

# House Bill 3715

Sponsored by Representative ANDERSEN

## 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 makes changes to some laws regarding persons with mental illness. (Flesch Readability Score: 67.7).

Defines "dangerous to self or others" for the purpose of taking a person with mental illness into custody. Describes evidence that the court must consider in civil commitment proceedings.

Directs the Oregon State Hospital to ensure a minimum bed capacity for individuals who have been civilly committed.

Directs the Oregon Department of Administrative Services to contract with a qualified community mental health provider to provide certain services in eastern Oregon.

Directs the Oregon Health Authority to collect certain data regarding admissions for mental health treatment and submit a report to the interim committees of the Legislative Assembly relating to health care no later than September 15 of each even-numbered year.

Modifies a declaration for mental health treatment to allow the principal to authorize inpatient treatment for up to 180 days.

Prohibits a criminal court from committing certain defendants who lack fitness to proceed.

Declares an emergency, effective on passage.

## A BILL FOR AN ACT

Relating to persons with mental illness; creating new provisions; amending ORS 127.700, 127.736, 161.370, 161.371, 163.738, 426.005, 426.070, 426.074, 426.130, 426.133, 426.160, 426.180, 426.225, 426.228, 426.231, 426.232, 426.233, 426.234 and 430.399; and declaring an emergency.

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

## INVOLUNTARY CIVIL COMMITMENT CRITERIA

**SECTION 1.** ORS 426.005 is amended to read:

426.005. (1) As used in ORS 426.005 to 426.390, unless the context requires otherwise:

(a) "Community mental health program director" means the director of an entity that provides the services described in ORS 430.630 (3) to (5).

**(b) "Dangerous to self or others" means likely to inflict serious physical harm upon self or another person within the next 30 days.**

*[(b)]* (c) "Director of the facility" means a superintendent of a state mental hospital, the chief of psychiatric services in a community hospital or the person in charge of treatment and rehabilitation programs at other treatment facilities.

*[(c)]* (d) "Facility" means a state mental hospital, community hospital, residential facility, detoxification center, day treatment facility or such other facility as the authority determines suitable that provides diagnosis and evaluation, medical care, detoxification, social services or rehabilitation to persons who are in custody during a prehearing period of detention or who have been committed to the Oregon Health Authority under ORS 426.130.

*[(d)]* (e) "Licensed independent practitioner" means:

**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 (A) A physician, as defined in ORS 677.010;

2 (B) A nurse practitioner licensed under ORS 678.375 and authorized to write prescriptions under  
3 ORS 678.390; or

4 (C) A naturopathic physician licensed under ORS chapter 685.

5 [(e)] (f) "Nonhospital facility" means any facility, other than a hospital, that is approved by the  
6 authority to provide adequate security, psychiatric, nursing and other services to persons under ORS  
7 426.232 or 426.233.

8 [(f)] (g) "Person with mental illness" means a person who, because of a mental disorder, is one  
9 or more of the following:

10 (A) Dangerous to self or others.

11 (B) Unable to provide for basic personal needs that are necessary to avoid serious physical harm  
12 in the near future, and is not receiving such care as is necessary to avoid such harm.

13 (C) A person:

14 (i) With a chronic mental illness, as defined in ORS 426.495;

15 (ii) Who, within the previous three years, has twice been placed in a hospital or approved in-  
16 patient facility by the authority or the Department of Human Services under ORS 426.060;

17 (iii) Who is exhibiting symptoms or behavior substantially similar to those that preceded and led  
18 to one or more of the hospitalizations or inpatient placements referred to in sub-subparagraph (ii)  
19 of this subparagraph; and

20 (iv) Who, unless treated, will continue, to a reasonable medical probability, to physically or  
21 mentally deteriorate so that the person will become a person described under either subparagraph  
22 (A) or (B) of this paragraph or both.

23 [(g)] (h) "Prehearing period of detention" means a period of time calculated from the initiation  
24 of custody during which a person may be detained under ORS 426.228, 426.231, 426.232 or 426.233.

25 (2) Whenever a community mental health program director, director of the facility, superinten-  
26 dent of a state hospital or administrator of a facility is referred to, the reference includes any  
27 designee such person has designated to act on the person's behalf in the exercise of duties.

28 **SECTION 2.** ORS 426.130 is amended to read:

29 426.130. (1) After hearing all of the evidence, and reviewing the findings of the examiners, the  
30 court shall determine whether the person has a mental illness and is in need of treatment. **In de-**  
31 **termining whether a person has a mental illness based on the person being dangerous to self**  
32 **or others, the court:**

33 (a) **May consider, but is not limited to considering, the following:**

34 (A) **The person's threat or attempt to commit suicide or inflict serious physical harm**  
35 **upon self.**

36 (B) **The person's threat to inflict serious physical harm upon another person, if:**

37 (i) **The threat is followed by any action that a reasonable person would believe is intended**  
38 **to carry out the threat; and**

39 (ii) **The threat would place a reasonable person in fear of imminent serious physical**  
40 **harm.**

41 (C) **The person's attempt to inflict serious physical harm upon another person, if the**  
42 **attempt would place a reasonable person in fear of imminent serious physical harm.**

43 (D) **Any past behavior by the person that resulted in physical harm to self or physical**  
44 **harm to another person.**

45 (b) **Shall consider, at a minimum, when assessing the relevance of the person's past be-**

1 **havior, how recently the past behavior occurred and the frequency and severity of the past**  
 2 **behavior.**

3 (2) If, in the opinion of the court, the person:

4 (a) Is a person with mental illness based upon clear and convincing evidence, the court:

5 (A) Shall order the release of the person and dismiss the case if:

6 (i) The person is willing and able to participate in treatment on a voluntary basis; and

7 (ii) The court finds that the person will probably do so.

8 (B) May order conditional release under this subparagraph subject to the qualifications and re-  
 9 quirements under ORS 426.125. If the court orders conditional release under this subparagraph, the  
 10 court shall establish a period of commitment for the conditional release.

11 (C) May order commitment of the person with mental illness to the Oregon Health Authority for  
 12 treatment if, in the opinion of the court, subparagraph (A) or (B) of this paragraph is not in the best  
 13 interest of the person. If the court orders commitment under this subparagraph:

14 (i) The court shall establish a period of commitment.

15 (ii) The authority may place the committed person in outpatient commitment under ORS 426.127.

16 (D) Shall order that the person be prohibited from purchasing or possessing a firearm if, in the  
 17 opinion of the court, there is a reasonable likelihood the person [*would constitute a danger*] **is dan-**  
 18 **gerous** to self or others or to the community at large as a result of the person's mental or psycho-  
 19 logical state as demonstrated by past behavior or participation in incidents involving unlawful  
 20 violence or threats of unlawful violence, or by reason of a single incident of extreme, violent, un-  
 21 lawful conduct. When a court makes an order under this subparagraph, the court shall cause a copy  
 22 of the order to be delivered to the sheriff of the county who will enter the information into the Law  
 23 Enforcement Data System.

24 (b) Is not a person with mental illness, the court shall release the person from custody if the  
 25 person has been detained under ORS 426.070, 426.180, 426.228, 426.232 or 426.233 and:

26 (A) Dismiss the case; or

27 (B) Order the person to participate in assisted outpatient treatment in accordance with ORS  
 28 426.133. The court may continue the proceeding for no more than seven days to allow time for the  
 29 community mental health program director to develop the person's assisted outpatient treatment  
 30 plan.

31 [(2)] (3) A court that orders a conditional release, a commitment or assisted outpatient treat-  
 32 ment under this section shall establish a period of commitment or treatment for the person subject  
 33 to the order. Any period of commitment ordered for commitment or conditional release under this  
 34 section shall be for a period of time not to exceed 180 days. A period of assisted outpatient treat-  
 35 ment shall be for a period of time not to exceed 12 months.

36 [(3)] (4) If the commitment proceeding was initiated under ORS 426.070 (1)(a) and if the notice  
 37 included a request under ORS 426.070 (2)(d)(B), the court shall notify the two persons of the court's  
 38 determination under [*subsection (1) of*] this section.

39 [(4)] (5) If the court finds that the person is a person with mental illness and either orders  
 40 commitment under subsection [(1)(a)(B)] (2)(a)(B) or (C) of this section or enters an order under  
 41 subsection [(1)(a)(D)] (2)(a)(D) of this section, the court shall notify the person that the person is  
 42 prohibited from purchasing or possessing a firearm under state and federal law unless the person  
 43 obtains relief from the prohibition from the Psychiatric Security Review Board under ORS 166.273  
 44 or under federal law.

45 **SECTION 3.** ORS 426.070 is amended to read:

1 426.070. (1) Any of the following may initiate commitment procedures under this section by giving  
 2 the notice described under subsection (2) of this section:

3 (a) Two persons;

4 (b) The local health officer; or

5 (c) Any magistrate or **any** judge of a court of a federally recognized Indian tribe located in this  
 6 state.

7 (2) For purposes of subsection (1) of this section, the notice must comply with the following:

8 (a) It must be in writing under oath;

9 (b) It must be given to the community mental health program director or a designee of the di-  
 10 rector in the county where the person alleged to have a mental illness resides;

11 (c) It must state that a person within the county other than the person giving the notice is a  
 12 person with mental illness and is in need of treatment, care or custody;

13 (d) If the commitment proceeding is initiated by two persons under subsection (1)(a) of this sec-  
 14 tion, it may include a request that the court notify the two persons:

15 (A) Of the issuance or nonissuance of a warrant under this section; or

16 (B) Of the court's determination under ORS 426.130 [(1)]; and

17 (e) If the notice contains a request under paragraph (d) of this subsection, it must also include  
 18 the addresses of the two persons making the request.

