

**CONFERENCE COMMITTEE AMENDMENTS TO
B-ENGROSSED SENATE BILL 24
(INCLUDING AMENDMENTS TO RESOLVE CONFLICTS)**

June 19

Amended Summary

Modifies procedures related to criminal defendants lacking fitness to proceed.

Provides that when defendant is committed to state mental hospital or other facility for examination on issue of fitness to proceed, examination may include period of observation. Provides that committed defendant be transported to hospital or facility for examination, after which superintendent of hospital or director of facility may return defendant to facility from which defendant was transported, or inform court and parties that defendant requires hospital level of care and request that defendant remain at facility pending fitness to proceed order.

Authorizes report concerning defendant's fitness to proceed to be provided to community mental health program director of county in which defendant is charged and county of defendant's last known residence. Restricts availability and use of report. Authorizes court to enter order concerning fitness to proceed, without hearing, based on report from examination if both parties consent.

Requires court to receive and consider certain input from community mental health program director or director's designee, and any entity responsible for supervising defendant upon release, after court finds defendant lacks fitness to proceed. Directs court and parties to at hearing determine appropriate action in case. Directs court to consider certain criteria and enter order necessary to implement action. **Requires court to make three specified findings before committing defendant to state mental hospital or other facility.** Requires review hearing *[after 14]* every seven days for **certain** defendants *[not requiring]* **lacking fitness to proceed who do not require** hospital level of care **and** who remain in custody **following fitness determination.**

Modifies procedures when court receives notice that committed defendant is no longer danger to self or others, **that defendant no longer requires hospital level of care**, or that resources to treat defendant are available in community. **Requires review hearing every seven days when court terminates commitment but defendant remains in custody.**

Prohibits court from committing defendant lacking fitness to proceed to state mental hospital or other facility when defendant charged only with violation offenses. Restricts circumstances in which court may commit defendant *[lacking fitness to proceed to state mental hospital or other facility when defendant is]* charged only with *[misdemeanor or violation]* **misdemeanor offenses.**

Provides that defendant committed for treatment to restore fitness to proceed receive credit for time served in jail both before and after commitment.

Authorizes treatment, as permitted by law, when defendant committed for purposes of conducting examination on issue of mental defense. Restricts availability and use of report resulting from examination.

Declares emergency, effective on passage.

President Courtney:

Your Conference Committee to whom was referred B-engrossed Senate Bill 24, having had the same under consideration, respectfully reports it back with the recommendation that the Senate concur in the House amendments dated May 30 and that the bill be amended as follows and re-passed.

1 On page 5 of the printed B-engrossed bill, delete lines 42 through 45 and delete pages 6 through
2 15 and insert:

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

4 “161.370. (1)(a) When the defendant's fitness to proceed is drawn in question, the issue shall be
5 determined by the court.

6 “(b) If neither the prosecuting attorney nor counsel for the defendant contests the finding of the

1 report filed under ORS 161.365, the court may make the determination on the basis of the report.
2 If the finding is contested, the court shall hold a hearing on the issue. If the report is received in
3 evidence in the hearing, the party who contests the finding has the right to summon and to cross-
4 examine any psychiatrist or psychologist who submitted the report and to offer evidence upon the
5 issue. Other evidence regarding the defendant's fitness to proceed may be introduced by either
6 party.

7 **“(2)(a) If the court determines that the defendant lacks fitness to proceed, the criminal pro-
8 ceeding against the defendant shall be suspended and[:] the court shall, at a hearing, proceed in
9 accordance with this subsection.**

10 **“(b) After making the determination under paragraph (a) of this subsection, the court
11 shall receive a recommendation, to be considered at the hearing, from a community mental
12 health program director or the director's designee, and from any local entity that would be
13 responsible for supervising the defendant if the defendant were to be released in the com-
14 munity, concerning whether services and supervision necessary to safely allow the defendant
15 to gain or regain fitness to proceed are available in the community.**

16 **“(c) The court and the parties shall at the hearing determine an appropriate action in the
17 case, and the court shall enter an order necessary to implement the action. In determining
18 the appropriate action, the court shall consider the primary and secondary release criteria
19 as defined in ORS 135.230, the least restrictive option appropriate for the defendant, the
20 needs of the defendant and the interests of justice. Actions may include but are not limited
21 to:**

22 **“(A) Commitment for the defendant to gain or regain fitness to proceed under subsection
23 (3) or (5) of this section;**

24 **“(B) Community restoration as recommended by the community mental health program
25 director or designee;**

26 **“(C) Release on supervision;**

27 **“(D) Commencement of a civil commitment proceeding under ORS 426.070 to 426.170,
28 426.701 or 427.235 to 427.290;**

