

HB 2480-1  
(LC 2835)  
3/27/25 (JLM/ps)

Requested by HOUSE COMMITTEE ON JUDICIARY (at the request of Representative Jason Kropf)

**PROPOSED AMENDMENTS TO  
HOUSE BILL 2480**

1 In line 2 of the printed bill, after “health” insert “; creating new pro-  
2 visions; and amending ORS 125.683, 161.355, 161.362, 161.365, 161.367, 161.370,  
3 161.371 and 430.230”.

4 Delete lines 4 through 8 and insert:

5 **“SECTION 1. Section 2 of this 2025 Act is added to and made a part  
6 of ORS 125.675 to 125.691.**

7 **“SECTION 2. (1) The Oregon Public Guardian and Conservator shall  
8 develop and administer a program to provide guardianship services to  
9 defendants whose criminal cases have been suspended or dismissed  
10 pursuant to ORS 161.370 due to the defendant lacking fitness to pro-  
11 ceed.**

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

15 **“(3) The Oregon Public Guardian and Conservator may provide  
16 services under this section at any time after the defendant’s fitness  
17 to proceed is drawn into question.**

18 **“(4) A defendant’s eligibility to participate in the program may be  
19 determined at any time after a defendant’s fitness to proceed is drawn  
20 into question or, if the court finds that there is no substantial proba-  
21 bility that the defendant will, in the foreseeable future, gain or regain**

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

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

8 **“SECTION 3.** ORS 125.683 is amended to read:

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

19 “(a) Assess the person's capacity to:

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

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

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

24 “(b) Assess the person's financial resources;

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

29 “(d) Determine whether any other person may be willing and able to serve  
30 as the person's guardian or conservator and, if appropriate, locate and con-

1 tact that other person;

2 “(e) Determine the type of fiduciary, if any, to request in a petition filed  
3 under ORS 125.055, giving preference to the least intrusive form of fiduciary  
4 relationship consistent with the best interests of the person; and

5 “(f) Determine how best to provide public guardian and conservator ser-  
6 vices to the person that are least restrictive to the person’s liberty, that are  
7 least intrusive to the person and that provide for the greatest degree of in-  
8 dependence that the person is capable of exercising.

9 “(2)(a) If the person is a resident of a nursing home as defined in ORS  
10 678.710 or a residential facility as defined in ORS [441.402] **443.400**, the  
11 nursing home or residential facility shall provide the Oregon Public Guard-  
12 ian and Conservator access to the person’s records as is necessary to conduct  
13 the needs assessment required under this section.

14 “(b) Any other public agency that has provided or is providing care or  
15 services to the person shall disclose to the Oregon Public Guardian and  
16 Conservator, upon request, a minimum amount of information about the  
17 person for whom the needs assessment is being conducted, including pro-  
18 tected health information as defined in ORS 192.556 and financial informa-  
19 tion, as is reasonably necessary to prevent or lessen a serious and imminent  
20 threat to the health or safety of the person who is the subject of the needs  
21 assessment. For purposes of this paragraph, a request from the Oregon Public  
22 Guardian and Conservator for the purpose of conducting a needs assessment  
23 is presumed to be a situation that will prevent or lessen a serious and im-  
24 minent threat to the health or safety of the person.

25 “(c) Any health care provider not identified in either paragraph (a) or (b)  
26 of this subsection may disclose protected health information to the Oregon  
27 Public Guardian and Conservator in accordance with 45 C.F.R. 164.512 (j) to  
28 prevent or lessen a serious or imminent threat to the health or safety of a  
29 person if the health care provider, in good faith, believes the disclosure is  
30 necessary to prevent or lessen the threat. For purposes of this paragraph, a

1 request from the Oregon Public Guardian and Conservator for disclosure  
2 under this paragraph for the purposes of conducting a needs assessment, or  
3 the good faith belief and disclosure of the health care provider under this  
4 paragraph, are presumed to be situations that will prevent or lessen a serious  
5 and imminent threat to the health or safety of the person.

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

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

21 **“SECTION 4.** ORS 161.362 is amended to read:

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

1 “(2) A determination by a community mental health program director, or  
2 the director’s designee, pursuant to ORS 161.355 to 161.371, that appropriate  
3 [*community restoration*] **treatment** services are not present and available in  
4 the community must include information concerning the specific services  
5 necessary to safely allow the defendant to gain or regain fitness to proceed  
6 in the community and must specify the necessary services that are not pres-  
7 ent and available in the community.