19 (3) Upon receipt of a notice under subsections (1) and (2) of this section or when notified by a  
 20 circuit court that the court received notice under ORS 426.234, the community mental health pro-  
 21 gram director, or designee of the director, shall:

22 (a) Immediately notify the judge of the court having jurisdiction for that county under ORS  
 23 426.060 of the notification described in subsections (1) and (2) of this section.

24 (b) Immediately notify the Oregon Health Authority if commitment is proposed because the  
 25 person appears to be a person with mental illness, as defined in ORS 426.005 [(1)(f)(C)] **(1)(g)(C)**.  
 26 When such notice is received, the authority may verify, to the extent known by the authority,  
 27 whether or not the person meets the criteria described in ORS 426.005 [(1)(f)(C)(i)] **(1)(g)(C)(i)** and  
 28 (ii) and so inform the community mental health program director or designee of the director.

29 (c) Initiate an investigation under ORS 426.074 to determine whether there is probable cause to  
 30 believe that the person is in fact a person with mental illness.

31 (4) Upon completion, a recommendation based upon the investigation report under ORS 426.074  
 32 shall be promptly submitted to the court. If the community mental health program director deter-  
 33 mines that probable cause does not exist to believe that a person released from detention under ORS  
 34 426.234 (2)(c) or (3)(b) is a person with mental illness, the community mental health program director  
 35 may recommend assisted outpatient treatment in accordance with ORS 426.133.

36 (5) When the court receives notice under subsection (3) of this section:

37 (a) If the court, following the investigation, concludes that there is probable cause to believe  
 38 that the person investigated is a person with mental illness, it shall, through the issuance of a ci-  
 39 tation as provided in ORS 426.090, cause the person to be brought before it at a time and place as  
 40 it may direct, for a hearing under ORS 426.095 to determine whether the person is a person with  
 41 mental illness. The person shall be given the opportunity to appear voluntarily at the hearing unless  
 42 the person fails to appear or unless the person is detained pursuant to paragraph (b) of this sub-  
 43 section.

44 (b)(A) If the court finds that there is probable cause to believe that failure to take the person  
 45 into custody pending the investigation or hearing would pose serious harm or danger to the person

1 or to others, the court may issue a warrant of detention to the community mental health program  
 2 director or designee or the sheriff of the county or designee directing the director, sheriff or a  
 3 designee to take the person alleged to have a mental illness into custody and produce the person  
 4 at the time and place stated in the warrant.

5 (B) At the time the person is taken into custody, the person shall be informed by the community  
 6 mental health program director, the sheriff or a designee of the following:

7 (i) The person's rights with regard to representation by or appointment of counsel as described  
 8 in ORS 426.100;

9 (ii) The warning under ORS 426.123; and

10 (iii) The person's right, if the community mental health program director, sheriff or designee  
 11 reasonably suspects that the person is a foreign national, to communicate with an official from the  
 12 consulate of the person's country. A community mental health program director, sheriff or designee  
 13 is not civilly or criminally liable for failure to provide the information required by this sub-  
 14 subparagraph. Failure to provide the information required by this sub-subparagraph does not in itself  
 15 constitute grounds for the exclusion of evidence that would otherwise be admissible in a proceeding.

16 (C) The court may make any orders for the care and custody of the person prior to the hearing  
 17 as it considers necessary.

18 (c) If the notice includes a request under subsection (2)(d)(A) of this section, the court shall  
 19 notify the two persons of the issuance or nonissuance of a warrant under this subsection.

20 **SECTION 4.** ORS 426.074 is amended to read:

21 426.074. The following is applicable to an investigation initiated by a community mental health  
 22 program director, or a designee of the director, as part of commitment procedures under ORS  
 23 426.070 and 426.228 to 426.235:

24 (1) If the person alleged to have a mental illness is held in custody before the hearing the in-  
 25 vestigation shall be completed at least 24 hours before the hearing under ORS 426.095, otherwise the  
 26 investigation shall comply with the following time schedule:

27 (a) If the person can be located, the investigator shall contact the person within three judicial  
 28 days from the date the community mental health program director or a designee receives a notice  
 29 under ORS 426.070 alleging that the person has a mental illness and is in need of treatment.

30 (b) Within 15 days from the date the community mental health program director or a designee  
 31 receives a notice under ORS 426.070, one of the following shall occur:

32 (A) The investigation shall be completed and submitted to the court.

33 (B) An application for extension shall be made to the court under paragraph (c) of this sub-  
 34 section.

35 (c) The community mental health program director, a designee or the investigator may file for  
 36 an extension of the time under paragraph (b) of this subsection only if one of the following occurs:

37 (A) A treatment option less restrictive than involuntary inpatient commitment is actively being  
 38 pursued.

39 (B) The person alleged to have a mental illness cannot be located.

40 (d) A court may grant an extension under paragraph (c) of this subsection for a time and upon  
 41 the terms and conditions the court considers appropriate.

42 (2) This subsection establishes a nonexclusive list of provisions applicable to the content of the  
 43 investigation, as follows:

44 (a) The investigation conducted should, where appropriate, include an interview or examination  
 45 of the person alleged to have a mental illness in the home of the person or other place familiar to

1 the person.

2 (b) Whether or not the person consents, the investigation should include interviews with any  
 3 individuals that the investigator has probable cause to believe have pertinent information regarding  
 4 the investigation. If the person objects to the contact with any individual, the objection shall be  
 5 noted in the investigator’s report.

6 (c) The investigator shall be allowed access to licensed independent practitioners, nurses or so-  
 7 cial workers and to medical records compiled during the current involuntary prehearing period of  
 8 detention to determine probable cause and to develop alternatives to commitment. If commitment is  
 9 proposed because the person appears to be a person with mental illness as defined in ORS 426.005  
 10 [(1)(f)(C)] (1)(g)(C), the investigator shall be allowed access to medical records necessary to verify  
 11 the existence of criteria described in ORS 426.005 [(1)(f)(C)] (1)(g)(C). The investigator shall include  
 12 pertinent parts of the medical record in the investigation report. Records and communications de-  
 13 scribed in this paragraph and related communications are not privileged under ORS 40.230, 40.235,  
 14 40.240 or 40.250.

15 (3) A copy of the investigation report shall be provided as soon as possible, but in no event later  
 16 than 24 hours prior to the hearing, to the person and to the person’s counsel. Copies shall likewise  
 17 be provided to counsel assisting the court, to the examiners and to the court for use in questioning  
 18 witnesses.

19 **SECTION 5.** ORS 426.133 is amended to read:

20 426.133. (1) As used in ORS 426.005 to 426.390, “assisted outpatient treatment” may not be con-  
 21 strued to be a commitment under ORS 426.130 and does not include taking a person into custody  
 22 or the forced medication of a person.

23 (2) A court may issue an order requiring a person to participate in assisted outpatient treatment  
 24 if the court finds that the person:

- 25 (a)(A) Is 18 years of age or older;
- 26 (B) Has a mental disorder;
- 27 (C) Will not obtain treatment in the community voluntarily; and
- 28 (D) Is unable to make an informed decision to seek or to comply with voluntary treatment; and
- 29 (b) As a result of being a person described in paragraph (a) of this subsection:
- 30 (A) Is incapable of surviving safely in the community without treatment; and
- 31 (B) Requires treatment to prevent a deterioration in the person’s condition that will predictably
- 32 result in the person becoming a person with mental illness.

33 (3) In determining whether to issue the order under subsection (2) of this section, the court shall  
 34 consider, but is not limited to considering, the following factors:

- 35 (a) The person’s ability to access finances in order to get food or medicine.
- 36 (b) The person’s ability to obtain treatment for the person’s medical condition.
- 37 (c) The person’s ability to access necessary resources in the community without assistance.
- 38 (d) The degree to which there are risks to the person’s safety.
- 39 (e) The likelihood that the person will decompensate without immediate care or treatment.
- 40 (f) The person’s previous attempts to inflict physical injury on self or others.
- 41 (g) The person’s history of mental health treatment in the community.
- 42 (h) The person’s patterns of decompensation in the past.
- 43 (i) The person’s risk of being victimized or harmed by others.
- 44 (j) The person’s access to the means to inflict harm on self or others.
- 45 (4) The community mental health program director may recommend to the court a treatment

1 plan for a person participating in assisted outpatient treatment. The court may adopt the plan as  
 2 recommended or with modifications.

3 (5) As part of the order under subsection (2) of this section, the court may prohibit the person  
 4 from purchasing or possessing a firearm during the period of assisted outpatient treatment if, in the  
 5 opinion of the court, there is a reasonable likelihood the person [*would constitute a danger*] is **dan-**  
 6 **gerous** to self or others or to the community at large as a result of the person's mental or psycho-  
 7 logical state, as demonstrated by past behavior or participation in incidents involving unlawful  
 8 violence or threats of unlawful violence, or by reason of a single incident of extreme, violent, un-  
 9 lawful conduct. When a court adds a firearm prohibition to an order under subsection (2) of this  
 10 section, the court shall cause a copy of the order to be delivered to the sheriff of the county, who  
 11 shall enter the information into the Law Enforcement Data System.

12 (6) The court retains jurisdiction over the person until the earlier of the end of the period of  
 13 the assisted outpatient treatment established under ORS 426.130 [(2)] **(3)** or until the court finds that  
 14 the person no longer meets the criteria in subsection (2) of this section.

15 (7) This section does not:

16 (a) Prevent a court from appointing a guardian ad litem to act for the person; or

17 (b) Require a community mental health program to provide treatment or services to, or super-  
 18 vision of, the person:

19 (A) If the county lacks sufficient funds for such purposes; or

20 (B) In the case of a county that has declined to operate or contract for a community mental  
 21 health program, if the public agency or private corporation that contracts with the Oregon Health  
 22 Authority to provide the program, as described in ORS 430.640, lacks sufficient funds for such pur-  
 23 poses.