29 **“(E) Commencement of protective proceedings under ORS chapter 125; or**

30 **“(F) Dismissal of the charges pursuant to ORS 135.755.**

31 **“(d) If the court, while considering or ordering an appropriate action under this sub-
32 section, determines that the defendant does not require a hospital level of care due to the
33 defendant's dangerousness and the acuity of symptoms of the defendant's qualifying mental
34 disorder, but that services and supervision necessary to safely allow the defendant to gain
35 or regain fitness to proceed are not available in the community, for any defendant remaining
36 in custody after such determination, the court shall set a review hearing seven days from
37 the date of the determination under paragraph (a) of this subsection. At the review hearing,
38 the court shall consider all relevant information and determine an appropriate action in the
39 case as described in paragraph (c) of this subsection. If the defendant remains in custody
40 following the initial review hearing, the court shall hold further review hearings every seven
41 days thereafter until the defendant is no longer in custody.**

42 **“[(a)] (3)(a) Unless the court orders an action other than commitment under subsection
43 (2) of this section, and except as otherwise provided in subsections (4) and (5) of this section,
44 if the court finds that the defendant is dangerous to self or others as a result of a qualifying mental
45 disorder, [or] that a hospital level of care is necessary due to the defendant's dangerousness**

1 **and the acuity of symptoms of the defendant's qualifying mental disorder, and** that, based on
2 the findings resulting from the consultation described in ORS 161.365 (1) **and from any information**
3 **provided by community-based mental health providers or any other sources,** the services and
4 supervision necessary to *restore* **allow** the *defendant's* **defendant to gain or regain** fitness to
5 proceed are not available in the community, the court shall commit the defendant to the custody
6 of the superintendent of a state mental hospital or director of a facility[,] designated by the Oregon
7 Health Authority[,] if the defendant is at least 18 years of age, or to the custody of the director of
8 a secure intensive community inpatient facility designated by the authority if the defendant is under
9 18 years of age[; or].

10 **“(b) If the defendant is committed under this subsection, the community mental health**
11 **program director shall at regular intervals, during any period of commitment, review avail-**
12 **able community resources and maintain communication with the defendant and the super-**
13 **intendent of the state mental hospital or director of the facility in order to facilitate an**
14 **efficient transition to treatment in the community when ordered.**

15 *“(b) (4)(a) If the court does not make a finding described in [paragraph (a) of this subsection,]*
16 **subsection (3) of this section, if commitment is precluded under subsection (5) of this section**
17 **or if the court determines that care other than commitment for incapacity to stand trial would bet-**
18 **ter serve the defendant and the community, the court shall release the defendant on supervision for**
19 **as long as the unfitness endures.**

20 **“(b) The court may order a community mental health program director providing treat-**
21 **ment to the defendant in the community to provide the court with status reports on the**
22 **defendant's progress in gaining or regaining fitness to proceed.**

23 **“(c) A community mental health program director providing treatment to the defendant**
24 **in the community shall notify the court if the defendant gains or regains fitness to proceed.**

25 **“(5)(a) If the most serious offense in the charging instrument is a violation, the court**
26 **may not commit the defendant under subsection (3) of this section.**

27 **“(b) If the most serious offense in the charging instrument is a misdemeanor, the court**
28 **may not commit the defendant under subsection (3) of this section unless the finding that**
29 **the defendant requires a hospital level of care due to the defendant's dangerousness and the**
30 **acuity of symptoms of the defendant's qualifying mental disorder is based on a recommen-**
31 **dation by a certified evaluator as defined in ORS 161.309, or a community mental health**
32 **program director or the director's designee, that the defendant requires such level of care.**

33 **“(c) If at the time of determining the appropriate action for the case the court has not**
34 **received a recommendation as to whether the defendant requires a hospital level of care due**
35 **to the defendant's dangerousness and the acuity of symptoms of the defendant's qualifying**
36 **mental disorder, the court shall order a certified evaluator or a community mental health**
37 **program director, or the director's designee, to make such a recommendation.**

38 **“(d) If the court does not order the commitment of a defendant described in this sub-**
39 **section to the state mental hospital or other facility, the court shall hold a hearing in ac-**
40 **cordance with subsection (2)(c) of this section to determine and order an appropriate action**
41 **other than commitment.**

42 *“(3) (6) When a defendant is released on supervision under subsection [(2)(b)] (4) of this sec-*
43 *tion, the court may place conditions that the court deems appropriate on the release, including the*
44 *requirement that the defendant regularly report to the authority or a community mental health*
45 *program for examination to determine if the defendant has gained or regained capacity to stand*

1 trial.