8 “(3)(a) Reports resulting from examinations performed by a certified  
9 evaluator, and documents containing the recommendations of or resulting  
10 from consultations with a community mental health program director or the  
11 director’s designee, prepared under ORS 161.355 to 161.371, and any document  
12 submitted to the court by a state mental hospital related to the proceedings  
13 under ORS 161.355 to 161.371, are confidential and may be made available  
14 only:

15 “(A) To the court, prosecuting attorney, defense attorney, agent of the  
16 prosecuting or defense attorney, defendant, community mental health pro-  
17 gram director or designee, state mental hospital, **Oregon Public Guardian**  
18 **and Conservator** and any facility in which the defendant is housed; or

19 “(B) As ordered by a court.

20 “(b) Any facility in which a defendant is housed may not use a report or  
21 document described in paragraph (a) of this subsection to support a disci-  
22 plinary action against the defendant.

23 “(c) Nothing in this subsection prohibits the prosecuting attorney, defense  
24 attorney or agent of the prosecuting or defense attorney from discussing the  
25 contents of a report or document described in paragraph (a) of this sub-  
26 section with witnesses or victims as otherwise permitted by law.

27 “(4) The court shall ensure that an order entered under ORS 161.355 to  
28 161.371 is provided, by the end of the next judicial day, to any entity ordered  
29 to provide restoration services.

30 “(5) Unless the court orders otherwise or either party objects, a defendant

1 committed to a state mental hospital or other facility, or a certified evalu-  
2 ator or other expert witness, may attend hearings held under ORS 161.355  
3 to 161.371 via simultaneous electronic transmission.

4 **“SECTION 5. Section 6 of this 2025 Act is added to and made a part**  
5 **of ORS 161.355 to 161.371.**

6 **“SECTION 6. The Oregon Health Authority shall employ at least**  
7 **one individual to serve as a liaison for defendants who have been**  
8 **committed to the custody of the superintendent of a state mental**  
9 **hospital or director of a facility designated by the Oregon Health Au-**  
10 **thority under ORS 161.370, but who are then discharged from the hos-**  
11 **pital or facility and ordered to engage in treatment services in the**  
12 **community, in order to facilitate the transition.**

13 **“SECTION 7. ORS 161.355 is amended to read:**

14 “161.355. As used in ORS 161.355 to 161.371:

15 “(1) ‘Certified evaluator’ has the meaning given that term in ORS 161.309.

16 “[2] ‘Community restoration services’ means services and treatment neces-  
17 sary to safely allow a defendant to gain or regain fitness to proceed in the  
18 community, which may include supervision by pretrial services.]

19 “[3] (2) ‘Hospital level of care’ means that a defendant requires the type  
20 of care provided by an inpatient hospital in order to gain or regain fitness  
21 to proceed.

22 “[4] (3) ‘Public safety concerns’ means that the defendant presents a risk  
23 to self or to the public if not hospitalized or in custody.

24 **“(4) ‘Treatment services’ means fitness restoration services, med-**  
25 **ical services, medication management, supportive services, case man-**  
26 **agement services, substance use disorder treatment and any other**  
27 **services that address a person’s fitness to proceed or conditions and**  
28 **circumstances that contribute to a person’s lack of fitness.**

29 **“SECTION 8. ORS 161.365 is amended to read:**

30 “161.365. (1)(a) When the court has reason to doubt the defendant’s fitness

1 to proceed by reason of incapacity as described in ORS 161.360, the court  
2 may call any witness to assist it in reaching its decision and, except as  
3 provided in paragraph (b) of this subsection, shall order that a community  
4 mental health program director, or the director's designee, consult with the  
5 defendant and with any local entity that would be responsible for providing  
6 [community restoration] **treatment** services to the defendant if the defendant  
7 were to be released in the community, to determine whether appropriate  
8 [community restoration] **treatment** services are present and available in the  
9 community. After the consultation, the program director or the director's  
10 designee shall provide to the court a copy of the findings resulting from the  
11 consultation.

12 “(b) If the defendant is charged with one or more of the following offenses  
13 the court is not required to, but may in its discretion, order the consultation  
14 described in paragraph (a) of this subsection:

15 “(A) Aggravated murder;

16 “(B) Murder in any degree;

17 “(C) Attempted aggravated murder;

18 “(D) Attempted murder in any degree;

19 “(E) Manslaughter in any degree;

20 “(F) Aggravated vehicular homicide;

21 “(G) Arson in the first degree when classified as crime category 10 of the  
22 sentencing guidelines grid of the Oregon Criminal Justice Commission;

23 “(H) Assault in the first degree;

24 “(I) Assault in the second degree;

25 “(J) Kidnapping in the first degree;

26 “(K) Kidnapping in the second degree;

27 “(L) Rape in the first degree;

28 “(M) Sodomy in the first degree;

29 “(N) Unlawful sexual penetration in the first degree;

30 “(O) Robbery in the first degree; or

1 “(P) Robbery in the second degree.

