

(Including Amendments to Resolve Conflicts)

B-Engrossed Senate Bill 24

Ordered by the House May 30
Including Senate Amendments dated April 19 and House Amendments
dated May 30

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SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Modifies procedures related to criminal defendants lacking fitness to proceed.

Provides that [*order committing*] **when defendant is committed** to state mental hospital or other facility for examination on issue of fitness to proceed, [*may authorize treatment and*] **examination may include period of observation [*prior to examination*]**. 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 [*request amended court order allowing defendant to be kept for further observation and treatment*] **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.**

[*Provides that court-ordered consultation with*] **Requires court to receive and consider certain input from** community mental health program director or director's designee [*occur prior to court's disposition determination and*], **and any entity responsible for supervising defendant upon release**, after court finds defendant lacks fitness to proceed. [*Requires court, upon receipt of findings resulting from consultation, to consider and pursue certain alternative dispositions to commitment.*] **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 review hearing after 14 days for defendants not requiring hospital level of care who remain in custody.**

Modifies procedures when court receives notice that committed defendant is no longer danger to self or others or that resources to treat defendant are available in community.

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.

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, [*and observation prior to examination*] **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.

A BILL FOR AN ACT

1
2 Relating to forensic evaluations; amending ORS 161.315, 161.365 and 161.370; and declaring an
3 emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 161.365 is amended to read:

6 161.365. (1) When the court has reason to doubt the defendant's fitness to proceed by reason of
7 incapacity as described in ORS 161.360, the court may call any witness to its assistance in reaching

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 its decision and shall order that a community mental health program director, or the director's
2 designee, consult with the defendant **and with any local entity that would be responsible for**
3 **supervising the defendant if the defendant were to be released in the community**, to determine
4 whether services and supervision necessary to safely *[restore]* **allow the [defendant's] defendant to**
5 **gain or regain** fitness to proceed are available in the community. After the consultation, the pro-
6 gram director or the director's designee shall provide to the court a copy of the findings resulting
7 from the consultation. If the court determines the assistance of a psychiatrist or psychologist would
8 be helpful, the court may:

9 (a) Order that a psychiatric or psychological examination of the defendant be conducted by a
10 certified evaluator as defined in ORS 161.309 and a report of the examination be prepared; or

11 (b) Order the defendant to be committed for the purpose of an examination *[for a period not ex-*
12 *ceeding 30 days]* to a state mental hospital or other facility designated by the Oregon Health Au-
13 thority if the defendant is at least 18 years of age, or to a secure intensive community inpatient
14 facility designated by the authority if the defendant is under 18 years of age. **The state mental**
15 **hospital or other facility may retain custody of a defendant committed under this paragraph**
16 **for the duration necessary to complete the examination of the defendant, not to exceed 30**
17 **days. The examination may include a period of observation.**

18 (2)(a) **A defendant committed under subsection (1)(b) of this section shall be transported**
19 **to the state mental hospital or other facility for the examination.**

20 (b) **At the conclusion of the examination, the superintendent of the state mental hospital**
21 **or the superintendent's designee or the director of the facility may:**

22 (A) **Return the defendant to the facility from which the defendant was transported; or**

23 (B) **Inform the court and the parties that the defendant requires a hospital level of care**
24 **due to the defendant's dangerousness and the acuity of symptoms of the defendant's quali-**
25 **ifying mental disorder and request that the defendant remain at the state mental hospital or**
26 **other facility pending a hearing or order under ORS 161.370.**

27 (c) **If both parties consent, the court may, without holding a hearing, enter any order**
28 **authorized by ORS 161.370 based on a report resulting from an examination conducted under**
29 **this section.**

30 [(2)] (3) The report of an examination described in this section must include, but is not neces-
31 sarily limited to, the following:

32 (a) A description of the nature of the examination;

33 (b) A statement of the mental condition of the defendant;

34 (c) If the defendant suffers from a qualifying mental disorder, an opinion as to whether the de-
35 fendant is incapacitated within the description set out in ORS 161.360; and

36 (d) If the defendant is incapacitated within the description set out in ORS 161.360, a recom-
37 mendation of treatment and services necessary to *[restore]* **allow the defendant to gain or regain**
38 **capacity, including whether a hospital level of care is required due to the defendant's**
39 **dangerousness and the acuity of symptoms of the defendant's qualifying mental disorder.**

40 [(3)] (4) Except when the defendant and the court both request to the contrary, the report may
41 not contain any findings or conclusions as to whether the defendant as a result of a qualifying
42 mental disorder was subject to the provisions of ORS 161.295 or 161.300 at the time of the criminal
43 act charged.

44 [(4)] (5) If the examination by the psychiatrist or psychologist cannot be conducted by reason
45 of the unwillingness of the defendant to participate in the examination, the report must so state and

1 must include, if possible, an opinion as to whether the unwillingness of the defendant was the result
2 of a qualifying mental disorder affecting capacity to proceed.

3 [(5)] (6)(a) The report **resulting from the examination of a defendant under this section**
4 must be filed with the clerk of the court, who shall cause copies to be delivered to the district at-
5 torney and to counsel for defendant.