24 **SECTION 6.** ORS 426.160 is amended to read:

25 426.160. (1) The court having jurisdiction over any proceeding conducted pursuant to ORS  
 26 426.005, 426.060 to 426.170, 426.217, 426.228, 426.255 to 426.292, 426.300 to 426.309, 426.385, 426.395,  
 27 426.701 and 426.702 may not disclose any part of the record of the proceeding or commitment to any  
 28 person except:

29 (a) The court shall, pursuant to rules adopted by the Department of State Police, transmit the  
 30 minimum information necessary, as defined in ORS 181A.290, to the Department of State Police for  
 31 persons described in ORS 181A.290 (1)(a) or (b) to enable the department to access and maintain the  
 32 information and transmit the information to the federal government as required under federal law;

33 (b) As provided in ORS 426.070 (5)(c), 426.130 [(3)] **(4)** or 426.170;

34 (c) On request of the person subject to the proceeding;

35 (d) On request of the person's legal representative or the attorney for the person or the state;  
 36 or

37 (e) Pursuant to court order.

38 (2) In any proceeding described in subsection (1) of this section that is before the Supreme Court  
 39 or the Court of Appeals, the limitations on disclosure imposed by this section apply to the appellate  
 40 court record and to the trial court record while it is in the appellate court's custody. The appellate  
 41 court may disclose information from the trial or appellate court record in a decision, as defined in  
 42 ORS 19.450, provided that the court uses initials, an alias or some other convention for protecting  
 43 against public disclosure the identity of the person subject to the proceeding.

44 **SECTION 7.** ORS 426.180 is amended to read:

45 426.180. (1) ORS 426.180 to 426.210 apply to the commitment of an individual in Indian country

1 if a federally recognized Indian tribe that has Indian country located within this state chooses to  
 2 exercise the tribe's authority over the commitment.

3 (2) As used in this section and ORS 426.200 and 426.210, "hospital" means a hospital that is li-  
 4 censed under ORS chapter 441, other than an institution listed in ORS 426.010.

5 (3) If the court of a tribe having jurisdiction over an individual issues an order finding that the  
 6 individual is dangerous to self or *[to any other person]* **others** and is in need of immediate care,  
 7 custody or treatment for mental illness, a person may request that the individual be taken by a  
 8 tribal police officer or other peace officer to a hospital or nonhospital facility by submitting to the  
 9 officer a certified copy of the order and an affidavit that includes:

10 (a) The name and address of the nearest relative or legal guardian of the individual; and

11 (b) A medical history completed by one of the following, who may not be related to the indi-  
 12 vidual by blood or marriage:

13 (A) The tribe's mental health authority, if the tribe has entered into an agreement with the state  
 14 pursuant to ORS 430.630 (9)(a)(B);

15 (B) A qualified mental health professional; or

16 (C) A licensed independent practitioner.

17 (4) Upon receipt of the order and affidavit described in subsection (3) of this section, the tribal  
 18 police officer or other peace officer shall immediately transport the individual to a hospital or a  
 19 nonhospital facility and present the individual to the hospital or nonhospital facility accompanied  
 20 by the court order and affidavit.

21 (5) The director of the hospital or nonhospital facility may refuse to admit the individual if a  
 22 licensed independent practitioner, after reviewing the documents accompanying the individual, is not  
 23 satisfied that an emergency exists or that the individual is dangerous to self or others and **is** in need  
 24 of immediate care, custody or treatment for mental illness.

25 (6) If the hospital or nonhospital facility admits the individual, the director or a licensed inde-  
 26 pendent practitioner shall notify the community mental health program director for the area and the  
 27 circuit court with jurisdiction in the area where the facility is located. Upon receipt of the notice,  
 28 the community mental health program director shall initiate commitment proceedings in accordance  
 29 with ORS 426.070.

30 (7) If an individual is admitted to a hospital or nonhospital facility under this section, any li-  
 31 censed independent practitioner who is treating the individual shall give the individual the warning  
 32 under ORS 426.123.

33 (8) This section may be applied as provided by agreement with the governing body of the res-  
 34 ervation. Payment of costs for a commitment made under this section shall be as provided under  
 35 ORS 426.250.

36 (9) The director of the hospital or nonhospital facility or licensed independent practitioner shall  
 37 notify the appropriate tribe regarding all actions taken under ORS 426.180 to 426.210 no later than  
 38 24 hours after the action is taken, except for information protected from disclosure by state or fed-  
 39 eral law.

40 **SECTION 8.** ORS 426.225 is amended to read:

41 426.225. (1) If any person who has been committed to the Oregon Health Authority under ORS  
 42 426.127 or 426.130 *[(1)(a)(B)]* **(2)(a)(B)** or (C) requests, during this period of commitment, voluntary  
 43 admission to a state hospital, the superintendent shall cause the person to be examined immediately  
 44 by a licensed independent practitioner. If the licensed independent practitioner finds the person to  
 45 be in need of immediate care or treatment for mental illness, the person shall be voluntarily admit-



1 ted.

2 (2) If any person who has been committed to the authority under ORS 426.127 or 426.130  
 3 [(1)(a)(B)] **(2)(a)(B)** or (C) requests, during this period of commitment, voluntary admission to a fa-  
 4 cility approved by the authority, the administrator of the facility shall cause the person to be ex-  
 5 amined immediately by a licensed independent practitioner. If the licensed independent practitioner  
 6 finds the person to be in need of immediate care or treatment for mental illness, and the authority  
 7 grants approval, the person shall be voluntarily admitted.

8 **SECTION 9.** ORS 426.228 is amended to read:

9 426.228. (1) A peace officer may take into custody a person who the officer has probable cause  
 10 to believe is dangerous to self or [*to any other person*] **others** and is in need of immediate care,  
 11 custody or treatment for mental illness. As directed by the community mental health program di-  
 12 rector, a peace officer shall remove a person taken into custody under this section to the nearest  
 13 hospital or nonhospital facility approved by the Oregon Health Authority. The officer shall prepare  
 14 a written report and deliver it to the licensed independent practitioner who is treating the person.  
 15 The report shall state:

- 16 (a) The reason for custody;
- 17 (b) The date, time and place the person was taken into custody; and
- 18 (c) The name of the community mental health program director and a telephone number where  
 19 the director may be reached at all times.

20 (2) A peace officer shall take a person into custody when the community mental health program  
 21 director, pursuant to ORS 426.233, notifies the peace officer that the director has probable cause to  
 22 believe that the person is imminently dangerous to self or [*to any other person*] **others**. As directed  
 23 by the community mental health program director, the peace officer shall remove the person to a  
 24 hospital or nonhospital facility approved by the authority. The community mental health program  
 25 director shall prepare a written report that the peace officer shall deliver to the licensed inde-  
 26 pendent practitioner who is treating the person. The report shall state:

- 27 (a) The reason for custody;
- 28 (b) The date, time and place the person was taken into custody; and
- 29 (c) The name of the community mental health program director and a telephone number where  
 30 the director may be reached at all times.

31 (3) If more than one hour will be required to transport the person to the hospital or nonhospital  
 32 facility from the location where the person was taken into custody, the peace officer shall obtain,  
 33 if possible, a certificate from a licensed independent practitioner stating that the travel will not be  
 34 detrimental to the person's physical health and that the person is dangerous to self or [*to any other*  
 35 *person*] **others** and is in need of immediate care or treatment for mental illness. The licensed inde-  
 36 pendent practitioner shall have personally examined the person within 24 hours prior to signing the  
 37 certificate.

38 (4) When a peace officer or other authorized individual, acting under this section, delivers a  
 39 person to a hospital or nonhospital facility, a licensed independent practitioner shall examine the  
 40 person immediately. If the licensed independent practitioner finds the person to be in need of  
 41 emergency care or treatment for mental illness, the licensed independent practitioner shall proceed  
 42 under ORS 426.232, otherwise the person may not be retained in custody. If the person is to be re-  
 43 leased from custody, the peace officer or the community mental health program director shall return  
 44 the person to the place where the person was taken into custody unless the person declines that  
 45 service.

1 (5) A peace officer may transfer a person in custody under this section to the custody of an in-  
 2 dividual authorized by the community mental health program director under ORS 426.233 (3). The  
 3 peace officer may meet the authorized individual at any location that is in accordance with ORS  
 4 426.140 to effect the transfer. When transferring a person in custody to an authorized individual, the  
 5 peace officer shall deliver the report required under subsections (1) and (2) of this section to the  
 6 authorized individual.

7 (6) An individual authorized under ORS 426.233 (3) shall take a person into custody when di-  
 8 rected to do so by a peace officer or by a community mental health program director under ORS  
 9 426.233.

10 (7) An individual authorized under ORS 426.233 (3) shall perform the duties of the peace officer  
 11 or the community mental health program director required by this section and ORS 426.233 if the  
 12 peace officer or the director has not already done so.

13 (8) An individual authorized under ORS 426.233 (3) may transfer a person in custody under this  
 14 section to the custody of another individual authorized under ORS 426.233 (3) or a peace officer. The  
 15 individual transferring custody may meet another authorized individual or a peace officer at any  
 16 location that is in accordance with ORS 426.140 to effect the transfer.

17 (9)(a) When a peace officer takes a person into custody under this section, and the peace officer  
 18 reasonably suspects that the person is a foreign national, the peace officer shall inform the person  
 19 of the person's right to communicate with an official from the consulate of the person's country.

20 (b) A peace officer is not civilly or criminally liable for failure to provide the information re-  
 21 quired by this subsection. Failure to provide the information required by this subsection does not  
 22 in itself constitute grounds for the exclusion of evidence that would otherwise be admissible in a  
 23 proceeding.