2 “(c) If the court determines the assistance of a psychiatrist or psychol-  
3 ogist would be helpful **to the court in reaching a determination under**  
4 **ORS 161.370**, the court may:

5 “(A) Order that a psychiatric or psychological examination of the de-  
6 fendant be conducted by a certified evaluator and a report of the examina-  
7 tion be prepared; or

8 “(B) Order the defendant to be committed for the purpose of an examina-  
9 tion to a state mental hospital or other facility designated by the Oregon  
10 Health Authority if the defendant is at least 18 years of age, or to a secure  
11 intensive community inpatient facility designated by the authority if the  
12 defendant is under 18 years of age. The state mental hospital or other facility  
13 may retain custody of a defendant committed under this paragraph for the  
14 duration necessary to complete the examination of the defendant, not to ex-  
15 ceed 30 days. The examination may include a period of observation.

16 “(d) The court shall provide a copy of any order entered under this sub-  
17 section to the community mental health program director or designee and to  
18 the state mental hospital or other facility by the end of the next judicial day.

19 “(2)(a) A defendant committed under subsection (1)(c)(B) of this section  
20 shall be transported to the state mental hospital or other facility for the  
21 examination.

22 “(b) At the conclusion of the examination, the superintendent of the state  
23 mental hospital or the superintendent’s designee or the director of the facil-  
24 ity may:

25 “(A) Return the defendant to the facility from which the defendant was  
26 transported; or

27 “(B) Inform the court and the parties that the defendant requires a hos-  
28 pital level of care due to the acuity of symptoms of the defendant’s qualifying  
29 mental disorder and request that the defendant remain at the state mental  
30 hospital or other facility pending a hearing or order under ORS 161.370.



1 “(3) The report of an examination described in this section must include,  
2 but is not necessarily limited to, the following:

3 “(a) A description of the nature of the examination;

4 “(b) A statement of the mental condition of the defendant;

5 “(c) If the defendant suffers from a qualifying mental disorder, an opinion  
6 as to whether the defendant is incapacitated within the description set out  
7 in ORS 161.360; and

8 “(d) If the defendant is incapacitated within the description set out in  
9 ORS 161.360, a recommendation of treatment and services necessary to allow  
10 the defendant to gain or regain capacity, including whether a hospital level  
11 of care is required due to the acuity of symptoms of the defendant’s quali-  
12 fying mental disorder.

13 “(4) Except when the defendant and the court both request to the con-  
14 trary, the report may not contain any findings or conclusions as to whether  
15 the defendant as a result of a qualifying mental disorder was subject to the  
16 provisions of ORS 161.295 or 161.300 at the time of the criminal act charged.

17 “(5) If the examination by the certified evaluator cannot be conducted by  
18 reason of the unwillingness of the defendant to participate in the examina-  
19 tion, the report must so state and must include, if possible, an opinion as to  
20 whether the unwillingness of the defendant was the result of a qualifying  
21 mental disorder affecting fitness to proceed.

22 “(6) The report resulting from the examination of a defendant under this  
23 section may be filed electronically and must be filed with the clerk of the  
24 court, who shall cause copies to be delivered to the district attorney and to  
25 counsel for defendant.

26 “(7)(a) When upon motion of the court or a financially eligible defendant,  
27 the court has ordered a psychiatric or psychological examination of the de-  
28 fendant, a county or justice court shall order the county to pay, a municipal  
29 court shall order the city to pay, and a circuit court shall order the execu-  
30 tive director of the Oregon Public Defense Commission to pay from funds

1 available for the purpose:

2 “(A) A reasonable fee if the examination of the defendant is conducted  
3 by a certified evaluator in private practice; and

4 “(B) All costs including transportation of the defendant if the examina-  
5 tion is conducted by a certified evaluator in the employ of the Oregon Health  
6 Authority or a community mental health program established under ORS  
7 430.610 to 430.670.

8 “(b) When an examination is ordered at the request or with the  
9 acquiescence of a defendant who is determined not to be financially eligible,  
10 the examination shall be performed at the defendant’s expense. When an ex-  
11 amination is ordered at the request of the prosecution, the county shall pay  
12 for the expense of the examination.

13 “(8) The Oregon Health Authority shall establish by rule standards for  
14 the consultation described in subsection (1) of this section.

