

D R A F T

SUMMARY

Digest: The Act makes changes to some laws about places that provide mental health treatment. (Flesch Readability Score: 77.8).

Prohibits state hospitals from providing inpatient services to individuals who are under 18 years of age.

Modifies the description of when a qualifying mental disorder is resistant to treatment for purposes of involuntary civil commitment of an extremely dangerous person.

Directs the Oregon Health Authority to designate a licensed physician to serve as the chief medical officer of a state hospital, regardless of whether the superintendent of the hospital is a licensed physician.

Requires certain evaluations to be conducted by a certified evaluator.

A BILL FOR AN ACT

Relating to facilities that provide mental health treatment; creating new provisions; and amending ORS 161.362, 161.371, 426.010, 426.020, 426.220, 426.650, 426.701 and 430.630.

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

MINIMUM AGE REQUIREMENT FOR PATIENTS TREATED AT STATE HOSPITALS

SECTION 1. ORS 426.010 is amended to read:

426.010. (1) Except as otherwise ordered by the Oregon Health Authority pursuant to ORS 179.325, the Oregon State Hospital campuses in Salem, Marion County, and in Junction City, Lane County, shall be used as state hospitals for the **inpatient** care and treatment of persons with mental illness

1 who are assigned to the care of the institutions by the authority or who have
2 previously been committed to the institutions.

3 **(2) The state hospitals described in this section may not provide**
4 **care or treatment to individuals under 18 years of age.**

5 **SECTION 2.** ORS 426.220 is amended to read:

6 426.220. (1) Pursuant to rules and regulations promulgated by the Oregon
7 Health Authority, the superintendent of any state hospital for the treatment
8 and care of persons with mental illness may admit and hospitalize therein
9 as a patient, any person who may have a nervous disorder or a mental ill-
10 ness, and who voluntarily has made written application for such admission.
11 No person under the age of 18 years shall be admitted as a patient to any
12 such state hospital [*unless an application therefor in behalf of the person has*
13 *been executed by the parent, adult next of kin or legal guardian of the*
14 *person*]. Except when a period of longer hospitalization has been imposed as
15 a condition of admission, pursuant to rules and regulations of the authority,
16 no person voluntarily admitted to any state hospital shall be detained
17 therein more than 72 hours after the person[, *if at least 18 years of age,*] has
18 given notice in writing of a desire to be discharged therefrom[, *or, if the*
19 *patient is under the age of 18 years, after notice in writing has been given by*
20 *the parent, adult next of kin or legal guardian of the person that such parent,*
21 *adult next of kin or legal guardian desires that such person be discharged*
22 *therefrom*].

23 (2) Any person voluntarily admitted to a state hospital pursuant to this
24 section may upon application and notice to the superintendent of the hospi-
25 tal concerned, be granted a temporary leave of absence from the hospital if
26 such leave, in the opinion of the superintendent, will not interfere with the
27 successful treatment or examination of the applicant for leave.

28 [*(3) Upon admission or discharge of a minor to or from a state hospital the*
29 *superintendent shall immediately notify the parent or guardian.*]

30 **SECTION 3.** ORS 426.650 is amended to read:

31 426.650. (1) Pursuant to rules promulgated by the Oregon Health Author-

1 ity, the superintendent of any state hospital for the treatment and care of
2 persons with mental illness may admit and hospitalize therein as a patient
3 any person in need of medical or mental therapeutic treatment as a sexually
4 dangerous person who voluntarily has made written application for such
5 admission. No person under the age of 18 years shall be admitted as a patient
6 to any such state hospital [*unless an application therefor in behalf of the*
7 *person has been executed by the parent, adult next of kin or legal guardian*
8 *of the person*]. Pursuant to rules and regulations of the authority, no person
9 voluntarily admitted to any state hospital shall be detained therein more
10 than 72 hours after the person[, *if at least 18 years of age,*] has given notice
11 in writing of desire to be discharged therefrom[, *or, if the patient is under*
12 *the age of 18 years, after notice in writing has been given by the parent, adult*
13 *next of kin or legal guardian of the person that such parent, adult next of kin*
14 *or legal guardian desires that such person be discharged therefrom*].

15 (2) Any person voluntarily admitted to a state facility pursuant to this
16 section may upon application and notice to the superintendent of the insti-
17 tution concerned, be granted a temporary leave of absence from the institu-
18 tion if such leave, in the opinion of the chief medical officer, will not
19 interfere with the successful treatment or examination of the applicant.

20 **SECTION 4.** ORS 430.630 is amended to read:

21 430.630. (1) In addition to any other requirements that may be established
22 by rule by the Oregon Health Authority, each community mental health
23 program, subject to the availability of funds, shall provide guidance and as-
24 sistance to local Behavioral Health Resource Networks for the joint devel-
25 opment of programs and activities to increase access to treatment and shall
26 provide the following basic services to persons with alcoholism or drug de-
27 pendence, and persons who are alcohol or drug abusers:

28 (a) Outpatient services;

29 (b) Aftercare for persons released from hospitals;

30 (c) Training, case and program consultation and education for community
31 agencies, related professions and the public;

1 (d) Guidance and assistance to other human service agencies for joint
2 development of prevention programs and activities to reduce factors causing
3 alcohol abuse, alcoholism, drug abuse and drug dependence; and

4 (e) Age-appropriate treatment options for older adults.

