

# SENATE BILL 295 – WHAT YOU NEED TO KNOW

## WHEN?

The Governor signed SB 295 and, with the emergency clause, it took effect the same day, June 23, 2021

## WHAT?

SB 295 relates to fitness to proceed, creates new provisions, and amends ORS 161.365, 161.370, 161.372, 161.373, 161.390, 161.382, 181A.290, and 430.230.

(The following are highlights from SB 295. Interested parties should read the bill in its entirety.)

### Fitness to Proceed

- The term “dangerousness” is removed and replaced by **“the acuity of symptoms of the defendant’s qualifying mental disorder.”**
- Removes “supervision” in relationship to CMHP obligations, and instead describes the CMHP’s responsibility to provide community restoration services.
- Adds requirement to provide information in writing to the defendant that federal law prohibits the defendant from purchasing or possessing a firearm unless the defendant obtains relief.
- Removes the requirement of a hearing in ORS 161.370 fitness determinations where all parties agree. If the parties do not agree regarding the fitness determination and appropriate action for the case, a hearing is still required.
- Clarifies recommendations that evaluators must make to the court regarding hospital level of care.

### **Hospital level of care (HLOC) and public safety concerns**

- The following definitions were added:



- The term “hospital level of care” is defined as meaning “that a defendant requires the type of care provided by an inpatient hospital in order to gain or regain fitness to proceed.”
- The term “public safety concerns” is defined to mean “that the defendant presents a risk to self or to the public if not hospitalized or in custody.”
- If the defendant is charged with a **felony**, the court must commit the defendant to OSH or an OHA-designated facility if the court finds that the defendant requires a HLOC due to public safety concerns or the acuity of the defendant’s symptoms, and the appropriate services are not available in the community.
- If the defendant’s highest charge is a **misdemeanor**, the court may **not** commit the defendant **unless** the court either:
  - receives a recommendation from a certified evaluator that the defendant requires a HLOC due to the acuity of defendant’s symptoms and receives a recommendation from the CMHP that appropriate services are not available in the community; **or**
  - makes written findings that defendant requires a HLOC due to the acuity of defendant’s symptoms, public safety concerns, and appropriate services are not available in the community.

### **Amendments to the former “9b” process where the person no longer needs HLOC**

- A Community Mental Health Programs (CMHP) may file a notice with the court if the CMHP believes the person no longer needs HLOC at OSH, and can instead be served in the community;
- OSH may file a notice (rather than “shall”) with the court that the person no longer needs HLOC for persons charged with felonies;
- When a court receives a notice for a person charged with a misdemeanor that the person no longer needs HLOC, the court “may continue the commitment of the defendant only if the court makes written findings that a hospital level of care is necessary due to public safety concerns and the acuity of symptoms of the defendant’s qualifying mental disorder, and that appropriate community restoration services are not present and available in the community.

### **Changes for Courts**

- Allows the court on its own motion to order a “.365” evaluation when the crime is in the listed serious felonies (aggravated murder, murder, or attempted aggravated murder or murder, manslaughter, aggravated vehicular homicide, arson in the first degree when classified as crime category 10, assault



in the first or second degree, kidnapping in the first or second degree, rape in the first degree, unlawful sexual penetration in the first degree, or robbery in the first or second degrees)

- When the court considers actions, and determines that commitment to OSH is not appropriate, but the defendant remains in custody (i.e., in jail), the court must hold a hearing and **“enter an order in accordance with the defendant’s constitutional rights to due process.”**
- Adds a requirement for the court to contact other jurisdictions where there is a warrant or hold that could impact planning for restoration.
- Adds a restriction that a court may not order someone into restoration in another county without permission from the other county.

### **Involuntary medications – ORS 161.372**

- Clarifies that the reports filed regarding involuntary medications are confidential.

### **WHY HAVE THESE CHANGES BEEN MADE?**

The Legislature’s intent is to reduce the number of defendants committed to OSH and increase community treatment and supervision of defendants.

### **HOW HAVE THESE CHANGES BEEN MADE?**

SB 295 reorganizes current fitness to proceed statutes.

Revised order templates are being amended and will be available at

<https://www.oregon.gov/oha/OSH/LEGAL/Pages/Evaluation-Order-Templates.aspx>.

OHA will discuss SB 295 changes with stakeholders to effectuate a smooth transition and understanding of the law.

OHA will provide technical assistance upon request.

### **WHERE CAN I REVIEW THE NEW LAW?**

Read SB 295 online at this [link](#)

### **QUESTIONS?**

If you have any questions, please contact OSH Legal Affairs at 503-947-2937.