15 “**SECTION 9.** ORS 161.367 is amended to read:

16 “161.367. (1) If at any time the court determines that the defendant lacks  
17 fitness to proceed, the court shall further determine whether there is a sub-  
18 stantial probability that the defendant, in the foreseeable future, will gain  
19 or regain fitness to proceed. If the court determines that there is no sub-  
20 stantial probability that the defendant, in the foreseeable future, will gain  
21 or regain fitness to proceed, the court shall dismiss, without prejudice and  
22 in accordance with subsection (6) of this section, all charges against the  
23 defendant and:

24 “(a) Order that the defendant be discharged; or

25 “(b) Initiate commitment proceedings under ORS 426.070, 426.701 or  
26 427.235 to 427.292.

27 “(2)(a) The superintendent of the hospital or director of the facility in  
28 which the defendant is committed under ORS 161.370 or a person examining  
29 the defendant as a condition of release to [*community restoration*] **treatment**  
30 services **in the community** shall notify the court if the defendant gains or

1 regains fitness to proceed.

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

4 “(c) The court may, upon its own motion or the request of either party,  
5 hold a hearing to determine whether the defendant has gained or regained  
6 fitness to proceed. If the court determines that the defendant has gained or  
7 regained fitness to proceed, the court shall resume the criminal proceeding  
8 unless the court determines that so much time has elapsed since the com-  
9 mitment or release of the defendant to [*community restoration*] **treatment**  
10 **services in the community** that it would be unjust to resume the criminal  
11 proceeding. If the court determines that it would be unjust to resume the  
12 criminal proceeding, the court, on motion of either party, may dismiss the  
13 charge in accordance with subsection (6) of this section, and may order the  
14 defendant to be discharged or cause a proceeding to be commenced forthwith  
15 under ORS 426.070 to 426.170, 426.701 or 427.235 to 427.292.

16 “(3) If the defendant gains or regains fitness to proceed, the defendant  
17 shall be given credit against each charge alleged in the accusatory instru-  
18 ment for each day the defendant was committed under ORS 161.370 to the  
19 custody of a state mental hospital, or to the custody of a secure intensive  
20 community inpatient facility designated by the Oregon Health Authority.

21 “(4) Notwithstanding the suspension of the criminal proceeding under  
22 ORS 161.370 (2), the fact that the defendant is unfit to proceed does not  
23 preclude any objection through counsel and without the personal partic-  
24 ipation of the defendant on the grounds that the indictment is insufficient,  
25 that the statute of limitations has run, that double jeopardy principles apply  
26 or upon any other ground at the discretion of the court which the court  
27 deems susceptible of fair determination prior to trial.

28 “(5) At the time that the court determines that the defendant lacks fitness  
29 to proceed under ORS 161.370 (2), the court shall notify the defendant in  
30 writing that federal law prohibits the defendant from purchasing or possess-

1 ing a firearm unless the person obtains relief from the prohibition under  
2 federal law. The court shall again notify the defendant in writing of the  
3 prohibition if the court finds that the defendant has gained or regained fit-  
4 ness to proceed under subsection (2) of this section.

5 “(6) If the court intends to dismiss all charges involving orders of com-  
6 mitment against a defendant who is committed to and currently located at  
7 a state mental hospital or other facility, the court shall order that the de-  
8 fendant be immediately transported back to the jurisdiction in which the  
9 charges were initiated, and the dismissal shall take effect only upon the  
10 defendant’s arrival in that jurisdiction.

11 **“SECTION 10.** ORS 161.370 is amended to read:

12 “161.370. (1)(a) When the defendant’s fitness to proceed is drawn in ques-  
13 tion, the issue shall be determined by the court.

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

23 **“(A) Evidence of a prior diagnosis of the defendant made by a cer-  
24 tified evaluator or a qualified mental health practitioner;**

25 **“(B) A prior evaluation of the defendant conducted under this sec-  
26 tion or ORS 161.315 or 161.365;**

27 **“(C) Prior determinations that the defendant lacked fitness to pro-  
28 ceed;**

29 **“(D) Prior commitments of the defendant under ORS chapter 426  
30 or 427;**

1       “(E) The defendant’s conduct as observed by the court;

2       “(F) Prior court records or assessments relating to actions involv-  
3       ing the defendant that contain a mental health diagnosis of the de-  
4       fendant;

5       “(G) Relevant information on the defendant’s mental health diag-  
6       nosis in the possession of the local supervisory authority, if the de-  
7       fendant is under active supervision; and

8       “(H) Any other information the court deems relevant.

9       “(2)(a) If the court determines that the defendant lacks fitness to proceed,  
10       the criminal proceeding against the defendant shall be suspended and the  
11       court shall proceed in accordance with this subsection.

12       “(b) After making the determination under paragraph (a) of this sub-  
13       section, the court shall receive a recommendation from a community mental  
14       health program director or the director’s designee, and from any local entity  
15       that would be responsible for treating the defendant if the defendant were  
16       to be released in the community, concerning whether appropriate [*community*  
17       *restoration*] **treatment** services are present and available in the community.

