

SENATE BILL 24 – WHAT YOU NEED TO KNOW

WHEN?

The Governor signed SB 24 and, with the emergency clause, it took effect the same day, July 15, 2019.

WHAT?

SB 24 amends ORS 161.365, ORS 161.370, and ORS 161.315 in several ways. (The following are highlights from SB 24. Interested parties should read the bill in its entirety.)

30-day evaluations – ORS 161.365 and ORS 161.315

- Deletes the 30-day commitment language in ORS 161.365 and ORS 161.315, and states that the defendant shall return to the county when OSH concludes its examination, unless:
 - ▶ OSH requests that the defendant remain at OSH due to the defendant's dangerousness and the acuity of the defendant's symptoms;
 - ▶ OSH determines that a period of observation is needed.
- Requires certified evaluators' reports filed under ORS 161.365 to include a recommendation of treatment and services necessary to allow the defendant to gain capacity, including whether a hospital level of care is required due to the defendant's dangerousness and the acuity of defendant's symptoms.
- Clarifies that evaluation reports are confidential and are available only to the parties, the court, the community mental health program (CMHP), and the facility housing the defendant – or as permitted by law or by court order.
- Requires evaluators to provide copies of their reports to the CMHP.

Competency restoration – ORS 161.370

- When a court determines that a defendant lacks fitness to proceed, the court must consider a CMHP recommendation whether the services and supervision necessary to safely allow the defendant to gain fitness are available in the community.
- If the court releases the defendant on supervision or orders community restoration, the court may order the CMHP to provide the court with status reports, and to notify the court if the defendant gains fitness to proceed.



- If the defendant's most serious charge is a **violation**, the court may not commit the defendant to OSH or a facility designated by OHA.
- If the defendant's most serious charge is a **misdemeanor**, the court may not commit the defendant to OSH or a facility designated by OHA unless a certified evaluator or the CMHP determines that the defendant requires a hospital level of care due to:
 - ▶ The defendant's dangerousness; and
 - ▶ The acuity of symptoms of the defendant's qualifying mental disorder.
- If the defendant's most serious charge is a **felony**, the court shall commit the defendant to OSH or a facility designated by OHA if the court determines that:
 - ▶ The defendant does require a hospital level of care due to the defendant's dangerousness and the acuity of symptoms of the defendant's qualifying mental disorder; and
 - ▶ Services and supervision necessary to allow the defendant to gain fitness are not available in the community.

If the defendant is committed under this section, the CMHP shall regularly review available community resources and maintain communication with the defendant and with OSH.

- If the court commits the defendant to OSH, the OSH superintendent shall file notice with the court when it determines:
 - ▶ The defendant is no longer dangerous; or
 - ▶ A hospital level of care is not necessary due to the defendant's dangerousness and the acuity of symptoms of the defendant's qualifying mental disorder; or
 - ▶ The services and supervision necessary to allow the defendant to gain fitness are available in the community.

When the court receives such a notice, the court must order the CMHP to – within five judicial days – determine whether services and supervision necessary to safely allow the defendant to gain fitness are available in the community. Then, within 10 days of receiving the CMHP's recommendations, the court shall hold a hearing to determine an appropriate action.

- Requires the court and the parties to determine an appropriate action for the defendant throughout the proceedings under ORS 161.370, which may include but is not limited to: OSH commitment; community restoration; release on supervision; commencement of civil commitment proceedings; commencement of protective proceedings; or dismissal of the charges.
- Requires the court to consider in determining the appropriate action: the primary and secondary release criteria; the least restrictive option appropriate for the defendant; the needs of the defendant; and the interests of justice.
- Requires courts to ensure that “.370” orders be provided, by the end of the next judicial day, to any entity ordered to provide services and supervision, including OSH.
- Specifies that defendants, evaluators and other experts may attend hearings via “simultaneous electronic transmission” unless the court orders otherwise.

Resulting changes to Oregon Administrative Rules 309-088-0105 – 309-088-0145

Defines:

- Hospital level of care, acuity and dangerousness
- CMHP restoration services
- CMHP role in discharge planning
- CMHP responsibility for monthly updates to the court
- CMHP ongoing engagement for individuals in the hospital or other facility
- Consultations required to be completed by a qualified mental health provider (QMHP)

Adds:

- Consultation by CMHP with any local entity responsible for supervision if the individual is released into the community
- OHA can request additional consultations
- Plan of correction for not meeting required timelines
- Timelines for CMHPs to submit consultation reports to the court after receiving a ready to discharge notice from OSH or receiving a consultation order from the courts

WHY?

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

HOW?

The court will ensure orders are sent to OSH.courtorders@state.or.us.

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 24 changes with stakeholders to effectuate a smooth transition and understanding of the law. OHA will provide technical assistance upon request.

WHERE?

Read SB 24 online:

<https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureDocument/SB24/Enrolled>

QUESTIONS?

If you have any questions, please contact OSH Legal Affairs at 503-947-2937 or OSH.courtorders@state.or.us.