24 **SECTION 10.** ORS 426.231 is amended to read:

25 426.231. (1) A licensed independent practitioner may hold a person for transportation to a  
 26 treatment facility for up to 12 hours in a health care facility licensed under ORS chapter 441 and  
 27 approved by the Oregon Health Authority if:

28 (a) The licensed independent practitioner believes the person is dangerous to self or [*to any*  
 29 *other person*] **others** and is in need of emergency care or treatment for mental illness;

30 (b) The licensed independent practitioner is not related to the person by blood or marriage; and

31 (c) A licensed independent practitioner with admitting privileges at the receiving facility con-  
 32 sents to the transporting.

33 (2) Before transporting the person, the licensed independent practitioner shall prepare a written  
 34 statement that:

35 (a) The licensed independent practitioner has examined the person within the preceding 12  
 36 hours;

37 (b) A licensed independent practitioner with admitting privileges at the receiving facility has  
 38 consented to the transporting of the person for examination and admission if appropriate; and

39 (c) The licensed independent practitioner believes the person is dangerous to self or [*to any other*  
 40 *person*] **others** and is in need of emergency care or treatment for mental illness.

41 (3) The written statement required by subsection (2) of this section authorizes a peace officer,  
 42 an individual authorized under ORS 426.233 or the designee of a community mental health program  
 43 director to transport a person to the treatment facility indicated on the statement.

44 **SECTION 11.** ORS 426.232 is amended to read:

45 426.232. (1) If a licensed independent practitioner believes a person who is brought to a hospital

1 or nonhospital facility by a peace officer under ORS 426.228 or by an individual authorized under  
 2 ORS 426.233, or believes a person who is at a hospital or nonhospital facility, is dangerous to self  
 3 or *[to any other person]* **others** and is in need of emergency care or treatment for mental illness,  
 4 and the licensed independent practitioner is not related to the person by blood or marriage, the li-  
 5 censed independent practitioner may do one of the following:

6 (a) Detain the person and cause the person to be admitted or, if the person is already admitted,  
 7 cause the person to be retained in a hospital where the licensed independent practitioner has ad-  
 8 mitting privileges or is on staff.

9 (b) Approve the person for emergency care or treatment at a nonhospital facility approved by  
 10 the authority.

11 (2) When approving a person for emergency care or treatment at a nonhospital facility under  
 12 this section, the licensed independent practitioner shall notify immediately the community mental  
 13 health program director in the county where the person was taken into custody and maintain the  
 14 person, if the person is being held at a hospital, for as long as is feasible given the needs of the  
 15 person for mental or physical health or safety. However, under no circumstances may the person  
 16 be held for longer than five judicial days.

17 **SECTION 12.** ORS 426.233 is amended to read:

18 426.233. (1)(a) A community mental health program director operating under ORS 430.610 to  
 19 430.695 or a designee of the director may take one of the actions listed in paragraph (b) of this  
 20 subsection when the community mental health program director or designee has probable cause to  
 21 believe a person:

22 (A) Is dangerous to self or *[to any other person]* **others** and is in need of immediate care, custody  
 23 or treatment for mental illness; or

24 (B)(i) Is a person with mental illness placed on conditional release under ORS 426.125, outpatient  
 25 commitment under ORS 426.127 or trial visit under ORS 426.273; and

26 (ii) Is dangerous to self or *[to any other person]* **others** or is unable to provide for basic personal  
 27 needs and is not receiving the care that is necessary for health and safety and is in need of imme-  
 28 diate care, custody or treatment for mental illness.

29 (b) The community mental health program director or designee under the circumstances set out  
 30 in paragraph (a) of this subsection may:

31 (A) Notify a peace officer to take the person into custody and direct the officer to remove the  
 32 person to a hospital or nonhospital facility approved by the Oregon Health Authority;

33 (B) Authorize involuntary admission of, or, if already admitted, cause to be involuntarily re-  
 34 tained in a nonhospital facility approved by the authority, a person approved for care or treatment  
 35 at a nonhospital facility by a licensed independent practitioner under ORS 426.232;

36 (C) Notify an individual authorized under subsection (3) of this section to take the person into  
 37 custody and direct the authorized individual to remove the person in custody to a hospital or non-  
 38 hospital facility approved by the authority;

39 (D) Direct an individual authorized under subsection (3) of this section to transport a person in  
 40 custody from a hospital or a nonhospital facility approved by the authority to another hospital or  
 41 nonhospital facility approved by the authority as provided under ORS 426.235; or

42 (E) Direct an individual authorized under subsection (3) of this section to transport a person in  
 43 custody from a facility approved by the authority to another facility approved by the authority as  
 44 provided under ORS 426.060.

45 (2) A designee under subsection (1) of this section must meet the standards established by rule

1 of the authority and be approved by the community mental health program director before assuming  
 2 the authority permitted under subsection (1) of this section.

3 (3) The community mental health program director may authorize any individual to provide  
 4 custody and secure transportation services for a person in custody under ORS 426.228. In author-  
 5 izing an individual under this subsection, the community mental health program director shall grant  
 6 the individual the authority to do the following:

7 (a) Accept custody from a peace officer of a person in custody under ORS 426.228;

8 (b) Take custody of a person upon notification by the community mental health program director  
 9 under the provisions of this section;

10 (c) Remove a person in custody to an approved hospital or nonhospital facility as directed by  
 11 the community mental health program director;

12 (d) Transfer a person in custody to another individual authorized under this subsection or a  
 13 peace officer;

14 (e) Transfer a person in custody from a hospital or nonhospital facility to another hospital fa-  
 15 cility or nonhospital facility when directed to do so by the community mental health program di-  
 16 rector; and

17 (f) Retain a person in custody at the approved hospital or nonhospital facility until a licensed  
 18 independent practitioner makes a determination under ORS 426.232.

19 (4) An individual authorized under subsection (3) of this section must meet the standards estab-  
 20 lished by rule of the authority and be approved by the community mental health program director  
 21 before assuming the authority granted under this section.

22 (5) The costs of transporting a person under ORS 426.060, 426.228 or 426.235 by an individual  
 23 authorized under subsection (3) of this section shall be the responsibility of the community mental  
 24 health program in the county in which the authorized individual is directed by a peace officer or a  
 25 community mental health program director to take custody of a person and to transport the person  
 26 to a facility approved by the authority, but the community mental health program shall not be re-  
 27 sponsible for costs that exceed the amount provided by the state for that transportation. An indi-  
 28 vidual authorized to act under subsection (3) of this section shall charge the cost of emergency  
 29 medical transportation to, and collect that cost from, the person, third party payers or other legally  
 30 or financially responsible individuals or entities in the same manner that costs for the transportation  
 31 of other persons are charged and collected.

32 **SECTION 13.** ORS 426.234 is amended to read:

33 426.234. (1) At the time a person alleged to have a mental illness is admitted to or retained in  
 34 a hospital or nonhospital facility under ORS 426.232 or 426.233, a licensed independent practitioner,  
 35 nurse or qualified mental health professional at the hospital or nonhospital facility shall:

36 (a) Inform the person of the person's right to representation by or appointment of counsel as  
 37 described in ORS 426.100;

38 (b) Give the person the warning under ORS 426.123;

39 (c) Immediately examine the person;

40 (d) Set forth, in writing, the condition of the person and the need for emergency care or treat-  
 41 ment; and

42 (e) If the licensed independent practitioner, nurse or qualified mental health professional rea-  
 43 sonably suspects that the person is a foreign national, inform the person of the person's right to  
 44 communicate with an official from the consulate of the person's country. A licensed independent  
 45 practitioner, nurse or qualified mental health professional is not civilly or criminally liable for fail-

1 ure to provide the information required by this paragraph. Failure to provide the information re-  
2 quired by this paragraph does not in itself constitute grounds for the exclusion of evidence that  
3 would otherwise be admissible in a proceeding.

4 (2)(a) At the time the person is admitted to or retained in a hospital under ORS 426.232, the li-  
5 censed independent practitioner shall contact the community mental health program director of the  
6 county in which the person resides, if the county of residence is different from the county in which  
7 the hospital is located. The community mental health program director may request that the licensed  
8 independent practitioner notify the circuit court in the county in which the person resides. If the  
9 community mental health program director does not make the request, the licensed independent  
10 practitioner shall notify, immediately and in writing, the circuit court in the county in which the  
11 person is hospitalized.

12 (b) At the time the person is admitted to a hospital under ORS 426.232 after being brought to  
13 the hospital by a peace officer under ORS 426.228, the licensed independent practitioner shall con-  
14 tact the community mental health program director of the county in which the person is hospital-  
15 ized. The community mental health program director of the county in which the person is  
16 hospitalized may request that the licensed independent practitioner notify the circuit court in the  
17 county in which the person is hospitalized. If the community mental health program director does  
18 not make the request, the licensed independent practitioner shall notify, immediately and in writing,  
19 the circuit court in the county in which the person was taken into custody.

20 (c) If, at any time prior to the hearing under ORS 426.070 to 426.130, the licensed independent  
21 practitioner responsible for a person admitted or retained under ORS 426.232 determines that the  
22 person is not dangerous to self or *[to any other person]* **others** and is not in need of emergency care  
23 or treatment for mental illness, the licensed independent practitioner may release the person from  
24 the detention authorized by ORS 426.232. The licensed independent practitioner shall immediately  
25 notify the circuit court notified under this subsection and the community mental health program  
26 director of the person's release from detention.

