

HB 2481-5
(LC 2836)
4/23/25 (JLM/ps)

Requested by JOINT COMMITTEE ON ADDICTION AND COMMUNITY SAFETY RESPONSE (at
the request of Judicial Department)

**PROPOSED AMENDMENTS TO
HOUSE BILL 2481**

1 In line 2 of the printed bill, after “health” insert “; creating new pro-
2 visions; and amending ORS 161.371”.

3 Delete lines 4 through 8 and insert:

4 **“SECTION 1.** ORS 161.371 is amended to read:

5 “161.371. (1) The superintendent of a state mental hospital or director of
6 a facility to which the defendant is committed under ORS 161.370 shall cause
7 the defendant to be evaluated within 60 days from the defendant’s delivery
8 into the superintendent’s or director’s custody, for the purpose of determin-
9 ing whether there is a substantial probability that, in the foreseeable future,
10 the defendant will have fitness to proceed. In addition, the superintendent
11 or director shall:

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

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

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

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

21 “(C) There is a substantial probability that, in the foreseeable future, the

1 defendant will gain or regain fitness to proceed. If the probability exists, the
2 superintendent or director shall give the court an estimate of the time in
3 which the defendant, with appropriate treatment, is expected to gain or re-
4 gain fitness to proceed.

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

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

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

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

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

25 “(3)(a) Notwithstanding subsection (2) of this section, if the most serious
26 offense in the charging instrument is a felony, and the superintendent of the
27 state mental hospital or director of the facility to which the defendant is
28 committed determines that a hospital level of care is no longer necessary due
29 to present public safety concerns and the acuity of symptoms of the
30 defendant’s qualifying mental disorder, the superintendent or director *[may*

1 *file notice of the determination with the court. Upon receipt of the notice, the*
2 *court shall order that a community mental health program director or the*
3 *director's designee, within five judicial days:] shall notify the community*
4 **mental health program director, or the director's designee, of the de-**
5 **termination.**

6 *"[(A) Consult with the defendant and with any local entity that would be*
7 *responsible for providing community restoration services, if the defendant were*
8 *to be released in the community, to determine whether community restoration*
9 *services are present and available in the community; and]*

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

12 *"[(b) Notwithstanding subsection (2) of this section, if the most serious of-*
13 *fense in the charging instrument is a felony, and the community mental health*
14 *program director determines that community restoration services that would*
15 *mitigate any risk posed by the defendant are present and available in the*
16 *community, the community mental health program director may file notice of*
17 *the determination with the court. Upon receipt of the notice, the court shall*
18 *order that the superintendent of the state mental hospital or director of the*
19 *facility to which the defendant is committed, within five judicial days:]*

20 *"[(A) Evaluate the defendant to determine whether a hospital level of care*
21 *is no longer necessary due to present public safety concerns, or no longer nec-*
22 *essary due to the acuity of symptoms of the defendant's qualifying mental*
23 *disorder; and]*

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

26 **"(b) Within 10 judicial days of receiving the notification described**
27 **in paragraph (a) of this subsection, the community mental health**
28 **program director shall consult with the defendant and with any local**
29 **entity that would be responsible for providing community restoration**
30 **services, if the defendant were to be released into the community, to**

1 **determine if there is an appropriate placement available in the com-**
2 **munity for the defendant, and shall provide a report on the results of**
3 **the consultation that identifies any specific placement in the commu-**
4 **nity that is appropriate and available for the defendant to the super-**
5 **intendent or director of the facility to which the defendant is**
6 **committed.**

7 **“(c) If, based on the report described in paragraph (b) of this sub-**
8 **section, the superintendent or the director of the facility to which the**
9 **defendant is committed determines that placement is appropriate and**
10 **available in the community to meet the care needs of the defendant,**
11 **the superintendent or director:**

12 **“(A) May coordinate with the community mental health program**
13 **director to secure any required referrals to the placement; and**

14 **“(B) Upon the defendant’s acceptance into the placement, shall file**
15 **notice of the determination, the placement acceptance and any rec-**
16 **ommendations with the court, and provide a copy of the notice to the**
17 **parties.**

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

22 **“(A) If, after consideration of the factors and possible actions described**
23 **in ORS 161.370 (2)(c) and any recommendations received under paragraph [(a)**
24 **or (b)] (c) of this subsection, the court determines that a hospital level of**
25 **care is necessary due to public safety concerns or the acuity of symptoms**
26 **of the defendant’s qualifying mental disorder, and that based on the consul-**
27 **tation or [evaluation] any determination described in [paragraph (a) or**
28 **(b)] paragraphs (a) to (c) of this subsection, any information provided by**
29 **community-based mental health providers or any other sources, primary and**
30 **secondary release criteria as defined in ORS 135.230, and any other infor-**

1 mation the court finds to be trustworthy and reliable, the appropriate com-
2 munity restoration services are not present and available in the community,
3 the court may continue the commitment of the defendant.