18       “(c) If the parties agree as to the appropriate action under this section,  
19       the court may, after making all findings required by law, enter any order  
20       authorized by this section. If the parties do not agree as to the appropriate  
21       action, the court and the parties shall, at a hearing, consider an appropriate  
22       action in the case, and the court shall make a determination and enter an  
23       order necessary to implement the action. In determining the appropriate  
24       action, the court shall consider the primary and secondary release criteria  
25       as defined in ORS 135.230, the least restrictive option appropriate for the  
26       defendant, the needs of the defendant and the interests of justice. Actions  
27       may include but are not limited to:

28       “(A) Commitment for the defendant to gain or regain fitness to proceed  
29       under subsection (3) or (4) of this section;

30       “(B) An order to engage in [*community restoration*] **treatment** services

1 **in the community**, as recommended by the community mental health pro-  
2 gram director or designee, under subsection (6) of this section;

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

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

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

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

20 “(e) If the court determines that the appropriate action in the case is an  
21 order for the defendant to engage in [*community restoration*] **treatment** ser-  
22 vices **in the community**, but the defendant has a pending criminal case,  
23 warrant or hold in one or more other jurisdictions, the other jurisdictions  
24 shall, within two judicial days of becoming aware of the proceeding under  
25 this section, communicate with the court and the other jurisdictions, if ap-  
26 plicable, to develop a plan to address the interests of all jurisdictions in the  
27 defendant in a timely manner.

28 “(f) **If the court determines that the appropriate action in the case**  
29 **is the commencement of protective proceedings under ORS chapter**  
30 **125, the court may, in accordance with ORS 125.600 and 125.605, appoint**

1 **a temporary fiduciary for the defendant to exercise the powers of a**  
2 **guardian, until a guardian can be appointed.**

3 “(3)(a) If the most serious offense in the charging instrument is a felony,  
4 the court shall commit the defendant to the custody of the superintendent  
5 of a state mental hospital or director of a facility designated by the Oregon  
6 Health Authority if the defendant is at least 18 years of age, or to the cus-  
7 tody of the director of a secure intensive community inpatient facility des-  
8 igned by the authority if the defendant is under 18 years of age, if the  
9 court makes the following findings:

10 “(A) The defendant requires a hospital level of care due to public safety  
11 concerns if the defendant is not hospitalized or in custody or the acuity of  
12 symptoms of the defendant’s qualifying mental disorder; and

13 “(B) Based on the findings resulting from a consultation described in ORS  
14 161.365 (1), if applicable, from any information provided by community-based  
15 mental health providers or any other sources, and primary and secondary  
16 release criteria as defined in ORS 135.230, the appropriate [*community resto-*  
17 *ration*] **treatment** services are not present and available in the community.

18 “(b) If the defendant is committed under this subsection, the community  
19 mental health program director, or director’s designee, shall at regular in-  
20 tervals, during any period of commitment, review [*available community res-*  
21 *toration*] **treatment services available in the community** and maintain  
22 communication with the defendant and the superintendent of the state men-  
23 tal hospital or director of the facility in order to facilitate an efficient  
24 transition to treatment in the community when ordered.

25 “(c) If the court does not order the commitment of the defendant under  
26 this subsection, the court shall proceed in accordance with subsection (2)(c)  
27 of this section to determine and order an appropriate action other than  
28 commitment.

29 “(4)(a) If the most serious offense in the charging instrument is a  
30 misdemeanor, the court may not commit the defendant to the custody of the

1 superintendent of a state mental hospital or director of a facility designated  
2 by the Oregon Health Authority if the defendant is at least 18 years of age,  
3 or to the custody of the director of a secure intensive community inpatient  
4 facility designated by the authority if the defendant is under 18 years of age,  
5 unless the court:

6 “(A)(i) Receives a recommendation from a certified evaluator that the  
7 defendant requires a hospital level of care due to the acuity of symptoms of  
8 the defendant’s qualifying mental disorder; and

9 “(ii) Receives a recommendation from a community mental health program  
10 director, or director’s designee, that the appropriate [*community restoration*]  
11 **treatment** services are not present and available in the community; or

12 “(B) Determines that the defendant requires a hospital level of care after  
13 making all of the following written findings:

14 “(i) The defendant needs a hospital level of care due to the acuity of the  
15 symptoms of the defendant’s qualifying mental disorder;

16 “(ii) There are public safety concerns; and

17 “(iii) The appropriate [*community restoration*] **treatment** services are not  
18 present and available in the community.