2 “[4] (7) When the court, on its own motion or upon the application of the superintendent of the
3 hospital or director of the facility in which the defendant is committed, a person examining the de-
4 fendant as a condition of release on supervision, or either party, determines, after a hearing, if a
5 hearing is requested, that the defendant has gained or regained fitness to proceed, the criminal
6 proceeding shall be resumed. If, however, the court is of the view that so much time has elapsed
7 since the commitment or release of the defendant on supervision that it would be unjust to resume
8 the criminal proceeding, the court on motion of either party may dismiss the charge and may order
9 the defendant to be discharged or cause a proceeding to be commenced forthwith under ORS 426.070
10 to 426.170, **426.701** or 427.235 to 427.290.

11 “[5] (8) The superintendent of a state hospital or director of a facility to which the defendant
12 is committed shall cause the defendant to be evaluated within 60 days from the defendant’s delivery
13 into the superintendent’s or director’s custody, for the purpose of determining whether there is a
14 substantial probability that, in the foreseeable future, the defendant will have the capacity to stand
15 trial. In addition, the superintendent or director shall:

16 “(a) Immediately notify the committing court if the defendant, at any time, gains or regains the
17 capacity to stand trial or will never have the capacity to stand trial.

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

20 “(A) The defendant has the present capacity to stand trial;

21 “(B) There is no substantial probability that, in the foreseeable future, the defendant will gain
22 or regain the capacity to stand trial; or

23 “(C) There is a substantial probability that, in the foreseeable future, the defendant will gain
24 or regain the capacity to stand trial. If the probability exists, the superintendent or director shall
25 give the court an estimate of the time in which the defendant, with appropriate treatment, is ex-
26 pected to gain or regain capacity.

27 “[6)(a)] (9)(a) If the superintendent or director determines that there is a substantial probability
28 that, in the foreseeable future, the defendant will gain or regain the capacity to stand trial, unless
29 the court otherwise orders, the defendant shall remain in the superintendent’s or director’s custody
30 where the defendant shall receive treatment designed for the purpose of enabling the defendant to
31 gain or regain capacity. In keeping with the notice requirement under subsection [(5)(b)] (8)(b) of
32 this section, the superintendent or director shall, for the duration of the defendant’s period of com-
33 mitment, submit a progress report to the committing court, concerning the defendant’s capacity or
34 incapacity, at least once every 180 days as measured from the date of the defendant’s delivery into
35 the superintendent’s or director’s custody.

36 “(b)(A) Notwithstanding paragraph (a) of this subsection, if the superintendent or director de-
37 termines that a defendant committed under this section is no longer dangerous to self or others as
38 a result of a qualifying mental disorder, **that a hospital level of care is not necessary due to the**
39 **defendant’s dangerousness and the acuity of symptoms of the defendant’s qualifying mental**
40 **disorder**, or that the services and supervision necessary to [restore] **allow** the [defendant’s] de-
41 **fendant to gain or regain** fitness to proceed are available in the community, the superintendent
42 or director shall file notice of that determination with the court.

43 “(B) Upon receipt of the notice, [the court shall order the person released on supervision as de-
44 scribed in subsection (3) of this section.] **the court shall order that a community mental health**
45 **program director or the director’s designee, within five judicial days:**

1 “(i) Consult with the defendant and with any local entity that would be responsible for
2 supervising the defendant if the defendant were to be released in the community to deter-
3 mine whether services and supervision necessary to safely allow the defendant to gain or
4 regain fitness to proceed are available in the community; and

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

6 “(C) Within 10 judicial days of receiving the recommendations from the consultation, the
7 court shall hold a hearing to determine an appropriate action in accordance with subsection
8 (2)(c) of this section as follows:

9 “(i) If, after consideration of the factors and possible actions described in subsection
10 (2)(c) of this section, and any recommendations from the consultation described in this par-
11 agraph, the court determines that the defendant remains dangerous to self or others as a
12 result of a qualifying mental disorder, a hospital level of care is necessary due to the
13 defendant’s dangerousness and the acuity of symptoms of the defendant’s qualifying mental
14 disorder, and the services and supervision necessary to allow the defendant to gain or regain
15 fitness to proceed are not available in the community, the court may, after making specific
16 findings to that effect, continue the commitment.

17 “(ii) If the court does not make the findings described in sub-subparagraph (i) of this
18 subparagraph, the court shall terminate the commitment and shall set a review hearing
19 seven days from the date of the commitment termination for any defendant remaining in
20 custody. At the review hearing, the court shall consider all relevant information and deter-
21 mine an appropriate action in the case as described in subsection (2)(c) of this section. If the
22 defendant remains in custody following the initial review hearing, the court shall hold fur-
23 ther review hearings every seven days thereafter until the defendant is no longer in custody.

