

HB 2481-3
(LC 2836)
4/22/25 (JLM/ps)

Requested by JOINT COMMITTEE ON ADDICTION AND COMMUNITY SAFETY RESPONSE (at
the request of Oregon Criminal Defense Lawyers Association)

**PROPOSED AMENDMENTS TO
HOUSE BILL 2481**

1 In line 2 of the printed bill, after “health” insert “; amending ORS
2 161.370”.

3 Delete lines 4 through 8 and insert:

4 **“SECTION 1.** ORS 161.370 is amended to read:

5 *“161.370. [(1)(a) When the defendant’s fitness to proceed is drawn in ques-*
6 *tion, the issue shall be determined by the court.]*

7 *“[(b) If neither the prosecuting attorney nor counsel for the defendant con-*
8 *tests the finding of the report filed under ORS 161.365, the court may make the*
9 *determination on the basis of the report. If the finding is contested, the court*
10 *shall hold a hearing on the issue. If the report is received in evidence in the*
11 *hearing, the party who contests the finding has the right to summon and to*
12 *cross-examine any certified evaluator who submitted the report and to offer*
13 *evidence upon the issue. Other evidence regarding the defendant’s fitness to*
14 *proceed may be introduced by either party.]*

15 **“(1)(a) The court may hear motions related to a defendant’s fitness**
16 **to proceed from either party at any time prior to the imposition of**
17 **sentence. If a defendant has previously been found to lack fitness to**
18 **proceed, either party may move the court to find the defendant fit to**
19 **proceed. After receiving a motion, the defendant’s fitness shall be de-**
20 **termined by the court.**

21 **“(b) If a motion under this subsection is uncontested, the court may**

1 make the determination of fitness based on the motion. If the motion
2 is contested, the party contesting the motion shall file a response
3 stating with particularity the reasons for contesting the motion, and
4 the court shall hold a hearing on the issue.

5 “(c) A contested hearing must be held as soon as practicable. If the
6 defendant is in custody, the hearing must be held within 14 days of the
7 filing of the response. The court may allow additional time for the
8 hearing if good cause is shown that more time is needed to determine
9 the issue of fitness. When determining whether good cause exists, the
10 court shall consider:

11 “(A) The condition of the defendant and whether allowing more
12 time will result in the deterioration of the defendant’s mental or
13 physical condition;

14 “(B) The nature of the charges;

15 “(C) The length of the requested postponement;

16 “(D) Whether the defendant has previously been found unfit to
17 proceed and committed or ordered to participate in restoration treat-
18 ment; and

19 “(E) The strength of the evidence supporting the motion.

20 “(d) The moving party has the burden of proving that the defendant
21 is fit to proceed or lacks fitness to proceed, as applicable, by a pre-
22 ponderance of the evidence.

23 “(e) Either party may call and cross-examine witnesses at a hearing
24 under this subsection. Notwithstanding ORS 131.045, a witness may
25 appear by simultaneous electronic transmission at the hearing.

26 “(f) ORS 40.450 to 40.475, 40.505, 40.510 and 40.515 do not apply to the
27 following evidence, if offered for the purpose of assisting the court in
28 determining the issue of fitness to proceed under this section:

29 “(A) A report from an examination of the defendant filed with the
30 court under ORS 161.365 or this section for the same defendant in any

1 case;

2 “(B) A discharge summary or focused psychological assessment
3 from the state mental hospital or relating to other psychiatric or
4 psychological treatment for the defendant within the preceding five
5 years;

6 “(C) Records from a civil commitment proceeding under ORS
7 chapter 426 or 427 concerning the defendant from the preceding five
8 years; and

9 “(D) Relevant information on the defendant’s mental health diag-
10 nosis and treatment held or provided by a local supervisory authority,
11 if the defendant is under active supervision.

12 “(g) After the hearing described in this subsection, the court may
13 enter a finding that the defendant is fit to proceed or lacks fitness to
14 proceed, or may request additional information to aid in its determi-
15 nation, including ordering an examination under ORS 161.365 (1)(c).

16 “(h) The failure to contest any issue relating to a fitness to proceed
17 determination under this subsection does not preclude either party
18 from contesting the same issue at a later time.

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

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

28 “(c) If the parties agree as to the appropriate action under this section,
29 the court may, after making all findings required by law, enter any order
30 authorized by this section. If the parties do not agree as to the appropriate

1 action, the court and the parties shall, at a hearing, consider an appropriate
2 action in the case, and the court shall make a determination and enter an
3 order necessary to implement the action. In determining the appropriate
4 action, the court shall consider the primary and secondary release criteria
5 as defined in ORS 135.230, the least restrictive option appropriate for the
6 defendant, the needs of the defendant and the interests of justice. Actions
7 may include but are not limited to:

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

10 “(B) An order to engage in community restoration services, as recom-
11 mended by the community mental health program director or designee, under
12 subsection (6) of this section;

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

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

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

18 “(d) If the court, while considering or ordering an appropriate action un-
19 der this subsection, does not order the defendant committed to a state mental
20 hospital or other facility, but finds that appropriate community restoration
21 services are not present and available in the community, for any defendant
22 remaining in custody after such determination, the court shall set a review
23 hearing seven days from the date of the determination under paragraph (a)
24 of this subsection. At the review hearing, the court shall consider all rele-
25 vant information and determine if commitment to the state mental hospital
26 or other facility is appropriate under subsection (3) or (4) of this section, or
27 if another action described in paragraph (c) of this subsection is appropriate.
28 At the conclusion of the hearing the court shall enter an order in accordance
29 with the defendant’s constitutional rights to due process.

30 “(e) If the court determines that the appropriate action in the case is an

1 order for the defendant to engage in community restoration services, but the
2 defendant has a pending criminal case, warrant or hold in one or more other
3 jurisdictions, the other jurisdictions shall, within two judicial days of be-
4 coming aware of the proceeding under this section, communicate with the
5 court and the other jurisdictions, if applicable, to develop a plan to address
6 the interests of all jurisdictions in the defendant in a timely manner.

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

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

17 “(B) Based on the findings resulting from a consultation described in ORS
18 161.365 (1), if applicable, from any information provided by community-based
19 mental health providers or any other sources, and primary and secondary
20 release criteria as defined in ORS 135.230, the appropriate community resto-
21 ration services are not present and available in the community.

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

29 “(c) If the court does not order the commitment of the defendant under
30 this subsection, the court shall proceed in accordance with subsection (2)(c)

1 of this section to determine and order an appropriate action other than
2 commitment.

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

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

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

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

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

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

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

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

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

30 “(B) Has not received a recommendation from the community mental

1 health program director or designee concerning whether appropriate com-
2 munity restoration services are present and available in the community, the
3 court shall order the director or designee to make such a recommendation.

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

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

15 “(5) If the most serious offense in the charging instrument is a violation,
16 the court may not 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 igned by the authority if the defendant is under 18 years of age.

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

1 from the other county.

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

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

13 “(d) When a defendant is ordered to engage in community restoration
14 services under this subsection, the court may place conditions that the court
15 deems appropriate on the release, including the requirement that the de-
16 fendant regularly report to a state mental hospital or a certified evaluator
17 for examination to determine if the defendant has gained or regained fitness
18 to proceed.

19 “(7) The Oregon Health Authority shall establish by rule standards for
20 the recommendation provided to the court described in subsection (2) of this
21 section.”.

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