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

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

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

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

30 “[*(b) Notwithstanding subsection (2) of this section, if the most serious of-*

1 *fense in the charging instrument is a misdemeanor, and the community mental*
2 *health program director determines that the community restoration services*
3 *that would mitigate any risk posed by the defendant are present and available*
4 *in the community, the community mental health program director may file no-*
5 *tice of the determination with the court. Upon receipt of the notice, the court*
6 *shall order that the superintendent of the state mental hospital or director of*
7 *the facility to which the defendant is committed, within five judicial days:]*

8 *“(A) Evaluate the defendant to determine whether a hospital level of care*
9 *is no longer necessary due to present public safety concerns, or no longer nec-*
10 *essary due to the acuity of symptoms of the defendant’s qualifying mental*
11 *disorder; and]*

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

14 **“(b) Within 10 judicial days of receiving the notification described**
15 **in paragraph (a) of this subsection, the community mental health**
16 **program director shall consult with the defendant and with any local**
17 **entity that would be responsible for providing community restoration**
18 **services, if the defendant were to be released into the community, to**
19 **determine if there is an appropriate placement available in the com-**
20 **munity for the defendant, and shall provide a report on the results of**
21 **the consultation that identifies any specific placement in the commu-**
22 **nity that is appropriate and available for the defendant to the super-**
23 **intendent or director of the facility to which the defendant is**
24 **committed.**

25 **“(c) If, based on the report described in paragraph (b) of this sub-**
26 **section, the superintendent or the director of the facility to which the**
27 **defendant is committed determines that placement is appropriate and**
28 **available in the community to meet the care needs of the defendant,**
29 **the superintendent or director:**

30 **“(A) May coordinate with the community mental health program**

1 **director to secure any required referrals to the placement; and**

2 **“(B) Upon the defendant’s acceptance into the placement, shall file**
3 **notice of the determination, the placement acceptance and any rec-**
4 **ommendations with the court, and provide a copy of the notice to the**
5 **parties.**

6 “[*(c)*] **(d)** Within [10] **five** judicial days of receiving the [*recommendations*
7 *described in paragraph (a) or (b)*] **notice described in paragraph (c)(B)** of
8 this subsection, the court shall hold a hearing to determine an appropriate
9 action in accordance with ORS 161.370 (2)(c) as follows:

10 **“(A)** After consideration of the factors and possible actions described in
11 ORS 161.370 (2)(c), the consultation [*or evaluation*] and any **determinations**
12 **or** recommendations described in [*paragraph (a) or (b)*] **paragraphs (a) to**
13 **(c)** of this subsection, and any other information the court finds to be
14 trustworthy and reliable, the court may continue the commitment of the de-
15 fendant if the court makes written findings that a hospital level of care is
16 necessary due to public safety concerns and the acuity of symptoms of the
17 defendant’s qualifying mental disorder, and that appropriate community res-
18 toration services are not present and available in the community.

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

26 **“(5)(a)** If a defendant remains committed under this section, the court
27 shall determine within a reasonable period of time whether there is a sub-
28 stantial probability that, in the foreseeable future, the defendant will gain
29 or regain fitness to proceed. However, regardless of the number of charges
30 with which the defendant is accused, in no event shall the defendant be

1 committed for longer than whichever of the following, measured from the
2 defendant's initial custody date, is shorter:

3 “(A) Three years; or

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

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

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

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

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

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

21 “(c) The superintendent of the state mental hospital or director of the
22 facility to which the defendant is committed shall notify the committing
23 court of the defendant's impending discharge 30 days before the date on
24 which the superintendent or director is required to discharge the defendant
25 under this subsection.

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

30 “(b) When the committing court receives a notice from the superintendent

1 or director under subsection (1) of this section concerning the defendant's
2 progress or lack thereof, or under subsection (5) of this section concerning
3 the defendant's impending discharge, the committing court shall determine,
4 after a hearing if a hearing is requested, whether the defendant presently
5 has fitness to proceed.