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

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

26 “(B) An evaluation conducted under subsection [(5)] (8) of this section, if the defendant did not
27 receive an examination under ORS 161.365.

28 “[(7)(a)] (10)(a) A defendant who remains committed under subsection [(6)] (9) of this section
29 shall be discharged within a period of time that is reasonable for making a determination concerning
30 whether or not, and when, the defendant may gain or regain capacity. However, regardless of the
31 number of charges with which the defendant is accused, in no event shall the defendant be com-
32 mitted for longer than whichever of the following, measured from the defendant’s initial custody
33 date, is shorter:

34 “(A) Three years; or

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

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

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

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

43 “(i) For each day the defendant is committed under this section, whether the days are consec-
44 utive or are interrupted by a period of time during which the defendant has gained or regained fit-
45 ness to proceed; and

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

5 “[8] (11) The superintendent or director shall notify the committing court of the defendant’s
6 impending discharge 30 days before the date on which the superintendent or director is required to
7 discharge the defendant under subsection [(7)] (10) of this section.

8 “[9] (12) When the committing court receives a notice from the superintendent or director
9 under subsection [(5)] (8) or [(8)] (11) of this section concerning the defendant’s progress or lack
10 thereof, the committing court shall determine, after a hearing, if a hearing is requested, whether the
11 defendant presently has the capacity to stand trial.

12 “[10] (13) If at any time the court determines that the defendant lacks the capacity to stand
13 trial, the court shall further determine whether there is a substantial probability that the defendant,
14 in the foreseeable future, will gain or regain the capacity to stand trial and whether the defendant
15 is entitled to discharge under subsection [(7)] (10) of this section. If the court determines that there
16 is no substantial probability that the defendant, in the foreseeable future, will gain or regain the
17 capacity to stand trial or that the defendant is entitled to discharge under subsection [(7)] (10) of
18 this section, the court shall dismiss, without prejudice, all charges against the defendant and:

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

20 “(b) Initiate commitment proceedings under ORS 426.070 or 427.235 to 427.290.

21 “[11] (14) All notices required under this section shall be filed with the clerk of the court and
22 delivered to both the district attorney and the counsel for the defendant.

23 “[12] (15) If the defendant gains or regains fitness to proceed, the term of any sentence re-
24 ceived by the defendant for conviction of the crime charged shall be reduced by the amount of time
25 the defendant was committed under this section to the custody of a state mental hospital, or to the
26 custody of a secure intensive community inpatient facility[,] designated by the Oregon Health Au-
27 thority.

28 “[13] (16) Notwithstanding the suspension of the criminal proceeding under subsection (2) of
29 this section, the fact that the defendant is unfit to proceed does not preclude any objection through
30 counsel and without the personal participation of the defendant on the grounds that the indictment
31 is insufficient, that the statute of limitations has run, that double jeopardy principles apply or upon
32 any other ground at the discretion of the court which the court deems susceptible of fair determi-
33 nation prior to trial.

34 “[14] (17) At the time that the court determines that the defendant lacks fitness to proceed
35 under subsection (2) of this section, the court shall notify the defendant that federal law prohibits
36 the defendant from purchasing or possessing a firearm unless the person obtains relief from the
37 prohibition under federal law. The court shall again notify the defendant of the prohibition if the
38 court finds that the defendant has gained or regained fitness to proceed under subsection [(4)] (7)
39 of this section.

40 “(18)(a) **The entity or evaluator conducting an examination of a defendant under this**
41 **section shall provide a copy of any report described in this section to the community mental**
42 **health program director or designee in:**

43 “(A) **The county in which the defendant is charged; and**

44 “(B) **The county of the defendant’s last known residence.**

45 “(b) **Reports prepared under this section are confidential and may be made available only:**

1 **“(A) To the court, prosecuting attorney, defense attorney, agent of the prosecuting or**
2 **defense attorney, defendant, community mental health program director or designee and any**
3 **facility in which the defendant is housed; or**

4 **“(B) As ordered by a court.**

5 **“(c) Any facility in which a defendant is housed may not use a report prepared under this**
6 **section to support a disciplinary action against the defendant.**

7 **“(d) Nothing in this subsection prohibits the prosecuting attorney, defense attorney or**
8 **agent of the prosecuting or defense attorney from discussing the contents of a report pre-**
9 **pared under this section with witnesses or victims as otherwise permitted by law.**

10 **“(19) Unless the court orders otherwise or either party objects, a defendant committed**
11 **to a state hospital or other facility, or a certified evaluator or other expert witness, may**
12 **attend hearings held under this section via simultaneous electronic transmission.**