6 (b) **The entity or evaluator conducting the examination shall provide a copy of the report**
7 **resulting from the examination to the community mental health program director or**
8 **designee in:**

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

10 (B) **The county of the defendant's last known residence.**

11 (c) **Reports prepared under this section are confidential and may be made available only:**

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

15 (B) **As ordered by a court.**

16 (d) **Any facility in which a defendant is housed may not use a report prepared under this**
17 **section to support a disciplinary action against the defendant.**

18 (e) **Nothing in this subsection prohibits the prosecuting attorney, defense attorney or**
19 **agent of the prosecuting or defense attorney from discussing the contents of a report pre-**
20 **pared under this section with witnesses or victims as otherwise permitted by law.**

21 [(6)(a)] (7)(a) When upon motion of the court or a financially eligible defendant, the court has
22 ordered a psychiatric or psychological examination of the defendant, a county or justice court shall
23 order the county to pay, and a circuit court shall order the public defense services executive di-
24 rector to pay from funds available for the purpose:

25 (A) A reasonable fee if the examination of the defendant is conducted by a psychiatrist or psy-
26 chologist in private practice; and

27 (B) All costs including transportation of the defendant if the examination is conducted by a
28 psychiatrist or psychologist in the employ of the Oregon Health Authority or a community mental
29 health program established under ORS 430.610 to 430.670.

30 (b) When an examination is ordered at the request or with the acquiescence of a defendant who
31 is determined not to be financially eligible, the examination shall be performed at the defendant's
32 expense. When an examination is ordered at the request of the prosecution, the county shall pay for
33 the expense of the examination.

34 [(7)] (8) The Oregon Health Authority shall establish by rule standards for the consultation de-
35 scribed in subsection (1) of this section.

36 **SECTION 1a. If Senate Bill 25 becomes law, section 1 of this 2019 Act (amending ORS**
37 **161.365) is repealed and ORS 161.365, as amended by section 4, chapter __, Oregon Laws 2019**
38 **(Enrolled Senate Bill 25), is amended to read:**

39 161.365. (1)(a) When the court has reason to doubt the defendant's fitness to proceed by reason
40 of incapacity as described in ORS 161.360, the court may call any witness to assist it in reaching
41 its decision and shall order that a community mental health program director, or the director's
42 designee, consult with the defendant **and with any local entity that would be responsible for**
43 **supervising the defendant if the defendant were to be released in the community**, to determine
44 whether services and supervision necessary to safely [restore] **allow** the [defendant's] **defendant to**
45 **gain or regain** fitness to proceed are available in the community. After the consultation, the pro-

1 gram director or the director's designee shall provide to the court a copy of the findings resulting
2 from the consultation. If the court determines the assistance of a psychiatrist or psychologist would
3 be helpful, the court may:

4 (A) Order that a psychiatric or psychological examination of the defendant be conducted by a
5 certified evaluator as defined in ORS 161.309 and a report of the examination be prepared; or

6 (B) Order the defendant to be committed for the purpose of an examination [*for a period not*
7 *exceeding 30 days*] to a state mental hospital or other facility designated by the Oregon Health Au-
8 thority if the defendant is at least 18 years of age, or to a secure intensive community inpatient
9 facility designated by the authority if the defendant is under 18 years of age. **The state mental**
10 **hospital or other facility may retain custody of a defendant committed under this paragraph**
11 **for the duration necessary to complete the examination of the defendant, not to exceed 30**
12 **days. The examination may include a period of observation.**

13 (b) The court shall provide a copy of any order entered under this subsection to the community
14 mental health program director or designee and to the state mental hospital or other facility by the
15 end of the next judicial day.

16 **(2)(a) A defendant committed under subsection (1)(a)(B) of this section shall be trans-**
17 **ported to the state mental hospital or other facility for the examination.**

18 **(b) At the conclusion of the examination, the superintendent of the state mental hospital**
19 **or the superintendent's designee or the director of the facility may:**

20 **(A) Return the defendant to the facility from which the defendant was transported; or**

21 **(B) Inform the court and the parties that the defendant requires a hospital level of care**
22 **due to the defendant's dangerousness and the acuity of symptoms of the defendant's quali-**
23 **ifying mental disorder and request that the defendant remain at the state mental hospital or**
24 **other facility pending a hearing or order under ORS 161.370.**

25 **(c) If both parties consent, the court may, without holding a hearing, enter any order**
26 **authorized by ORS 161.370 based on a report resulting from an examination conducted under**
27 **this section.**

28 [(2)] **(3)** The report of an examination described in this section must include, but is not neces-
29 sarily limited to, the following:

30 (a) A description of the nature of the examination;

31 (b) A statement of the mental condition of the defendant;

32 (c) If the defendant suffers from a qualifying mental disorder, an opinion as to whether the de-
33 fendant is incapacitated within the description set out in ORS 161.360; and

34 (d) If the defendant is incapacitated within the description set out in ORS 161.360, a recom-
35 mendation of treatment and services necessary to [*restore*] **allow the defendant to gain or regain**
36 **capacity, including whether a hospital level of care is required due to the defendant's**
37 **dangerousness and the acuity of symptoms of the defendant's qualifying mental disorder.**

38 [(3)] **(4)** Except when the defendant and the court both request to the contrary, the report may
39 not contain any findings or conclusions as to whether the defendant as a result of a qualifying
40 mental disorder was subject to the provisions of ORS 161.295 or 161.300 at the time of the criminal
41 act charged.

