

“Public safety concerns” means that the defendant presents a risk to self or to the public if not hospitalized or in custody. SB 295, section 2(4).

<b>Present Safety Concerns</b>	<b>Reference</b>
<p>When a certified evaluator recommends that a defendant requires a hospital level of care due to the acuity of the defendant’s symptoms.</p> <p><b><u>Language:</u></b></p> <p>A recommendation provided by a certified evaluator, pursuant to sections 2 to 5 of this 2021 Act, 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.</p>	<p>Section 3(1)</p>

<b>Public Safety Concerns</b>	<b>Reference</b>
<p>If, after consideration of the factors and possible actions and any recommendations received, the court determines that a hospital level of care is necessary and that based on the consultation or evaluation, any information provided by CMHPs or other sources, primary and secondary release criteria, and any other information the court finds, the appropriate community restoration services are not present and available in the community, the court may continue to commitment of the defendant.</p> <p><b><u>Language:</u></b></p> <p>Within 10 judicial days of receiving the recommendations described in paragraph (a) or (b) of this subsection, the court shall hold a hearing to determine an appropriate action in accordance with ORS 161.370 (2)(c) as follows:            (A) If, after consideration of the factors and possible actions described in ORS 161.370 (2)(c) and any recommendations received under paragraph (a) or (b) of this subsection, the court determines that a hospital level of</p>	<p>Section 5(3)(c)(A)</p>

<p>care is necessary due to public safety concerns or the acuity of symptoms of the defendant’s qualifying mental disorder, and that based on the consultation or evaluation described in paragraph (a) or (b) of this subsection, any information provided by community-based mental health providers or any other sources, primary and secondary release criteria as defined in ORS 135.230, and any other information the court finds to be trustworthy and reliable, the appropriate community restoration services are not present and available in the community, the court may continue the commitment of the defendant.</p> <p>(B) If the court does not make the determination described in subparagraph (A) of this paragraph, the court shall terminate the commitment and shall set a review hearing seven days from the date of the commitment termination for any defendant remaining in custody. At the review hearing, the court shall consider all relevant information, determine an appropriate action in the case as described in ORS 161.370 (2)(c) and enter an order in accordance with the defendant’s constitutional rights to due process.</p>	
<p>After consideration of the factors and possible actions, the consultation or evaluation and any recommendations, and any other information the court finds , the court may continue to commitment of the defendant if the court makes written findings that a hospital level of care is necessary and that appropriate community restoration services are not present and available in the community.</p> <p><b><u>Language:</u></b></p> <p>Within 10 judicial days of receiving the recommendations described in paragraph (a) or (b) of this subsection, the court shall hold a hearing to determine an appropriate action in accordance with ORS 161.370 (2)(c) as follows:</p> <p>(A) After consideration of the factors and possible actions described in ORS 161.370 (2)(c), the consultation or evaluation and any recommendations described in paragraph (a) or (b) of this subsection, and any other information the court finds to be trustworthy and reliable, the court may continue the commitment of the defendant 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.</p> <p>(B) If the court does not make the findings described in subparagraph (A) of this paragraph, the court shall terminate the commitment and shall set a review hearing seven days from the date of the commitment termination for any defendant remaining in custody. At the review hearing, the court shall consider all relevant information, determine an</p>	<p>Section 5(4)(c)(A)</p>

<p>appropriate action in the case as described in ORS 161.370 (2)(c) and enter an order in accordance with the defendant's constitutional rights to due process.</p>	
<p>If the most serious offense in the charging instrument is a felony, the court will commit the defendant to OSH if the defendant is at least 18 or to the custody of the director of a secure intensive community inpatient facility designated by the authority if the defendant is under 18, if the court determines that the defendant requires a hospital level of care and the appropriate community restoration services are not present and available in the community.</p> <p><b><u>Language:</u></b></p> <p>If the most serious offense in the charging instrument is a felony, the court shall commit the defendant to the custody of the superintendent of a state mental hospital or director of a facility designated by the Oregon Health Authority if the defendant is at least 18 years of age, or to the custody of the director of a secure intensive community inpatient facility designated by the authority if the defendant is under 18 years of age, if the court makes the following findings:</p> <p>(A) The defendant requires a hospital level of care due to public safety concerns if the defendant is not hospitalized or in custody or the acuity of symptoms of the defendant's qualifying mental disorder; and</p> <p>(B) Based on the findings resulting from a consultation described in ORS 161.365 (1), if applicable, from any information provided by community-based mental health providers or any other sources, and primary and secondary release criteria as defined in ORS 135.230, the appropriate community restoration services are not present and available in the community.</p>	<p>Section 7(3)(a)(A)</p>
<p>If the most serious offense in the charging instrument is a misdemeanor, the court may not commit the defendant to OSH if the defendant is 18 years or to the custody of the director of a secure intensive community inpatient facility if the defendant is under 18, unless the court receives a recommendation the a certified evaluator that defendant requires a hospital level of care and receives a recommendation from a CMHP that the appropriate community restoration services are not present and available in the community or Determines that the defendant requires a hospital level of care after making written findings that defendant needs a hospital level of care, AND there are public safety concerns, AND the appropriate community restoration services are not present and available in the community.</p> <p><b><u>Language:</u></b></p>	<p>Section 7(4)(a)(B)(ii)</p>

