS 125.683, 161.355, 161.362, 161.367, 161.370, 161.371 and 426.701; and prescribing an effective date.

Be It Enacted by the People of the State of Oregon:

OREGON STATE HOSPITAL CAPACITY

SECTION 1. (1) **The Oregon Health Authority shall, as soon as practicable, expand the capacity at Oregon State Hospital for inpatient psychiatric patients, including state and community hospital beds. The additional capacity shall at least meet the projected additional capacity needed as identified in the Oregon Health Authority Behavioral Health Residential+ Facility Study of June 2024, projecting the need for 486 new beds.**

(2) **Beginning no later than December 31, 2025, and annually thereafter, the Oregon Health Authority shall submit a report to the appropriate interim committees of the Legislative Assembly, in the manner described in ORS 192.245, concerning the current capacity of Oregon State Hospital and the projected additional capacity needed in the following year.**

SECTION 2. Section 1 of this 2025 Act is amended to read:

Sec. 1. *[(1) The Oregon Health Authority shall, as soon as practicable, expand the capacity at Oregon State Hospital for inpatient psychiatric patients, including state and community hospital beds. The additional capacity shall at least meet the projected additional capacity needed as identified in the Oregon Health Authority Behavioral Health Residential+ Facility Study of June 2024, projecting the need for 486 new beds.]*

[(2) Beginning no later than December 31, 2025, and annually thereafter,] The Oregon Health Authority shall **annually** submit a report to the appropriate interim committees of the Legislative

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 Assembly, in the manner described in ORS 192.245, concerning the current capacity of Oregon State
2 Hospital and the projected additional capacity needed in the following year.

3 **SECTION 3. The amendments to section 1 of this 2025 Act by section 2 of this 2025 Act**
4 **become operative on January 2, 2028.**

5
6 **FITNESS TO PROCEED**
7

8 **SECTION 4.** ORS 161.355 is amended to read:

9 161.355. As used in ORS 161.355 to 161.371:

10 (1) "Certified evaluator" has the meaning given that term in ORS 161.309.

11 (2) "Community restoration services" means services and treatment necessary to safely allow a
12 defendant to gain or regain fitness to proceed in the community, which may include supervision by
13 pretrial services.

14 (3) "Hospital level of care" means that a defendant requires the type of care provided by an
15 inpatient hospital **or an in-custody jail-based restoration treatment program** in order to gain
16 or regain fitness to proceed.

17 (4) "Public safety concerns" means that the defendant presents a risk to self or to the public if
18 not hospitalized or in custody.

19 **SECTION 5.** ORS 161.367 is amended to read:

20 161.367. (1) If at any time the court determines that the defendant lacks fitness to proceed, the
21 court shall further determine whether there is a substantial probability that the defendant, in the
22 foreseeable future, will gain or regain fitness to proceed. If the court determines that there is no
23 substantial probability that the defendant, in the foreseeable future, will gain or regain fitness to
24 proceed, the court shall dismiss, without prejudice and in accordance with subsection (6) of this
25 section, all charges against the defendant and:

26 (a) Order that the defendant be discharged; or

27 (b) Initiate commitment proceedings under ORS 426.070, 426.701 or 427.235 to 427.292.

28 (2)(a) The superintendent of the hospital or director of the facility in which the defendant is
29 committed under ORS 161.370, **the director of the facility providing the in-custody jail-based**
30 **restoration treatment program** or a person examining the defendant as a condition of release to
31 community restoration services shall notify the court if the defendant gains or regains fitness to
32 proceed.

33 (b) A party to the case may notify the court if the defendant has gained or regained fitness to
34 proceed.

35 (c) The court may, upon its own motion or the request of either party, hold a hearing to deter-
36 mine whether the defendant has gained or regained fitness to proceed. If the court determines that
37 the defendant has gained or regained fitness to proceed, the court shall resume the criminal pro-
38 ceeding unless the court determines that so much time has elapsed since the commitment or release
39 of the defendant to community restoration services that it would be unjust to resume the criminal
40 proceeding. If the court determines that it would be unjust to resume the criminal proceeding, the
41 court, on motion of either party, may dismiss the charge in accordance with subsection (6) of this
42 section, and may order the defendant to be discharged or cause a proceeding to be commenced
43 forthwith under ORS 426.070 to 426.170, 426.701 or 427.235 to 427.292.

44 (3) If the defendant gains or regains fitness to proceed, the defendant shall be given credit
45 against each charge alleged in the accusatory instrument for each day the defendant was **in custody**

1 **or** committed under ORS 161.370 to the custody of a state mental hospital, or to the custody of a
 2 secure intensive community inpatient facility designated by the Oregon Health Authority.

3 (4) Notwithstanding the suspension of the criminal proceeding under ORS 161.370 (2), the fact
 4 that the defendant is unfit to proceed does not preclude any objection through counsel and without
 5 the personal participation of the defendant on the grounds that the indictment is insufficient, that
 6 the statute of limitations has run, that double jeopardy principles apply or upon any other ground
 7 at the discretion of the court which the court deems susceptible of fair determination prior to trial.

8 (5) At the time that the court determines that the defendant lacks fitness to proceed under ORS
 9 161.370 (2), the court shall notify the defendant in writing that federal law prohibits the defendant
 10 from purchasing or possessing a firearm unless the person obtains relief from the prohibition under
 11 federal law. The court shall again notify the defendant in writing of the prohibition if the court finds
 12 that the defendant has gained or regained fitness to proceed under subsection (2) of this section.

13 (6) If the court intends to dismiss all charges involving orders of commitment against a defend-
 14 ant who is committed to and currently located at a state mental hospital or other facility, the court
 15 shall order that the defendant be immediately transported back to the jurisdiction in which the
 16 charges were initiated, and the dismissal shall take effect only upon the defendant's arrival in that
 17 jurisdiction.

18 **SECTION 6.** ORS 161.370 is amended to read:

19 161.370. (1)(a) When the defendant's fitness to proceed is drawn in question, the issue shall be
 20 determined by the court.

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

27 (2)(a) If the court determines that the defendant lacks fitness to proceed, the criminal proceeding
 28 against the defendant shall be suspended and the court shall proceed in accordance with this sub-
 29 section.

30 (b) After making the determination under paragraph (a) of this subsection, the court shall re-
 31 ceive a recommendation from a community mental health program director or the director's
 32 designee, and from any local entity **or agency** that would be responsible for treating the defendant
 33 if the defendant were to be released in the community, concerning whether appropriate community
 34 restoration services are present and available in the community.