42 [(4)] **(5)** If the examination by the psychiatrist or psychologist cannot be conducted by reason
43 of the unwillingness of the defendant to participate in the examination, the report must so state and
44 must include, if possible, an opinion as to whether the unwillingness of the defendant was the result
45 of a qualifying mental disorder affecting capacity to proceed.

1 [(5)] **(6)(a)** The report **resulting from the examination of a defendant under this section**
2 **may be filed electronically and** must be filed with the **clerk of the court**, [*and may be filed elec-*
3 *tronically. The clerk of the court*] **who** shall cause copies to be delivered to the district attorney[, *to*
4 *the community mental health program director or designee*] and to counsel for defendant.

5 **(b) The entity or evaluator conducting the examination shall provide a copy of the report**
6 **resulting from the examination to the community mental health program director or**
7 **designee in:**

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

9 **(B) The county of the defendant's last known residence.**

10 **(c) Reports prepared under this section are confidential and may be made available only:**

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

14 **(B) As ordered by a court.**

15 **(d) Any facility in which a defendant is housed may not use a report prepared under this**
16 **section to support a disciplinary action against the defendant.**

17 **(e) Nothing in this subsection prohibits the prosecuting attorney, defense attorney or**
18 **agent of the prosecuting or defense attorney from discussing the contents of a report pre-**
19 **pared under this section with witnesses or victims as otherwise permitted by law.**

20 [(6)(a)] **(7)(a)** When upon motion of the court or a financially eligible defendant, the court has
21 ordered a psychiatric or psychological examination of the defendant, a county or justice court shall
22 order the county to pay, and a circuit court shall order the public defense services executive di-
23 rector to pay from funds available for the purpose:

24 **(A) A reasonable fee if the examination of the defendant is conducted by a psychiatrist or psy-**
25 **chologist in private practice; and**

26 **(B) All costs including transportation of the defendant if the examination is conducted by a**
27 **psychiatrist or psychologist in the employ of the Oregon Health Authority or a community mental**
28 **health program established under ORS 430.610 to 430.670.**

29 **(b) When an examination is ordered at the request or with the acquiescence of a defendant who**
30 **is determined not to be financially eligible, the examination shall be performed at the defendant's**
31 **expense. When an examination is ordered at the request of the prosecution, the county shall pay for**
32 **the expense of the examination.**

33 [(7)(a)] *Reports and evaluations conducted under this section are confidential and may be made*
34 *available only:]*

35 [(A)] *To the court, prosecuting attorney, defense attorney, defendant, community mental health pro-*
36 *gram director or designee and facility in which the defendant is housed; or]*

37 [(B)] *As ordered by a court.]*

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

40 **(8) The Oregon Health Authority shall establish by rule standards for the consultation described**
41 **in subsection (1) of this section.**

42 **SECTION 2.** ORS 161.370 is amended to read:

43 161.370. **(1)(a)** When the defendant's fitness to proceed is drawn in question, the issue shall be
44 determined by the court.

45 **(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 proceed-
 8 ing against the defendant shall be suspended and[.] **the court shall, at a hearing, proceed in ac-**
 9 **cordance with this subsection.**

10 (b) **After making the determination under paragraph (a) of this subsection, the court**
 11 **shall receive input, to be considered at the hearing, from a community mental health pro-**
 12 **gram director or the director's designee, and from any local entity that would be responsible**
 13 **for supervising the defendant if the defendant were to be released in the community, con-**
 14 **cerning whether services and supervision necessary to safely allow the defendant to gain or**
 15 **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:**

33 (A) **Determines that the defendant requires a hospital level of care, the court shall make**
 34 **specific findings regarding why the defendant requires such level of care.**

35 (B) **Determines that the defendant does not require a hospital level of care, but that**
 36 **services and supervision necessary to safely allow the defendant to gain or regain fitness to**
 37 **proceed are not available in the community, the court shall set a review hearing 14 days from**
 38 **the date of the determination for any defendant remaining in custody.**

39 [(a)] (3)(a) **Unless the court orders an action other than commitment under subsection**
 40 **(2) of this section, and except as otherwise provided in subsections (4) and (5) of this section,**
 41 **if the court finds that the defendant is dangerous to self or others as a result of a qualifying mental**
 42 **disorder, or that, based on the findings resulting from the consultation described in ORS 161.365 (1)**
 43 **and from any information provided by community-based mental health providers or any**
 44 **other sources, the services and supervision necessary to [restore] allow the [defendant's] defendant**
 45 **to gain or regain fitness to proceed are not available in the community, the court shall commit the**

1 defendant to the custody of the superintendent of a state mental hospital or director of a facility[,]
2 designated by the Oregon Health Authority[,] if the defendant is at least 18 years of age, or to the
3 custody of the director of a secure intensive community inpatient facility designated by the author-
4 ity if the defendant is under 18 years of age[; or].

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

10 [(b)] (4)(a) If the court does not make a finding described in [paragraph (a) of this subsection,]
11 **subsection (3) of this section, if the circumstances in subsection (5)(c) of this section apply**
12 or if the court determines that care other than commitment for incapacity to stand trial would bet-
13 ter serve the defendant and the community, the court shall release the defendant on supervision for
14 as long as the unfitness endures.

