

HB 2470-2  
(LC 2362)  
4/8/25 (JLM/ps)

Requested by HOUSE COMMITTEE ON JUDICIARY (at the request of Oregon District Attorneys Association)

**PROPOSED AMENDMENTS TO  
HOUSE BILL 2470**

1 On page 1 of the printed bill, line 2, after the second semicolon delete the  
2 rest of the line and delete line 3 and insert “and amending ORS 161.367,  
3 161.370 and 161.371.”.

4 Delete lines 5 through 24 and delete pages 2 through 20 and insert:

5 **“SECTION 1.** ORS 161.367 is amended to read:

6 “161.367. (1) If at any time the court determines that the defendant lacks  
7 fitness to proceed, the court shall further determine whether there is a sub-  
8 stantial probability that the defendant, in the foreseeable future, will gain  
9 or regain fitness to proceed. If the court determines that there is no sub-  
10 stantial probability that the defendant, in the foreseeable future, will gain  
11 or regain fitness to proceed, the court shall dismiss, without prejudice and  
12 in accordance with subsection (6) of this section, all charges against the  
13 defendant and:

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

15 “(b) Initiate commitment proceedings under ORS 426.070, 426.701 or  
16 427.235 to 427.292.

17 “(2)(a) The superintendent of the hospital or director of the facility in  
18 which the defendant is committed **or receiving in-custody restoration**  
19 **services** under ORS 161.370, or a person examining the defendant as a con-  
20 dition of release to community restoration services, shall notify the court if  
21 the defendant gains or regains fitness to proceed.

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

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

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

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

27       “(5) At the time that the court determines that the defendant lacks fitness  
28 to proceed under ORS 161.370 (2), the court shall notify the defendant in  
29 writing that federal law prohibits the defendant from purchasing or possess-  
30 ing a firearm unless the person obtains relief from the prohibition under

1 federal law. The court shall again notify the defendant in writing of the  
2 prohibition if the court finds that the defendant has gained or regained fit-  
3 ness to proceed under subsection (2) of this section.

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

10 **“SECTION 2.** ORS 161.370 is amended to read:

11 “161.370. (1)(a) When the defendant’s fitness to proceed is drawn in ques-  
12 tion, the issue shall be determined by the court.

13 “(b) If neither the prosecuting attorney nor counsel for the defendant  
14 contests the finding of the report filed under ORS 161.365, the court may  
15 make the determination on the basis of the report. If the finding is contested,  
16 the court shall hold a hearing on the issue. If the report is received in evi-  
17 dence in the hearing, the party who contests the finding has the right to  
18 summon and to cross-examine any certified evaluator who submitted the re-  
19 port and to offer evidence upon the issue. Other evidence regarding the  
20 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,  
22 the criminal proceeding against the defendant shall be suspended and the  
23 court shall proceed in accordance with this subsection.

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

30 “(c) If the parties agree as to the appropriate action under this section,

1 the court may, after making all findings required by law, enter any order  
2 authorized by this section. If the parties do not agree as to the appropriate  
3 action, the court and the parties shall, at a hearing, consider an appropriate  
4 action in the case, and the court shall make a determination and enter an  
5 order necessary to implement the action. In determining the appropriate  
6 action, the court shall consider the primary and secondary release criteria  
7 as defined in ORS 135.230, the least restrictive option appropriate for the  
8 defendant, the needs of the defendant and the interests of justice. Actions  
9 may include but are not limited to:

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

12 “**(B) An order to participate in in-custody restoration services, if**  
13 **such services are available and appropriate and the most serious**  
14 **charge in the charging instrument is a felony;**

15 “[*B*)] (C) An order to engage in community restoration services, as re-  
16 commended by the community mental health program director or designee,  
17 under subsection (6) of this section;

18 “[*C*)] (D) Commencement of a civil commitment proceeding under ORS  
19 426.070 to 426.170, 426.701 or 427.235 to 427.292;

20 “[*D*)] (E) Commencement of protective proceedings under ORS chapter  
21 125; or

22 “[*E*)] (F) Dismissal of the charges pursuant to ORS 135.755 and in ac-  
23 cordance with ORS 161.367 (6).