5 (2) As alternatives to state hospitalization, it is the responsibility of the
6 community mental health program to ensure that, subject to the availability
7 of funds, the following services for persons with alcoholism or drug depend-
8 ence, and persons who are alcohol or drug abusers, are available when
9 needed and approved by the Oregon Health Authority:

10 (a) Emergency services on a 24-hour basis, such as telephone consultation,
11 crisis intervention and prehospital screening examination;

12 (b) Care and treatment for a portion of the day or night, which may in-
13 clude day treatment centers, work activity centers and after-school programs;

14 (c) Residential care and treatment in facilities such as halfway houses,
15 detoxification centers and other community living facilities;

16 (d) Continuity of care, such as that provided by service coordinators,
17 community case development specialists and core staff of federally assisted
18 community mental health centers;

19 (e) Inpatient treatment in community hospitals; and

20 (f) Other alternative services to state hospitalization as defined by the
21 Oregon Health Authority.

22 (3) In addition to any other requirements that may be established by rule
23 of the Oregon Health Authority, each community mental health program,
24 subject to the availability of funds, shall provide or ensure the provision of
25 the following services to persons with mental or emotional disturbances:

26 (a) Screening and evaluation to determine the client's service needs;

27 (b) Crisis stabilization to meet the needs of persons with acute mental or
28 emotional disturbances, including the costs of investigations and prehearing
29 detention in community hospitals or other facilities approved by the au-
30 thority for persons involved in involuntary commitment procedures;

31 (c) Vocational and social services that are appropriate for the client's age,

1 designed to improve the client's vocational, social, educational and recre-
2 ational functioning;

3 (d) Continuity of care to link the client to housing and appropriate and
4 available health and social service needs;

5 (e) Psychiatric care in state and community hospitals, subject to the
6 provisions of subsection (4) of this section;

7 (f) Residential services;

8 (g) Medication monitoring;

9 (h) Individual, family and group counseling and therapy;

10 (i) Public education and information;

11 (j) Prevention of mental or emotional disturbances and promotion of
12 mental health;

13 (k) Consultation with other community agencies;

14 (L) Preventive mental health services for children and adolescents, in-
15 cluding primary prevention efforts, early identification and early inter-
16 vention services. Preventive services should be patterned after service models
17 that have demonstrated effectiveness in reducing the incidence of emotional,
18 behavioral and cognitive disorders in children. As used in this paragraph:

19 (A) "Early identification" means detecting emotional disturbance in its
20 initial developmental stage;

21 (B) "Early intervention services" for children at risk of later development
22 of emotional disturbances means programs and activities for children and
23 their families that promote conditions, opportunities and experiences that
24 encourage and develop emotional stability, self-sufficiency and increased
25 personal competence; and

26 (C) "Primary prevention efforts" means efforts that prevent emotional
27 problems from occurring by addressing issues early so that disturbances do
28 not have an opportunity to develop; and

29 (m) Preventive mental health services for older adults, including primary
30 prevention efforts, early identification and early intervention services. Pre-
31 ventive services should be patterned after service models that have demon-

1 strated effectiveness in reducing the incidence of emotional and behavioral
2 disorders and suicide attempts in older adults. As used in this paragraph:

3 (A) “Early identification” means detecting emotional disturbance in its
4 initial developmental stage;

5 (B) “Early intervention services” for older adults at risk of development
6 of emotional disturbances means programs and activities for older adults and
7 their families that promote conditions, opportunities and experiences that
8 encourage and maintain emotional stability, self-sufficiency and increased
9 personal competence and that deter suicide; and

10 (C) “Primary prevention efforts” means efforts that prevent emotional
11 problems from occurring by addressing issues early so that disturbances do
12 not have an opportunity to develop.

13 (4) A community mental health program shall assume responsibility for
14 psychiatric care in state and community hospitals, as provided in subsection
15 (3)(e) of this section, in the following circumstances:

16 (a) The person receiving care is a resident of the county served by the
17 program. For purposes of this paragraph, “resident” means the resident of a
18 county in which the person maintains a current mailing address or, if the
19 person does not maintain a current mailing address within the state, the
20 county in which the person is found, or the county in which a court-
21 committed person with a mental illness has been conditionally released.

22 (b) The person has been hospitalized involuntarily or voluntarily, pursu-
23 ant to ORS 426.130 or 426.220, [*except for persons confined to the Secure Child*
24 *and Adolescent Treatment Unit at Oregon State Hospital,*] or has been hospi-
25 talized as the result of a revocation of conditional release.

26 (c) Payment is made for the first 60 consecutive days of hospitalization.

27 (d) The hospital has collected all available patient payments and third-
28 party reimbursements.

29 (e) In the case of a community hospital, the authority has approved the
30 hospital for the care of persons with mental or emotional disturbances, the
31 community mental health program has a contract with the hospital for the

1 psychiatric care of residents and a representative of the program approves
2 voluntary or involuntary admissions to the hospital prior to admission.

3 (5) Subject to the review and approval of the Oregon Health Authority,
4 a community mental health program may initiate additional services after
5 the services defined in this section are provided.

6 (6) Each community mental health program and the state hospital serving
7 the program's geographic area shall enter into a written agreement con-
8 cerning the policies and procedures to be followed by the program and the
9 hospital when a patient is admitted to, and discharged from, the hospital and
10 during the period of hospitalization.

11 (7) Each community mental health program shall have a mental health
12 advisory committee, appointed by the board of county commissioners or the
13 county court or, if two or more counties have combined to provide mental
14 health services, the boards or courts of the participating counties or, in the
15 case of a Native American reservation, the tribal council.

16 (8) A community mental health program may request and the authority
17 may grant a waiver regarding provision of one or more of the services de-
18 scribed in subsection (3) of this section upon a showing by the county and
19 a determination by the authority that persons with mental or emotional
20 disturbances in that county would be better served and unnecessary
21 institutionalization avoided.