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

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

20 **(5)(a) If the most serious offense in the charging instrument is a misdemeanor or vio-**
21 **lation, except as provided in paragraph (d) of this subsection, the court may not commit the**
22 **defendant under subsection (3) of this section without a recommendation by a certified**
23 **evaluator as defined in ORS 161.309, or a community mental health program director or the**
24 **director's designee, that the defendant requires a hospital level of care due to the defendant's**
25 **dangerousness and the acuity of symptoms of the defendant's qualifying mental disorder.**

26 **(b) If at the time of determining the appropriate action for the case the court has not**
27 **received a recommendation as to whether the defendant requires a hospital level of care due**
28 **to the defendant's dangerousness and the acuity of symptoms of the defendant's qualifying**
29 **mental disorder, the court shall order a certified evaluator or a community mental health**
30 **program director, or the director's designee, to make such a recommendation.**

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

35 **(d) If the court orders the commitment of a defendant described in this subsection to the**
36 **state mental hospital or other facility without a recommendation that the defendant requires**
37 **a hospital level of care due to the defendant's dangerousness and the acuity of symptoms of**
38 **the defendant's qualifying mental disorder, the court shall make specific written findings**
39 **regarding why commitment is necessary and appropriate.**

40 [(3)] (6) When a defendant is released on supervision under subsection [(2)(b)] (4) of this section,
41 the court may place conditions that the court deems appropriate on the release, including the re-
42 quirement that the defendant regularly report to the authority or a community mental health pro-
43 gram for examination to determine if the defendant has gained or regained capacity to stand trial.

44 [(4)] (7) When the court, on its own motion [or upon the application of the superintendent of the
45 hospital or director of the facility in which the defendant is committed, a person examining the de-

1 fendant as a condition of release on supervision, or either party, determines, after a hearing, if a
2 hearing is requested, that the defendant has gained or regained fitness to proceed, the criminal
3 proceeding shall be resumed. If, however, the court is of the view that so much time has elapsed
4 since the commitment or release of the defendant on supervision that it would be unjust to resume
5 the criminal proceeding, the court on motion of either party may dismiss the charge and may order
6 the defendant to be discharged or cause a proceeding to be commenced forthwith under ORS 426.070
7 to 426.170, **426.701** or 427.235 to 427.290.

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

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

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

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

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

20 (C) There is a substantial probability that, in the foreseeable future, the defendant will gain or
21 regain the capacity to stand trial. If the probability exists, the superintendent or director shall give
22 the court an estimate of the time in which the defendant, with appropriate treatment, is expected
23 to gain or regain capacity.

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

33 (b)**(A)** Notwithstanding paragraph (a) of this subsection, if the superintendent or director de-
34 termines that a defendant committed under this section is no longer dangerous to self or others as
35 a result of a qualifying mental disorder, or that the services and supervision necessary to *[restore]*
36 **allow the [defendant's] defendant to gain or regain** fitness to proceed are available in the com-
37 munity, the superintendent or director shall file notice of that determination with the court.

38 **(B)** Upon receipt of the notice, *[the court shall order the person released on supervision as de-*
39 *scribed in subsection (3) of this section.]* **the court shall order that a community mental health**
40 **program director or the director's designee consult with the defendant and with any local**
41 **entity that would be responsible for supervising the defendant if the defendant were to be**
42 **released in the community, within seven judicial days, to determine whether services and**
43 **supervision necessary to safely allow the defendant to gain or regain fitness to proceed are**
44 **available in the community. The director or designee shall provide the court and the parties**
45 **with recommendations from the consultation within 14 judicial days of the court's order.**

1 (C) Within 14 judicial days of receiving the recommendations from the consultation, the
2 court shall hold a hearing to determine an appropriate action in accordance with subsection
3 (2)(c) of this section as follows:

4 (i) If, after consideration of the factors and possible actions described in subsection (2)(c)
5 of this section, and any recommendations from the consultation described in this paragraph,
6 the court determines that the defendant remains dangerous to self or others as a result of
7 a qualifying mental disorder, or that the services and supervision necessary to allow the
8 defendant to gain or regain fitness to proceed are not available in the community, the court
9 may, after making specific findings to that effect, continue the commitment.

10 (ii) If the court determines that the defendant is no longer dangerous to self or others
11 as a result of a qualifying mental disorder, or that the services and supervision necessary
12 to allow the defendant to gain or regain fitness to proceed are available in the community,
13 the court shall release the defendant after considering the recommendations from the con-
14 sultation described in subparagraph (B) of this paragraph.

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

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

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

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

25 (A) Three years; or

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

28 (b) For purposes of calculating the maximum period of commitment described in paragraph (a)
29 of this subsection:

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

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

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

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

41 [(8)] (11) The superintendent or director shall notify the committing court of the defendant's
42 impending discharge 30 days before the date on which the superintendent or director is required to
43 discharge the defendant under subsection [(7)] (10) of this section.

44 [(9)] (12) When the committing court receives a notice from the superintendent or director under
45 subsection [(5)] (8) or [(8)] (11) of this section concerning the defendant's progress or lack thereof,

1 the committing court shall determine, after a hearing, if a hearing is requested, whether the de-
2 fendant presently has the capacity to stand trial.

3 [(10)] (13) If at any time the court determines that the defendant lacks the capacity to stand
4 trial, the court shall further determine whether there is a substantial probability that the defendant,
5 in the foreseeable future, will gain or regain the capacity to stand trial and whether the defendant
6 is entitled to discharge under subsection [(7)] (10) of this section. If the court determines that there
7 is no substantial probability that the defendant, in the foreseeable future, will gain or regain the
8 capacity to stand trial or that the defendant is entitled to discharge under subsection [(7)] (10) of
9 this section, the court shall dismiss, without prejudice, all charges against the defendant and:

10 (a) Order that the defendant be discharged; or

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

12 [(11)] (14) All notices required under this section shall be filed with the clerk of the court and
13 delivered to both the district attorney and the counsel for the defendant.