13 **“(20) The Oregon Health Authority shall establish by rule standards for the recommen-**
14 **dation provided to the court described in subsection (2) of this section.**

15 **“SECTION 2a. If Senate Bill 25 becomes law, section 2 of this 2019 Act (amending ORS**
16 **161.370) is repealed and ORS 161.370, as amended by section 5, chapter 311, Oregon Laws 2019**
17 **(Enrolled Senate Bill 25), is amended to read:**

18 **“161.370. (1)(a) When the defendant’s fitness to proceed is drawn in question, the issue shall be**
19 **determined by the court.**

20 **“(b) If neither the prosecuting attorney nor counsel for the defendant contests the finding of the**
21 **report filed under ORS 161.365, the court may make the determination on the basis of the report.**
22 **If the finding is contested, the court shall hold a hearing on the issue. If the report is received in**
23 **evidence in the hearing, the party who contests the finding has the right to summon and to cross-**
24 **examine any psychiatrist or psychologist who submitted the report and to offer evidence upon the**
25 **issue. Other evidence regarding the defendant’s fitness to proceed may be introduced by either**
26 **party.**

27 **“(2)(a) If the court determines that the defendant lacks fitness to proceed, the criminal pro-**
28 **ceeding against the defendant shall be suspended and[:] the court shall, at a hearing, proceed in**
29 **accordance with this subsection.**

30 **“(b) After making the determination under paragraph (a) of this subsection, the court**
31 **shall receive a recommendation, to be considered at the hearing, from a community mental**
32 **health program director or the director’s designee, and from any local entity that would be**
33 **responsible for supervising the defendant if the defendant were to be released in the com-**
34 **munity, concerning whether services and supervision necessary to safely allow the defendant**
35 **to gain or regain fitness to proceed are available in the community.**

36 **“(c) The court and the parties shall at the hearing determine an appropriate action in the**
37 **case, and the court shall enter an order necessary to implement the action. In determining**
38 **the appropriate action, the court shall consider the primary and secondary release criteria**
39 **as defined in ORS 135.230, the least restrictive option appropriate for the defendant, the**
40 **needs of the defendant and the interests of justice. Actions may include but are not limited**
41 **to:**

42 **“(A) Commitment for the defendant to gain or regain fitness to proceed under subsection**
43 **(3) or (5) of this section;**

44 **“(B) Community restoration as recommended by the community mental health program**
45 **director or designee;**

1 “(C) Release on supervision;

2 “(D) Commencement of a civil commitment proceeding under ORS 426.070 to 426.170,
3 426.701 or 427.235 to 427.290;

4 “(E) Commencement of protective proceedings under ORS chapter 125; or

5 “(F) Dismissal of the charges pursuant to ORS 135.755.

6 “(d) If the court, while considering or ordering an appropriate action under this sub-
7 section, determines that the defendant does not require a hospital level of care due to the
8 defendant’s dangerousness and the acuity of symptoms of the defendant’s qualifying mental
9 disorder, but that services and supervision necessary to safely allow the defendant to gain
10 or regain fitness to proceed are not available in the community, for any defendant remaining
11 in custody after such determination, the court shall set a review hearing seven days from
12 the date of the determination under paragraph (a) of this subsection. At the review hearing,
13 the court shall consider all relevant information and determine an appropriate action in the
14 case as described in paragraph (c) of this subsection. If the defendant remains in custody
15 following the initial review hearing, the court shall hold further review hearings every seven
16 days thereafter until the defendant is no longer in custody.

17 “[(A)] (3)(a) Unless the court orders an action other than commitment under subsection
18 (2) of this section, and except as otherwise provided in subsections (4) and (5) of this section,
19 if the court finds that the defendant is dangerous to self or others as a result of a qualifying mental
20 disorder, [or] that a hospital level of care is necessary due to the defendant’s dangerousness
21 and the acuity of symptoms of the defendant’s qualifying mental disorder, and that, based on
22 the findings resulting from the consultation described in ORS 161.365 (1) and from any information
23 provided by community-based mental health providers or any other sources, the services and
24 supervision necessary to [restore] allow the [defendant’s] defendant to gain or regain fitness to
25 proceed are not available in the community, the court shall commit the defendant to the custody
26 of the superintendent of a state mental hospital or director of a facility[,] designated by the Oregon
27 Health Authority[,] if the defendant is at least 18 years of age, or to the custody of the director of
28 a secure intensive community inpatient facility designated by the authority if the defendant is under
29 18 years of age; or].