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

43 (A) Commitment **or an order to participate in an in-custody jail-based restoration treat-**
 44 **ment program** for the defendant to gain or regain fitness to proceed under subsection (3) or (4) of
 45 this section;

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

3 (C) Commencement of a civil commitment proceeding under ORS 426.070 to 426.170, 426.701 or
 4 427.235 to 427.292;

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

6 (E) Dismissal of the charges pursuant to ORS 135.755 and in accordance with ORS 161.367 (6).

7 (d) If the court, while considering or ordering an appropriate action under this subsection, does
 8 not order the defendant committed to a state mental hospital or other facility, **or ordered to par-**
 9 **ticipate in an in-custody jail-based restoration treatment program**, but finds that appropriate
 10 community restoration services are not present and available in the community, for any defendant
 11 remaining in custody after such determination, the court shall set a review hearing seven days from
 12 the date of the determination under paragraph (a) of this subsection. At the review hearing, the
 13 court shall consider all relevant information and determine if commitment to the state mental hos-
 14 pital or other facility, **or an order to participate in an in-custody jail-based restoration treat-**
 15 **ment program**, is appropriate under subsection (3) or (4) of this section, or if another action
 16 described in paragraph (c) of this subsection is appropriate. At the conclusion of the hearing the
 17 court shall enter an order in accordance with the defendant's constitutional rights to due process.

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

24 **(f) If the court determines that the appropriate action in the case is the commencement**
 25 **of protective proceedings under ORS chapter 125, the court may, in accordance with ORS**
 26 **125.600 and 125.605, appoint a temporary fiduciary for the defendant to exercise the powers**
 27 **of a guardian, until a guardian can be appointed.**

28 (3)(a) If the most serious offense in the charging instrument is a felony, the court shall commit
 29 the defendant to the custody of the superintendent of a state mental hospital or director of a facility
 30 designated by the Oregon Health Authority, **or order the defendant to participate in an in-**
 31 **custody jail-based restoration treatment program**, if the defendant is at least 18 years of age,
 32 or **commit the defendant** to the custody of the director of a secure intensive community inpatient
 33 facility designated by the authority if the defendant is under 18 years of age, if the court makes the
 34 following findings:

35 (A) The defendant requires a hospital level of care due to public safety concerns if the defendant
 36 is not hospitalized or in custody or the acuity of symptoms of the defendant's qualifying mental
 37 disorder; and

38 (B) Based on the findings resulting from a consultation described in ORS 161.365 (1), if applica-
 39 ble, from any information provided by community-based mental health providers or any other
 40 sources, and primary and secondary release criteria as defined in ORS 135.230, the appropriate
 41 community restoration services are not present and available in the community.

42 (b) If the defendant is committed **or ordered to participate in an in-custody jail-based res-**
 43 **toration treatment program** under this subsection, the community mental health program director,
 44 or director's designee, shall at regular intervals, during any period of commitment **or while the**
 45 **defendant is subject to the order**, review available community restoration services and maintain

1 communication with the defendant and the superintendent of the state mental hospital or director
2 of the facility in order to facilitate an efficient transition to treatment in the community when or-
3 dered.

4 (c) If the court does not order the commitment of the defendant **or order the defendant to**
5 **participate in an in-custody jail-based restoration treatment program** under this subsection,
6 the court shall proceed in accordance with subsection (2)(c) of this section to determine and order
7 an appropriate action other than commitment **or an order to participate in an in-custody jail-**
8 **based restoration treatment program**.

9 (4)(a) If the most serious offense in the charging instrument is a misdemeanor, the court may
10 not commit the defendant to the custody of the superintendent of a state mental hospital or director
11 of a facility designated by the Oregon Health Authority, **or order the defendant to participate in**
12 **an in-custody jail-based restoration treatment program**, if the defendant is at least 18 years of
13 age, or **commit the defendant** to the custody of the director of a secure intensive community in-
14 patient facility designated by the authority if the defendant is under 18 years of age, unless the
15 court:

16 (A)(i) Receives a recommendation from a certified evaluator that the defendant requires a hos-
17 pital level of care due to the acuity of symptoms of the defendant's qualifying mental disorder; and

18 (ii) Receives a recommendation from a community mental health program director, or director's
19 designee, that the appropriate community restoration services are not present and available in the
20 community; or

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

23 (i) The defendant needs a hospital level of care due to the acuity of the symptoms of the
24 defendant's qualifying mental disorder;

25 (ii) There are public safety concerns; and

26 (iii) The appropriate community restoration services are not present and available in the com-
27 munity.

28 (b) If at the time of determining the appropriate action for the case, the court is considering
29 commitment **or an order to participate in an in-custody jail-based restoration treatment pro-**
30 **gram** under paragraph (a)(A) of this subsection and:

31 (A) Has not received a recommendation from a certified evaluator as to whether the defendant
32 requires a hospital level of care due to the acuity of symptoms of the defendant's qualifying mental
33 disorder, the court shall order a certified evaluator to make such a recommendation.

34 (B) Has not received a recommendation from the community mental health program director or
35 designee concerning whether appropriate community restoration services are present and available
36 in the community, the court shall order the director or designee to make such a recommendation.

37 (c) If the court does not order the commitment of the defendant **or order the defendant to**
38 **participate in an in-custody jail-based restoration treatment program** under this subsection,
39 the court shall proceed in accordance with subsection (2)(c) of this section to determine and order
40 an appropriate action other than commitment **or an order to participate in an in-custody jail-**
41 **based restoration treatment program**.

42 (d) If the defendant is committed **or ordered to participate in an in-custody jail-based res-**
43 **toration treatment program** under this subsection, the community mental health program director,
44 or director's designee, shall at regular intervals, during any period of commitment **or while the**
45 **defendant is subject to the order**, review available community restoration services and maintain

1 communication with the defendant and the superintendent of the state mental hospital or director
 2 of the facility in order to facilitate an efficient transition to treatment in the community when or-
 3 dered.

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, **or order the defendant to participate in**
 7 **an in-custody jail-based restoration treatment program**, if the defendant is at least 18 years of
 8 age, or **commit the defendant** to the custody of the director of a secure intensive community in-
 9 patient facility designated by the authority if the defendant is under 18 years of age.