14 [(12)] (15) If the defendant gains or regains fitness to proceed, the term of any sentence received
15 by the defendant for conviction of the crime charged shall be reduced by the amount of time the
16 defendant was committed under this section to the custody of a state mental hospital, or to the
17 custody of a secure intensive community inpatient facility[,] designated by the Oregon Health Au-
18 thority.

19 [(13)] (16) Notwithstanding the suspension of the criminal proceeding under subsection (2) of this
20 section, the fact that the defendant is unfit to proceed does not preclude any objection through
21 counsel and without the personal participation of the defendant on the grounds that the indictment
22 is insufficient, that the statute of limitations has run, that double jeopardy principles apply or upon
23 any other ground at the discretion of the court which the court deems susceptible of fair determi-
24 nation prior to trial.

25 [(14)] (17) At the time that the court determines that the defendant lacks fitness to proceed
26 under subsection (2) of this section, the court shall notify the defendant that federal law prohibits
27 the defendant from purchasing or possessing a firearm unless the person obtains relief from the
28 prohibition under federal law. The court shall again notify the defendant of the prohibition if the
29 court finds that the defendant has gained or regained fitness to proceed under subsection [(4)] (7)
30 of this section.

31 (18)(a) **The entity or evaluator conducting an examination of a defendant under this sec-**
32 **tion shall provide a copy of any report described in this section to the community mental**
33 **health program director or designee in:**

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

35 (B) **The county of the defendant's last known residence.**

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

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

40 (B) **As ordered by a court.**

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

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

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

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

6 **SECTION 2a.** If Senate Bill 25 becomes law, section 2 of this 2019 Act (amending ORS
7 161.370) is repealed and ORS 161.370, as amended by section 5, chapter __, Oregon Laws 2019
8 (Enrolled Senate Bill 25), is amended to read:

9 161.370. (1)(a) When the defendant's fitness to proceed is drawn in question, the issue shall be
10 determined by the court.

11 (b) If neither the prosecuting attorney nor counsel for the defendant contests the finding of the
12 report filed under ORS 161.365, the court may make the determination on the basis of the report.
13 If the finding is contested, the court shall hold a hearing on the issue. If the report is received in
14 evidence in the hearing, the party who contests the finding has the right to summon and to cross-
15 examine any psychiatrist or psychologist who submitted the report and to offer evidence upon the
16 issue. Other evidence regarding the defendant's fitness to proceed may be introduced by either
17 party.

18 (2)(a) If the court determines that the defendant lacks fitness to proceed, the criminal proceeding
19 against the defendant shall be suspended and[.] **the court shall, at a hearing, proceed in ac-**
20 **cordance with this subsection.**

21 (b) **After making the determination under paragraph (a) of this subsection, the court**
22 **shall receive input, to be considered at the hearing, from a community mental health pro-**
23 **gram director or the director's designee, and from any local entity that would be responsible**
24 **for supervising the defendant if the defendant were to be released in the community, con-**
25 **cerning whether services and supervision necessary to safely allow the defendant to gain or**
26 **regain fitness to proceed are available in the community.**

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

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

35 (B) **Community restoration as recommended by the community mental health program**
36 **director or designee;**

37 (C) **Release on supervision;**

38 (D) **Commencement of a civil commitment proceeding under ORS 426.070 to 426.170,**
39 **426.701 or 427.235 to 427.290;**

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

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

42 (d) **If the court, while considering or ordering an appropriate action under this sub-**
43 **section:**

44 (A) **Determines that the defendant requires a hospital level of care, the court shall make**
45 **specific findings regarding why the defendant requires such level of care.**

1 **(B) Determines that the defendant does not require a hospital level of care, but that**
2 **services and supervision necessary to safely allow the defendant to gain or regain fitness to**
3 **proceed are not available in the community, the court shall set a review hearing 14 days from**
4 **the date of the determination for any defendant remaining in custody.**

5 **(e) The court shall ensure that an order entered under this subsection is provided, by the**
6 **end of the next judicial day, to any entity ordered to provide services and supervision nec-**
7 **essary to restore the defendant's fitness to proceed.**

8 **[(A)] (3)(a) Unless the court orders an action other than commitment under subsection**
9 **(2) of this section, and except as otherwise provided in subsections (4) and (5) of this section,**
10 **if the court finds that the defendant is dangerous to self or others as a result of a qualifying mental**
11 **disorder, or that, based on the findings resulting from the consultation described in ORS 161.365 (1)**
12 **and from any information provided by community-based mental health providers or any**
13 **other sources, the services and supervision necessary to [restore] allow the [defendant's] defendant**
14 **to gain or regain fitness to proceed are not available in the community, the court shall commit the**
15 **defendant to the custody of the superintendent of a state mental hospital or director of a facility[,]**
16 **designated by the Oregon Health Authority[,]** if the defendant is at least 18 years of age, or to the
17 **custody of the director of a secure intensive community inpatient facility designated by the author-**
18 **ity if the defendant is under 18 years of age[: or].**

