Civil Commitment and Aid and Assist Overview

Behavioral Health Division

Adult Behavioral Health

Civil Commitment

The Path to Civil Commitment

The formal civil commitment process begins with a Notice of Mental Illness (NMI).

- The NMI initiates an investigation by an OHA certified investigator in the county where the NMI was filed.
- The type of NMI dictates the timeline for the investigation.
- The role of the investigator
    - Interview the PAMI.
    - Review pertinent records (hospital chart, police reports, crisis notes, etc)
    - Interview witnesses which can include hospital staff, family, law enforcement, crisis workers, and community members.
    - File a report with a recommendation to the court.

Notice of Mental Illness – 4 Types

Two-party Petition

- Completed by any two citizens in the community
- Must be notarized and submitted to the CMHP who notifies the circuit court
- Hearing required within 15 calendar days (5 days with Warrant of Detention)

Magistrate or County Health Officer

- Completed by judge/magistrate or County Health Officer
- Submitted directly to CMHP
- Hearing required within 15 calendar days (5 days with Warrant of Detention)

ORS 426.070

Hospital Hold

- Completed by a Licensed Independent Practitioner
- Submitted directly to the circuit court who notifies the CMHP
- Hearing required within 5 judicial days

Nonhospital Hold

- Completed by a LIP and CMHP Director/designee
- Submitted directly to the circuit court
- Hearing required within 5 judicial days

ORS 426.234

Civil Commitment Overview

Community Mental Health Programs and Tribes

- **ORS 426.180 Emergency commitment of individuals in Indian country.**
  - (1) ORS 426.180 to 426.210 apply to the commitment of an individual in Indian country if a federally recognized Indian tribe that has Indian country located within this state chooses to exercise the tribe's authority over the commitment.
  - (8) This section may be applied as provided by agreement with the governing body of the reservation. Payment of costs for a commitment made under this section shall be as provided under ORS 426.311.
- **OAR 309-033-0240(2) – Initiation for a Person under the Jurisdiction of a Federally Recognized Tribe in Oregon.** The civil commitment process may be initiated for a person under the jurisdiction of a federally recognized tribe located in Oregon by a tribal court pursuant to ORS 426.180, by a tribal court or other statutory grounds pursuant to ORS 426.070, or by a licensed independent practitioner (LIP) pursuant to ORS 426.232.
- **OAR 309-033-0930 - Investigation of Persons Alleged to Have a Mental Illness (2)(b)(A):** Information from the Nine Federally Recognized Tribes of Oregon. When the person is identified as an enrolled member of a federally recognized tribe in Oregon, the investigator shall solicit information from that tribe, whenever feasible;

Investigation Outcome

- A recommendation of no hearing.
- Voluntary treatment.
- A Diversion of 14 days with the possibility of an Extension of another 14 days.
- A civil commitment hearing based on one or more of the following prongs:
  - Danger to self.
  - Danger to others.
  - Unable to provide for basic needs.
  - Chronic mental disorder (expanded criteria).

Civil Commitment Hearing Outcome

- Dismissal and release.
- Civil commitment of up to 180 days.
  - Conditional release (by court).
  - Inpatient commitment (by CMHP)
  - Outpatient commitment (by CMHP)
- Assisted Outpatient Treatment (AOT)

Aid and Assist

What is Aid and Assist?

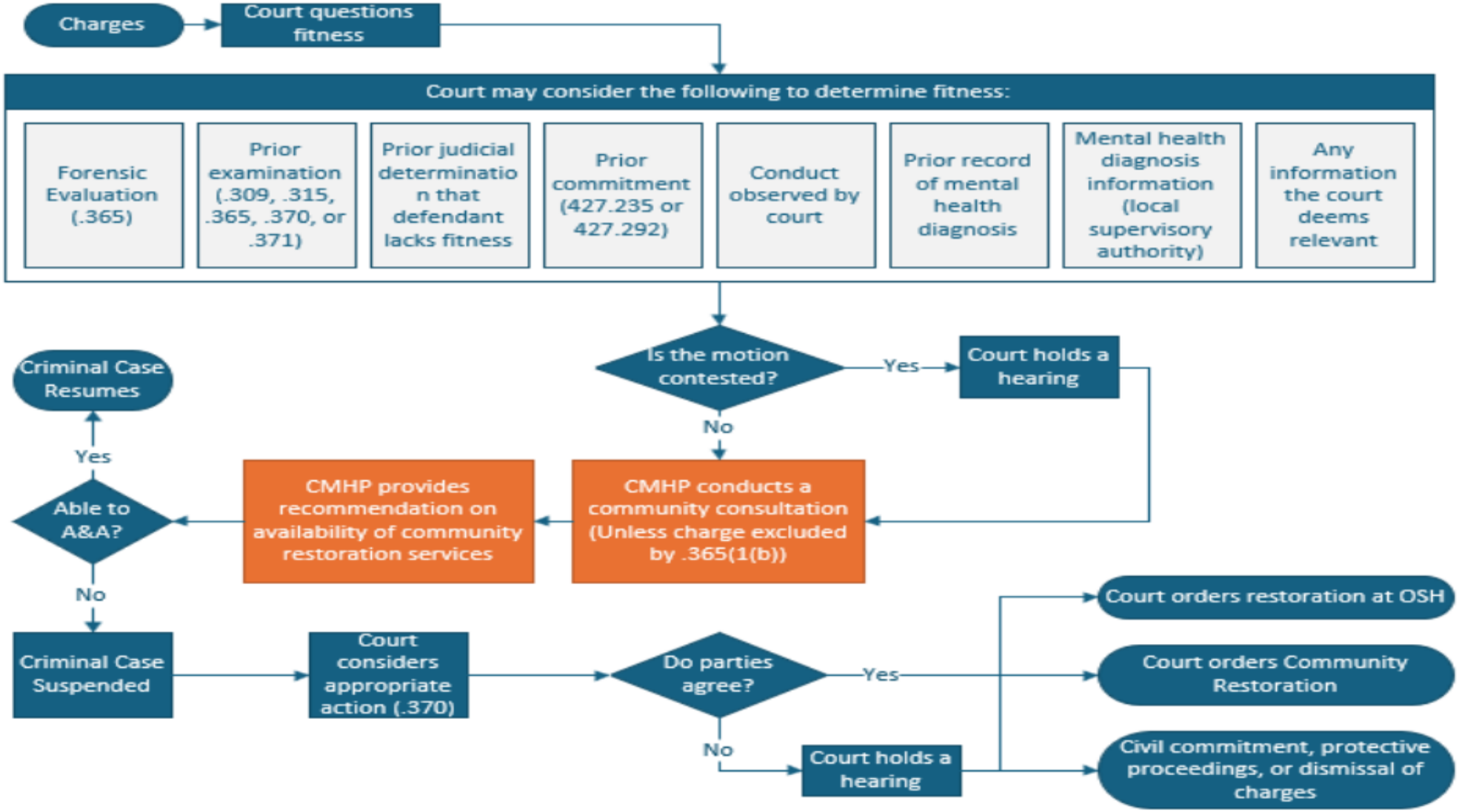
Is:

- A defendant is unable to aid and assist if, as a result of a "qualifying mental disorder," the defendant is unable to:
  - Understand the nature of the proceedings;
  - Assist and cooperate with their counsel; or
  - Participate in their defense
- Common terms are:
  - Incompetent to Stand Trial (IST)
  - Unfit to Proceed
  - Unable to Aid and Assist
  - Aid and Assist
  - .370

Is not:

- Dangerousness is not a reason for incompetence even if dangerousness is due to a qualifying mental disorder
- Severe symptoms do not automatically render a person incompetent to proceed
- Lack of factual knowledge does not mean incompetence and must be due to qualifying mental disorder
- Commitment for incompetency is not the same as Guilty Except for Insanity commitment

Aid and Assist process



Consultation vs. Evaluation

Community Consultation

- Completed by CMHP staff who are QMHPs to inform the court of appropriate and available community restoration services.
- Provides specific services necessary to safely allow the person to gain or regain fitness to proceed in the community
- Identifies whether those services are present and available in the community

Forensic Evaluation

- Can be ordered by the court to provide an opinion on whether a defendant is able to aid and assist in their defense
- Completed by a Certified Forensic Evaluator who is a Psychologist or a Psychiatrist
- Provides information on what treatment and services the individual may need to be able to Aid and Assist and if a hospital level of care is required

* House Bill 2005, Section 45(5)(c)-(d)[2], requires competency re-evaluations for individuals on community restoration at specified intervals, including 90-day re-evaluations for certain charge categories and at least every 180 days for all community restoration defendants, effective for applicable cases beginning September 29, 2025.

Competency and Community Restoration

Competency restoration services can occur at OSH or in the community (Community Restoration). These services include but are not limited to:

Competency Restoration services may include, but are not limited to:

- Behavioral Health Treatment (mental health and/or substance use treatment, ACT- assertive community treatment)
- Legal Skills Training
  - Training on courtroom procedures, roles, languages, and potential outcomes of the court process
  - an individual found unable to aid and assist does not automatically require legal skills training to gain or regain capacity
- Medical Services
  - Management and care of the Individual related to any psychiatric or medical condition that impairs their capacity.

Community Restoration services may include, but are not limited to:

- Competency Restoration Services
- Forensic Care Coordination (case management, communication with courts); and
- Supportive Services necessary to support community integration (housing, peer support etc.)

Community Mental Health Programs and Tribes

OAR 309-088-0146 CMHP Responsibilities During Community Restoration (6) The CMHP shall have on-going communication and collaboration between the Court or other applicable designated agencies within the criminal justice system, State Hospital, the Authority, Veteran or Military Services, Aging and People with Disability Services, Intellectual and Developmental Disability Services, **tribal entities,** CCO and providers, to ensure the defendant's needs are being met in the Least Restrictive Environment. Coordination efforts may include but are not limited to:

- a) Coordination of periodic forensic evaluations at least every 180 days, beginning with the community restoration order date, or as ordered by the court, in collaboration with the defendant's attorney, to assess Fitness to Proceed;
- (b) Communication with providers to coordinate or provide transportation to and from the forensic evaluations and court appearances in the case; and
- (c) Communication with providers, at least every 45 days, to receive clinical updates that inform Community Restoration Status Reports while the defendant is in Community Restoration Services; and
- (d) Communication of Court ordered requirements, limitations, and court dates to the defendant as clinically indicated.

Consultation and collaboration with tribal entities is also required in the following OAR's related to community restoration services:

- OAR 309-088-0105 Purpose and Scope: community consultations
- OAR 309-088-0115 Definitions (7) (20): case management and forensic care coordination
- OAR 309-088-0125 CMHP Consultation Reports and OHA Notification/Support Requests (5)

Funding Overview

General funds are the primary funding for OHA Behavioral Health's Civil and Aid & Assist programs

County Financial Assistance Agreements (CFAA) with Community Mental Health Programs (CMHP)

Direct contracts with residential providers for individuals that are not Medicaid eligible and/or do not meet medical necessity for Medicaid reimbursemment

Questions

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OREGON HEALTH AUTHORITY

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