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

21 **(b) When a defendant is ordered to engage in community restoration services under this**
 22 **subsection, the court may place conditions that the court deems appropriate on the release,**
 23 **including the requirement that the defendant regularly report to a state mental hospital or**
 24 **a certified evaluator for examination to determine if the defendant has gained or regained**
 25 **fitness to proceed.**

26 **(c) The superintendent of the state mental hospital or the certified evaluator to which**
 27 **the defendant is ordered to report under this subsection, or the community mental health**
 28 **program director coordinating the defendant's treatment in the community, shall cause the**
 29 **defendant to be evaluated within 60 days from the date the defendant was ordered to engage**
 30 **in community restoration services under this subsection for the purpose of determining**
 31 **whether there is a substantial probability that, in the foreseeable future, the defendant will**
 32 **have fitness to proceed, and provide the court with the results of the evaluation within 30**
 33 **days. In addition, the superintendent, evaluator or director shall:**

34 **(A) Immediately notify the court if the defendant, at any time, gains or regains fitness**
 35 **to proceed or if there is no substantial probability that, within the foreseeable future, the**
 36 **defendant will gain or regain fitness to proceed.**

37 **(B) Within 90 days from the date the defendant was ordered to engage in community**
 38 **restoration services under this subsection, notify the court that:**

39 **(i) The defendant has present fitness to proceed;**

40 **(ii) There is no substantial probability that, in the foreseeable future, the defendant will**
 41 **gain or regain fitness to proceed; or**

42 **(iii) There is a substantial probability that, in the foreseeable future, the defendant will**
 43 **gain or regain fitness to proceed. If the probability exists, the superintendent, evaluator or**
 44 **director shall give the court an estimate of the time in which the defendant, with appropriate**
 45 **treatment, is expected to gain or regain fitness to proceed.**

1 **(C) For the duration of the time period during which the defendant is ordered to engage**
 2 **in community restoration services, submit a progress report to the court, concerning the**
 3 **defendant’s fitness to proceed, at least once every 180 days as measured from the date the**
 4 **defendant was ordered to engage in community restoration services under this subsection.**

5 **[(b)] (d)** The court may order a community mental health program director coordinating the
 6 defendant’s treatment in the community to provide the court with status reports on the defendant’s
 7 progress in gaining or regaining fitness to proceed **in addition to any reports required by para-**
 8 **graph (c) of this subsection.** The director shall provide a status report if the defendant is not
 9 complying with court-ordered restoration services. **The status report must be provided to the**
 10 **court within 48 hours if the conduct constituting the noncompliance consists of missed ap-**
 11 **pointments, missed treatment sessions, a positive urine test for unauthorized substances,**
 12 **new law enforcement contact or a refusal to take prescribed medications.**

13 **[(c)] (e)** *[A community mental health program director coordinating the defendant’s treatment in the*
 14 *community shall notify the court if the defendant gains or regains fitness to proceed. The notice]* **The**
 15 **notification described in paragraph (c)(A) of this subsection** shall be filed with the court and
 16 may be filed electronically. The clerk of the court shall cause copies of the notice to be delivered
 17 to both the district attorney and the counsel for the defendant.

18 **[(d)]** *When a defendant is ordered to engage in community restoration services under this sub-*
 19 *section, the court may place conditions that the court deems appropriate on the release, including the*
 20 *requirement that the defendant regularly report to a state mental hospital or a certified evaluator for*
 21 *examination to determine if the defendant has gained or regained fitness to proceed.]*

22 **(f) If the court determines that there is a substantial probability that, in the foreseeable**
 23 **future, the defendant will gain or regain fitness to proceed, unless the court otherwise or-**
 24 **ders, the defendant shall continue to engage in community restoration services and receive**
 25 **treatment designed for the purpose of enabling the defendant to gain or regain fitness to**
 26 **proceed.**

27 (7) The Oregon Health Authority shall establish by rule standards for the recommendation pro-
 28 vided to the court described in subsection (2) of this section.

29 **SECTION 7.** ORS 161.371 is amended to read:

30 161.371. (1) The superintendent of a state mental hospital or director of a facility to which the
 31 defendant is committed under ORS 161.370, **or the director of the facility providing the in-**
 32 **custody jail-based restoration treatment program,** shall cause the defendant to be evaluated
 33 within 60 days from the defendant’s delivery into the superintendent’s or director’s custody, for the
 34 purpose of determining whether there is a substantial probability that, in the foreseeable future, the
 35 defendant will have fitness to proceed. In addition, the superintendent or director shall:

36 (a) Immediately notify the *[committing]* court if the defendant, at any time, gains or regains fit-
 37 ness to proceed or if there is no substantial probability that, within the foreseeable future, the de-
 38 fendant will gain or regain fitness to proceed.

39 (b) Within 90 days of the defendant’s delivery into the superintendent’s or director’s custody,
 40 notify the *[committing]* court that:

41 (A) The defendant has present fitness to proceed;

42 (B) There is no substantial probability that, in the foreseeable future, the defendant will gain
 43 or regain fitness to proceed; or

44 (C) There is a substantial probability that, in the foreseeable future, the defendant will gain or
 45 regain fitness to proceed. If the probability exists, the superintendent or director shall give the court

1 an estimate of the time in which the defendant, with appropriate treatment, is expected to gain or
 2 regain fitness to proceed.

3 (c) Notify the court if court-ordered involuntary medication is necessary for the defendant to
 4 gain or regain fitness to proceed and, if appropriate, submit a report to the court under ORS 161.372.

5 **(d)(A) Provide the defendant’s records to the court, district attorney or attorney for the**
 6 **defendant within 10 days of receipt of an electronically submitted records request. A request**
 7 **for records under this paragraph must be either accompanied by an authorization for the**
 8 **release signed by the defendant or made in accordance with 45 C.F.R. 164.512(e).**

9 **(B) As used in this paragraph, “records” includes but is not limited to the following as**
 10 **they relate to the defendant:**

11 **(i) Electronic or paper medical records.**

12 **(ii) The master patient index.**

13 **(iii) Medical, psychological and psychiatric notes including history, physicals, progress**
 14 **notes and discharge summaries.**

15 **(iv) Nursing notes.**

16 **(v) Educational materials.**

17 **(vi) Records from legal skills classes.**

18 **(vii) Raw data from any administered psychiatric or psychology testing.**

19 **(viii) Audio or video recordings of any evaluation or testing.**

20 **(ix) Evaluation reports.**

21 **(x) Any other written or recorded statement concerning the defendant’s fitness to pro-**
 22 **ceed.**

23 (2)(a) If the superintendent of the state mental hospital or director of the facility to which the
 24 defendant is committed, **or the director of the facility providing the in-custody jail-based res-**
 25 **toration treatment program**, determines that there is a substantial probability that, in the fore-
 26 seeable future, the defendant will gain or regain fitness to proceed, unless the court otherwise
 27 orders, the defendant shall remain in the superintendent’s or director’s custody where the defendant
 28 shall receive treatment designed for the purpose of enabling the defendant to gain or regain fitness
 29 to proceed. In keeping with the notice requirement under subsection (1)(b) of this section, the su-
 30 perintendent or director shall, for the duration of the defendant’s period of commitment **or treat-**
 31 **ment**, submit a progress report to the [committing] court, concerning the defendant’s fitness to
 32 proceed, at least once every 180 days as measured from the date of the defendant’s delivery into the
 33 superintendent’s or director’s custody.