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

24 **[(B)] (4)(a) If the court does not make a finding described in [subparagraph (A) of this para-**
25 **graph,] subsection (3) of this section, if the circumstances in subsection (5)(c) of this section**
26 **apply or if the court determines that care other than commitment for incapacity to stand trial would**
27 **better serve the defendant and the community, the court shall release the defendant on supervision**
28 **for as long as the unfitness endures.**

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

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

34 **(5)(a) If the most serious offense in the charging instrument is a misdemeanor or vio-**
35 **lation, except as provided in paragraph (d) of this subsection, the court may not commit the**
36 **defendant under subsection (3) of this section without a recommendation by a certified**
37 **evaluator as defined in ORS 161.309, or a community mental health program director or the**
38 **director's designee, that the defendant requires a hospital level of care due to the defendant's**
39 **dangerousness and the acuity of symptoms of the defendant's qualifying mental disorder.**

40 **(b) If at the time of determining the appropriate action for the case the court has not**
41 **received a recommendation as to whether the defendant requires a hospital level of care due**
42 **to the defendant's dangerousness and the acuity of symptoms of the defendant's qualifying**
43 **mental disorder, the court shall order a certified evaluator or a community mental health**
44 **program director, or the director's designee, to make such a recommendation.**

45 **(c) If the court does not order the commitment of a defendant described in this sub-**

1 **section to the state mental hospital or other facility, the court shall hold a hearing in ac-**
2 **cordance with subsection (2)(c) of this section to determine and order an appropriate action**
3 **other than commitment.**

4 **(d) If the court orders the commitment of a defendant described in this subsection to the**
5 **state mental hospital or other facility without a recommendation that the defendant requires**
6 **a hospital level of care due to the defendant's dangerousness and the acuity of symptoms of**
7 **the defendant's qualifying mental disorder, the court shall make specific written findings**
8 **regarding why commitment is necessary and appropriate.**

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

12 *[(3)]* **(6)** When a defendant is released on supervision under subsection *[(2)(a)(B)]* **(4)** of this
13 section, the court may place conditions that the court deems appropriate on the release, including
14 the requirement that the defendant regularly report to the authority or a community mental health
15 program for examination to determine if the defendant has gained or regained capacity to stand
16 trial.

17 *[(4)]* **(7)** When the court, on its own motion or upon the application of the superintendent of the
18 hospital or director of the facility in which the defendant is committed, a person examining the de-
19 fendant as a condition of release on supervision, or either party, determines, after a hearing, if a
20 hearing is requested, that the defendant has gained or regained fitness to proceed, the criminal
21 proceeding shall be resumed. If, however, the court is of the view that so much time has elapsed
22 since the commitment or release of the defendant on supervision that it would be unjust to resume
23 the criminal proceeding, the court on motion of either party may dismiss the charge and may order
24 the defendant to be discharged or cause a proceeding to be commenced forthwith under ORS 426.070
25 to 426.170, **426.701** or 427.235 to 427.290.

26 *[(5)]* **(8)** The superintendent of a state hospital or director of a facility to which the defendant
27 is committed shall cause the defendant to be evaluated within 60 days from the defendant's delivery
28 into the superintendent's or director's custody, for the purpose of determining whether there is a
29 substantial probability that, in the foreseeable future, the defendant will have the capacity to stand
30 trial. In addition, the superintendent or director shall:

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

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

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

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

38 (C) There is a substantial probability that, in the foreseeable future, the defendant will gain or
39 regain the capacity to stand trial. If the probability exists, the superintendent or director shall give
40 the court an estimate of the time in which the defendant, with appropriate treatment, is expected
41 to gain or regain capacity.

42 *[(6)(a)]* **(9)(a)** If the superintendent or director determines that there is a substantial probability
43 that, in the foreseeable future, the defendant will gain or regain the capacity to stand trial, unless
44 the court otherwise orders, the defendant shall remain in the superintendent's or director's custody
45 where the defendant shall receive treatment designed for the purpose of enabling the defendant to

1 gain or regain capacity. In keeping with the notice requirement under subsection [(5)(b)] **(8)(b)** of
 2 this section, the superintendent or director shall, for the duration of the defendant's period of com-
 3 mitment, submit a progress report to the committing court, concerning the defendant's capacity or
 4 incapacity, at least once every 180 days as measured from the date of the defendant's delivery into
 5 the superintendent's or director's custody.

6 (b)(A) Notwithstanding paragraph (a) of this subsection, if the superintendent or director de-
 7 termines that a defendant committed under this section is no longer dangerous to self or others as
 8 a result of a qualifying mental disorder, or that the services and supervision necessary to [restore]
 9 **allow** the [defendant's] **defendant to gain or regain** fitness to proceed are available in the com-
 10 munity, the superintendent or director shall file notice of that determination with the court.