22 (9)(a) As used in this subsection, "local mental health authority" means
23 one of the following entities:

24 (A) The board of county commissioners of one or more counties that es-
25 tablishes or operates a community mental health program;

26 (B) The tribal council, in the case of a federally recognized tribe of Native
27 Americans that elects to enter into an agreement to provide mental health
28 services; or

29 (C) A regional local mental health authority comprising two or more
30 boards of county commissioners.

31 (b) Each local mental health authority that provides mental health ser-

1 vices shall determine the need for local mental health services and adopt a
2 comprehensive local plan for the delivery of mental health services for chil-
3 dren, families, adults and older adults that describes the methods by which
4 the local mental health authority shall provide those services. The purpose
5 of the local plan is to create a blueprint to provide mental health services
6 that are directed by and responsive to the mental health needs of individuals
7 in the community served by the local plan. A local mental health authority
8 shall coordinate its local planning with the development of the community
9 health improvement plan under ORS 414.575 by the coordinated care organ-
10 ization serving the area. The Oregon Health Authority may require a local
11 mental health authority to review and revise the local plan periodically.

12 (c) The local plan shall identify ways to:

13 (A) Coordinate and ensure accountability for all levels of care described
14 in paragraph (e) of this subsection;

15 (B) Maximize resources for consumers and minimize administrative ex-
16 penses;

17 (C) Provide supported employment and other vocational opportunities for
18 consumers;

19 (D) Determine the most appropriate service provider among a range of
20 qualified providers;

21 (E) Ensure that appropriate mental health referrals are made;

22 (F) Address local housing needs for persons with mental health disorders;

23 (G) Develop a process for discharge from state and local psychiatric hos-
24 pitals and transition planning between levels of care or components of the
25 system of care;

26 (H) Provide peer support services, including but not limited to drop-in
27 centers and paid peer support;

28 (I) Provide transportation supports; and

29 (J) Coordinate services among the criminal and juvenile justice systems,
30 adult and juvenile corrections systems and local mental health programs to
31 ensure that persons with mental illness who come into contact with the

1 justice and corrections systems receive needed care and to ensure continuity
2 of services for adults and juveniles leaving the corrections system.

3 (d) When developing a local plan, a local mental health authority shall:

4 (A) Coordinate with the budgetary cycles of state and local governments
5 that provide the local mental health authority with funding for mental
6 health services;

7 (B) Involve consumers, advocates, families, service providers, schools and
8 other interested parties in the planning process;

9 (C) Coordinate with the local public safety coordinating council to ad-
10 dress the services described in paragraph (c)(J) of this subsection;

11 (D) Conduct a population based needs assessment to determine the types
12 of services needed locally;

13 (E) Determine the ethnic, age-specific, cultural and diversity needs of the
14 population served by the local plan;

15 (F) Describe the anticipated outcomes of services and the actions to be
16 achieved in the local plan;

17 (G) Ensure that the local plan coordinates planning, funding and services
18 with:

19 (i) The educational needs of children, adults and older adults;

20 (ii) Providers of social supports, including but not limited to housing,
21 employment, transportation and education; and

22 (iii) Providers of physical health and medical services;

23 (H) Describe how funds, other than state resources, may be used to sup-
24 port and implement the local plan;

25 (I) Demonstrate ways to integrate local services and administrative func-
26 tions in order to support integrated service delivery in the local plan; and

27 (J) Involve the local mental health advisory committees described in
28 subsection (7) of this section.

29 (e) The local plan must describe how the local mental health authority
30 will ensure the delivery of and be accountable for clinically appropriate
31 services in a continuum of care based on consumer needs. The local plan

1 shall include, but not be limited to, services providing the following levels
2 of care:

- 3 (A) Twenty-four-hour crisis services;
- 4 (B) Secure and nonsecure extended psychiatric care;
- 5 (C) Secure and nonsecure acute psychiatric care;
- 6 (D) Twenty-four-hour supervised structured treatment;
- 7 (E) Psychiatric day treatment;
- 8 (F) Treatments that maximize client independence;
- 9 (G) Family and peer support and self-help services;
- 10 (H) Support services;
- 11 (I) Prevention and early intervention services;
- 12 (J) Transition assistance between levels of care;
- 13 (K) Dual diagnosis services;
- 14 (L) Access to placement in state-funded psychiatric hospital beds;
- 15 (M) Precommitment and civil commitment in accordance with ORS chap-
16 ter 426; and
- 17 (N) Outreach to older adults at locations appropriate for making contact
18 with older adults, including senior centers, long term care facilities and
19 personal residences.

20 (f) In developing the part of the local plan referred to in paragraph (c)(J)
21 of this subsection, the local mental health authority shall collaborate with
22 the local public safety coordinating council to address the following:

- 23 (A) Training for all law enforcement officers on ways to recognize and
24 interact with persons with mental illness, for the purpose of diverting them
25 from the criminal and juvenile justice systems;
- 26 (B) Developing voluntary locked facilities for crisis treatment and
27 follow-up as an alternative to custodial arrests;
- 28 (C) Developing a plan for sharing a daily jail and juvenile detention
29 center custody roster and the identity of persons of concern and offering
30 mental health services to those in custody;
- 31 (D) Developing a voluntary diversion program to provide an alternative

1 for persons with mental illness in the criminal and juvenile justice systems;
2 and

3 (E) Developing mental health services, including housing, for persons
4 with mental illness prior to and upon release from custody.