34 (b) A progress report described in paragraph (a) of this subsection may consist of an update to:

35 (A) The original examination report conducted under ORS 161.365; or

36 (B) An evaluation conducted under subsection (1) of this section, if the defendant did not receive
 37 an examination under ORS 161.365.

38 (3)(a) Notwithstanding subsection (2) of this section, if the most serious offense in the charging
 39 instrument is a felony, and the superintendent of the state mental hospital or director of the facility
 40 to which the defendant is committed, **or the director of the facility providing the in-custody**
 41 **jail-based restoration treatment program**, determines that a hospital level of care is no longer
 42 necessary due to present public safety concerns and the acuity of symptoms of the defendant’s
 43 qualifying mental disorder, the superintendent or director may file notice of the determination with
 44 the court. Upon receipt of the notice, the court shall order that a community mental health program
 45 director or the director’s designee, within five judicial days:

1 (A) Consult with the defendant and with any local entity that would be responsible for providing
 2 community restoration services, if the defendant were to be released in the community, to determine
 3 whether community restoration services are present and available in the community; and

4 (B) Provide the court and the parties with recommendations from the consultation.

5 (b) Notwithstanding subsection (2) of this section, if the most serious offense in the charging
 6 instrument is a felony, and the community mental health program director determines that commu-
 7 nity restoration services that would mitigate any risk posed by the defendant are present and
 8 available in the community, the community mental health program director may file notice of the
 9 determination with the court. Upon receipt of the notice, the court shall order that the superinten-
 10 dent of the state mental hospital or director of the facility to which the defendant is committed, **or**
 11 **the director of the facility providing the in-custody jail-based restoration treatment program,**
 12 within five judicial days:

13 (A) Evaluate the defendant to determine whether a hospital level of care is no longer necessary
 14 due to present public safety concerns, or no longer necessary due to the acuity of symptoms of the
 15 defendant’s qualifying mental disorder; and

16 (B) Provide the court and the parties with recommendations from the evaluation.

17 (c) Within 10 judicial days of receiving the recommendations described in paragraph (a) or (b)
 18 of this subsection, the court shall hold a hearing to determine an appropriate action in accordance
 19 with ORS 161.370 (2)(c) as follows:

20 (A) If, after consideration of the factors and possible actions described in ORS 161.370 (2)(c) and
 21 any recommendations received under paragraph (a) or (b) of this subsection, the court determines
 22 that a hospital level of care is necessary due to public safety concerns or the acuity of symptoms
 23 of the defendant’s qualifying mental disorder, and that based on the consultation or evaluation de-
 24 scribed in paragraph (a) or (b) of this subsection, any information provided by community-based
 25 mental health providers or any other sources, primary and secondary release criteria as defined in
 26 ORS 135.230, and any other information the court finds to be trustworthy and reliable, the appro-
 27 priate community restoration services are not present and available in the community, the court
 28 may continue the commitment [*of the defendant*] **or participation in an in-custody jail-based res-**
 29 **toration treatment program.**

30 (B) If the court does not make the determination described in subparagraph (A) of this para-
 31 graph, the court shall terminate the commitment **or participation in an in-custody jail-based**
 32 **restoration treatment program** and shall set a review hearing seven days from the date of the
 33 [*commitment*] termination for any defendant remaining in custody. At the review hearing, the court
 34 shall consider all relevant information, determine an appropriate action in the case as described in
 35 ORS 161.370 (2)(c) and enter an order in accordance with the defendant’s constitutional rights to
 36 due process.

37 (4)(a) Notwithstanding subsection (2) of this section, if the most serious offense in the charging
 38 instrument is a misdemeanor, and the superintendent of the state mental hospital or director of the
 39 facility to which the defendant is committed, **or the director of the facility providing the in-**
 40 **custody jail-based restoration treatment program,** determines that the defendant no longer
 41 needs a hospital level of care due to the acuity of symptoms of the defendant’s qualifying mental
 42 disorder or there are not present public safety concerns, the superintendent or director shall file
 43 notice of the determination with the court, along with recommendations regarding the necessary
 44 community restoration services that would mitigate any risk presented by the defendant. Upon re-
 45 ceipt of the notice, the court shall order that a community mental health program director or the

1 director's designee, within five judicial days:

2 (A) Consult with the defendant and with any local entity that would be responsible for providing
 3 community restoration services, if the defendant were to be released in the community, to determine
 4 whether appropriate community restoration services are present and available in the community;
 5 and

6 (B) Provide the court and the parties with recommendations from the consultation.

7 (b) Notwithstanding subsection (2) of this section, if the most serious offense in the charging
 8 instrument is a misdemeanor, and the community mental health program director determines that
 9 the community restoration services that would mitigate any risk posed by the defendant are present
 10 and available in the community, the community mental health program director may file notice of
 11 the determination with the court. Upon receipt of the notice, the court shall order that the super-
 12 intendent of the state mental hospital or director of the facility to which the defendant is committed,
 13 **or the director of the facility providing the in-custody jail-based restoration treatment pro-**
 14 **gram**, within five judicial days:

15 (A) Evaluate the defendant to determine whether a hospital level of care is no longer necessary
 16 due to present public safety concerns, or no longer necessary due to the acuity of symptoms of the
 17 defendant's qualifying mental disorder; and

18 (B) Provide the court and the parties with recommendations from the evaluation.

19 (c) Within 10 judicial days of receiving the recommendations described in paragraph (a) or (b)
 20 of this subsection, the court shall hold a hearing to determine an appropriate action in accordance
 21 with ORS 161.370 (2)(c) as follows:

22 (A) After consideration of the factors and possible actions described in ORS 161.370 (2)(c), the
 23 consultation or evaluation and any recommendations described in paragraph (a) or (b) of this sub-
 24 section, and any other information the court finds to be trustworthy and reliable, the court may
 25 continue the commitment **or treatment** of the defendant if the court makes written findings that a
 26 hospital level of care is necessary due to public safety concerns and the acuity of symptoms of the
 27 defendant's qualifying mental disorder, and that appropriate community restoration services are not
 28 present and available in the community.

29 (B) If the court does not make the findings described in subparagraph (A) of this paragraph, the
 30 court shall terminate the commitment **or treatment** and shall set a review hearing seven days from
 31 the date of the [*commitment*] termination for any defendant remaining in custody. At the review
 32 hearing, the court shall consider all relevant information, determine an appropriate action in the
 33 case as described in ORS 161.370 (2)(c) and enter an order in accordance with the defendant's con-
 34 stitutional rights to due process.