24 “(d) If the court, while considering or ordering an appropriate action un-  
25 der this subsection, does not order the defendant committed to a state mental  
26 hospital or other facility, but finds that **neither** appropriate community  
27 restoration services **or in-custody restoration services** are [*not*] present  
28 and available [*in the community*], for any defendant remaining in custody  
29 **without receiving treatment services** after such determination, the court  
30 shall set a review hearing seven days from the date of the determination

1 under paragraph (a) of this subsection. At the review hearing, the court shall  
2 consider all relevant information and determine if commitment to the state  
3 mental hospital or other facility is appropriate under subsection (3) or (4)  
4 of this section, or if another action described in paragraph (c) of this sub-  
5 section is appropriate. At the conclusion of the hearing the court shall enter  
6 an order in accordance with the defendant's constitutional rights to due  
7 process.

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

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

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

25 “**(B) Appropriate in-custody restoration services are not present and**  
26 **available; and**

27 “[*(B)*] **(C)** Based on the findings resulting from a consultation described  
28 in ORS 161.365 (1), if applicable, from any information provided by  
29 community-based mental health providers or any other sources, and primary  
30 and secondary release criteria as defined in ORS 135.230, the appropriate

community restoration services are not present and available in the community.

“(b) If the defendant is committed under this subsection, **or is ordered to participate in in-custody restoration services under subsection (2)(c) of this section**, the community mental health program director, or director’s designee, shall at regular intervals, during any period of commitment **of in-custody restoration**, review available community restoration services and maintain communication with the defendant and the superintendent of the state mental hospital or director of the facility in order to facilitate an efficient transition to treatment in the community when ordered.

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

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

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

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

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

“(i) The defendant needs a hospital level of care due to the acuity of the

1 symptoms of the defendant's qualifying mental disorder;

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

3       “(iii) The appropriate community restoration services are not present and  
4 available in the community.

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

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

12       “(B) Has not received a recommendation from the community mental  
13 health program director or designee concerning whether appropriate com-  
14 munity restoration services are present and available in the community, the  
15 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  
17 this subsection, the court shall proceed in accordance with subsection (2)(c)  
18 of this section to determine and order an appropriate action other than  
19 commitment.

20       “(d) If the defendant is committed under this subsection, the community  
21 mental health program director, or director's designee, shall at regular in-  
22 tervals, during any period of commitment, review available community res-  
23 toration services and maintain communication with the defendant and the  
24 superintendent of the state mental hospital or director of the facility in order  
25 to facilitate an efficient transition to treatment in the community when or-  
26 dered.

27       “(5) If the most serious offense in the charging instrument is a violation,  
28 the court may not commit the defendant to the custody of the superintendent  
29 of a state mental hospital or director of a facility designated by the Oregon  
30 Health Authority if the defendant is at least 18 years of age, or to the cus-

1 tody of the director of a secure intensive community inpatient facility des-  
2 ignated by the authority if the defendant is under 18 years of age.

3 “(6)(a) If the court does not order the commitment of the defendant under  
4 subsection (3) or (4) of this section, if commitment is precluded under sub-  
5 section (5) of this section, **if the court does not order the defendant to**  
6 **participate in in-custody restoration services under subsection (2)(c)**  
7 **of this section** or if the court determines that care other than commitment  
8 **or participation in in-custody restoration services** would better serve the  
9 defendant and the community, the court shall release the defendant, pursuant  
10 to an order that the defendant engage in community restoration services,  
11 until the defendant has gained or regained fitness to proceed, or until the  
12 court finds there is no substantial probability that the defendant will, within  
13 the foreseeable future, gain or regain fitness to proceed. The court may not  
14 order the defendant to engage in community restoration services in another  
15 county without permission from the other county.

16 “(b) The court may order a community mental health program director  
17 coordinating the defendant’s treatment in the community to provide the  
18 court with status reports on the defendant’s progress in gaining or regaining  
19 fitness to proceed. The director shall provide a status report if the defendant  
20 is not complying with court-ordered restoration services.