27 (3)(a) At the time the person is admitted to or retained in a nonhospital facility under ORS  
28 426.233, the community mental health program director in the county where the person was taken  
29 into custody shall contact the community mental health program director of the county in which the  
30 person resides, if the county of residence is different from the county in which the person was taken  
31 into custody. The community mental health program director of the county in which the person re-  
32 sides may request that the community mental health program director of the county in which the  
33 person was taken into custody notify the circuit court in the county where the person resides.  
34 Otherwise, the community mental health program director of the county in which the person was  
35 taken into custody shall notify, immediately and in writing, the circuit court in the county in which  
36 the person was taken into custody.

37 (b) If, at any time prior to the hearing under ORS 426.070 to 426.130, a community mental health  
38 program director, after consultation with a licensed independent practitioner, determines that a  
39 person admitted or retained under ORS 426.233 is not dangerous to self or *[to any other person]*  
40 **others** and is not in need of immediate care, custody or treatment for mental illness, the community  
41 mental health program director may release the person from detention. The community mental  
42 health program director shall immediately notify the circuit court originally notified under para-  
43 graph (a) of this subsection of the person's release from detention.

44 (4) When the judge of the circuit court receives notice under subsection (2) or (3) of this section,  
45 the judge immediately shall commence proceedings under ORS 426.070 to 426.130. In a county having

1 a population of 100,000 or more, and when feasible in a county with a lesser population, the com-  
2 munity mental health program director or designee who directs the peace officer or other authorized  
3 individual to take a person into custody under ORS 426.233 shall not also conduct the investigation  
4 as provided for under ORS 426.074. Except when a person is being held under ORS 426.237 (1)(b), a  
5 person shall not be held under ORS 426.232 or 426.233 for more than five judicial days without a  
6 hearing being held under ORS 426.070 to 426.130.

7 (5) When the judge of the circuit court receives notice under subsection (2)(c) or (3)(b) of this  
8 section that a person has been released, and unless the court receives the recommendation required  
9 by ORS 426.070 (4), the judge shall dismiss the case no later than 14 days after the date the person  
10 was initially detained.

11 **SECTION 14.** ORS 430.399, as amended by section 80, chapter 70, Oregon Laws 2024, is  
12 amended to read:

13 430.399. (1) Any person who is intoxicated or under the influence of controlled substances in a  
14 public place may be sent home or taken to a sobering facility or to an appropriate facility by a po-  
15 lice officer or a member of a mobile crisis intervention team as defined in ORS 430.626. If the person  
16 is incapacitated, the person shall be taken by the police officer or team member to an appropriate  
17 facility or sobering facility. If the health of the person appears to be in immediate danger, or the  
18 police officer or team member has reasonable cause to believe the person is dangerous to self or  
19 *[to any other person]* **others, as defined in ORS 426.005**, the person shall be taken by the police  
20 officer or team member to an appropriate facility or sobering facility. A person shall be deemed in-  
21 capacitated when in the opinion of the police officer or team member the person is unable to make  
22 a rational decision as to acceptance of assistance.

23 (2) When a person is taken to an appropriate facility, the director of the facility shall determine  
24 whether the person shall be admitted as a patient, referred to another facility or a sobering facility  
25 or denied referral or admission. If the person is incapacitated or the health of the person appears  
26 to be in immediate danger, or if the director has reasonable cause to believe the person is dangerous  
27 to self or *[to any other person]* **others, as defined in ORS 426.005**, the person must be admitted.  
28 The person shall be discharged within 72 hours unless the person has applied for voluntary admis-  
29 sion to the facility.

30 (3) When a person is taken to a sobering facility, the staff of the sobering facility shall, con-  
31 sistent with the facility's comprehensive written policies and procedures, determine whether or not  
32 the person shall be admitted into the sobering facility. A person who is admitted shall be discharged  
33 from the sobering facility within 24 hours.

34 (4) In the absence of any appropriate facility or sobering facility, or if a sobering facility de-  
35 termines that a person should not be admitted to the sobering facility, an intoxicated person or a  
36 person under the influence of controlled substances who would otherwise be taken by a police offi-  
37 cer to an appropriate facility or sobering facility may be taken to the city or county jail where the  
38 person may be held until no longer intoxicated, under the influence of controlled substances or in-  
39 capacitated.

40 (5) An intoxicated person or person under the influence of controlled substances, when taken  
41 into custody by the police officer for a criminal offense, shall immediately be taken to the nearest  
42 appropriate facility when the condition of the person requires emergency medical treatment.

43 (6) The records of a person at an appropriate facility or sobering facility may not, without the  
44 person's consent, be revealed to any person other than the director and staff of the facility or so-  
45 bering facility. A person's request that no disclosure be made of admission to a facility or sobering

1 facility shall be honored unless the person is incapacitated or disclosure of admission is required  
 2 by ORS 430.397.

3 **SECTION 15.** ORS 163.738 is amended to read:

4 163.738. (1)(a) A citation shall notify the respondent of a circuit court hearing where the re-  
 5 spondent shall appear at the place and time set forth in the citation. The citation shall contain:

6 (A) The name of the court at which the respondent is to appear;

7 (B) The name of the respondent;

8 (C) A copy of the stalking complaint;

9 (D) The date, time and place at which the citation was issued;

10 (E) The name of the law enforcement officer who issued the citation;

11 (F) The time, date and place at which the respondent is to appear in court;

12 (G) Notice to the respondent that failure to appear at the time, date and place set forth in the  
 13 citation shall result in the respondent's arrest and entry of a court's stalking protective order; and

14 (H) Notice to the respondent of potential liability under federal law for the possession or pur-  
 15 chase of firearms or firearm ammunition and for other acts prohibited by 18 U.S.C. 2261 to 2262.

16 (b) The officer shall notify the petitioner in writing of the place and time set for the hearing.

17 (2)(a) The hearing shall be held as indicated in the citation. At the hearing, the petitioner may  
 18 appear in person or by telephonic appearance. The respondent shall be given the opportunity to  
 19 show cause why a court's stalking protective order should not be entered. The hearing may be  
 20 continued for up to 30 days. The court may enter:

21 (A) A temporary stalking protective order pending further proceedings; or

22 (B) A court's stalking protective order if the court finds by a preponderance of the evidence  
 23 that:

24 (i) The person intentionally, knowingly or recklessly engages in repeated and unwanted contact  
 25 with the other person or a member of that person's immediate family or household thereby alarming  
 26 or coercing the other person;

27 (ii) It is objectively reasonable for a person in the victim's situation to have been alarmed or  
 28 coerced by the contact; and

29 (iii) The repeated and unwanted contact causes the victim reasonable apprehension regarding  
 30 the personal safety of the victim or a member of the victim's immediate family or household.

31 (b) In the order, the court shall specify the conduct from which the respondent is to refrain,  
 32 which may include all contact listed in ORS 163.730 and any attempt to make contact listed in ORS  
 33 163.730. The order is of unlimited duration unless limited by law. If the respondent was provided  
 34 notice and an opportunity to be heard, the court shall also include in the order, when appropriate,  
 35 terms and findings sufficient under 18 U.S.C. 922 (d)(8) and (g)(8) to affect the respondent's ability  
 36 to possess firearms and ammunition or engage in activities involving firearms.

37 (3) The circuit court may enter an order under this section against a minor respondent without  
 38 appointment of a guardian ad litem.

39 (4) If the respondent fails to appear at the time, date and place specified in the citation, the  
 40 circuit court shall issue a warrant of arrest as provided in ORS 133.110 in order to ensure the ap-  
 41 pearance of the respondent at court and shall enter a court's stalking protective order.

42 (5) The circuit court may also order the respondent to undergo mental health evaluation and,  
 43 if indicated by the evaluation, treatment. If the respondent is without sufficient resources to obtain  
 44 the evaluation or treatment, or both, the court shall refer the respondent to the mental health  
 45 agency designated by the community mental health director for evaluation or treatment, or both.

1 (6) If the circuit court, the mental health evaluator or any other persons have probable cause  
 2 to believe that the respondent is dangerous to self or others, **as defined in ORS 426.005**, or is un-  
 3 able to provide for basic personal needs, the court shall initiate commitment procedures as provided  
 4 in ORS 426.070 or 426.180.

5 (7) A law enforcement officer shall report the results of any investigation arising from a com-  
 6 plaint under ORS 163.744 to the district attorney within three days after presentation of the com-  
 7 plaint.

8 (8) Except for purposes of impeachment, a statement made by the respondent at a hearing under  
 9 this section may not be used as evidence in a prosecution for stalking as defined in ORS 163.732 or  
 10 for violating a court’s stalking protective order as defined in ORS 163.750.

11  
 12 **WILLAMETTE VALLEY CIVIL COMMITMENT CAPACITY**

13  
 14 **SECTION 16.** (1) **No later than January 1, 2026, at least 25 percent of the overall bed ca-**  
 15 **capacity at the Oregon State Hospital must be reserved for civil commitment placements.**

16 (2) **No later than January 1, 2027, at least 50 percent of the overall bed capacity at the**  
 17 **Oregon State Hospital must be reserved for civil commitment placements.**

18 **SECTION 17.** Section 16 of this 2025 Act is amended to read:

19 **Sec. 16.** [(1) *No later than January 1, 2026, at least 25 percent of the overall bed capacity at the*  
 20 *Oregon State Hospital must be reserved for civil commitment placements.*]

21 [(2) *No later than January 1, 2027,*] At least 50 percent of the overall bed capacity at the Oregon  
 22 State Hospital must be reserved for civil commitment placements.