6 “(7) If at any time the court determines that the defendant lacks fitness
7 to proceed, the court shall further determine whether the defendant is enti-
8 tled to discharge under subsection (5) of this section. If the court determines
9 that the defendant is entitled to discharge under subsection (5) of this sec-
10 tion, the court shall dismiss, without prejudice and in accordance with ORS
11 161.367 (6), all charges against the defendant and:

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

13 “(b) Initiate commitment proceedings under ORS 426.070, 426.701 or
14 427.235 to 427.292.

15 **“SECTION 2.** ORS 161.371, as amended by section 1 of this 2025 Act, is
16 amended to read:

17 “161.371. (1) The superintendent of a state mental hospital or director of
18 a facility to which the defendant is committed under ORS 161.370 shall cause
19 the defendant to be evaluated within 60 days from the defendant's delivery
20 into the superintendent's or director's custody, for the purpose of determin-
21 ing whether there is a substantial probability that, in the foreseeable future,
22 the defendant will have fitness to proceed. In addition, the superintendent
23 or director shall:

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

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

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

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

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

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

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

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

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

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

28 “(3)(a) Notwithstanding subsection (2) of this section, if the most serious
29 offense in the charging instrument is a felony, and the superintendent of the
30 state mental hospital or director of the facility to which the defendant is

1 committed determines that a hospital level of care is no longer necessary due
2 to present public safety concerns and the acuity of symptoms of the
3 defendant's qualifying mental disorder, the superintendent or director [*shall*
4 *notify the community mental health program director, or the director's*
5 *designee, of the determination.*] **may file notice of the determination with**
6 **the court. Upon receipt of the notice, the court shall order that a**
7 **community mental health program director or the director's designee,**
8 **within five judicial days:**

9 “[(b) *Within 10 judicial days of receiving the notification described in*
10 *paragraph (a) of this subsection, the community mental health program direc-*
11 *tor shall consult with the defendant and with any local entity that would be*
12 *responsible for providing community restoration services, if the defendant were*
13 *to be released into the community, to determine if there is an appropriate*
14 *placement available in the community for the defendant, and shall provide a*
15 *report on the results of the consultation that identifies any specific placement*
16 *in the community that is appropriate and available for the defendant to the*
17 *superintendent or director of the facility to which the defendant is*
18 *committed.*]

19 “[(c) *If, based on the report described in paragraph (b) of this subsection,*
20 *the superintendent or the director of the facility to which the defendant is*
21 *committed determines that placement is appropriate and available in the com-*
22 *munity to meet the care needs of the defendant, the superintendent or*
23 *director:*]

24 “[*(A) May coordinate with the community mental health program director*
25 *to secure any required referrals to the placement; and*]

26 “[*(B) Upon the defendant's acceptance into the placement, shall file notice*
27 *of the determination, the placement acceptance and any recommendations with*
28 *the court, and provide a copy of the notice to the parties.*]

29 “**(A) Consult with the defendant and with any local entity that**
30 **would be responsible for providing community restoration services, if**

1 the defendant were to be released in the community, to determine
2 whether community restoration services are present and available in
3 the community; and

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

6 “(b) Notwithstanding subsection (2) of this section, if the most se-
7 rious offense in the charging instrument is a felony, and the commu-
8 nity mental health program director determines that community
9 restoration services that would mitigate any risk posed by the de-
10 fendant are present and available in the community, the community
11 mental health program director may file notice of the determination
12 with the court. Upon receipt of the notice, the court shall order that
13 the superintendent of the state mental hospital or director of the fa-
14 cility to which the defendant is committed, within five judicial days:

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

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

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

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

1 **paragraph (a) or (b)** of this subsection, any information provided by
2 community-based mental health providers or any other sources, primary and
3 secondary release criteria as defined in ORS 135.230, and any other infor-
4 mation the court finds to be trustworthy and reliable, the appropriate com-
5 munity restoration services are not present and available in the community,
6 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 *[notify the community mental health program director, or the*
21 *director’s designee, of the determination.]* **file notice of the determination**
22 **with the court, along with recommendations regarding the necessary**
23 **community restoration services that would mitigate any risk pre-**
24 **sented by the defendant. Upon receipt of the notice, the court shall**
25 **order that a community mental health program director or the**
26 **director’s designee, within five judicial days:**

27 “[*(b) Within 10 judicial days of receiving the notification described in*
28 *paragraph (a) of this subsection, the community mental health program direc-*
29 *tor shall consult with the defendant and with any local entity that would be*
30 *responsible for providing community restoration services, if the defendant were*

1 to be released into the community, to determine if there is an appropriate
2 placement available in the community for the defendant, and shall provide a
3 report on the results of the consultation that identifies any specific placement
4 in the community that is appropriate and available for the defendant to the
5 superintendent or director of the facility to which the defendant is
6 committed.]