30 “(b) If the defendant is committed under this subsection, the community mental health
31 program director shall at regular intervals, during any period of commitment, review avail-
32 able community resources and maintain communication with the defendant and the super-
33 intendent of the state mental hospital or director of the facility in order to facilitate an
34 efficient transition to treatment in the community when ordered.

35 “[(B)] (4)(a) If the court does not make a finding described in [subparagraph (A) of this para-
36 graph,] subsection (3) of this section, if commitment is precluded under subsection (5) of this
37 section or if the court determines that care other than commitment for incapacity to stand trial
38 would better serve the defendant and the community, the court shall release the defendant on
39 supervision for as long as the unfitness endures.

40 “(b) The court may order a community mental health program director providing treat-
41 ment to the defendant in the community to provide the court with status reports on the
42 defendant’s progress in gaining or regaining fitness to proceed.

43 “(c) A community mental health program director providing treatment to the defendant
44 in the community shall notify the court if the defendant gains or regains fitness to proceed.

45 “(5)(a) If the most serious offense in the charging instrument is a violation, the court

1 may not commit the defendant under subsection (3) of this section.

2 “(b) If the most serious offense in the charging instrument is a misdemeanor, the court
3 may not commit the defendant under subsection (3) of this section unless the finding that
4 the defendant requires a hospital level of care due to the defendant’s dangerousness and the
5 acuity of symptoms of the defendant’s qualifying mental disorder is based on a recommen-
6 dation by a certified evaluator as defined in ORS 161.309, or a community mental health
7 program director or the director’s designee, that the defendant requires such level of care.

8 “(c) If at the time of determining the appropriate action for the case the court has not
9 received a recommendation as to whether the defendant requires a hospital level of care due
10 to the defendant’s dangerousness and the acuity of symptoms of the defendant’s qualifying
11 mental disorder, the court shall order a certified evaluator or a community mental health
12 program director, or the director’s designee, to make such a recommendation.

13 “(d) If the court does not order the commitment of a defendant described in this sub-
14 section to the state mental hospital or other facility, the court shall hold a hearing in ac-
15 cordance with subsection (2)(c) of this section to determine and order an appropriate action
16 other than commitment.

17 “[*(b)*] *The court shall ensure that an order entered under this subsection is provided, by the end*
18 *of the next judicial day, to any entity ordered to provide services and supervision necessary to restore*
19 *the defendant’s fitness to proceed.*]

20 “[*(3)*] **(6)** When a defendant is released on supervision under subsection [*(2)(a)(B)*] **(4)** of this
21 section, the court may place conditions that the court deems appropriate on the release, including
22 the requirement that the defendant regularly report to the authority or a community mental health
23 program for examination to determine if the defendant has gained or regained capacity to stand
24 trial.

25 “[*(4)*] **(7)** When the court, on its own motion or upon the application of the superintendent of the
26 hospital or director of the facility in which the defendant is committed, a person examining the de-
27 fendant as a condition of release on supervision, or either party, determines, after a hearing, if a
28 hearing is requested, that the defendant has gained or regained fitness to proceed, the criminal
29 proceeding shall be resumed. If, however, the court is of the view that so much time has elapsed
30 since the commitment or release of the defendant on supervision that it would be unjust to resume
31 the criminal proceeding, the court on motion of either party may dismiss the charge and may order
32 the defendant to be discharged or cause a proceeding to be commenced forthwith under ORS 426.070
33 to 426.170, **426.701** or 427.235 to 427.290.

34 “[*(5)*] **(8)** The superintendent of a state hospital or director of a facility to which the defendant
35 is committed shall cause the defendant to be evaluated within 60 days from the defendant’s delivery
36 into the superintendent’s or director’s custody, for the purpose of determining whether there is a
37 substantial probability that, in the foreseeable future, the defendant will have the capacity to stand
38 trial. In addition, the superintendent or director shall:

39 “(a) Immediately notify the committing court if the defendant, at any time, gains or regains the
40 capacity to stand trial or will never have the capacity to stand trial.

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

43 “(A) The defendant has the present capacity to stand trial;

44 “(B) There is no substantial probability that, in the foreseeable future, the defendant will gain
45 or regain the capacity to stand trial; or

1 “(C) There is a substantial probability that, in the foreseeable future, the defendant will gain
2 or regain the capacity to stand trial. If the probability exists, the superintendent or director shall
3 give the court an estimate of the time in which the defendant, with appropriate treatment, is ex-
4 pected to gain or regain capacity.