23 **SECTION 18.** **The amendments to section 16 of this 2025 Act by section 17 of this 2025**  
 24 **Act become operative on January 1, 2027.**

25  
 26 **EASTERN OREGON CIVIL COMMITMENT PILOT PROJECT**

27  
 28 **SECTION 19.** (1) **As used in this section, “facility” means:**

29 (a) **A residential treatment facility, as defined in ORS 443.400; or**

30 (b) **A secure residential treatment facility, as described in ORS 443.465.**

31 (2) **The Oregon Department of Administrative Services, in consultation with the Oregon**  
 32 **Health Authority, shall contract with and provide funding to one or more qualified commu-**  
 33 **nity mental health providers located in central or eastern Oregon to:**

34 (a) **Establish and maintain two new facilities in central Oregon and two new facilities in**  
 35 **eastern Oregon to provide care and treatment to individuals who have been committed to the**  
 36 **authority for treatment under ORS 426.130; and**

37 (b) **Develop an innovative model for providing customized residential treatment outside**  
 38 **of institutional settings for:**

39 (A) **Individuals who have been committed to the authority for treatment under ORS**  
 40 **426.130; and**

41 (B) **Individuals who are committed to the custody of the Oregon State Hospital, or a fa-**  
 42 **cility designated by the authority, under ORS 161.370.**

43 (3) **A facility established under this section must contain accommodations for no more**  
 44 **than 16 individuals.**

45 (4) **The department shall oversee the funding and licensing of facilities established under**



1 this section and collaborate with the authority to ensure that the cost of the services pro-  
2 vided by the facilities may be reimbursed using federal Medicaid funds.

3 **SECTION 20.** (1) The Oregon Department of Administrative Services shall enter into the  
4 contract described in section 19 of this 2025 Act no later than six months after the effective  
5 date of this 2025 Act.

6 (2) The department and the contracted community mental health provider shall take all  
7 steps necessary to ensure that the facilities described in section 19 of this 2025 Act are open  
8 and operational no later than January 1, 2027.

9 **SECTION 21.** In addition to and not in lieu of any other appropriation, there is appro-  
10 priated to the Oregon Department of Administrative Services, for the biennium beginning  
11 July 1, 2025, out of the General Fund, the amount of \$10,000,000, which may be expended for  
12 carrying out the provisions of section 19 of this 2025 Act.

13  
14 **CIVIL COMMITMENT DATA COLLECTION**

15  
16 **SECTION 22.** The Oregon Health Authority shall collect data regarding the number of  
17 individuals who have been civilly committed under ORS chapter 426 or 427 and receiving  
18 community level, hospital level and state hospital level treatment. In addition, the authority  
19 shall collect data regarding the numbers of individuals who have been admitted for inpatient  
20 mental health treatment by an agent acting under a declaration of mental health treatment,  
21 as described in ORS 127.736. The authority shall submit a report summarizing the data col-  
22 lected under this section for the immediately preceding 24-month period in the manner pro-  
23 vided by ORS 192.245, and may include recommendations for legislation, to the interim  
24 committees of the Legislative Assembly related to health care no later than September 15  
25 of each even-numbered year.

26 **SECTION 23.** The report described in section 22 of this 2025 Act is first due by September  
27 15, 2026. Notwithstanding section 22 of this 2025 Act, the report due on September 15, 2026,  
28 shall summarize the data collected by the Oregon Health Authority during the immediately  
29 preceding 12-month period.

30  
31 **DECLARATION FOR MENTAL HEALTH TREATMENT**

32  
33 **SECTION 24.** ORS 127.700, as amended by section 34, chapter 73, Oregon Laws 2024, is  
34 amended to read:

35 127.700. As used in ORS 127.700 to 127.737:

36 (1) "Attending physician" shall have the same meaning as provided in ORS 127.505.

37 (2) "Attorney-in-fact" means an adult validly appointed under ORS 127.540, 127.700 to 127.737  
38 and 426.385 to make mental health treatment decisions for a principal under a declaration for mental  
39 health treatment and also means an alternative attorney-in-fact.

40 (3) "Declaration" means a document making a declaration of preferences or instructions re-  
41 garding mental health treatment.

42 (4) "Health care facility" shall have the same meaning as provided in ORS 127.505.

43 (5) "Health care provider" shall have the same meaning as provided in ORS 127.505.

44 (6) "Incapable" means that, in the opinion of the court in a protective proceeding under ORS  
45 chapter 125, or the opinion of two physicians, a person's ability to receive and evaluate information

1 effectively or communicate decisions is impaired to such an extent that the person currently lacks  
2 the capacity to make mental health treatment decisions.

3 (7) "Mental health treatment" means convulsive treatment, treatment of mental illness with  
4 psychoactive medication, admission to and retention in a health care facility for a period not to  
5 exceed [17] 180 days for care or treatment of mental illness, and outpatient services.

6 (8) "Outpatient services" means treatment for a mental or emotional disorder that is obtained  
7 by appointment and is provided by an outpatient service as defined in ORS 430.010.

8 (9) "Provider" means a mental health treatment provider, a physician associate licensed under  
9 ORS 677.505 to 677.525 or a nurse practitioner licensed under ORS 678.375 to 678.390.

10 (10) "Representative" means "attorney-in-fact" as defined in this section.

11 **SECTION 25.** ORS 127.736 is amended to read:

12 127.736. A declaration for mental health treatment shall be in substantially the following form:  
13 \_\_\_\_\_

14  
15 **DECLARATION FOR MENTAL HEALTH TREATMENT**

16 I, \_\_\_\_\_, being an adult of sound mind, willfully and voluntarily  
17 make this declaration for mental health treatment. I want this declaration to be followed if a court  
18 or two physicians determine that I am unable to make decisions for myself because my ability to  
19 receive and evaluate information effectively or communicate decisions is impaired to such an extent  
20 that I lack the capacity to refuse or consent to mental health treatment. "Mental health  
21 treatment" means treatment of mental illness with psychoactive medication, admission to and re-  
22 tention in a health care facility for a period up to [17] 180 days, convulsive treatment and outpatient  
23 services that are specified in this declaration.  
24 \_\_\_\_\_

25  
26 **CHOICE OF DECISION MAKER**

27 If I become incapable of giving or withholding informed consent for mental health treatment, I  
28 want these decisions to be made by: (INITIAL ONLY ONE)

29 — My appointed representative consistent with my desires, or, if my desires are unknown by  
30 my representative, in what my representative believes to be my best interests.

31 — By the mental health treatment provider who requires my consent in order to treat me, but  
32 only as specifically authorized in this declaration.

33 **APPOINTED REPRESENTATIVE**

34 If I have chosen to appoint a representative to make mental health treatment decisions for me  
35 when I am incapable, I am naming that person here. I may also name an alternate representative  
36 to serve. Each person I appoint must accept my appointment in order to serve. I understand that I  
37 am not required to appoint a representative in order to complete this declaration.

38 I hereby appoint:

39 NAME \_\_\_\_\_

40 ADDRESS \_\_\_\_\_

41 TELEPHONE # \_\_\_\_\_ to act as my representative to make decisions regarding my  
42 mental health treatment if I become incapable of giving or withholding informed consent for that  
43 treatment.

44 **(OPTIONAL)**

45 If the person named above refuses or is unable to act on my behalf, or if I revoke that person's

1 authority to act as my representative, I authorize the following person to act as my representative:

2 NAME \_\_\_\_\_

3 ADDRESS \_\_\_\_\_

4 TELEPHONE # \_\_\_\_\_

5 My representative is authorized to make decisions that are consistent with the wishes I have  
6 expressed in this declaration or, if not expressed, as are otherwise known to my representative. If  
7 my desires are not expressed and are not otherwise known by my representative, my representative  
8 is to act in what he or she believes to be my best interests. My representative is also authorized  
9 to receive information regarding proposed mental health treatment and to receive, review and con-  
10 sent to disclosure of medical records relating to that treatment.

11 \_\_\_\_\_

12 \_\_\_\_\_

13 DIRECTIONS FOR  
14 MENTAL HEALTH TREATMENT

15 This declaration permits me to state my wishes regarding mental health treatments including  
16 psychoactive medications, admission to and retention in a health care facility for mental health  
17 treatment for a period not to exceed [17] 180 days, convulsive treatment and outpatient services.

18  
19 **If I become incapable of giving or withholding informed consent to be admitted for inpa-**  
20 **tient mental health treatment, I CONSENT TO BE ADMITTED FOR INPATIENT TREAT-**  
21 **MENT FOR UP TO: (INITIAL ONLY ONE)**

22 **— 17 days.**

23 **— 30 days.**

24 **— 180 days.**

25  
26 If I become incapable of giving or withholding informed consent for mental health treatment,  
27 my wishes are: I CONSENT TO THE FOLLOWING MENTAL HEALTH TREATMENTS: (May in-  
28 clude types and dosage of medications, [*short-term inpatient treatment,*] a preferred provider or fa-  
29 cility, transport to a provider or facility, convulsive treatment or alternative outpatient treatments.)

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45 I DO NOT CONSENT TO THE FOLLOWING MENTAL HEALTH TREATMENT: (Consider

1 including your reasons, such as past adverse reaction, allergies or misdiagnosis. Be aware  
2 that a person may be treated without consent if the person is held pursuant to civil com-  
3 mitment law.)

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18  
19 **ADDITIONAL INFORMATION ABOUT MY MENTAL HEALTH TREATMENT NEEDS:**  
20 (Consider including mental or physical health history, dietary requirements, religious con-  
21 cerns, people to notify and other matters of importance.)

22 \_\_\_\_\_  
23 \_\_\_\_\_  
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35  
36  
37 YOU MUST SIGN HERE FOR THIS DECLARATION TO BE EFFECTIVE:

38 \_\_\_\_\_  
39 (Signature/Date)

40  
41 NOTARY OR WITNESSES

42  
43 (Have this document notarized by a notary public OR have 2 competent adult witnesses com-  
44 plete the Affirmation of Witnesses.)

