

Changes to Aid and Assist Statutes (FES)
SB 295 Enrolled (2021), Effective June 23, 2021

SB 295 Section-by-Section

Throughout the bill, references to “capacity to stand trial” are changed to “fitness to proceed,” because “fitness to proceed” more accurately captures the scope of aid & assist processes, which may include probation violations. Also, references to “supervision” by community mental health programs are replaced with “providing community restoration services” to clarify their focus on behavioral health services.

Section 2 defines “hospital level of care,” “community restoration services,” and “public safety concerns” for purposes of the aid and assist statutes.

“Hospital level of care” means that a defendant requires the type of care provided by an inpatient hospital in order to gain or regain fitness to proceed.

“Community restoration services” means services and treatment necessary to safely allow a defendant to gain or regain fitness to proceed in the community, which may include supervision by pretrial services.

“Public Safety Concerns” means that the defendant presents a risk to self or to the public if not hospitalized or in custody.

Section 3

- Removes the requirements for forensic evaluators to opine on the dangerousness of a defendant and the availability of community restoration services.

- A recommendation provided by a certified evaluator that a defendant requires a hospital level of care due to the acuity of the defendant’s symptoms must be based upon the defendant’s current diagnosis and symptomology, the defendant’s current ability to engage in treatment, present safety concerns relating to the defendant and any other pertinent information known to the evaluator.

- If the defendant is in a placement in a facility, the evaluator may defer to the treatment provider’s recommendation regarding whether a hospital level of care is needed.

- Makes confidential all reports resulting from forensic examinations, community mental health program (CHMP) consultations, and documents submitted to the court by a state mental hospital and may be made available only to:
 - the court
 - prosecuting attorney
 - defense attorney
 - agent of the prosecuting or defense attorney
 - defendant
 - community mental health program director or designee
 - state mental hospital and any facility in which the defendant is housed
 - or as ordered by the court.

Section 5

- Addresses the “9(b) process” for the court to consider a recommendation by OSH or a CMHP that a defendant who was committed for lack of fitness no longer needs a hospital level of care. If a CMHP files a notice to the court notify them that appropriate resources are present and available in the community, the court will order OSH to perform a hospital level of care evaluation.
- Notes that a “9(b)” notice **may** be filed if the most serious offense in a charging instrument is a felony, but **shall** be filed if the most serious offense is a misdemeanor.

Section 6 (ORS 161.365)

- Removes the requirements for forensic evaluators to opine on the dangerousness of a defendant.
- Replaces “capacity” with “fitness” to proceed.

Section 7 (ORS 161.370)

- Clarifies that the court may require a defendant on community restoration to report regularly to OSH or a certified evaluator for examination

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