21 “(c) A community mental health program director coordinating the  
22 defendant’s treatment in the community shall notify the court if the defend-  
23 ant gains or regains fitness to proceed. The notice shall be filed with the  
24 court and may be filed electronically. The clerk of the court shall cause  
25 copies of the notice to be delivered to both the district attorney and the  
26 counsel for the defendant.

27 “(d) When a defendant is ordered to engage in community restoration  
28 services under this subsection, the court may place conditions that the court  
29 deems appropriate on the release, including the requirement that the de-  
30 fendant regularly report to a state mental hospital or a certified evaluator



1 for examination to determine if the defendant has gained or regained fitness  
2 to proceed.

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

6 **“SECTION 3.** ORS 161.371 is amended to read:

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

15 “(a) Immediately notify the [*committing*] court if the defendant, at any  
16 time, gains or regains fitness to proceed or if there is no substantial proba-  
17 bility that, within the foreseeable future, the defendant will gain or regain  
18 fitness to proceed.

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

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

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

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

29 “(c) Notify the court if court-ordered involuntary medication is necessary  
30 for the defendant to gain or regain fitness to proceed and, if appropriate,

1 submit a report to the court under ORS 161.372.

2 “(2)(a) If the superintendent of the state mental hospital, or director of  
3 the facility to which the defendant is committed **or in which the defendant**  
4 **is receiving in-custody restoration services, or the superintendent’s**  
5 **or director’s designee**, determines that there is a substantial probability  
6 that, in the foreseeable future, the defendant will gain or regain fitness to  
7 proceed, unless the court otherwise orders, the defendant shall remain in the  
8 superintendent’s or director’s custody where the defendant shall receive  
9 treatment designed for the purpose of enabling the defendant to gain or re-  
10 gain fitness to proceed. In keeping with the notice requirement under sub-  
11 section (1)(b) of this section, the superintendent, [*or*] director **or designee**  
12 shall, for the duration of the defendant’s period of commitment **or in-**  
13 **custody restoration**, submit a progress report to the [*committing*] court,  
14 concerning the defendant’s fitness to proceed, at least once every 180 days  
15 as measured from the date of the defendant’s delivery into the  
16 superintendent’s or director’s custody.

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

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

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

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

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

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

7 “(b) Notwithstanding subsection (2) of this section, if the most serious  
8 offense in the charging instrument is a felony, and the community mental  
9 health program director determines that community restoration services that  
10 would mitigate any risk posed by the defendant are present and available in  
11 the community, the community mental health program director may file no-  
12 tice of the determination with the court. Upon receipt of the notice, the  
13 court shall order that the superintendent of the state mental hospital or di-  
14 rector of the facility to which the defendant is committed, within five judi-  
15 cial days:

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

20 “(B) Provide the court and the parties with recommendations from the  
21 evaluation.

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

26 “(A) If, after consideration of the factors and possible actions described  
27 in ORS 161.370 (2)(c) and any recommendations received under paragraph (a)  
28 or (b) of this subsection, the court determines that a hospital level of care  
29 is necessary due to public safety concerns or the acuity of symptoms of the  
30 defendant’s qualifying mental disorder, and that based on the consultation

1 or evaluation described in paragraph (a) or (b) of this subsection, any infor-  
2 mation provided by community-based mental health providers or any other  
3 sources, primary and secondary release criteria as defined in ORS 135.230,  
4 and any other information the court finds to be trustworthy and reliable, the  
5 appropriate community restoration services are not present and available in  
6 the community, the court may continue the commitment of the defendant.

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

14 “(4)(a) Notwithstanding subsection (2) of this section, if the most serious  
15 offense in the charging instrument is a misdemeanor, and the superintendent  
16 of the state mental hospital or director of the facility to which the defendant  
17 is committed determines that the defendant no longer needs a hospital level  
18 of care due to the acuity of symptoms of the defendant’s qualifying mental  
19 disorder or there are not present public safety concerns, the superintendent  
20 or director shall file notice of the determination with the court, along with  
21 recommendations regarding the necessary community restoration services  
22 that would mitigate any risk presented by the defendant. Upon receipt of the  
23 notice, the court shall order that a community mental health program di-  
24 rector or the director’s designee, within five judicial days:

25 “(A) Consult with the defendant and with any local entity that would be  
26 responsible for providing community restoration services, if the defendant  
27 were to be released in the community, to determine whether appropriate  
28 community restoration services are present and available in the community;  
29 and

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

1 consultation.