45

NOTARIAL CERTIFICATE:

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State of \_\_\_\_\_  
County of \_\_\_\_\_  
Signed or attested before me on \_\_\_\_\_,  
2\_\_\_\_\_, by \_\_\_\_\_.  
\_\_\_\_\_  
Notary Public - State of Oregon

OR

AFFIRMATION OF WITNESSES

I affirm that the person signing this declaration:

- (a) Is personally known to me;
- (b) Signed or acknowledged his or her signature on this declaration in my presence;
- (c) Appears to be of sound mind and not under duress, fraud or undue influence;
- (d) Is not related to me by blood, marriage or adoption;
- (e) Is not a patient or resident in a facility that I or my relative owns or operates;
- (f) Is not my patient and does not receive mental health services from me or my relative; and
- (g) Has not appointed me as a representative in this document.

Witnessed by:

\_\_\_\_\_  
(Signature of Witness/ (Printed Name of Witness)  
Date)

\_\_\_\_\_  
(Signature of Witness/ (Printed Name of Witness)  
Date)

ACCEPTANCE OF APPOINTMENT  
AS REPRESENTATIVE

I accept this appointment and agree to serve as representative to make mental health treatment decisions. I understand that I must act consistently with the desires of the person I represent, as expressed in this declaration or, if not expressed, as otherwise known by me. If I do not know the desires of the person I represent, I have a duty to act in what I believe in good faith to be that person's best interest. I understand that this document gives me authority to make decisions about mental health treatment only while that person has been determined to be incapable of making those decisions by a court or two physicians. I understand that the person who appointed me may revoke this declaration in whole or in part by communicating the revocation to the attending physician or other provider when the person is not incapable.

\_\_\_\_\_  
(Signature of (Printed name)  
Representative/Date)

\_\_\_\_\_  
(Signature of Alternate (Printed name)

1 Representative/Date)

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NOTICE TO PERSON  
MAKING A DECLARATION FOR  
MENTAL HEALTH TREATMENT

This is an important legal document. It creates a declaration for mental health treatment. Before signing this document, you should know these important facts:

This document allows you to make decisions in advance about certain types of mental health treatment: psychoactive medication, short-term (not to exceed [17] **180** days) admission to a treatment facility, convulsive treatment and outpatient services. Outpatient services are mental health services provided by appointment by licensed professionals and programs. The instructions that you include in this declaration will be followed only if a court or two physicians believe that you are incapable of making treatment decisions. Otherwise, you will be considered capable to give or withhold consent for the treatments. Your instructions may be overridden if you are being held pursuant to civil commitment law.

You may also appoint a person as your representative to make treatment decisions for you if you become incapable. The person you appoint has a duty to act consistently with your desires as stated in this document or, if not stated, as otherwise known by the representative. If your representative does not know your desires, he or she must make decisions in your best interests. For the appointment to be effective, the person you appoint must accept the appointment in writing. The person also has the right to withdraw from acting as your representative at any time. A “representative” is also referred to as an “attorney-in-fact” in state law but this person does not need to be an attorney at law.

This document will continue in effect for a period of three years unless you become incapable of participating in mental health treatment decisions. If this occurs, the directive will continue in effect until you are no longer incapable.

You have the right to revoke this document in whole or in part at any time you have not been determined to be incapable. **YOU MAY NOT REVOKE THIS DECLARATION WHEN YOU ARE CONSIDERED INCAPABLE BY A COURT OR TWO PHYSICIANS.** A revocation is effective when it is communicated to your attending physician or other provider.

If there is anything in this document that you do not understand, you should ask a lawyer to explain it to you. This declaration will not be valid unless it is signed by two qualified witnesses who are personally known to you and who are present when you sign or acknowledge your signature.

NOTICE TO PHYSICIAN OR PROVIDER

Under Oregon law, a person may use this declaration to provide consent for mental health treatment or to appoint a representative to make mental health treatment decisions when the person is incapable of making those decisions. A person is “incapable” when, in the opinion of a court or two physicians, the person’s ability to receive and evaluate information effectively or communicate decisions is impaired to such an extent that the person currently lacks the capacity to make mental health treatment decisions. This document becomes operative when it is delivered to the person’s physician or other provider and remains valid until revoked or expired. Upon being presented with this declaration, a physician or provider must make it a part of the person’s medical record. When acting under authority of the declaration, a physician or provider must comply with it to the fullest extent possible. If the physician or provider is unwilling to comply with the declaration, the physi-

1 cian or provider may withdraw from providing treatment consistent with professional judgment and  
 2 must promptly notify the person and the person’s representative and document the notification in  
 3 the person’s medical record. A physician or provider who administers or does not administer mental  
 4 health treatment according to and in good faith reliance upon the validity of this declaration is not  
 5 subject to criminal prosecution, civil liability or professional disciplinary action resulting from a  
 6 subsequent finding of the declaration’s invalidity.

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8

9

10 **FITNESS TO PROCEED IN CRIMINAL PROCEEDINGS**

11

12 **SECTION 26.** ORS 161.370 is amended to read:

13 161.370. (1)(a) When the defendant’s fitness to proceed is drawn in question, the issue shall be  
 14 determined by the court.

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

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

24 (b) After making the determination under paragraph (a) of this subsection, the court shall re-  
 25 ceive a recommendation from a community mental health program director or the director’s  
 26 designee, and from any local entity that would be responsible for treating the defendant if the de-  
 27 fendant were to be released in the community, concerning whether appropriate community restora-  
 28 tion services are present and available in the community.

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

37 (A) Commitment for the defendant to gain or regain fitness to proceed under subsection (3) [or  
 38 (4)] of this section;

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

41 (C) Commencement of a civil commitment proceeding under ORS 426.070 to 426.170, 426.701 or  
 42 427.235 to 427.292;

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

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

45 (d) If the court, while considering or ordering an appropriate action under this subsection, does

1 not order the defendant committed to a state mental hospital or other facility, but finds that ap-  
 2 propriate community restoration services are not present and available in the community, for any  
 3 defendant remaining in custody after such determination, the court shall set a review hearing seven  
 4 days from the date of the determination under paragraph (a) of this subsection. At the review  
 5 hearing, the court shall consider all relevant information and determine if commitment to the state  
 6 mental hospital or other facility is appropriate under subsection (3) or (4) of this section, or if an-  
 7 other action described in paragraph (c) of this subsection is appropriate. At the conclusion of the  
 8 hearing the court shall enter an order in accordance with the defendant's constitutional rights to  
 9 due process.

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

16 (3)(a) If the most serious offense in the charging instrument is a felony, the court shall commit  
 17 the defendant to the custody of the superintendent of a state mental hospital or director of a facility  
 18 designated by the Oregon Health Authority if the defendant is at least 18 years of age, or to the  
 19 custody of the director of a secure intensive community inpatient facility designated by the author-  
 20 ity if the defendant is under 18 years of age, if the court makes the following findings:

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

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

28 (b) If the defendant is committed under this subsection, the community mental health program  
 29 director, or director's designee, shall at regular intervals, during any period of commitment, review  
 30 available community restoration services and maintain communication with the defendant and the  
 31 superintendent of the state mental hospital or director of the facility in order to facilitate an effi-  
 32 cient transition to treatment in the community when ordered.

33 (c) If the court does not order the commitment of the defendant under this subsection, the court  
 34 shall proceed in accordance with subsection (2)(c) of this section to determine and order an appro-  
 35 priate action other than commitment.

36 (4)[(a)] If the most serious offense in the charging instrument is a misdemeanor, the court may  
 37 not commit the defendant to the custody of the superintendent of a state mental hospital or director  
 38 of a facility designated by the Oregon Health Authority if the defendant is at least 18 years of age,  
 39 or to the custody of the director of a secure intensive community inpatient facility designated by  
 40 the authority if the defendant is under 18 years of age. [*unless the court:*]

41 [(A)(i) *Receives a recommendation from a certified evaluator that the defendant requires a hospital*  
 42 *level of care due to the acuity of symptoms of the defendant's qualifying mental disorder; and]*

43 [(ii) *Receives a recommendation from a community mental health program director, or director's*  
 44 *designee, that the appropriate community restoration services are not present and available in the*  
 45 *community; or]*



1        *[(B) Determines that the defendant requires a hospital level of care after making all of the following*  
2 *written findings:]*

3        *[(i) The defendant needs a hospital level of care due to the acuity of the symptoms of the*  
4 *defendant's qualifying mental disorder;]*

5        *[(ii) There are public safety concerns; and]*

6        *[(iii) The appropriate community restoration services are not present and available in the commu-*  
7 *nity.]*

8        *[(b) If at the time of determining the appropriate action for the case, the court is considering com-*  
9 *mitment under paragraph (a)(A) of this subsection and:]*

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

13       *[(B) Has not received a recommendation from the community mental health program director or*  
14 *designee concerning whether appropriate community restoration services are present and available in*  
15 *the community, the court shall order the director or designee to make such a recommendation.]*

16       *[(c) If the court does not order the commitment of the defendant under this subsection, the court*  
17 *shall proceed in accordance with subsection (2)(c) of this section to determine and order an appropriate*  
18 *action other than commitment.]*

19       *[(d) If the defendant is committed under this subsection, the community mental health program di-*  
20 *rector, or director's designee, shall at regular intervals, during any period of commitment, review*  
21 *available community restoration services and maintain communication with the defendant and the su-*  
22 *perintendent of the state mental hospital or director of the facility in order to facilitate an efficient*  
23 *transition to treatment in the community when ordered.]*

24       (5) If the most serious offense in the charging instrument is a violation, the court may not  
25 commit the defendant to the custody of the superintendent of a state mental hospital or director of  
26 a facility designated by the Oregon Health Authority if the defendant is at least 18 years of age,  
27 or to the custody of the director of a secure intensive community inpatient facility designated by  
28 the authority if the defendant is under 18 years of age.