5 (g) Services described in the local plan shall:

6 (A) Address the vision, values and guiding principles described in the
7 Report to the Governor from the Mental Health Alignment Workgroup,
8 January 2001;

9 (B) Be provided to children, older adults and families as close to their
10 homes as possible;

11 (C) Be culturally appropriate and competent;

12 (D) Be, for children, older adults and adults with mental health needs,
13 from providers appropriate to deliver those services;

14 (E) Be delivered in an integrated service delivery system with integrated
15 service sites or processes, and with the use of integrated service teams;

16 (F) Ensure consumer choice among a range of qualified providers in the
17 community;

18 (G) Be distributed geographically;

19 (H) Involve consumers, families, clinicians, children and schools in treat-
20 ment as appropriate;

21 (I) Maximize early identification and early intervention;

22 (J) Ensure appropriate transition planning between providers and service
23 delivery systems, with an emphasis on transition between children and adult
24 mental health services;

25 (K) Be based on the ability of a client to pay;

26 (L) Be delivered collaboratively;

27 (M) Use age-appropriate, research-based quality indicators;

28 (N) Use best-practice innovations; and

29 (O) Be delivered using a community-based, multisystem approach.

30 (h) A local mental health authority shall submit to the Oregon Health
31 Authority a copy of the local plan and revisions adopted under paragraph (b)

1 of this subsection at time intervals established by the Oregon Health Au-
2 thority.

3

4 **PSYCHIATRIC MENTAL HEALTH NURSE PRACTITIONER**

5

6 **SECTION 5.** ORS 426.701 is amended to read:

7 426.701. (1) For the purposes of this section and ORS 426.702:

8 (a) A person is “extremely dangerous” if the person:

9 (A) Is at least 18 years of age;

10 (B) Is exhibiting symptoms or behaviors of a qualifying mental disorder
11 substantially similar to those that preceded the act described in subsection
12 (3)(a)(C) of this section; and

13 (C) Because of a qualifying mental disorder:

14 (i) Presents a serious danger to the safety of other persons by reason of
15 an extreme risk that the person will inflict grave or potentially lethal
16 physical injury on other persons; and

17 (ii) Unless committed, will continue to represent an extreme risk to the
18 safety of other persons in the foreseeable future.

19 (b) “Qualifying mental disorder” does not include:

20 (A) A disorder manifested solely by repeated criminal or otherwise anti-
21 social conduct; or

22 (B) A disorder constituting solely a personality disorder.

23 (c) A qualifying mental disorder is “resistant to treatment” if, *after re-*
24 *ceiving care from a licensed psychiatrist and exhausting all reasonable psy-*
25 *chiatric treatment, or after refusing psychiatric treatment,*] the person
26 continues to be significantly impaired in the person’s ability to make com-
27 petent decisions and to be aware of and control extremely dangerous behav-
28 ior **after:**

29 **(A) Receiving care from a licensed psychiatrist or a licensed nurse**
30 **practitioner with a specialty in psychiatric mental health and ex-**
31 **hausting all reasonably psychiatric treatment; or**

1 **(B) Refusing psychiatric treatment.**

2 (2)(a) A district attorney may petition the court to initiate commitment
3 proceedings described in this section if there is reason to believe a person
4 is an extremely dangerous person with mental illness. Venue is proper in the
5 county in which the person is alleged to have committed the qualifying act
6 or the county in which the person lives. The petition shall immediately be
7 served upon the person.

8 (b) If a person is committed to a state hospital under ORS 161.365 or
9 161.370 and the state hospital intends to discharge the person, the district
10 attorney may provide notice to the superintendent of the state hospital in-
11 dicating an intent to file a petition under this section. Upon receipt of the
12 notice, the superintendent may delay discharge of the person for up to seven
13 judicial days to allow for the petition to be filed and for the court to make
14 findings under paragraph (f) of this subsection.

15 (c) The person shall be advised in writing of:

16 (A) The allegation that the person is an extremely dangerous person with
17 mental illness and may be committed to the jurisdiction of the Psychiatric
18 Security Review Board for a maximum period of 24 months; and

19 (B) The right to a hearing to determine whether the person is an ex-
20 tremely dangerous person with mental illness, unless the person consents to
21 the commitment by waiving the right to a hearing in writing after consul-
22 tation with legal counsel.

23 (d) A person against whom a petition described in this subsection is filed
24 shall have the following:

25 (A) The right to obtain suitable legal counsel possessing skills and expe-
26 rience commensurate with the nature of the allegations and complexity of
27 the case and, if the person is without funds to retain legal counsel, the right
28 to have the court appoint legal counsel;

29 (B) The right to subpoena witnesses and to offer evidence on behalf of the
30 person at the hearing;

31 (C) The right to cross-examine any witnesses who appear at the hearing;

1 and

2 (D) The right to examine all reports, documents and information that the
3 court considers, including the right to examine the reports, documents and
4 information prior to the hearing, if available.

5 (e) Upon receipt of the petition, the court shall schedule a hearing and
6 shall appoint an examiner as described in ORS 426.110 to evaluate the per-
7 son. If the person is in custody or committed while the hearing is pending,
8 the hearing must commence within 30 days of filing the petition unless good
9 cause is found by the court. If the court finds good cause, the hearing must
10 commence no later than 60 days after the filing of the petition or, if the
11 district attorney provided notice under paragraph (b) of this subsection, the
12 date of the notice, whichever occurs first. As used in this paragraph, “good
13 cause” means:

14 (A) The person who would be considered the victim of the act described
15 in subsection (3)(a)(C) of this section if the act were criminally prosecuted,
16 or an essential witness for either the state or the person, is unable to testify
17 within the 30-day period.

18 (B) The attorney for the person cannot reasonably be expected to partic-
19 ipate in the hearing within the 30-day period, cannot be adequately prepared
20 to represent the person at the hearing within the 30-day period, or has a
21 schedule conflict that cannot be resolved in a manner that allows the attor-
22 ney to represent the person at a hearing within the 30-day period.

