

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

### **Background**

The aid and assist process may be triggered when a person experiencing mental illness is accused of a crime. If a court finds that a qualifying mental disorder may prevent a defendant from understanding the charges or assisting in their own defense, the court pauses the criminal case and may order the defendant to receive services to restore competency. This process protects the constitutional rights of defendants.

Changes to the aid and assist statutes in SB 295 were proposed by the SB 24 Implementation Workgroup and introduced by the Oregon Judicial Department. The SB 24 Implementation Workgroup (now called the “Aid and Assist Workgroup”) is a multi-stakeholder workgroup that has been meeting since 2019 with the goals of addressing implementation of SB 24 (2019) and improving the state’s aid & assist processes through consensus-based legislative changes. SB 295 builds upon SB 1575A (2020), which passed the Senate and House Judiciary Committee but did not reach the Senate floor before the 2020 legislative session ended.

### **SB 295 Section-by-Section**

SB 295 restructures the aid & assist statutes to improve clarity, making a number of substantive changes to effectuate the intent of SB 24 to increase the use of community-based services for competency restoration

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.

#### **Section 3**

- Removes the requirements for forensic evaluators to opine on the dangerousness of a defendant and the availability of community restoration services
- Requires CMHPs to report to the court on the specific community services that are necessary to safely restore the defendant and whether those services are present and available in the community
- 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
- Allows an evaluator to defer to the treatment provider’s recommendation of whether hospital level of care is needed for a defendant that is in a placement
- Requires the court to provide a copy of its orders within one judicial day to any entity ordered to provide restoration services

#### **Section 4**

- Clarifies that a defendant committed to the Oregon State Hospital (OSH) for restoration services will receive credit against each charge alleged in the accusatory instrument for each day of commitment
- Expands the existing requirement for courts to notify defendants of applicable firearms prohibitions by requiring the notice to be in writing

**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:

- Amends the criteria for that recommendation, replacing consideration of a defendant’s dangerousness with the defendant’s present safety concerns when not hospitalized
- Requires the CMHP to determine whether appropriate community restoration services are present and available in the community
- Clarifies when the court may continue the commitment following a recommendation that the defendant no longer needs a hospital level of care, depending on whether the most serious offense in the charging instrument is a felony or a misdemeanor

**Section 6** addresses court processes when a judge initially has doubts about the defendant’s fitness to proceed:

- Provides court discretion on whether to order a CMHP consultation when the defendant is charged with certain high-level offenses
- Clarifies that municipal courts shall order the city to pay for forensic examination when it is on the motion of the court of a financially eligible defendant

**Sections 6 and 7** authorize the court to order an appropriate action for a defendant who lacks fitness to proceed without holding a hearing if the parties agree and the court makes all findings required by law.

**Section 7** addresses the processes following the court’s determination that the defendant lacks fitness to proceed:

- Clarifies that a CMHP will recommend whether appropriate community restoration services are present and available in the community
- Conforms to federal law by requiring the court to set a review hearing within seven days for any defendant who remains in custody after it determines an appropriate action and to enter an order that is consistent with the defendant’s constitutional due process rights
- Clarifies that the court may require a defendant on community restoration to report regularly to OSH or a certified evaluator for examination
- Clarifies when the court has authority to commit a defendant to OSH, depending on whether the most serious offense in the charging instrument is a felony or misdemeanor
- Provides that, if the court determines that community restoration may be appropriate for a defendant who has warrants or holds in other jurisdictions, the courts in those jurisdictions must communicate within two judicial days and develop a plan to address their interests in a timely manner
- Prohibits a court from ordering community restoration services for a defendant in another county without permission of the receiving county

**Section 8** makes reports, motions, and orders concerning the involuntary medication of a defendant in custody of OSH after commitment under ORS 161.370 confidential and available for disclosure only as specified.

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