29       (6)(a) If the court does not order the commitment of the defendant under subsection (3) [or (4)]  
30 of this section, if commitment is precluded under subsection (4) **or** (5) of this section or if the court  
31 determines that care other than commitment would better serve the defendant and the community,  
32 the court shall release the defendant, pursuant to an order that the defendant engage in community  
33 restoration services, until the defendant has gained or regained fitness to proceed, or until the court  
34 finds there is no substantial probability that the defendant will, within the foreseeable future, gain  
35 or regain fitness to proceed. The court may not order the defendant to engage in community resto-  
36 ration services in another county without permission from the other county.

37       (b) The court may order a community mental health program director coordinating the  
38 defendant's treatment in the community to provide the court with status reports on the defendant's  
39 progress in gaining or regaining fitness to proceed. The director shall provide a status report if the  
40 defendant is not complying with court-ordered restoration services.

41       (c) A community mental health program director coordinating the defendant's treatment in the  
42 community shall notify the court if the defendant gains or regains fitness to proceed. The notice  
43 shall be filed with the court and may be filed electronically. The clerk of the court shall cause  
44 copies of the notice to be delivered to both the district attorney and the counsel for the defendant.

45       (d) When a defendant is ordered to engage in community restoration services under this sub-

1 section, the court may place conditions that the court deems appropriate on the release, including  
 2 the requirement that the defendant regularly report to a state mental hospital or a certified evalu-  
 3 ator for examination to determine if the defendant has gained or regained fitness to proceed.

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

6 **SECTION 27.** ORS 161.371 is amended to read:

7 161.371. (1) The superintendent of a state mental hospital or director of a facility to which the  
 8 defendant is committed under ORS 161.370 shall cause the defendant to be evaluated within 60 days  
 9 from the defendant's delivery into the superintendent's or director's custody, for the purpose of de-  
 10 termining whether there is a substantial probability that, in the foreseeable future, the defendant  
 11 will have fitness to proceed. In addition, the superintendent or director shall:

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

15 (b) Within 90 days of the defendant's delivery into the superintendent's or director's custody,  
 16 notify the committing court that:

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

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

20 (C) There is a substantial probability that, in the foreseeable future, the defendant will gain or  
 21 regain fitness to proceed. If the probability exists, the superintendent or director shall give the court  
 22 an estimate of the time in which the defendant, with appropriate treatment, is expected to gain or  
 23 regain fitness to proceed.

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

26 (2)(a) If the superintendent of the state mental hospital or director of the facility to which the  
 27 defendant is committed determines that there is a substantial probability that, in the foreseeable  
 28 future, the defendant will gain or regain fitness to proceed, unless the court otherwise orders, the  
 29 defendant shall remain in the superintendent's or director's custody where the defendant shall re-  
 30 ceive treatment designed for the purpose of enabling the defendant to gain or regain fitness to pro-  
 31 ceed. In keeping with the notice requirement under subsection (1)(b) of this section, the  
 32 superintendent or director shall, for the duration of the defendant's period of commitment, submit  
 33 a progress report to the committing court, concerning the defendant's fitness to proceed, at least  
 34 once every 180 days as measured from the date of the defendant's delivery into the superintendent's  
 35 or director's custody.

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

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

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

40 (3)(a) Notwithstanding subsection (2) of this section, if the most serious offense in the charging  
 41 instrument is a felony, and the superintendent of the state mental hospital or director of the facility  
 42 to which the defendant is committed determines that a hospital level of care is no longer necessary  
 43 due to present public safety concerns and the acuity of symptoms of the defendant's qualifying  
 44 mental disorder, the superintendent or director may file notice of the determination with the court.  
 45 Upon receipt of the notice, the court shall order that a community mental health program director

1 or the 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 community restoration services are present and available in the community; and

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

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

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

35 *[(4)(a) Notwithstanding subsection (2) of this section, if the most serious offense in the charging*  
 36 *instrument is a misdemeanor, and the superintendent of the state mental hospital or director of the fa-*  
 37 *ility to which the defendant is committed determines that the defendant no longer needs a hospital level*  
 38 *of care due to the acuity of symptoms of the defendant's qualifying mental disorder or there are not*  
 39 *present public safety concerns, the superintendent or director shall file notice of the determination with*  
 40 *the court, along with recommendations regarding the necessary community restoration services that*  
 41 *would mitigate any risk presented by the defendant. Upon receipt of the notice, the court shall order*  
 42 *that a community mental health program director or the director's designee, within five judicial*  
 43 *days:]*

44 *[(A) Consult with the defendant and with any local entity that would be responsible for providing*  
 45 *community restoration services, if the defendant were to be released in the community, to determine*

1 *whether appropriate community restoration services are present and available in the community; and]*

2 *[(B) Provide the court and the parties with recommendations from the consultation.]*

3 *[(b) Notwithstanding subsection (2) of this section, if the most serious offense in the charging in-*  
 4 *strument is a misdemeanor, and the community mental health program director determines that the*  
 5 *community restoration services that would mitigate any risk posed by the defendant are present and*  
 6 *available in the community, the community mental health program director may file notice of the de-*  
 7 *termination with the court. Upon receipt of the notice, the court shall order that the superintendent of*  
 8 *the state mental hospital or director of the facility to which the defendant is committed, within five ju-*  
 9 *dicial days:]*

10 *[(A) Evaluate the defendant to determine whether a hospital level of care is no longer necessary*  
 11 *due to present public safety concerns, or no longer necessary due to the acuity of symptoms of the*  
 12 *defendant's qualifying mental disorder; and]*

13 *[(B) Provide the court and the parties with recommendations from the evaluation.]*

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

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

24 *[(B) If the court does not make the findings described in subparagraph (A) of this paragraph, the*  
 25 *court shall terminate the commitment and shall set a review hearing seven days from the date of the*  
 26 *commitment termination for any defendant remaining in custody. At the review hearing, the court shall*  
 27 *consider all relevant information, determine an appropriate action in the case as described in ORS*  
 28 *161.370 (2)(c) and enter an order in accordance with the defendant's constitutional rights to due pro-*  
 29 *cess.]*

30 *[(5)] (4)(a) If a defendant remains committed under this section, the court shall determine within*  
 31 *a reasonable period of time whether there is a substantial probability that, in the foreseeable future,*  
 32 *the defendant will gain or regain fitness to proceed. However, regardless of the number of charges*  
 33 *with which the defendant is accused, in no event shall the defendant be committed for longer than*  
 34 *whichever of the following, measured from the defendant's initial custody date, is shorter:*

35 *(A) Three years; or*

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

38 *(b) For purposes of calculating the maximum period of commitment described in paragraph (a)*  
 39 *of this subsection:*

40 *(A) The initial custody date is the date on which the defendant is first committed under this*  
 41 *section on any charge alleged in the accusatory instrument; and*

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

44 *(i) For each day the defendant is committed under this section, whether the days are consecutive*  
 45 *or are interrupted by a period of time during which the defendant has gained or regained fitness to*

1 proceed; and

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

6 (c) The superintendent of the state mental hospital or director of the facility to which the de-  
 7 fendant is committed shall notify the committing court of the defendant's impending discharge 30  
 8 days before the date on which the superintendent or director is required to discharge the defendant  
 9 under this subsection.

10 [(6)] (5)(a) All notices required under this section shall be filed with the court and may be filed  
 11 electronically. The clerk of the court shall cause copies of the notices to be delivered to both the  
 12 district attorney and the counsel for the defendant.

13 (b) When the committing court receives a notice from the superintendent or director under  
 14 subsection (1) of this section concerning the defendant's progress or lack thereof, or under sub-  
 15 section [(5)] (4) of this section concerning the defendant's impending discharge, the committing court  
 16 shall determine, after a hearing if a hearing is requested, whether the defendant presently has fit-  
 17 ness to proceed.

18 [(7)] (6) If at any time the court determines that the defendant lacks fitness to proceed, the court  
 19 shall further determine whether the defendant is entitled to discharge under subsection [(5)] (4)  
 20 of this section. If the court determines that the defendant is entitled to discharge under subsection  
 21 [(5)] (4) of this section, the court shall dismiss, without prejudice and in accordance with ORS  
 22 161.367 (6), all charges against the defendant and:

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

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

25  
 26 **MISCELLANEOUS**  
 27

28 **SECTION 28. The unit captions used in this 2025 Act are provided only for the conven-**  
 29 **ience of the reader and do not become part of the statutory law of this state or express any**  
 30 **legislative intent in the enactment of this 2025 Act.**

31 **SECTION 29. (1) The amendments to ORS 163.738, 426.005, 426.070, 426.074, 426.130,**  
 32 **426.133, 426.160, 426.180, 426.225, 426.228, 426.231, 426.232, 426.233, 426.234 and 430.399 by**  
 33 **sections 1 to 15 of this 2025 Act apply to individuals who are taken into custody by a treat-**  
 34 **ment facility or law enforcement on or after the effective date of this 2025 Act.**

35 **(2) The amendments to ORS 127.700 and 127.736 by sections 24 and 25 of this 2025 Act**  
 36 **apply to declarations for mental health treatment executed on or after the effective date of**  
 37 **this 2025 Act.**

38 **(3) The amendments to ORS 161.370 and 161.371 by sections 26 and 27 of this 2025 Act**  
 39 **apply to the commitments of defendants occurring on or after the effective date of this 2025**  
 40 **Act.**

41 **SECTION 30. This 2025 Act being necessary for the immediate preservation of the public**  
 42 **peace, health and safety, an emergency is declared to exist, and this 2025 Act takes effect**  
 43 **on its passage.**