2 “(b) Notwithstanding subsection (2) of this section, if the most serious  
3 offense in the charging instrument is a misdemeanor, and the community  
4 mental health program director determines that the community restoration  
5 services that would mitigate any risk posed by the defendant are present and  
6 available in the community, the community mental health program director  
7 may file notice of the determination with the court. Upon receipt of the no-  
8 tice, the court shall order that the superintendent of the state mental hos-  
9 pital or director of the facility to which the defendant is committed, within  
10 five judicial days:

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

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

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

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

30 “(B) If the court does not make the findings described in subparagraph

1 (A) of this paragraph, the court shall terminate the commitment and shall  
2 set a review hearing seven days from the date of the commitment termination  
3 for any defendant remaining in custody. At the review hearing, the court  
4 shall consider all relevant information, determine an appropriate action in  
5 the case as described in ORS 161.370 (2)(c) and enter an order in accordance  
6 with the defendant's constitutional rights to due process.

7 “(5)(a) If a defendant remains committed **or held in custody for in-**  
8 **custody restoration services** under this section, the court shall determine  
9 within a reasonable period of time whether there is a substantial probability  
10 that, in the foreseeable future, the defendant will gain or regain fitness to  
11 proceed. However, regardless of the number of charges with which the de-  
12 fendant is accused, in no event shall the defendant be committed **or held** for  
13 longer than whichever of the following, measured from the defendant's initial  
14 custody date, is shorter:

15 “(A) Three years; or

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

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

20 “(A) The initial custody date is the date on which the defendant is first  
21 committed **or held in custody for in-custody restoration services** under  
22 this section on any charge alleged in the accusatory instrument; and

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

25 “(i) For each day the defendant is committed **or held in custody for**  
26 **in-custody restoration services** under this section, whether the days are  
27 consecutive or are interrupted by a period of time during which the defend-  
28 ant has gained or regained fitness to proceed; and

29 “(ii) Unless the defendant is charged on any charging instrument with  
30 aggravated murder or a crime listed in ORS 137.700 (2), for each day the

1 defendant is held in jail before and after the date the defendant is first  
2 committed **or held in custody for in-custody restoration services**,  
3 whether the days are consecutive or are interrupted by a period of time  
4 during which the defendant lacks fitness to proceed.

5 “(c) The superintendent of the state mental hospital, or director of the  
6 facility to which the defendant is committed **or in which the defendant is**  
7 **receiving in-custody restoration services**, shall notify the [committing]  
8 court of the defendant’s impending discharge 30 days before the date on  
9 which the superintendent or director is required to discharge the defendant  
10 under this subsection.

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

15 “(b) When the [committing] court receives a notice from the superinten-  
16 dent or director under subsection (1) of this section concerning the  
17 defendant’s progress or lack thereof, or under subsection (5) of this section  
18 concerning the defendant’s impending discharge, the [committing] court shall  
19 determine, after a hearing if a hearing is requested, whether the defendant  
20 presently has fitness to proceed.

21 “(7) If at any time the court determines that the defendant lacks fitness  
22 to proceed, the court shall further determine whether the defendant is enti-  
23 tled to discharge under subsection (5) of this section. If the court determines  
24 that the defendant is entitled to discharge under subsection (5) of this sec-  
25 tion, the court shall dismiss, without prejudice and in accordance with ORS  
26 161.367 (6), all charges against the defendant and:

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

28 “(b) Initiate commitment proceedings under ORS 426.070, 426.701 or  
29 427.235 to 427.292.

30 **“SECTION 4. (1) The Oregon Health Authority shall by rule estab-**

1   lish standards for in-custody restoration programs located in local  
2   correctional facilities.

3       “(2) A local correctional facility may establish an in-custody resto-  
4   ration program subject to the standards described in subsection (1) of  
5   this section.

6       “(3) As used in this section, ‘local correctional facility’ means a  
7   local correctional facility as defined in ORS 169.005 or a regional  
8   correctional facility as defined in ORS 169.620.”.

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