23 (C) An examiner cannot be appointed to conduct the examination, or
24 conduct the examination and prepare a report, within the 30-day period.

25 (D) If a guardian ad litem is appointed on the case, the guardian ad litem
26 cannot be prepared for a hearing within the 30-day period.

27 (f)(A) The court may order that the person be committed to the custody
28 of the superintendent of a state hospital or the director of a secure mental
29 health facility while the petition is pending if the court finds probable cause
30 that:

31 (i) The person is at least 18 years of age;

1 (ii) The person has a qualifying mental disorder that is resistant to
2 treatment;

3 (iii) The person committed an act described in subsection (3)(a)(C) of this
4 section; and

5 (iv) Failure to commit the person while the hearing is pending would pose
6 serious harm or danger to the person or others.

7 (B) If a person committed under this paragraph is held in a secure facility
8 other than a state hospital or secure mental health facility, including but
9 not limited to a jail or prison, at the time the petition is filed, the court may
10 further order that the person remain at that placement for sufficient time to
11 allow the superintendent or director to safely admit the person. Any order
12 of the court concerning the placement of a person under this subparagraph
13 must be in accordance with the person's constitutional right to due process.
14 If the person remains in a secure facility under this subparagraph, the su-
15 perintendent, director or designee may consult with the facility to ensure
16 continuity of care for the person.

17 (C) Commitment to the custody of the superintendent of a state hospital
18 or the director of a secure mental health facility under this paragraph may
19 not exceed 60 days. If the hearing does not occur within 60 days, if the dis-
20 trict attorney dismisses the petition, or if the court holds the hearing but
21 does not commit the person, the person shall be returned to the county in
22 which the petition was filed and the court shall hold a disposition hearing
23 within five judicial days to determine how to proceed on the petition and
24 any outstanding criminal charges. A person who is returned to a secure fa-
25 cility other than a state hospital or secure mental health facility, including
26 but not limited to a jail or prison, under this paragraph may remain at the
27 placement until the disposition hearing.

28 (g) If the hearing is not commenced within the time period required by
29 paragraph (e) of this subsection, the court shall either dismiss the petition
30 or release the person on personal recognizance, to the custody of a third
31 party or upon any additional reasonable terms and conditions the court

1 deems appropriate.

2 (3)(a) At the hearing on the petition, the court shall order the person
3 committed as an extremely dangerous person with mental illness under the
4 jurisdiction of the Psychiatric Security Review Board for a maximum of 24
5 months if the court finds, by clear and convincing evidence, that:

6 (A) The person is extremely dangerous;

7 (B) The person suffers from a qualifying mental disorder that is resistant
8 to treatment; and

9 (C) Because of the qualifying mental disorder that is resistant to treat-
10 ment, the person committed one of the following acts:

11 (i) Caused the death of another person;

12 (ii) Caused serious physical injury to another person by means of a dan-
13 gerous weapon;

14 (iii) Caused physical injury to another person by means of a firearm as
15 defined in ORS 166.210 or an explosive as defined in ORS 164.055;

16 (iv) Engaged in oral-genital contact with a child under 14 years of age;

17 (v) Forcibly compelled sexual intercourse, oral-genital contact or the
18 penetration of another person's anus or vagina; or

19 (vi) Caused a fire or explosion that damaged the protected property of
20 another, as those terms are defined in ORS 164.305, or placed another person
21 in danger of physical injury, and the fire or explosion was not the incidental
22 result of normal and usual daily activities.

23 (b) The court shall further commit the person to a state hospital for
24 custody, care and treatment if the court finds, by clear and convincing evi-
25 dence, that the person cannot be controlled in the community with proper
26 care, medication, supervision and treatment on conditional release.

27 (c) The court shall specify in the order whether any person who would
28 be considered a victim as defined in ORS 131.007 of the act described in
29 paragraph (a)(C) of this subsection, if the act had been criminally prosecuted,
30 requests notification of any order or hearing, conditional release, discharge
31 or escape of the person committed under this section.

1 (d) The court shall be fully advised of all drugs and other treatment
2 known to have been administered to the alleged extremely dangerous person
3 with mental illness that may substantially affect the ability of the person to
4 prepare for, or to function effectively at, the hearing.

5 (e) The provisions of ORS 40.230, 40.235, 40.240, 40.250 and 179.505 do not
6 apply to the use of the examiner's report and the court may consider the
7 report as evidence.

8 (4) The findings of the court that a person committed an act described in
9 subsection (3)(a)(C) of this section may not be admitted in a criminal prose-
10 cution.

11 (5)(a) If the court commits a person under this section and the person has
12 pending criminal charges at the time of the hearing, the court shall dismiss
13 the criminal charges without prejudice, and if the person is further commit-
14 ted to a state hospital under this section, the dismissal shall not take effect
15 until the person's transportation to the state hospital.

16 (b) If the court commits a person to the state hospital under this section
17 and:

18 (A) The person is in a setting other than a state hospital, the court may
19 additionally order that the person remain in that placement until the person
20 can be safely transported to a state hospital pursuant to the order. Any order
21 of the court concerning the placement of the person under this subparagraph
22 must be in accordance with the person's constitutional right to due process.

23 (B) The person is at a state hospital at the time of the hearing, the person
24 may remain at the state hospital under the commitment.

25 (c) A person committed under this section shall remain under the juris-
26 diction of the board for a maximum of 24 months unless the board conducts
27 a hearing and makes the findings described in subsection (6)(d) of this sec-
28 tion.