5 “[~~(6)(a)~~] **(9)(a)** If the superintendent or director determines that there is a substantial probability
6 that, in the foreseeable future, the defendant will gain or regain the capacity to stand trial, unless
7 the court otherwise orders, the defendant shall remain in the superintendent’s or director’s custody
8 where the defendant shall receive treatment designed for the purpose of enabling the defendant to
9 gain or regain capacity. In keeping with the notice requirement under subsection [~~(5)(b)~~] **(8)(b)** of
10 this section, the superintendent or director shall, for the duration of the defendant’s period of com-
11 mitment, submit a progress report to the committing court, concerning the defendant’s capacity or
12 incapacity, at least once every 180 days as measured from the date of the defendant’s delivery into
13 the superintendent’s or director’s custody.

14 “(b)(A) Notwithstanding paragraph (a) of this subsection, if the superintendent or director de-
15 termines that a defendant committed under this section is no longer dangerous to self or others as
16 a result of a qualifying mental disorder, **that a hospital level of care is not necessary due to the**
17 **defendant’s dangerousness and the acuity of symptoms of the defendant’s qualifying mental**
18 **disorder**, or that the services and supervision necessary to [*restore*] **allow the [defendant’s] de-**
19 **fendant to gain or regain** fitness to proceed are available in the community, the superintendent
20 or director shall file notice of that determination with the court.

21 “(B) Upon receipt of the notice, [*the court shall order the person released on supervision as de-*
22 *scribed in subsection (3) of this section.*] **the court shall order that a community mental health**
23 **program director or the director’s designee, within five judicial days:**

24 “(i) **Consult with the defendant and with any local entity that would be responsible for**
25 **supervising the defendant if the defendant were to be released in the community to deter-**
26 **mine whether services and supervision necessary to safely allow the defendant to gain or**
27 **regain fitness to proceed are available in the community; and**

28 “(ii) **Provide the court and the parties with recommendations from the consultation.**

29 “(C) **Within 10 judicial days of receiving the recommendations from the consultation, the**
30 **court shall hold a hearing to determine an appropriate action in accordance with subsection**
31 **(2)(c) of this section as follows:**

32 “(i) **If, after consideration of the factors and possible actions described in subsection**
33 **(2)(c) of this section, and any recommendations from the consultation described in this par-**
34 **agraph, the court determines that the defendant remains dangerous to self or others as a**
35 **result of a qualifying mental disorder, a hospital level of care is necessary due to the**
36 **defendant’s dangerousness and the acuity of symptoms of the defendant’s qualifying mental**
37 **disorder, and the services and supervision necessary to allow the defendant to gain or regain**
38 **fitness to proceed are not available in the community, the court may, after making specific**
39 **findings to that effect, continue the commitment.**

40 “(ii) **If the court does not make the findings described in sub-subparagraph (i) of this**
41 **subparagraph, the court shall terminate the commitment and shall set a review hearing**
42 **seven days from the date of the commitment termination for any defendant remaining in**
43 **custody. At the review hearing, the court shall consider all relevant information and deter-**
44 **mine an appropriate action in the case as described in subsection (2)(c) of this section. If the**
45 **defendant remains in custody following the initial review hearing, the court shall hold fur-**

1 **ther review hearings every seven days thereafter until the defendant is no longer in custody.**

2 “(c) A progress report described in paragraph (a) of this subsection may consist of an update to:

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

4 “(B) An evaluation conducted under subsection [(5)] (8) of this section, if the defendant did not
5 receive an examination under ORS 161.365.

6 “[(7)(a)] (10)(a) A defendant who remains committed under subsection [(6)] (9) of this section
7 shall be discharged within a period of time that is reasonable for making a determination concerning
8 whether or not, and when, the defendant may gain or regain capacity. However, regardless of the
9 number of charges with which the defendant is accused, in no event shall the defendant be com-
10 mitted for longer than whichever of the following, measured from the defendant’s initial custody
11 date, is shorter:

12 “(A) Three years; or

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

15 “(b) For purposes of calculating the maximum period of commitment described in paragraph (a)
16 of this subsection:

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

19 “(B) The defendant shall be given credit against each charge alleged in the accusatory instru-
20 ment:

21 “(i) For each day the defendant is committed under this section, whether the days are consec-
22 utive or are interrupted by a period of time during which the defendant has gained or regained fit-
23 ness to proceed; and

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

28 “[(8)] (11) The superintendent or director shall notify the committing court of the defendant’s
29 impending discharge 30 days before the date on which the superintendent or director is required to
30 discharge the defendant under subsection [(7)] (10) of this section.

31 “[(9)] (12) When the committing court receives a notice from the superintendent or director
32 under subsection [(5)] (8) or [(8)] (11) of this section concerning the defendant’s progress or lack
33 thereof, the committing court shall determine, after a hearing, if a hearing is requested, whether the
34 defendant presently has the capacity to stand trial.