35 (5)(a) If a defendant remains committed **or ordered to participate in an in-custody jail-based**
 36 **restoration treatment program** under this section, the court shall determine within a reasonable
 37 period of time whether there is a substantial probability that, in the foreseeable future, the defend-
 38 ant will gain or regain fitness to proceed. However, regardless of the number of charges with which
 39 the defendant is accused, in no event shall the defendant be committed **or held in custody** for
 40 longer than whichever of the following, measured from the defendant's initial custody date, is
 41 shorter:

42 (A) Three years; or

43 (B) A period of time equal to the maximum sentence the court could have imposed if the de-
 44 fendant had been convicted.

45 (b) For purposes of calculating the maximum period of commitment **or custody** described in

1 paragraph (a) of this subsection:

2 (A) The initial custody date is the date on which the defendant is first committed **or taken into**
 3 **custody** under this section on any charge alleged in the accusatory instrument; and

4 (B) The defendant shall be given credit against each charge alleged in the accusatory instru-
 5 ment:

6 (i) For each day the defendant is committed **or held in custody** under this section, whether the
 7 days are consecutive or are interrupted by a period of time during which the defendant has gained
 8 or regained fitness to proceed; and

9 (ii) Unless the defendant is charged on any charging instrument with aggravated murder or a
 10 crime listed in ORS 137.700 (2), for each day the defendant is held in jail before and after the date
 11 the defendant is first committed **or taken into custody**, whether the days are consecutive or are
 12 interrupted by a period of time during which the defendant lacks fitness to proceed.

13 (c) The superintendent of the state mental hospital or director of the facility to which the de-
 14 fendant is committed, **or the director of the facility providing the in-custody jail-based resto-**
 15 **ration treatment program**, shall notify the [*committing*] court of the defendant's impending
 16 discharge **or release** 30 days before the date on which the superintendent or director is required
 17 to discharge **or release** the defendant under this subsection.

18 (6)(a) All notices required under this section shall be filed with the court and may be filed
 19 electronically. The clerk of the court shall cause copies of the notices to be delivered to both the
 20 district attorney and the counsel for the defendant.

21 (b) When the [*committing*] court receives a notice from the superintendent or director under
 22 subsection (1) of this section concerning the defendant's progress or lack thereof, or under sub-
 23 section (5) of this section concerning the defendant's impending discharge, the [*committing*] court
 24 shall determine, after a hearing if a hearing is requested, whether the defendant presently has fit-
 25 ness to proceed.

26 (7) If at any time the court determines that the defendant lacks fitness to proceed, the court
 27 shall further determine whether the defendant is entitled to discharge under subsection (5) of this
 28 section. If the court determines that the defendant is entitled to discharge under subsection (5) of
 29 this section, the court shall dismiss, without prejudice and in accordance with ORS 161.367 (6), all
 30 charges against the defendant and:

31 (a) Order that the defendant be discharged; or

32 (b) Initiate commitment proceedings under ORS 426.070, 426.701 or 427.235 to 427.292.

33 **SECTION 8. Section 9 of this 2025 Act is added to and made a part of ORS 125.675 to**
 34 **125.691.**

35 **SECTION 9. (1) The Oregon Public Guardian and Conservator shall develop and adminis-**
 36 **ter a program to provide guardianship services to defendants whose criminal cases have been**
 37 **suspended or dismissed pursuant to ORS 161.370 due to the defendant lacking fitness to**
 38 **proceed.**

39 **(2) Participants in the program must meet the criteria described in ORS 125.680 (2) to**
 40 **receive public guardian and conservator services under this section.**

41 **(3) The Oregon Public Guardian and Conservator may provide services under this section**
 42 **at any time after the defendant's fitness to proceed is drawn into question.**

43 **(4) A defendant's eligibility to participate in the program may be determined at any time**
 44 **after a defendant's fitness to proceed is drawn into question or, if the court finds that there**
 45 **is no substantial probability that the defendant will, in the foreseeable future, gain or regain**

1 **the fitness to proceed, no later than one year following the date on which the defendant's**
 2 **case is dismissed.**

3 **(5) In administering the program described in this section, the Oregon Public Guardian**
 4 **and Conservator shall collaborate and coordinate with district attorneys, community mental**
 5 **health programs and facilities in which defendants are housed, including the Oregon State**
 6 **Hospital.**

7 **SECTION 10.** ORS 125.683 is amended to read:

8 125.683. (1) In providing public guardian and conservator services, the Oregon Public Guardian
 9 and Conservator shall conduct a needs assessment for a person who claims or is claimed not to have
 10 relatives or friends willing or able to assume the duties of guardianship or conservatorship and who
 11 claims or is claimed to lack the financial resources to obtain a private guardian or conservator. The
 12 purpose of the needs assessment is to determine the person's eligibility to receive public guardian
 13 and conservator services and to determine the appropriateness of filing a petition for the appoint-
 14 ment of a fiduciary or other pleading on behalf of the person in a court having probate jurisdiction.
 15 The needs assessment shall, at a minimum:

16 (a) Assess the person's capacity to:

17 (A) Care for the person's own safety;

18 (B) Manage the person's own financial affairs; and

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

20 (b) Assess the person's financial resources;

21 (c) Determine whether information that is available about the person is sufficient to support a
 22 finding that the person is incapacitated or financially incapable and the entry of a court order for
 23 the appointment of a fiduciary under ORS 125.010;

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

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

29 (f) Determine how best to provide public guardian and conservator services to the person that
 30 are least restrictive to the person's liberty, that are least intrusive to the person and that provide
 31 for the greatest degree of independence that the person is capable of exercising.

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

36 (b) Any other public agency that has provided or is providing care or services to the person
 37 shall disclose to the Oregon Public Guardian and Conservator, upon request, a minimum amount of
 38 information about the person for whom the needs assessment is being conducted, including protected
 39 health information as defined in ORS 192.556 and financial information, as is reasonably necessary
 40 to prevent or lessen a serious and imminent threat to the health or safety of the person who is the
 41 subject of the needs assessment. For purposes of this paragraph, a request from the Oregon Public
 42 Guardian and Conservator for the purpose of conducting a needs assessment is presumed to be a
 43 situation that will prevent or lessen a serious and imminent threat to the health or safety of the
 44 person.

45 (c) Any health care provider not identified in either paragraph (a) or (b) of this subsection may

1 disclose protected health information to the Oregon Public Guardian and Conservator in accordance
2 with 45 C.F.R. 164.512 (j) to prevent or lessen a serious or imminent threat to the health or safety
3 of a person if the health care provider, in good faith, believes the disclosure is necessary to prevent
4 or lessen the threat. For purposes of this paragraph, a request from the Oregon Public Guardian and
5 Conservator for disclosure under this paragraph for the purposes of conducting a needs assessment,
6 or the good faith belief and disclosure of the health care provider under this paragraph, are pre-
7 sumed to be situations that will prevent or lessen a serious and imminent threat to the health or
8 safety of the person.