<p>If the most serious offense in the charging instrument is a misdemeanor, the court may not commit the defendant to the custody of the superintendent of a state mental hospital or director of a facility designated by the Oregon Health Authority if the defendant is at least 18 years of age, or to the custody of the director of a secure intensive community inpatient facility designated by the authority if the defendant is under 18 years of age, unless the court:</p> <p>(A)(i) Receives a recommendation from a certified evaluator that the defendant requires a hospital level of care due to the acuity of symptoms of the defendant’s qualifying mental disorder; and</p> <p>(ii) Receives a recommendation from a community mental health program director, or director’s designee, that the appropriate community restoration services are not present and available in the community; or</p> <p>(B) Determines that the defendant requires a hospital level of care after making all of the following written findings:</p> <p>(i) The defendant needs a hospital level of care due to the acuity of the symptoms of the defendant’s qualifying mental disorder;</p> <p>(ii) There are public safety concerns; and</p> <p>(iii) The appropriate community restoration services are not present and available in the community.</p>	
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<b>Present Public Safety Concern</b>	<b>Reference</b>
<p>When the most serious offense in the charging instrument is a felony, and OSH determines that a hospital level of care is no longer necessary, OSH may file notice of this determination with the court. Upon receipt of the notice, the court will order a CMHP consult within 5 judicial days.</p> <p><b><u>Language:</u></b></p> <p>Notwithstanding subsection (2) of this section, if the most serious offense in the charging instrument is a felony, and the superintendent of the state mental hospital or director of the facility to which the defendant is committed determines that a hospital level of care is no longer necessary due to present public safety concerns and the acuity of symptoms of the defendant’s qualifying mental disorder, the superintendent or director may file notice of the determination with the court. Upon receipt of the notice, the court shall order that a community mental health program director or the director’s designee, within five judicial days:</p> <p>(A) Consult with the defendant and with any local entity that would be responsible for providing community restoration services, if the defendant were to be released in the community, to determine whether community restoration services are present and available in the community; and</p> <p>(B) Provide the court and the parties with recommendations from the consultation.</p>	<p>Section 5(3)(a)</p>

<p>If the most serious offense in the charging instrument is a felony and a CMHP determines that community restoration services are present and available in the community, the CMHP will notify the court. Upon receipt of the notice, the court will cause OSH to determine whether defendant requires a hospital level of care within 5 judicial days.</p> <p><b><u>Language:</u></b></p> <p>Notwithstanding subsection (2) of this section, if the most serious offense in the charging instrument is a felony, and the community mental health program director determines that community restoration services that would mitigate any risk posed by the defendant are present and available in the community, the community mental health program director may file notice of the determination with the court. Upon receipt of the notice, the court shall order that the superintendent of the state mental hospital or director of the facility to which the defendant is committed, within five judicial days:</p> <p>(A) Evaluate the defendant to determine whether a hospital level of care is no longer necessary due to present public safety concerns, or no longer necessary due to the acuity of symptoms of the defendant’s qualifying mental disorder; and</p> <p>(B) Provide the court and the parties with recommendations from the evaluation.</p>	<p>Section 5(3)(b)(A)</p>
<p>If the most serious offense in a charging instrument is a misdemeanor, and OSH determines the defendant does not need a hospital level of care , OSH will file notice of the determination with the court along with recommendations regarding the necessary community restoration services that would mitigate any risk presented by the defendant.</p> <p><b><u>Language:</u></b></p> <p>Notwithstanding subsection (2) of this section, if the most serious offense in the charging instrument is a misdemeanor, and the superintendent of the state mental hospital or director of the facility to which the defendant is committed determines that the defendant no longer needs a hospital level of care due to the acuity of symptoms of the defendant’s qualifying mental disorder or there are not present public safety concerns, the superintendent or director shall file notice of the determination with the court, along with recommendations regarding the necessary community restoration services that would mitigate any risk presented by the defendant. Upon receipt of the notice, the court shall order that a community mental health program director or the director’s designee, within five judicial days:</p>	<p>Section 5(4)(a)</p>

<p>(A) Consult with the defendant and with any local entity that would be responsible for providing community restoration services, if the defendant were to be released in the community, to determine whether appropriate community restoration services are present and available in the community; and</p> <p>(B) Provide the court and the parties with recommendations from the consultation.</p>	
<p>If the most serious offence in a charging instrument is a misdemeanor and the CMHP determines that community restoration services are present and available in the community, the CMHP may file notice of the determination with the court. Upon receipt of the notice, the court will order OSH to evaluate the defendant to determine whether defendant needs a hospital level of care within 5 judicial days.</p> <p><b><u>Language:</u></b></p> <p>Notwithstanding subsection (2) of this section, if the most serious offense in the charging instrument is a misdemeanor, and the community mental health program director determines that the community restoration services that would mitigate any risk posed by the defendant are present and available in the community, the community mental health program director may file notice of the determination with the court. Upon receipt of the notice, the court shall order that the superintendent of the state mental hospital or director of the facility to which the defendant is committed, within five judicial days:</p> <p>(A) Evaluate the defendant to determine whether a hospital level of care is no longer necessary due to present public safety concerns, or no longer necessary due to the acuity of symptoms of the defendant’s qualifying mental disorder; and</p> <p>(B) Provide the court and the parties with recommendations from the evaluation.</p>	Section 5(4)(b)(A)