

## Federal Order Frequently Asked Questions

September 29, 2025

**Disclaimer: These FAQs are not legal advice and do not constitute legal authority.**

On Sep. 1, 2022, Oregon Federal District Court Judge Michael Mosman issued an order (the “Mosman Order”) intended to bring Oregon State Hospital (OSH) into compliance with the 2002 Mink injunction, which requires OSH to admit defendants under aid and assist orders for competence restoration within seven days. The Mosman Order remains in effect and has been amended and clarified by the federal court in several subsequent orders, which are collectively referred to as the “federal orders.” The federal orders are designed to reduce in-custody wait time for admission for aid and assist defendants by: (1) prioritizing forensic admissions, and (2) limiting the length of restoration until the hospital reaches compliance with the Mink injunction.

On Aug. 9, 2023, a list of frequently asked questions (FAQs) related to the Mosman Order was developed. Those FAQs are available at: <https://www.oregon.gov/oha/OSH/reports/MINK-BOWMAN-FAQ.pdf>\*.

HB 2005 was signed into law on Jul. 24, 2025. It makes significant changes to the fitness to proceed statutes by amending ORS 161.355 to 161.373. However, that does not impact OSH’s and OHA’s legal obligation to comply with the federal orders.

Below are additional FAQs that address inconsistencies between HB 2005 and the federal orders.

### General

#### When does HB 2005 take effect?

Certain provisions of HB 2005 are effective on Sep. 29, 2025, while others are effective on Jan. 1, 2026.

The sections of HB 2005 that become effective on Sep. 29, 2025, generally address length of restoration at OSH and in the community, and processes and procedures related to community restoration. The provisions that will go into effect on Jan. 1, 2026 are generally related to the “ready to place” process and sets out some provisions identifying the evidence the court may consider in a fitness determination.

\*This FAQ was previously provided in an August 9, 2023 version. It is included here to assist with understanding the new FAQs generated by HB 2005.

## Inpatient competency restoration

### What is the impact of the new time limits for inpatient competency restoration at the hospital (LOR-H) under HB 2005?

While HB 2005 made changes to restoration time limits, OSH/OHA are required to follow the federal orders. The inpatient competency restoration limits in the federal orders are:

Most serious offense	Time limit under federal orders
Violations and Non-Person Misdemeanors	Ineligible
Person Misdemeanors; Contempt with Punitive Sanctions	Maximum sentence for offense or 90 days, whichever is shorter*
Non-Ballot Measure 11 (ORS 137.700(2)) Felonies	6 months*
Ballot Measure 11 (ORS 137.700(s)) Felonies	1 year*

\*The federal orders allow the above time limits to be extended for the following reasons:

1. A 30-day extension order for discharge planning, and
2. A 180-day extension order for violent felonies.

### When may a patient's OSH commitment be extended?

OSH/OHA are required to comply with all Mink-Bowman federal orders, which provide two types of extensions. These extensions, which have also been codified in HB 2005, include:

#### Violent Felony / 180-Day Extension

A district attorney may petition the court to extend the above maximum inpatient restoration limits by 180 days. The petition must be signed by the elected district attorney for that county and submitted within 30 days of receipt of OSH's notice of discharge. After a hearing, the court may issue an extension of 180 days if it makes the following findings based on clinical evidence presented:

- Defendant is charged with a "violent felony" pursuant to ORS 135.240(5), defined as an offense where there was actual or threatened serious physical injury to the victim, or a felony sexual offense;
- There is clear and convincing evidence of a danger of physical injury or sexual victimization to the victim or a member of the public if Defendant is discharged from OSH;
- Defendant meets the requirements of ORS 161.370(3), which requires the court to determine that the defendant requires 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 appropriate community restoration services are not present and available in the community; and
- There is a substantial probability that continued commitment at OSH will lead to a finding that Defendant has gained or regained fitness within the 180-day extension.

OSH must receive the extension order from the commitment court prior to the expiration of the restoration time period. The court is required to review the status of restoration efforts at least every 180 days. At these reviews, the court may continue the commitment for an additional 180 days if it makes the findings outlined above. The maximum total amount of commitment time cannot exceed statutory maximums of 36 months or the statutory maximum sentence the court could have imposed for the charged offense.

### **30-Day Discharge Planning Extension**

Provided that a defendant's statutory end of jurisdiction has not run, a court may order a 30-day extension for discharge planning and coordination where a community placement has been identified where the following criteria have been met:

- OSH determines that the defendant is reasonably expected to be placed in an identified placement within 30 days of the expiration of the defendant's inpatient commitment; and
- The court order to extend for 30 days is issued and received by OSH at least 5 business days prior to the end of the defendant's in-patient commitment.

### **May OSH hold a defendant based on automatic extensions authorized under HB 2005 to allow parties to file extension petitions, to hold extension hearings or to order an extension?**

No. OSH can only follow extensions authorized by the federal orders.

### **May OSH automatically hold a defendant past the LOR-H date when a fitness evaluation is submitted to the court, to provide the parties with an opportunity to petition for an LOR-H extension order?**

No. OSH/OHA are required to follow the federal orders, which allows for only two types of extensions: (1) the 30-day extension order for discharge planning, and (2) the 180-day extension order for violent felonies, as more fully explained above.

### **May OSH re-admit a defendant who has been discharged but where a court issues a late 30-day extension order for discharge planning or 180-day violent felony extension order?**

Consistent with current practice and the federal orders, OSH may not readmit a person based on a late extension order issued when the defendant has already been discharged.

### **May OSH hold a defendant past their LOR-H date when the court grants a district attorney requested extension in cases where an evaluator finds evidence of malingering/impression management and needs additional time?**

No. OSH can only follow extensions authorized by the federal orders.

### **May OSH hold a defendant past their LOR-H if the district attorney has filed a petition after receiving a Sell involuntary medication report?**

No. OSH can only follow extensions authorized by the federal orders.

### **May OSH hold a defendant where a court has issued an extension based on a Sell involuntary medication order?**

No. OSH can only follow extensions authorized by the federal orders.

### **How is the maximum OSH commitment period calculated for a person found unfit to proceed?**

Under HB 2005 and consistent with the federal orders, the clock starts on the initial day of commitment. Time spent in jail before or after commitment is not counted against the commitment period. Only time spent in a state psychiatric hospital or secure treatment facility is counted towards the maximum commitment period.

## **Forensic Evaluation Services**

### **How will HB 2005 impact OSH Forensic Evaluation Services (FES)?**

Evaluations of individuals in community restoration are required at least every 180 days to determine if the defendant has regained fitness to proceed. If the defendant is charged with a violation, B or C misdemeanor, or non-person A misdemeanor, the court may order a fitness evaluation prior to the review hearing 90 days after it issues the community restoration order. HB 2005 is silent on who should perform evaluations in the community and how they are funded.