7 “[(c) If, based on the report described in paragraph (b) of this subsection,
8 the superintendent or the director of the facility to which the defendant is
9 committed determines that placement is appropriate and available in the com-
10 munity to meet the care needs of the defendant, the superintendent or
11 director:]

12 “[(A) May coordinate with the community mental health program director
13 to secure any required referrals to the placement; and]

14 “[(B) Upon the defendant’s acceptance into the placement, shall file notice
15 of the determination, the placement acceptance and any recommendations with
16 the court, and provide a copy of the notice to the parties.]

17 **“(A) Consult with the defendant and with any local entity that**
18 **would be responsible for providing community restoration services, if**
19 **the defendant were to be released in the community, to determine**
20 **whether appropriate community restoration services are present and**
21 **available in the community; and**

22 **“(B) Provide the court and the parties with recommendations from**
23 **the consultation.**

24 **“(b) Notwithstanding subsection (2) of this section, if the most se-**
25 **rious offense in the charging instrument is a misdemeanor, and the**
26 **community mental health program director determines that the com-**
27 **munity restoration services that would mitigate any risk posed by the**
28 **defendant are present and available in the community, the community**
29 **mental health program director may file notice of the determination**
30 **with the court. Upon receipt of the notice, the court shall order that**

1 the superintendent of the state mental hospital or director of the fa-
2 cility to which the defendant is committed, within five judicial days:

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

7 “(B) Provide the court and the parties with recommendations from
8 the evaluation.

9 “[*(d)*] (c) Within [*five*] 10 judicial days of receiving the [*notice described*
10 *in paragraph (c)(B)*] **recommendations described in paragraph (a) or (b)**
11 of this subsection, the court shall hold a hearing to determine an appropriate
12 action in accordance with ORS 161.370 (2)(c) as follows:

13 “(A) After consideration of the factors and possible actions described in
14 ORS 161.370 (2)(c), the consultation **or evaluation** and any [*determinations*
15 *or*] recommendations described in [*paragraphs (a) to (c)*] **paragraph (a) or**
16 **(b)** of this subsection, and any other information the court finds to be
17 trustworthy and reliable, the court may continue the commitment of the de-
18 fendant if the court makes written findings that a hospital level of care is
19 necessary due to public safety concerns and the acuity of symptoms of the
20 defendant’s qualifying mental disorder, and that appropriate community res-
21 toration services are not present and available in the community.

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

29 “(5)(a) If a defendant remains committed under this section, the court
30 shall determine within a reasonable period of time whether there is a sub-

1 stantial probability that, in the foreseeable future, the defendant will gain
2 or regain fitness to proceed. However, regardless of the number of charges
3 with which the defendant is accused, in no event shall the defendant be
4 committed for longer than whichever of the following, measured from the
5 defendant's initial custody date, is shorter:

6 “(A) Three years; or

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

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

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

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

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

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

24 “(c) The superintendent of the state mental hospital or director of the
25 facility to which the defendant is committed shall notify the committing
26 court of the defendant's impending discharge 30 days before the date on
27 which the superintendent or director is required to discharge the defendant
28 under this subsection.

29 “(6)(a) All notices required under this section shall be filed with the court
30 and may be filed electronically. The clerk of the court shall cause copies of

1 the notices to be delivered to both the district attorney and the counsel for
2 the defendant.

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

9 “(7) If at any time the court determines that the defendant lacks fitness
10 to proceed, the court shall further determine whether the defendant is enti-
11 tled to discharge under subsection (5) of this section. If the court determines
12 that the defendant is entitled to discharge under subsection (5) of this sec-
13 tion, the court shall dismiss, without prejudice and in accordance with ORS
14 161.367 (6), all charges against the defendant and:

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

16 “(b) Initiate commitment proceedings under ORS 426.070, 426.701 or
17 427.235 to 427.292.

18 **“SECTION 3. The amendments to ORS 161.371 by section 2 of this**
19 **2025 Act become operative on July 15, 2027.”.**