19 “(b) If at the time of determining the appropriate action for the case, the  
20 court is considering commitment under paragraph (a)(A) of this subsection  
21 and:

22 “(A) Has not received a recommendation from a certified evaluator as to  
23 whether the defendant requires a hospital level of care due to the acuity of  
24 symptoms of the defendant’s qualifying mental disorder, the court shall order  
25 a certified evaluator to make such a recommendation.

26 “(B) Has not received a recommendation from the community mental  
27 health program director or designee concerning whether appropriate [*com-*  
28 *munity restoration*] **treatment** services are present and available in the  
29 community, the court shall order the director or designee to make such a  
30 recommendation.



1       “(c) If the court does not order the commitment of the defendant under  
2 this subsection, the court shall proceed in accordance with subsection (2)(c)  
3 of this section to determine and order an appropriate action other than  
4 commitment.

5       “(d) If the defendant is committed under this subsection, the community  
6 mental health program director, or director’s designee, shall at regular in-  
7 tervals, during any period of commitment, review [*available community res-*  
8 *toration*] **treatment** services **available in the community** and maintain  
9 communication with the defendant and the superintendent of the state men-  
10 tal hospital or director of the facility in order to facilitate an efficient  
11 transition to treatment in the community when ordered.

12       “(5) If the most serious offense in the charging instrument is a violation,  
13 the court may not commit the defendant to the custody of the superintendent  
14 of a state mental hospital or director of a facility designated by the Oregon  
15 Health Authority if the defendant is at least 18 years of age, or to the cus-  
16 tody of the director of a secure intensive community inpatient facility des-  
17 igned by the authority if the defendant is under 18 years of age.

18       “(6)(a) If the court does not order the commitment of the defendant under  
19 subsection (3) or (4) of this section, if commitment is precluded under sub-  
20 section (5) of this section or if the court determines that care other than  
21 commitment would better serve the defendant and the community, the court  
22 shall release the defendant, pursuant to an order that the defendant engage  
23 in [*community restoration*] **treatment** services **in the community**, until the  
24 defendant has gained or regained fitness to proceed, or until the court finds  
25 there is no substantial probability that the defendant will, within the fore-  
26 seeable future, gain or regain fitness to proceed. The court may not order the  
27 defendant to engage in [*community restoration*] **treatment** services in an-  
28 other county without permission from the other county.

29       “(b) The court may order a community mental health program director  
30 coordinating the defendant’s treatment in the community to provide the

1 court with status reports on the defendant's progress in gaining or regaining  
2 fitness to proceed. The director shall provide a status report if the defendant  
3 is not complying with court-ordered [*restoration*] **treatment** services.

4 “(c) A community mental health program director coordinating the  
5 defendant's treatment in the community shall notify the court if the defend-  
6 ant gains or regains fitness to proceed. The notice shall be filed with the  
7 court and may be filed electronically. The clerk of the court shall cause  
8 copies of the notice to be delivered to both the district attorney and the  
9 counsel for the defendant.

10 “(d) When a defendant is ordered to engage in [*community restoration*]  
11 **treatment services in the community** under this subsection, the court may  
12 place conditions that the court deems appropriate on the release, including  
13 the requirement that the defendant regularly report to a state mental hospi-  
14 tal or a certified evaluator for examination to determine if the defendant has  
15 gained or regained fitness to proceed.

16 “(7) The Oregon Health Authority shall establish by rule standards for  
17 the recommendation provided to the court described in subsection (2) of this  
18 section.

19 **“SECTION 11.** ORS 161.371 is amended to read:

20 “161.371. (1) The superintendent of a state mental hospital or director of  
21 a facility to which the defendant is committed under ORS 161.370 shall cause  
22 the defendant to be evaluated within 60 days from the defendant's delivery  
23 into the superintendent's or director's custody, for the purpose of determin-  
24 ing whether there is a substantial probability that, in the foreseeable future,  
25 the defendant will have fitness to proceed. In addition, the superintendent  
26 or director shall:

27 “(a) Immediately notify the committing court if the defendant, at any  
28 time, gains or regains fitness to proceed or if there is no substantial proba-  
29 bility that, within the foreseeable future, the defendant will gain or regain  
30 fitness to proceed.

1       “(b) Within 90 days of the defendant’s delivery into the superintendent’s  
2 or director’s custody, notify the committing court that:

3       “(A) The defendant has present fitness to proceed;

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

6       “(C) There is a substantial probability that, in the foreseeable future, the  
7 defendant will gain or regain fitness to proceed. If the probability exists, the  
8 superintendent or director shall give the court an estimate of the time in  
9 which the defendant, with appropriate treatment, is expected to gain or re-  
10 gain fitness to proceed.