35 “[(10)] (13) If at any time the court determines that the defendant lacks the capacity to stand
36 trial, the court shall further determine whether there is a substantial probability that the defendant,
37 in the foreseeable future, will gain or regain the capacity to stand trial and whether the defendant
38 is entitled to discharge under subsection [(7)] (10) of this section. If the court determines that there
39 is no substantial probability that the defendant, in the foreseeable future, will gain or regain the
40 capacity to stand trial or that the defendant is entitled to discharge under subsection [(7)] (10) of
41 this section, the court shall dismiss, without prejudice, all charges against the defendant and:

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

43 “(b) Initiate commitment proceedings under ORS 426.070 or 427.235 to 427.290.

44 “[(11)] (14) All notices required under this section shall be filed with the court and may be filed
45 electronically. The clerk of the court shall cause copies of the notices to be delivered to both the

1 district attorney and the counsel for the defendant.

2 “[~~(12)~~] **(15)** If the defendant gains or regains fitness to proceed, the term of any sentence re-
3 ceived by the defendant for conviction of the crime charged shall be reduced by the amount of time
4 the defendant was committed under this section to the custody of a state mental hospital, or to the
5 custody of a secure intensive community inpatient facility[,] designated by the Oregon Health Au-
6 thority.

7 “[~~(13)~~] **(16)** Notwithstanding the suspension of the criminal proceeding under subsection (2) of
8 this section, the fact that the defendant is unfit to proceed does not preclude any objection through
9 counsel and without the personal participation of the defendant on the grounds that the indictment
10 is insufficient, that the statute of limitations has run, that double jeopardy principles apply or upon
11 any other ground at the discretion of the court which the court deems susceptible of fair determi-
12 nation prior to trial.

13 “[~~(14)~~] **(17)** At the time that the court determines that the defendant lacks fitness to proceed
14 under subsection (2) of this section, the court shall notify the defendant that federal law prohibits
15 the defendant from purchasing or possessing a firearm unless the person obtains relief from the
16 prohibition under federal law. The court shall again notify the defendant of the prohibition if the
17 court finds that the defendant has gained or regained fitness to proceed under subsection [~~(4)~~] **(7)**
18 of this section.

19 “[~~(15)(a)~~] *Reports and evaluations conducted under this section are confidential and may be made*
20 *available only:]*

21 “[~~(A)~~] *To the court, prosecuting attorney, defense attorney, defendant, community mental health*
22 *program director or designee and facility in which the defendant is housed; or]*

23 “[~~(B)~~] *As ordered by a court.]*

24 “[~~(b)~~] *A facility in which a defendant is housed may not use a report or evaluation conducted under*
25 *this section to support a disciplinary action against the defendant.]*

26 “**(18)(a) The entity or evaluator conducting an examination of a defendant under this**
27 **section shall provide a copy of any report described in this section to the community mental**
28 **health program director or designee in:**

29 “**(A) The county in which the defendant is charged; and**

30 “**(B) The county of the defendant’s last known residence.**

31 “**(b) Reports prepared under this section are confidential and may be made available only:**

32 “**(A) To the court, prosecuting attorney, defense attorney, agent of the prosecuting or**
33 **defense attorney, defendant, community mental health program director or designee and any**
34 **facility in which the defendant is housed; or**

35 “**(B) As ordered by a court.**

36 “**(c) Any facility in which a defendant is housed may not use a report prepared under this**
37 **section to support a disciplinary action against the defendant.**

38 “**(d) Nothing in this subsection prohibits the prosecuting attorney, defense attorney or**
39 **agent of the prosecuting or defense attorney from discussing the contents of a report pre-**
40 **pared under this section with witnesses or victims as otherwise permitted by law.**

41 “**(19) The court shall ensure that an order entered under this section is provided, by the**
42 **end of the next judicial day, to any entity ordered to provide services and supervision nec-**
43 **essary to restore the defendant’s fitness to proceed.**

44 “**(20) Unless the court orders otherwise or either party objects, a defendant committed**
45 **to a state hospital or other facility, or a certified evaluator or other expert witness, may**

1 **attend hearings held under this section via simultaneous electronic transmission.**

2 **“(21) The Oregon Health Authority shall establish by rule standards for the recommen-**
3 **dation provided to the court described in subsection (2) of this section.”.**

4 On page 16, delete lines 1 through 31.

5 /s/ Floyd Prozanski
6 Senator

7 /s/ Dennis Linthicum
8 Senator

9 /s/ James Manning, Jr.
10 Senator

11 /s/ Jennifer Williamson
12 Representative

13 /s/ Duane Stark
14 Representative

15 /s/ Mitch Greenlick
16 Representative
17 _____
18