11 (B) Upon receipt of the notice, [the court shall order the person released on supervision as de-
 12 scribed in subsection (3) of this section.] **the court shall order that a community mental health**
 13 **program director or the director's designee consult with the defendant and with any local**
 14 **entity that would be responsible for supervising the defendant if the defendant were to be**
 15 **released in the community, within seven judicial days, to determine whether services and**
 16 **supervision necessary to safely allow the defendant to gain or regain fitness to proceed are**
 17 **available in the community. The director or designee shall provide the court and the parties**
 18 **with recommendations from the consultation within 14 judicial days of the court's order.**

19 (C) **Within 14 judicial days of receiving the recommendations from the consultation, the**
 20 **court shall hold a hearing to determine an appropriate action in accordance with subsection**
 21 **(2)(c) of this section as follows:**

22 (i) **If, after consideration of the factors and possible actions described in subsection (2)(c)**
 23 **of this section, and any recommendations from the consultation described in this paragraph,**
 24 **the court determines that the defendant remains dangerous to self or others as a result of**
 25 **a qualifying mental disorder, or that the services and supervision necessary to allow the**
 26 **defendant to gain or regain fitness to proceed are not available in the community, the court**
 27 **may, after making specific findings to that effect, continue the commitment.**

28 (ii) **If the court determines that the defendant is no longer dangerous to self or others**
 29 **as a result of a qualifying mental disorder, or that the services and supervision necessary**
 30 **to allow the defendant to gain or regain fitness to proceed are available in the community,**
 31 **the court shall release the defendant after considering the recommendations from the con-**
 32 **sultation described in subparagraph (B) of this paragraph.**

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

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

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

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

43 (A) Three years; or

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

1 (b) For purposes of calculating the maximum period of commitment described in paragraph (a)
2 of this subsection:

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

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

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

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

14 [(8)] (11) The superintendent or director shall notify the committing court of the defendant's
15 impending discharge 30 days before the date on which the superintendent or director is required to
16 discharge the defendant under subsection [(7)] (10) of this section.

17 [(9)] (12) When the committing court receives a notice from the superintendent or director under
18 subsection [(5)] (8) or [(8)] (11) of this section concerning the defendant's progress or lack thereof,
19 the committing court shall determine, after a hearing, if a hearing is requested, whether the de-
20 fendant presently has the capacity to stand trial.

21 [(10)] (13) If at any time the court determines that the defendant lacks the capacity to stand
22 trial, the court shall further determine whether there is a substantial probability that the defendant,
23 in the foreseeable future, will gain or regain the capacity to stand trial and whether the defendant
24 is entitled to discharge under subsection [(7)] (10) of this section. If the court determines that there
25 is no substantial probability that the defendant, in the foreseeable future, will gain or regain the
26 capacity to stand trial or that the defendant is entitled to discharge under subsection [(7)] (10) of
27 this section, the court shall dismiss, without prejudice, all charges against the defendant and:

28 (a) Order that the defendant be discharged; or

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

30 [(11)] (14) All notices required under this section shall be filed with the court and may be filed
31 electronically. The clerk of the court shall cause copies of the notices to be delivered to both the
32 district attorney and the counsel for the defendant.

33 [(12)] (15) If the defendant gains or regains fitness to proceed, the term of any sentence received
34 by the defendant for conviction of the crime charged shall be reduced by the amount of time the
35 defendant was committed under this section to the custody of a state mental hospital, or to the
36 custody of a secure intensive community inpatient facility[,] designated by the Oregon Health Au-
37 thority.

38 [(13)] (16) Notwithstanding the suspension of the criminal proceeding under subsection (2) of this
39 section, the fact that the defendant is unfit to proceed does not preclude any objection through
40 counsel and without the personal participation of the defendant on the grounds that the indictment
41 is insufficient, that the statute of limitations has run, that double jeopardy principles apply or upon
42 any other ground at the discretion of the court which the court deems susceptible of fair determi-
43 nation prior to trial.

44 [(14)] (17) At the time that the court determines that the defendant lacks fitness to proceed
45 under subsection (2) of this section, the court shall notify the defendant that federal law prohibits

1 the defendant from purchasing or possessing a firearm unless the person obtains relief from the
2 prohibition under federal law. The court shall again notify the defendant of the prohibition if the
3 court finds that the defendant has gained or regained fitness to proceed under subsection [(4)] (7)
4 of this section.

5 [(15)(a) Reports and evaluations conducted under this section are confidential and may be made
6 available only:]

7 [(A) To the court, prosecuting attorney, defense attorney, defendant, community mental health pro-
8 gram director or designee and facility in which the defendant is housed; or]

9 [(B) As ordered by a court.]

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

12 **(18)(a) The entity or evaluator conducting an examination of a defendant under this sec-
13 tion shall provide a copy of any report described in this section to the community mental
14 health program director or designee in:**

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

16 **(B) The county of the defendant's last known residence.**

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

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

21 **(B) As ordered by a court.**

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

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

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

30 **(20) The Oregon Health Authority shall establish by rule standards for the input provided
31 to the court described in subsection (2) of this section.**

32 **SECTION 3.** ORS 161.315 is amended to read:

33 161.315. (1) Upon filing of notice or the introduction of evidence by the defendant as provided
34 in ORS 161.309, the state shall have the right to have at least one psychiatrist or licensed psychol-
35 ogist of its selection examine the defendant. The state shall file notice with the court of its intention
36 to have the defendant examined.

37 (2)(a) Upon filing of the notice, the court, in its discretion, may order the defendant committed
38 to a state [institution] **mental hospital** or any other suitable facility, if the defendant is 18 years
39 of age or older, for observation and examination, **which may include treatment as permitted by
40 law** [as the court may designate for a period not to exceed 30 days].