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

14       “(2)(a) If the superintendent of the state mental hospital or director of the  
15 facility to which the defendant is committed determines that there is a sub-  
16 stantial probability that, in the foreseeable future, the defendant will gain  
17 or regain fitness to proceed, unless the court otherwise orders, the defendant  
18 shall remain in the superintendent’s or director’s custody where the defend-  
19 ant shall receive treatment designed for the purpose of enabling the defend-  
20 ant to gain or regain fitness to proceed. In keeping with the notice  
21 requirement under subsection (1)(b) of this section, the superintendent or  
22 director shall, for the duration of the defendant’s period of commitment,  
23 submit a progress report to the committing court, concerning the defendant’s  
24 fitness to proceed, at least once every 180 days as measured from the date  
25 of the defendant’s delivery into the superintendent’s or director’s custody.

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

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

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

1       “(3)(a) Notwithstanding subsection (2) of this section, if the most serious  
2 offense in the charging instrument is a felony, and the superintendent of the  
3 state mental hospital or director of the facility to which the defendant is  
4 committed determines that a hospital level of care is no longer necessary due  
5 to present public safety concerns and the acuity of symptoms of the  
6 defendant’s qualifying mental disorder, the superintendent or director may  
7 file notice of the determination with the court. Upon receipt of the notice,  
8 the court shall order that a community mental health program director or  
9 the director’s designee, within five judicial days:

10       “(A) Consult with the defendant and with any local entity that would be  
11 responsible for providing [*community restoration*] **treatment** services, if the  
12 defendant were to be released in the community, to determine whether  
13 [*community restoration*] **treatment** services are present and available in the  
14 community; and

15       “(B) Provide the court and the parties with recommendations from the  
16 consultation.

17       “(b) Notwithstanding subsection (2) of this section, if the most serious  
18 offense in the charging instrument is a felony, and the community mental  
19 health program director determines that [*community restoration*] **treatment**  
20 services that would mitigate any risk posed by the defendant are present and  
21 available in the community, the community mental health program director  
22 may file notice of the determination with the court. Upon receipt of the no-  
23 tice, the court shall order that the superintendent of the state mental hos-  
24 pital or director of the facility to which the defendant is committed, within  
25 five judicial days:

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

30       “(B) Provide the court and the parties with recommendations from the

1 evaluation.

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

6 “(A) If, after consideration of the factors and possible actions described  
7 in ORS 161.370 (2)(c) and any recommendations received under paragraph (a)  
8 or (b) of this subsection, the court determines that a hospital level of care  
9 is necessary due to public safety concerns or the acuity of symptoms of the  
10 defendant’s qualifying mental disorder, and that based on the consultation  
11 or evaluation described in paragraph (a) or (b) of this subsection, any infor-  
12 mation provided by community-based mental health providers or any other  
13 sources, primary and secondary release criteria as defined in ORS 135.230,  
14 and any other information the court finds to be trustworthy and reliable, the  
15 appropriate [*community restoration*] **treatment** services are not present and  
16 available in the community, the court may continue the commitment of the  
17 defendant.

18 “(B) If the court does not make the determination described in subpara-  
19 graph (A) of this paragraph, the court shall terminate the commitment and  
20 shall set a review hearing seven days from the date of the commitment ter-  
21 mination for any defendant remaining in custody. At the review hearing, the  
22 court shall consider all relevant information, determine an appropriate  
23 action in the case as described in ORS 161.370 (2)(c) and enter an order in  
24 accordance with the defendant’s constitutional rights to due process.

25 “(4)(a) Notwithstanding subsection (2) of this section, if the most serious  
26 offense in the charging instrument is a misdemeanor, and the superintendent  
27 of the state mental hospital or director of the facility to which the defendant  
28 is committed determines that the defendant no longer needs a hospital level  
29 of care due to the acuity of symptoms of the defendant’s qualifying mental  
30 disorder or there are not present public safety concerns, the superintendent

1 or director shall file notice of the determination with the court, along with  
2 recommendations regarding the necessary [*community restoration*] **treatment**  
3 services **in the community** that would mitigate any risk presented by the  
4 defendant. Upon receipt of the notice, the court shall order that a commu-  
5 nity mental health program director or the director’s designee, within five  
6 judicial days:

7 “(A) Consult with the defendant and with any local entity that would be  
8 responsible for providing [*community restoration*] **treatment** services, if the  
9 defendant were to be released in the community, to determine whether ap-  
10 propriate [*community restoration*] **treatment** services are present and avail-  
11 able in the community; and

12 “(B) Provide the court and the parties with recommendations from the  
13 consultation.