29 (6)(a) The board shall hold a hearing six months after the initial com-
30 mitment described in subsection (3) of this section, and thereafter six months
31 after a further commitment described in ORS 426.702, to determine the

1 placement of the person and whether the person is eligible for conditional
2 release or early discharge. The board shall provide written notice of the
3 hearing to the person, the person's legal counsel and the office of the district
4 attorney who filed the initial petition under subsection (2) of this section
5 within a reasonable time prior to the hearing. The board shall further notify
6 the person of the following:

7 (A) The nature of the hearing and possible outcomes;

8 (B) The right to appear at the hearing and present evidence;

9 (C) The right to be represented by legal counsel and, if the person is
10 without funds to retain legal counsel, the right to have the court appoint
11 legal counsel;

12 (D) The right to subpoena witnesses;

13 (E) The right to cross-examine witnesses who appear at the hearing; and

14 (F) The right to examine all reports, documents and information that the
15 board considers, including the right to examine the reports, documents and
16 information prior to the hearing if available.

17 (b) If the board determines at the hearing that the person still suffers
18 from a qualifying mental disorder that is resistant to treatment and contin-
19 ues to be extremely dangerous, and that the person cannot be controlled in
20 the community with proper care, medication, supervision and treatment if
21 conditionally released, the person shall remain committed to a state hospital.

22 (c) If the board determines at the hearing that the person still suffers
23 from a qualifying mental disorder that is resistant to treatment and contin-
24 ues to be extremely dangerous, but finds that the person can be controlled
25 in the community with proper care, medication, supervision and treatment
26 if conditionally released, the board shall conditionally release the person.

27 (d) If the board determines at the hearing that the person no longer suf-
28 fers from a qualifying mental disorder that is resistant to treatment or is
29 no longer extremely dangerous, the board shall discharge the person. The
30 discharge of a person committed under this section does not preclude com-
31 mitment of the person pursuant to ORS 426.005 to 426.390.

1 (7)(a) At any time during the commitment to a state hospital, the super-
2 intendent of the state hospital may request a hearing to determine the status
3 of the person's commitment under the jurisdiction of the board. The request
4 shall be accompanied by a report setting forth the facts supporting the re-
5 quest. If the request is for conditional release, the request shall be accom-
6 panied by a verified conditional release plan. The hearing shall be conducted
7 as described in subsection (6) of this section.

8 (b) The board may make the findings described in subsection (6)(c) of this
9 section and conditionally release the person without a hearing if the office
10 of the district attorney who filed the initial petition under subsection (2) of
11 this section does not object to the conditional release.

12 (c) At any time during conditional release, a state or local mental health
13 facility providing treatment to the person may request a hearing to deter-
14 mine the status of the person's commitment under the jurisdiction of the
15 board. The hearing shall be conducted as described in subsection (6) of this
16 section.

17 (8)(a) If the board orders the conditional release of a person under sub-
18 section (6)(c) of this section, the board shall order conditions of release that
19 may include a requirement to report to any state or local mental health fa-
20 cility for evaluation. The board may further require cooperation with, and
21 acceptance of, psychiatric or psychological treatment from the facility. Con-
22 ditions of release may be modified by the board from time to time.

23 (b) When a person is referred to a state or local mental health facility for
24 an evaluation under this subsection, the facility shall perform the evaluation
25 and submit a written report of its findings to the board. If the facility finds
26 that treatment of the person is appropriate, the facility shall include its
27 recommendations for treatment in the report to the board.

28 (c) Whenever treatment is provided to the person by a state or local
29 mental health facility under this subsection, the facility shall furnish reports
30 to the board on a regular basis concerning the progress of the person.

31 (d) Copies of all reports submitted to the board pursuant to this sub-

1 section shall be furnished to the person and to the person's legal counsel, if
2 applicable. The confidentiality of these reports is determined pursuant to
3 ORS 192.338, 192.345 and 192.355.

4 (e) The state or local mental health facility providing treatment to the
5 person under this subsection shall comply with the conditional release order
6 and any modifications of the conditions ordered by the board.

7 (9)(a) If at any time while the person is conditionally released it appears
8 that the person has violated the terms of the conditional release, the board
9 may order the person returned to a state hospital for evaluation or treat-
10 ment. A written order of the board is sufficient warrant for any law
11 enforcement officer to take the person into custody. A sheriff, municipal
12 police officer, parole or probation officer or other peace officer shall execute
13 the order, and the person shall be returned to the state hospital as soon as
14 practicable.

15 (b) The director of a state or local mental health facility providing
16 treatment to a person under subsection (8) of this section may request that
17 the board issue a written order for a person on conditional release to be
18 taken into custody if there is reason to believe that the person can no longer
19 be controlled in the community with proper care, medication, supervision and
20 treatment.

21 (c) Within 30 days following the return of the person to a state hospital,
22 the board shall conduct a hearing to determine if, by a preponderance of the
23 evidence, the person is no longer fit for conditional release. The board shall
24 provide written notice of the hearing to the person, the person's legal coun-
25 sel and the office of the district attorney who filed the initial petition under
26 subsection (2) of this section within a reasonable time prior to the hearing.
27 The notice shall advise the person of the nature of the hearing, the right to
28 have the court appoint legal counsel and the right to subpoena witnesses,
29 examine documents considered by the board and cross-examine all witnesses
30 who appear at the hearing.

31 (10)(a) If the person had unadjudicated criminal charges at the time of the

1 filing of the petition for the person's initial commitment under this section
2 and the state hospital or the state or local mental health facility providing
3 treatment to the person intends to recommend discharge of the person at an
4 upcoming hearing, the superintendent of the state hospital or the director
5 of the facility shall provide written notice to the board and the district at-
6 torney of the county where the criminal charges were initiated of the dis-
7 charge recommendation at least 45 days before the hearing. The notice shall
8 be accompanied by a report describing the person's diagnosis and the treat-
9 ment the person has received.