41 (b) If the defendant is under 18 years of age, upon filing of the notice, the court, in its discretion,
42 may order the defendant committed to a secure intensive community inpatient facility designated
43 by the Oregon Health Authority for [observation and] examination [as the court may designate for a
44 period not to exceed 30 days].

45 **(c) The state mental hospital or other facility may retain custody of a defendant com-**

1 **mitted under this subsection only for the duration necessary to complete the observation and**
2 **examination of the defendant, not to exceed 30 days.**

3 (3) If the defendant objects to the examiner chosen by the state, the court for good cause shown
4 may direct the state to select a different examiner.

5 (4) An examiner performing an examination on the issue of insanity of a defendant under this
6 section is not obligated to examine the defendant for fitness to proceed unless, during the examina-
7 tion, the examiner determines that the defendant's fitness to proceed is drawn in question. **If, dur-**
8 **ing the examination, the examiner determines that the defendant's fitness to proceed is in**
9 **doubt, the examiner shall report the issue to the court and to the superintendent of the state**
10 **mental hospital or the superintendent's designee, or to the director of the facility to which**
11 **the defendant is committed. The superintendent or director may:**

12 (a) **Return the defendant to the facility from which the defendant was transported; or**

13 (b) **Inform the court and the parties that the defendant should remain at the state**
14 **mental hospital or other facility for the purpose of an examination under ORS 161.365. If**
15 **neither party objects, the court may order an examination under ORS 161.365 without holding**
16 **a hearing.**

17 (5)(a) **Reports resulting from examinations conducted under this section are confidential**
18 **and may be made available only:**

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

22 (B) **As ordered by a court.**

23 (b) **Any facility in which a defendant is housed may not use a report prepared under this**
24 **section to support a disciplinary action against the defendant.**

25 (c) **Nothing in this subsection prohibits the prosecuting attorney, defense attorney or**
26 **agent of the prosecuting or defense attorney from discussing the contents of a report pre-**
27 **pared under this section with witnesses or victims as otherwise permitted by law.**

28 **SECTION 3a. If Senate Bill 25 becomes law, section 3 of this 2019 Act (amending ORS**
29 **161.315) is repealed and ORS 161.315, as amended by section 3, chapter ___, Oregon Laws 2019**
30 **(Enrolled Senate Bill 25), is amended to read:**

31 161.315. (1) Upon filing of notice or the introduction of evidence by the defendant as provided
32 in ORS 161.309, the state shall have the right to have at least one psychiatrist or licensed psychol-
33 ogist of its selection examine the defendant. The state shall file notice with the court of its intention
34 to have the defendant examined.

35 (2)(a) Upon filing of the notice, the court, in its discretion, may order the defendant committed
36 to a state [*institution*] **mental hospital** or any other suitable facility, if the defendant is 18 years
37 of age or older, for observation and examination, **which may include treatment as permitted by**
38 **law** [*as the court may designate for a period not to exceed 30 days*].

39 (b) If the defendant is under 18 years of age, upon filing of the notice, the court, in its discretion,
40 may order the defendant committed to a secure intensive community inpatient facility designated
41 by the Oregon Health Authority for [*observation and*] examination [*as the court may designate for a*
42 *period not to exceed 30 days*].

43 (c) **The state mental hospital or other facility may retain custody of a defendant com-**
44 **mitted under this subsection only for the duration necessary to complete the observation and**
45 **examination of the defendant, not to exceed 30 days.**

1 (3) If the defendant objects to the examiner chosen by the state, the court for good cause shown
2 may direct the state to select a different examiner.

3 (4) An examiner performing an examination on the issue of insanity of a defendant under this
4 section is not obligated to examine the defendant for fitness to proceed unless, during the examina-
5 tion, the examiner determines that the defendant's fitness to proceed is drawn in question. **If, dur-**
6 **ing the examination, the examiner determines that the defendant's fitness to proceed is in**
7 **doubt, the examiner shall report the issue to the court and to the superintendent of the state**
8 **mental hospital or the superintendent's designee, or to the director of the facility to which**
9 **the defendant is committed. The superintendent or director may:**

10 (a) **Return the defendant to the facility from which the defendant was transported; or**

11 (b) **Inform the court and the parties that the defendant should remain at the state**
12 **mental hospital or other facility for the purpose of an examination under ORS 161.365. If**
13 **neither party objects, the court may order an examination under ORS 161.365 without holding**
14 **a hearing.**

15 (5) A report resulting from an examination under this section may be filed with the court elec-
16 tronically.

17 [(6)(a) *Reports and evaluations conducted under this section are confidential and may be made*
18 *available only:*]

19 [(A) *To the court, prosecuting attorney, defense attorney, defendant, community mental health pro-*
20 *gram director or designee and facility in which the defendant is housed; or]*

21 [(B) *As ordered by a court.*]

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

24 (6)(a) **Reports resulting from examinations conducted under this section are confidential**
25 **and may be made available only:**

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

29 (B) **As ordered by a court.**

30 (b) **Any facility in which a defendant is housed may not use a report prepared under this**
31 **section to support a disciplinary action against the defendant.**

32 (c) **Nothing in this subsection prohibits the prosecuting attorney, defense attorney or**
33 **agent of the prosecuting or defense attorney from discussing the contents of a report pre-**
34 **pared under this section with witnesses or victims as otherwise permitted by law.**

35 **SECTION 4. This 2019 Act being necessary for the immediate preservation of the public**
36 **peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect**
37 **on its passage.**

38