14 “(b) Notwithstanding subsection (2) of this section, if the most serious  
15 offense in the charging instrument is a misdemeanor, and the community  
16 mental health program director determines that the [*community restoration*]  
17 **treatment** services that would mitigate any risk posed by the defendant are  
18 present and available in the community, the community mental health pro-  
19 gram director may file notice of the determination with the court. Upon re-  
20 ceipt of the notice, the court shall order that the superintendent of the state  
21 mental hospital or director of the facility to which the defendant is com-  
22 mitted, within five judicial days:

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

27 “(B) Provide the court and the parties with recommendations from the  
28 evaluation.

29 “(c) Within 10 judicial days of receiving the recommendations described  
30 in paragraph (a) or (b) of this subsection, the court shall hold a hearing to

1 determine an appropriate action in accordance with ORS 161.370 (2)(c) as  
2 follows:

3 “(A) After consideration of the factors and possible actions described in  
4 ORS 161.370 (2)(c), the consultation or evaluation and any recommendations  
5 described in paragraph (a) or (b) of this subsection, and any other informa-  
6 tion the court finds to be trustworthy and reliable, the court may continue  
7 the commitment of the defendant if the court makes written findings that a  
8 hospital level of care is necessary due to public safety concerns and the  
9 acuity of symptoms of the defendant’s qualifying mental disorder, and that  
10 appropriate [*community restoration*] **treatment** services are not present and  
11 available in the community.

12 “(B) If the court does not make the findings described in subparagraph  
13 (A) of this paragraph, the court shall terminate the commitment and shall  
14 set a review hearing seven days from the date of the commitment termination  
15 for any defendant remaining in custody. At the review hearing, the court  
16 shall consider all relevant information, determine an appropriate action in  
17 the case as described in ORS 161.370 (2)(c) and enter an order in accordance  
18 with the defendant’s constitutional rights to due process.

19 “(5)(a) If a defendant remains committed under this section, the court  
20 shall determine within a reasonable period of time whether there is a sub-  
21 stantial probability that, in the foreseeable future, the defendant will gain  
22 or regain fitness to proceed. However, regardless of the number of charges  
23 with which the defendant is accused, in no event shall the defendant be  
24 committed for longer than whichever of the following, measured from the  
25 defendant’s initial custody date, is shorter:

26 “(A) Three years; or

27 “(B) A period of time equal to the maximum sentence the court could have  
28 imposed if the defendant had been convicted.

29 “(b) For purposes of calculating the maximum period of commitment de-  
30 scribed in paragraph (a) of this subsection:

1       “(A) The initial custody date is the date on which the defendant is first  
2 committed under this section on any charge alleged in the accusatory in-  
3 strument; and

4       “(B) The defendant shall be given credit against each charge alleged in  
5 the accusatory instrument:

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

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

14       “(c) The superintendent of the state mental hospital or director of the  
15 facility to which the defendant is committed shall notify the committing  
16 court of the defendant’s impending discharge 30 days before the date on  
17 which the superintendent or director is required to discharge the defendant  
18 under this subsection.

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

23       “(b) When the committing court receives a notice from the superintendent  
24 or director under subsection (1) of this section concerning the defendant’s  
25 progress or lack thereof, or under subsection (5) of this section concerning  
26 the defendant’s impending discharge, the committing court shall determine,  
27 after a hearing if a hearing is requested, whether the defendant presently  
28 has fitness to proceed.

29       “(7) If at any time the court determines that the defendant lacks fitness  
30 to proceed, the court shall further determine whether the defendant is enti-



1 tled to discharge under subsection (5) of this section. If the court determines  
2 that the defendant is entitled to discharge under subsection (5) of this sec-  
3 tion, the court shall dismiss, without prejudice and in accordance with ORS  
4 161.367 (6), all charges against the defendant and:

5 “(a) Order that the defendant be discharged; or

6 “(b) Initiate commitment proceedings under ORS 426.070, 426.701 or  
7 427.235 to 427.292.

8 **“SECTION 12.** ORS 430.230 is amended to read:

9 “430.230. As used in ORS 430.230 to 430.236:

10 “(1) ‘Comprehensive community supports and services’ includes:

11 “(a) Community-based mental health or substance use disorder treatment  
12 programs;

13 “(b) [*Community restoration*] **Treatment** services as defined in ORS  
14 161.355;

15 “(c) Evidence-based and tribal-based programs designed to reduce hospital  
16 and jail utilization by target populations; and

17 “(d) Programs aimed at diverting individuals with nonperson criminal  
18 charges experiencing mental illness or substance use disorders from the  
19 criminal justice system.

20 “(2) ‘County’ includes a single county or a regional consortium of coun-  
21 ties.”.

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