10 (b) Upon receiving the notice described in this subsection, the district
11 attorney may request an order from the court in the county where the
12 criminal charges were initiated for an evaluation to determine if the person
13 is fit to proceed in the criminal proceeding. The court may order the state
14 hospital or the state or local mental health facility providing treatment to
15 the person to perform the evaluation. The hospital or facility shall provide
16 copies of the evaluation to the district attorney, the person and the person's
17 legal counsel, if applicable.

18 (c) The person committed under this section may not waive an evaluation
19 ordered by the court to determine if the person is fit to proceed with the
20 criminal proceeding as described in this subsection.

21 (11) The board shall make reasonable efforts to notify any person de-
22 scribed in subsection (3)(c) of this section of any order or hearing, condi-
23 tional release, discharge or escape of the person committed under this
24 section.

25 (12) Unless the court orders otherwise or either party objects, any party
26 or witness may attend a hearing held under this section via simultaneous
27 electronic transmission.

28 (13) The board shall adopt rules to carry out the provisions of this section
29 and ORS 426.702.

30 (14) Any time limitation described in ORS 131.125 to 131.155 does not run
31 during a commitment described in this section or a further commitment de-

1 scribed in ORS 426.702.

2

3

CHIEF MEDICAL OFFICER OF STATE HOSPITAL

4

5 **SECTION 6.** ORS 426.020 is amended to read:

6 426.020. (1) The superintendent of a hospital referred to in ORS 426.010
7 [*shall*] **must** be a person the Oregon Health Authority considers qualified
8 to administer the hospital. [*If the superintendent of any hospital is a physi-*
9 *cian licensed by the Oregon Medical Board, the superintendent shall serve as*
10 *chief medical officer.*]

11 (2) [*If the superintendent is not a physician,*] The Director of the Oregon
12 Health Authority or the designee of the director shall designate a physician
13 **licensed by the Oregon Medical Board** to serve as chief medical officer
14 **of a hospital referred to in ORS 426.010.** The designated chief medical of-
15 ficer may be an appointed state employee in the unclassified service, a self-
16 employed contractor or an employee of a public or private entity that
17 contracts with the authority to provide chief medical officer services. Unless
18 the designated chief medical officer is specifically appointed as a state em-
19 ployee in the unclassified service, the designated chief medical officer shall
20 not be deemed a state employee for purposes of any state statute, rule or
21 policy.

22 (3)(a) Notwithstanding any other provision of law, the designated chief
23 medical officer may supervise physicians and naturopathic physicians who
24 are employed by the hospital or who provide services at the hospital pursu-
25 ant to a contract.

26 (b) The designated chief medical officer may delegate all or part of the
27 authority to supervise other physicians and naturopathic physicians at the
28 hospital to a physician who is employed by the state, a self-employed con-
29 tractor or an employee of a public or private entity that contracts with the
30 authority to provide physician services.

31

CERTIFIED EVALUATORS

SECTION 7. ORS 161.362 is amended to read:

161.362. (1) A recommendation provided by a certified evaluator, pursuant to ORS 161.355 to 161.371, 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*] **symptomatology**, 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.

(2) A determination by a community mental health program director, or the director's designee, pursuant to ORS 161.355 to 161.371, that appropriate community restoration services are not present and available in the community must include information concerning the specific services necessary to safely allow the defendant to gain or regain fitness to proceed in the community and must specify the necessary services that are not present and available in the community.

(3)(a) Reports resulting from examinations performed by a certified evaluator, and documents containing the recommendations of or resulting from consultations with a community mental health program director or the director's designee, prepared under ORS 161.355 to 161.371, and any document submitted to the court by a state mental hospital related to the proceedings under ORS 161.355 to 161.371, are confidential and may be made available only:

(A) 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

(B) As ordered by a court.

1 (b) Any facility in which a defendant is housed may not use a report or
2 document described in paragraph (a) of this subsection to support a disci-
3 plinary action against the defendant.

4 (c) Nothing in this subsection prohibits the prosecuting attorney, defense
5 attorney or agent of the prosecuting or defense attorney from discussing the
6 contents of a report or document described in paragraph (a) of this sub-
7 section with witnesses or victims as otherwise permitted by law.

8 (4) The court shall ensure that an order entered under ORS 161.355 to
9 161.371 is provided, by the end of the next judicial day, to any entity ordered
10 to provide restoration services.

11 (5) Unless the court orders otherwise or either party objects, a defendant
12 committed to a state mental hospital or other facility, or a certified evalu-
13 ator or other expert witness, may attend hearings held under ORS 161.355
14 to 161.371 via simultaneous electronic transmission.

15 **SECTION 8.** ORS 161.371 is amended to read:

16 161.371. (1) The superintendent of a state mental hospital or director of
17 a facility to which the defendant is committed under ORS 161.370 shall cause
18 the defendant to be evaluated **by a certified evaluator** within 60 days from
19 the defendant's delivery into the superintendent's or director's custody, for
20 the purpose of determining whether there is a substantial probability that,
21 in the foreseeable future, the defendant will have fitness to proceed. In ad-
22 dition, the superintendent or director shall:

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

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

29 (A) The defendant has present fitness to proceed;

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

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

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

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

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

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

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

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

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

4 (A) Consult with the defendant and with any local entity that would be
5 responsible for providing community restoration services, if the defendant
6 were to be released in the community, to determine whether community res-
7 toration services are present and available in the community; and

8 (B) Provide the court and the parties with recommendations from the
9 consultation.