9 **(d) If the person is currently or was previously a defendant in a criminal case subject to**
10 **ORS 161.370, and to the extent authorized by federal law, the Oregon Public Guardian and**
11 **Conservator shall have access to any reports resulting from examinations or evaluations of**
12 **the defendant, documents containing recommendation of or resulting from consultations**
13 **with a community mental health program, documents submitted to the court by a state**
14 **mental hospital related to the proceedings under ORS 161.370 and any other court records**
15 **relating to the defendant.**

16 (3) For each person determined to be eligible for public guardian and conservator services under
17 this section, the Oregon Public Guardian and Conservator shall develop a written plan setting forth
18 the type and duration of services to be provided by the Oregon Public Guardian and Conservator.
19 The plan shall be included in any nonemergency petition or pleading filed with the court.

20 **SECTION 11.** ORS 161.362 is amended to read:

21 161.362. (1) A recommendation provided by a certified evaluator, pursuant to ORS 161.355 to
22 161.371, that a defendant requires a hospital level of care due to the acuity of the defendant's
23 symptoms must be based upon the defendant's current diagnosis and symptomology, the defendant's
24 current ability to engage in treatment, present safety concerns relating to the defendant and any
25 other pertinent information known to the evaluator. If the defendant is in a placement in a facility,
26 the evaluator may defer to the treatment provider's recommendation regarding whether a hospital
27 level of care is needed.

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

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

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

41 (B) As ordered by a court.

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

44 (c) Nothing in this subsection prohibits the prosecuting attorney, defense attorney or agent of
45 the prosecuting or defense attorney from discussing the contents of a report or document described

1 in paragraph (a) of this subsection with witnesses or victims as otherwise permitted by law.

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

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

7
 8 **COMMITMENT OF EXTREMELY DANGEROUS PERSON WITH MENTAL ILLNESS**

9
 10 **SECTION 12.** ORS 426.701 is amended to read:

11 426.701. (1) For the purposes of this section and ORS 426.702:

12 (a) A person is “extremely dangerous” if the person:

13 (A) Is at least 18 years of age;

14 (B) Is exhibiting symptoms or behaviors of a qualifying mental disorder substantially similar to
 15 those that preceded the act described in subsection (3)(a)(C) of this section; and

16 (C) Because of a qualifying mental disorder:

17 (i) Presents a serious danger to the safety of other persons by reason of an extreme risk that
 18 the person will inflict grave or potentially lethal physical injury on other persons; and

19 (ii) Unless committed, will continue to represent an extreme risk to the safety of other persons
 20 in the foreseeable future.

21 **(b)(A) “Qualifying mental disorder” means:**

22 **(i) A developmental or intellectual disability, traumatic brain injury, brain damage or**
 23 **other biological dysfunction that is associated with distress or disability, causing symptoms**
 24 **or impairment in at least one important area of an individual’s functioning and that is de-**
 25 **defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders.**

26 **(ii) Any diagnosis of a psychiatric condition that is a significant behavioral or psycho-**
 27 **logical syndrome or pattern that is associated with distress or disability, causing symptoms**
 28 **or impairment in at least one important area of an individual’s functioning and that is de-**
 29 **defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders.**

30 *[(b)]* **(B) “Qualifying mental disorder” does not include:**

31 *[(A)]* **(i) A disorder manifested solely by repeated criminal or otherwise antisocial conduct; or**

32 *[(B)]* **(ii) A disorder constituting solely a personality disorder.**

33 (c) A qualifying mental disorder is “resistant to treatment” if, after receiving care from a li-
 34 censed psychiatrist and exhausting all reasonable psychiatric treatment, or after refusing psychiatric
 35 treatment, the person continues to be significantly impaired in the person’s ability to make compe-
 36 tent decisions and to be aware of and control extremely dangerous behavior.

37 (2)(a) A district attorney may petition the court to initiate commitment proceedings described
 38 in this section if there is reason to believe a person is an extremely dangerous person with mental
 39 illness. Venue is proper in the county in which the person is alleged to have committed the quali-
 40 fying act or the county in which the person lives. The petition shall immediately be served upon the
 41 person.

42 (b) If a person is committed to a state hospital under ORS 161.365 or 161.370 and the state
 43 hospital intends to discharge the person, the district attorney may provide notice to the super-
 44 intendent of the state hospital indicating an intent to file a petition under this section. Upon receipt
 45 of the notice, the superintendent may delay discharge of the person for up to seven judicial days to

1 allow for the petition to be filed and for the court to make findings under paragraph (f) of this
 2 subsection.

3 (c) The person shall be advised in writing of:

4 (A) The allegation that the person is an extremely dangerous person with mental illness and
 5 may be committed to the jurisdiction of the Psychiatric Security Review Board for a maximum pe-
 6 riod of 24 months; and

7 (B) The right to a hearing to determine whether the person is an extremely dangerous person
 8 with mental illness, unless the person consents to the commitment by waiving the right to a hearing
 9 in writing after consultation with legal counsel.

10 (d) A person against whom a petition described in this subsection is filed shall have the follow-
 11 ing:

12 (A) The right to obtain suitable legal counsel possessing skills and experience commensurate
 13 with the nature of the allegations and complexity of the case and, if the person is without funds to
 14 retain legal counsel, the right to have the court appoint legal counsel;

15 (B) The right to subpoena witnesses and to offer evidence on behalf of the person at the hearing;

16 (C) The right to cross-examine any witnesses who appear at the hearing; and

17 (D) The right to examine all reports, documents and information that the court considers, in-
 18 cluding the right to examine the reports, documents and information prior to the hearing, if avail-
 19 able.

20 (e) Upon receipt of the petition, the court shall schedule a hearing and shall appoint an exam-
 21 iner as described in ORS 426.110 to evaluate the person. If the person is in custody or committed
 22 while the hearing is pending, the hearing must commence within 30 days of filing the petition unless
 23 good cause is found by the court. If the court finds good cause, the hearing must commence no later
 24 than 60 days after the filing of the petition or, if the district attorney provided notice under para-
 25 graph (b) of this subsection, the date of the notice, whichever occurs first. As used in this paragraph,
 26 “good cause” means:

27 (A) The person who would be considered the victim of the act described in subsection (3)(a)(C)
 28 of this section if the act were criminally prosecuted, or an essential witness for either the state or
 29 the person, is unable to testify within the 30-day period.

30 (B) The attorney for the person cannot reasonably be expected to participate in the hearing
 31 within the 30-day period, cannot be adequately prepared to represent the person at the hearing
 32 within the 30-day period, or has a schedule conflict that cannot be resolved in a manner that allows
 33 the attorney to represent the person at a hearing within the 30-day period.