10 (b) Notwithstanding subsection (2) of this section, if the most serious of-
11 fense in the charging instrument is a felony, and the community mental
12 health program director determines that community restoration services that
13 would mitigate any risk posed by the defendant are present and available in
14 the community, the community mental health program director may file no-
15 tice of the determination with the court. Upon receipt of the notice, the
16 court shall order that the superintendent of the state mental hospital or di-
17 rector of the facility to which the defendant is committed, within five judi-
18 cial days:

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

23 (B) Provide the court and the parties with recommendations from the
24 evaluation.

25 (c) Within 10 judicial days of receiving the recommendations described in
26 paragraph (a) or (b) of this subsection, the court shall hold a hearing to de-
27 termine an appropriate action in accordance with ORS 161.370 (2)(c) as fol-
28 lows:

29 (A) If, after consideration of the factors and possible actions described in
30 ORS 161.370 (2)(c) and any recommendations received under paragraph (a)
31 or (b) of this subsection, the court determines that a hospital level of care

1 is necessary due to public safety concerns or the acuity of symptoms of the
2 defendant's qualifying mental disorder, and that based on the consultation
3 or evaluation described in paragraph (a) or (b) of this subsection, any infor-
4 mation provided by community-based mental health providers or any other
5 sources, primary and secondary release criteria as defined in ORS 135.230,
6 and any other information the court finds to be trustworthy and reliable, the
7 appropriate community restoration services are not present and available in
8 the community, the court may continue the commitment of the defendant.

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

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

27 (A) Consult with the defendant and with any local entity that would be
28 responsible for providing community restoration services, if the defendant
29 were to be released in the community, to determine whether appropriate
30 community restoration services are present and available in the community;
31 and

1 (B) Provide the court and the parties with recommendations from the
2 consultation.

3 (b) Notwithstanding subsection (2) of this section, if the most serious of-
4 fense in the charging instrument is a misdemeanor, and the community
5 mental health program director determines that the community restoration
6 services that would mitigate any risk posed by the defendant are present and
7 available in the community, the community mental health program director
8 may file notice of the determination with the court. Upon receipt of the no-
9 tice, the court shall order that the superintendent of the state mental hos-
10 pital or director of the facility to which the defendant is committed, within
11 five judicial days:

12 (A) Evaluate the defendant to determine whether a hospital level of care
13 is no longer necessary due to present public safety concerns, or no longer
14 necessary due to the acuity of symptoms of the defendant's qualifying mental
15 disorder; and

16 (B) Provide the court and the parties with recommendations from the
17 evaluation.

18 (c) Within 10 judicial days of receiving the recommendations described in
19 paragraph (a) or (b) of this subsection, the court shall hold a hearing to de-
20 termine an appropriate action in accordance with ORS 161.370 (2)(c) as fol-
21 lows:

22 (A) After consideration of the factors and possible actions described in
23 ORS 161.370 (2)(c), the consultation or evaluation and any recommendations
24 described in paragraph (a) or (b) of this subsection, and any other informa-
25 tion the court finds to be trustworthy and reliable, the court may continue
26 the commitment of the defendant if the court makes written findings that a
27 hospital level of care is necessary due to public safety concerns and the
28 acuity of symptoms of the defendant's qualifying mental disorder, and that
29 appropriate community restoration services are not present and available in
30 the community.

31 (B) If the court does not make the findings described in subparagraph (A)

1 of this paragraph, the court shall terminate the commitment and shall set a
2 review hearing seven days from the date of the commitment termination for
3 any defendant remaining in custody. At the review hearing, the court shall
4 consider all relevant information, determine an appropriate action in the
5 case as described in ORS 161.370 (2)(c) and enter an order in accordance with
6 the defendant's constitutional rights to due process.

7 (5)(a) If a defendant remains committed under this section, the court shall
8 determine within a reasonable period of time whether there is a substantial
9 probability that, in the foreseeable future, the defendant will gain or regain
10 fitness to proceed. However, regardless of the number of charges with which
11 the defendant is accused, in no event shall the defendant be committed for
12 longer than whichever of the following, measured from the defendant's initial
13 custody date, is shorter:

14 (A) Three years; or

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

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

19 (A) The initial custody date is the date on which the defendant is first
20 committed under this section on any charge alleged in the accusatory in-
21 strument; and

22 (B) The defendant shall be given credit against each charge alleged in the
23 accusatory instrument:

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

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

1 (c) The superintendent of the state mental hospital or director of the fa-
2 cility to which the defendant is committed shall notify the committing court
3 of the defendant's impending discharge 30 days before the date on which the
4 superintendent or director is required to discharge the defendant under this
5 subsection.

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

10 (b) When the committing court receives a notice from the superintendent
11 or director under subsection (1) of this section concerning the defendant's
12 progress or lack thereof, or under subsection (5) of this section concerning
13 the defendant's impending discharge, the committing court shall determine,
14 after a hearing if a hearing is requested, whether the defendant presently
15 has fitness to proceed.

16 (7) If at any time the court determines that the defendant lacks fitness
17 to proceed, the court shall further determine whether the defendant is enti-
18 tled to discharge under subsection (5) of this section. If the court determines
19 that the defendant is entitled to discharge under subsection (5) of this sec-
20 tion, the court shall dismiss, without prejudice and in accordance with ORS
21 161.367 (6), all charges against the defendant and:

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

23 (b) Initiate commitment proceedings under ORS 426.070, 426.701 or 427.235
24 to 427.292.

25

26

CAPTIONS

27

28 **SECTION 9. The unit captions used in this 2025 Act are provided**
29 **only for the convenience of the reader and do not become part of the**
30 **statutory law of this state or express any legislative intent in the**
31 **enactment of this 2025 Act.**