34 (C) An examiner cannot be appointed to conduct the examination, or conduct the examination
 35 and prepare a report, within the 30-day period.

36 (D) If a guardian ad litem is appointed on the case, the guardian ad litem cannot be prepared
 37 for a hearing within the 30-day period.

38 (f)(A) The court may order that the person be committed to the custody of the superintendent
 39 of a state hospital or the director of a secure mental health facility while the petition is pending if
 40 the court finds probable cause that:

41 (i) The person is at least 18 years of age;

42 (ii) The person has a qualifying mental disorder that is resistant to treatment;

43 (iii) The person committed an act described in subsection (3)(a)(C) of this section; and

44 (iv) Failure to commit the person while the hearing is pending would pose serious harm or
 45 danger to the person or others.

1 (B) If a person committed under this paragraph is held in a secure facility other than a state
 2 hospital or secure mental health facility, including but not limited to a jail or prison, at the time
 3 the petition is filed, the court may further order that the person remain at that placement for suf-
 4 ficient time to allow the superintendent or director to safely admit the person. Any order of the
 5 court concerning the placement of a person under this subparagraph must be in accordance with the
 6 person’s constitutional right to due process. If the person remains in a secure facility under this
 7 subparagraph, the superintendent, director or designee may consult with the facility to ensure con-
 8 tinuity of care for the person.

9 (C) Commitment to the custody of the superintendent of a state hospital or the director of a
 10 secure mental health facility under this paragraph may not exceed 60 days. If the hearing does not
 11 occur within 60 days, if the district attorney dismisses the petition, or if the court holds the hearing
 12 but does not commit the person, the person shall be returned to the county in which the petition
 13 was filed and the court shall hold a disposition hearing within five judicial days to determine how
 14 to proceed on the petition and any outstanding criminal charges. A person who is returned to a
 15 secure facility other than a state hospital or secure mental health facility, including but not limited
 16 to a jail or prison, under this paragraph may remain at the placement until the disposition hearing.

17 (g) If the hearing is not commenced within the time period required by paragraph (e) of this
 18 subsection, the court shall either dismiss the petition or release the person on personal recogni-
 19 zance, to the custody of a third party or upon any additional reasonable terms and conditions the
 20 court deems appropriate.

21 (3)(a) At the hearing on the petition, the court shall order the person committed as an extremely
 22 dangerous person with mental illness under the jurisdiction of the Psychiatric Security Review
 23 Board for a maximum of 24 months if the court finds, by clear and convincing evidence, that:

24 (A) The person is extremely dangerous;

25 (B) The person suffers from a qualifying mental disorder that is resistant to treatment; and

26 (C) Because of the qualifying mental disorder that is resistant to treatment, the person com-
 27 mitted one of the following acts:

28 (i) Caused **or attempted to cause** the death of another person;

29 (ii) Caused **or attempted to cause** serious physical injury to another person by means of a
 30 dangerous weapon;

31 (iii) Caused **or attempted to cause** physical injury to another person by means of a firearm as
 32 defined in ORS 166.210 or an explosive as defined in ORS 164.055;

33 (iv) Engaged **or attempted to engage** in oral-genital contact with a child under 14 years of age;

34 [(v) *Forcibly compelled sexual intercourse, oral-genital contact or the penetration of another*
 35 *person’s anus or vagina; or]*

36 (v) **Engaged in or attempted to engage in sexual contact or sexual intercourse by means**
 37 **of forcible compulsion against another person or against another person who was mentally**
 38 **incapacitated, physically helpless or incapable of appraising the nature of the other person’s**
 39 **conduct;**

40 (vi) Caused **or attempted to cause** a fire or explosion that damaged the protected property of
 41 another, as those terms are defined in ORS 164.305, or placed another person in danger of physical
 42 injury, and the fire or explosion was not the incidental result of normal and usual daily activities;

43 **or**

44 (vii) **Any other act that constitutes an extreme danger to the person, another person or**
 45 **the public.**

1 (b) The court shall further commit the person to a state hospital for custody, care and treatment
 2 if the court finds, by clear and convincing evidence, that the person cannot be controlled in the
 3 community with proper care, medication, supervision and treatment on conditional release.

4 (c) The court shall specify in the order whether any person who would be considered a victim
 5 as defined in ORS 131.007 of the act described in paragraph (a)(C) of this subsection, if the act had
 6 been criminally prosecuted, requests notification of any order or hearing, conditional release, dis-
 7 charge or escape of the person committed under this section.

8 (d) The court shall be fully advised of all drugs and other treatment known to have been ad-
 9 ministered to the alleged extremely dangerous person with mental illness that may substantially af-
 10 fect the ability of the person to prepare for, or to function effectively at, the hearing.

11 (e) The provisions of ORS 40.230, 40.235, 40.240, 40.250 and 179.505 do not apply to the use of
 12 the examiner's report and the court may consider the report as evidence.

13 (4) The findings of the court that a person committed an act described in subsection (3)(a)(C)
 14 of this section may not be admitted in a criminal prosecution.

15 (5)(a) If the court commits a person under this section and the person has pending criminal
 16 charges at the time of the hearing, the court shall dismiss the criminal charges without prejudice,
 17 and if the person is further committed to a state hospital under this section, the dismissal shall not
 18 take effect until the person's transportation to the state hospital.

19 (b) If the court commits a person to the state hospital under this section and:

20 (A) The person is in a setting other than a state hospital, the court may additionally order that
 21 the person remain in that placement until the person can be safely transported to a state hospital
 22 pursuant to the order. Any order of the court concerning the placement of the person under this
 23 subparagraph must be in accordance with the person's constitutional right to due process.

24 (B) The person is at a state hospital at the time of the hearing, the person may remain at the
 25 state hospital under the commitment.

26 (c) A person committed under this section shall remain under the jurisdiction of the board for
 27 a maximum of 24 months unless the board conducts a hearing and makes the findings described in
 28 subsection (6)(d) of this section.

29 (6)(a) The board shall hold a hearing six months after the initial commitment described in sub-
 30 section (3) of this section, and thereafter six months after a further commitment described in ORS
 31 426.702, to determine the placement of the person and whether the person is eligible for conditional
 32 release or early discharge. The board shall provide written notice of the hearing to the person, the
 33 person's legal counsel and the office of the district attorney who filed the initial petition under
 34 subsection (2) of this section within a reasonable time prior to the hearing. The board shall further
 35 notify the person of the following:

36 (A) The nature of the hearing and possible outcomes;

37 (B) The right to appear at the hearing and present evidence;

38 (C) The right to be represented by legal counsel and, if the person is without funds to retain
 39 legal counsel, the right to have the court appoint legal counsel;

40 (D) The right to subpoena witnesses;

41 (E) The right to cross-examine witnesses who appear at the hearing; and

42 (F) The right to examine all reports, documents and information that the board considers, in-
 43 cluding the right to examine the reports, documents and information prior to the hearing if avail-
 44 able.

45 (b) If the board determines at the hearing that the person still suffers from a qualifying mental

1 disorder that is resistant to treatment and continues to be extremely dangerous, and that the person
2 cannot be controlled in the community with proper care, medication, supervision and treatment if
3 conditionally released, the person shall remain committed to a state hospital.

4 (c) If the board determines at the hearing that the person still suffers from a qualifying mental
5 disorder that is resistant to treatment and continues to be extremely dangerous, but finds that the
6 person can be controlled in the community with proper care, medication, supervision and treatment
7 if conditionally released, the board shall conditionally release the person.

8 (d) If the board determines at the hearing that the person no longer suffers from a qualifying
9 mental disorder that is resistant to treatment or is no longer extremely dangerous, the board shall
10 discharge the person. The discharge of a person committed under this section does not preclude
11 commitment of the person pursuant to ORS 426.005 to 426.390.

12 (7)(a) At any time during the commitment to a state hospital, the superintendent of the state
13 hospital may request a hearing to determine the status of the person's commitment under the juris-
14 diction of the board. The request shall be accompanied by a report setting forth the facts supporting
15 the request. If the request is for conditional release, the request shall be accompanied by a verified
16 conditional release plan. The hearing shall be conducted as described in subsection (6) of this sec-
17 tion.

18 (b) The board may make the findings described in subsection (6)(c) of this section and condi-
19 tionally release the person without a hearing if the office of the district attorney who filed the ini-
20 tial petition under subsection (2) of this section does not object to the conditional release.

21 (c) At any time during conditional release, a state or local mental health facility providing
22 treatment to the person may request a hearing to determine the status of the person's commitment
23 under the jurisdiction of the board. The hearing shall be conducted as described in subsection (6)
24 of this section.

25 (8)(a) If the board orders the conditional release of a person under subsection (6)(c) of this sec-
26 tion, the board shall order conditions of release that may include a requirement to report to any
27 state or local mental health facility for evaluation. The board may further require cooperation with,
28 and acceptance of, psychiatric or psychological treatment from the facility. Conditions of release
29 may be modified by the board from time to time.

30 (b) When a person is referred to a state or local mental health facility for an evaluation under
31 this subsection, the facility shall perform the evaluation and submit a written report of its findings
32 to the board. If the facility finds that treatment of the person is appropriate, the facility shall in-
33 clude its recommendations for treatment in the report to the board.

34 (c) Whenever treatment is provided to the person by a state or local mental health facility under
35 this subsection, the facility shall furnish reports to the board on a regular basis concerning the
36 progress of the person.

37 (d) Copies of all reports submitted to the board pursuant to this subsection shall be furnished
38 to the person and to the person's legal counsel, if applicable. The confidentiality of these reports is
39 determined pursuant to ORS 192.338, 192.345 and 192.355.

40 (e) The state or local mental health facility providing treatment to the person under this sub-
41 section shall comply with the conditional release order and any modifications of the conditions or-
42 dered by the board.

43 (9)(a) If at any time while the person is conditionally released it appears that the person has
44 violated the terms of the conditional release, the board may order the person returned to a state
45 hospital for evaluation or treatment. A written order of the board is sufficient warrant for any law

1 enforcement officer to take the person into custody. A sheriff, municipal police officer, parole or
 2 probation officer or other peace officer shall execute the order, and the person shall be returned to
 3 the state hospital as soon as practicable.

4 (b) The director of a state or local mental health facility providing treatment to a person under
 5 subsection (8) of this section may request that the board issue a written order for a person on con-
 6 ditional release to be taken into custody if there is reason to believe that the person can no longer
 7 be controlled in the community with proper care, medication, supervision and treatment.

8 (c) Within 30 days following the return of the person to a state hospital, the board shall conduct
 9 a hearing to determine if, by a preponderance of the evidence, the person is no longer fit for con-
 10 ditional release. The board shall provide written notice of the hearing to the person, the person's
 11 legal counsel and the office of the district attorney who filed the initial petition under subsection
 12 (2) of this section within a reasonable time prior to the hearing. The notice shall advise the person
 13 of the nature of the hearing, the right to have the court appoint legal counsel and the right to
 14 subpoena witnesses, examine documents considered by the board and cross-examine all witnesses
 15 who appear at the hearing.

16 (10)(a) If the person had unadjudicated criminal charges at the time of the filing of the petition
 17 for the person's initial commitment under this section and the state hospital or the state or local
 18 mental health facility providing treatment to the person intends to recommend discharge of the
 19 person at an upcoming hearing, the superintendent of the state hospital or the director of the fa-
 20 cility shall provide written notice to the board and the district attorney of the county where the
 21 criminal charges were initiated of the discharge recommendation at least 45 days before the hearing.
 22 The notice shall be accompanied by a report describing the person's diagnosis and the treatment the
 23 person has received.

24 (b) Upon receiving the notice described in this subsection, the district attorney may request an
 25 order from the court in the county where the criminal charges were initiated for an evaluation to
 26 determine if the person is fit to proceed in the criminal proceeding. The court may order the state
 27 hospital or the state or local mental health facility providing treatment to the person to perform the
 28 evaluation. The hospital or facility shall provide copies of the evaluation to the district attorney,
 29 the person and the person's legal counsel, if applicable.

30 (c) The person committed under this section may not waive an evaluation ordered by the court
 31 to determine if the person is fit to proceed with the criminal proceeding as described in this sub-
 32 section.

33 (11) The board shall make reasonable efforts to notify any person described in subsection (3)(c)
 34 of this section of any order or hearing, conditional release, discharge or escape of the person com-
 35 mitted under this section.

36 (12) Unless the court orders otherwise or either party objects, any party or witness may attend
 37 a hearing held under this section via simultaneous electronic transmission.

38 (13) The board shall adopt rules to carry out the provisions of this section and ORS 426.702.

39 (14) Any time limitation described in ORS 131.125 to 131.155 does not run during a commitment
 40 described in this section or a further commitment described in ORS 426.702.

41
 42 **CAPTIONS**
 43

44 **SECTION 13. The unit captions used in this 2025 Act are provided only for the conven-**
 45 **ience of the reader and do not become part of the statutory law of this state or express any**

1 **legislative intent in the enactment of this 2025 Act.**

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EFFECTIVE DATE

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5 **SECTION 14. This 2025 Act takes effect on the 91st day after the date on which the 2025**
6 **regular session of the Eighty-third Legislative Assembly adjourns sine die.**

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