

KNOW YOUR  
RIGHTS  
The Aid and  
Assist  
Process

**DRO**

Disability  
Rights  
Oregon

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# Introduction

The purpose of this brochure is to provide general information about the rights of people with disabilities who are involved in the criminal justice process.

This is general information that we hope is helpful. This information is provided as a public service and is not legal advice.

Contact your criminal defense attorney with questions about your criminal charges. They are your best resource for criminal justice questions.



# Overview of the Aid and Assist Process

If you have been accused of a crime, you have the right to a trial and to participate in your own defense. You also have the right to an attorney.

Sometimes the court thinks you cannot understand the charges or help your defense attorney. That means the court thinks you may be unable to “aid and assist” in your own defense. The case against you is put on hold until you are able to “aid and assist.”

People often spend some time in jail before, during, or after the aid and assist process. For more information about your rights in jail, [contact Disability Rights Oregon](#) or go to [droregon.org](#).

## What does aid and assist mean?

### TO AID AND ASSIST, YOU MUST BE ABLE TO:

- Understand the criminal charges against you
- Understand the decisions you’ll need to make in your case
- Help your defense attorney
- Participate in the court process

### EXAMPLES OF CONDITIONS/DISABILITIES THAT CAN AFFECT YOUR ABILITY TO AID AND ASSIST INCLUDE:

- Brain injuries
- Mental health conditions
- Intellectual or developmental disabilities
- Cognitive conditions



Sometimes other words are used to talk about the aid and assist process:

- 370 (ORS 161.370)
- Competency to stand trial
- Fitness to proceed
- Competency restoration

## What happens when the court or my attorney thinks I am unable to aid and assist?

If your attorney or the judge thinks you may not be able to aid and assist, you will receive an evaluation. The evaluation can happen in jail, in the community, or at the state hospital. Some people receive more than one evaluation.

Sometimes, instead of an evaluation, the court can hear from witnesses in the community who have information that will help the court decide if you can aid and assist. Often the court will ask you some questions about your understanding of the court system and the process.

If the court decides you are unable to aid and assist, your criminal case is put on hold, and the judge will order treatment for you, either in the community or at the state hospital.

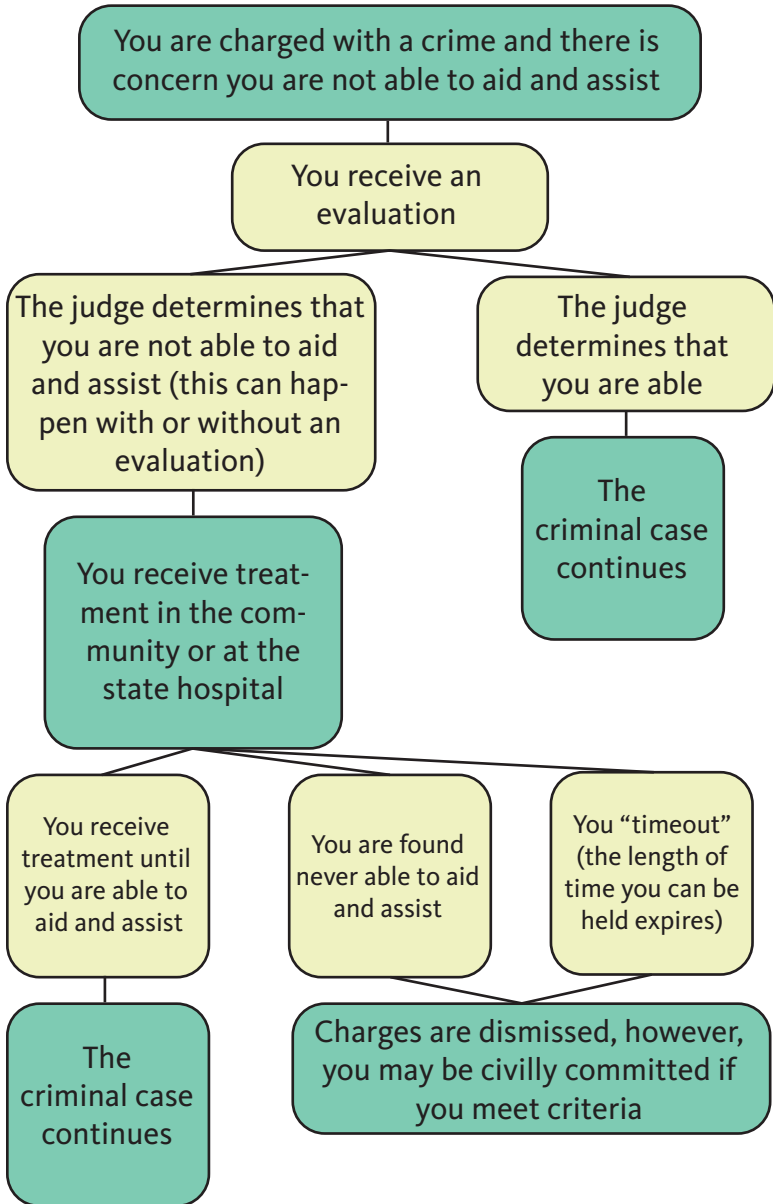
## Alternatives to the Criminal Process

At any point, rather than engaging in the criminal justice process, the judge may:

- Dismiss the charges
- Start the process for a civil commitment
- Consider a guardianship
- Consider other appropriate options



# The Aid and Assist process



# The Evaluation Process

## Who orders an evaluation?

The evaluation may be ordered by the judge, and/or your attorney may hire an evaluator.

If your attorney has a concern about your ability to aid and assist, their ethical obligations require them to raise that concern with the court. A defense attorney cannot ignore a concern regarding your ability to aid and assist.

## How long do I have to wait for an evaluation?

Unfortunately, wait times vary depending on the county and the availability of a forensic evaluator. People may wait 1 to 8 weeks. If you are in jail and you have been waiting for weeks for an evaluation, you or your friend or family should contact your attorney, the jail, and the court to push for a timely evaluation.

## Who performs the evaluation?

The evaluation is performed by a certified forensic examiner (“evaluator”). The evaluator may be hired by your attorney or the evaluator may work for the state hospital.

# Where does the evaluation take place?

Evaluations can take place in an outpatient setting, at the jail, or at the state hospital.

# What does the evaluation say?

THE EVALUATOR WRITES A REPORT THAT PROVIDES AN OPINION ABOUT:

- Whether you are able to aid and assist
- Your possible diagnosis or condition
- Whether treatment is recommended in the community or a hospital setting

# Is the evaluation confidential?

If the evaluation was ordered by your defense attorney, it remains confidential unless your attorney needs to let the court and the District Attorney know that you are unable to aid and assist. If you are concerned about confidentiality, talk to your attorney.





# What happens after the evaluation is performed?

The judge holds a hearing to decide if you are able to aid and assist in your defense.

## IF YOU ARE FOUND ABLE TO AID AND ASSIST:

- The case continues

## IF YOU ARE FOUND UNABLE TO AID AND ASSIST:

- The charges are put on hold until you are able to aid and assist
- The judge will order you receive [restoration treatment](#) so that you can aid and assist in your defense in the future

If you have been found unable and are stuck in jail waiting for treatment, contact your defense attorney and Disability Rights Oregon. No one should wait in jail for more than 7 days.



# Your Rights During Restoration Treatment

## What is restoration treatment?

The goal of restoration treatment is to restore your ability to aid and assist in your case. Usually, this involves participating in “legal skills” classes. These classes teach you basic legal terminology and help you understand the legal process. Treatment may also involve medication.

## Where is treatment provided?

The judge may order you receive treatment in the community with supervision (“community restoration”) or commit you to the state hospital (“hospital restoration”).

### HOSPITAL RESTORATION:

- If the court finds that community restoration is not possible in your case, you will receive restoration treatment at the state hospital.
- Federal courts have held that you must be transferred to the state hospital within 7 days of the court order, but that doesn’t always happen. Talk to Disability Rights Oregon or your attorney if you are concerned about your wait time.

Some people start their restoration treatment at the state hospital but continue it in the community. If you are receiving restoration treatment at the state hospital and would like to receive treatment in the community, you may talk to your social worker.



## COMMUNITY RESTORATION:

- The Community Mental Health Program (CMHP) should meet with you to determine if community restoration is appropriate and available
- If you are charged with a misdemeanor, you must receive restoration treatment in the community, unless the evaluator or the CMHP determines that you need to be treated in a hospital
- Even if you are charged with a felony, you may still be able receive community restoration if the court finds it appropriate
- While receiving community restoration you may live in your own home or a residential program
- If you don't have a place to live, the CMHP may be able to arrange housing while receiving community restoration treatment

## What are my rights during treatment at the state hospital?

In hospital settings, there are rules and policies about patients' rights. Additionally, there are processes to override a patient's refusal of medications.

Disability Rights Oregon has a separate publication that explain these rights. For more information about your rights during treatment at the state hospital, [contact Disability Rights Oregon](#) or go to [droregon.org](http://droregon.org).



# The Re-evaluation Process

## When will I be re-evaluated?

You must be re-evaluated within **60 days** after you arrive at the state hospital or a community restoration placement. The purpose of this new evaluation is to determine if you have regained your ability to aid and assist. Your treatment team can request a re-evaluation sooner. They don't have to wait **60 days**.

After the evaluation is completed, the treatment providers must report back to the court. They must say whether they believe you will be able to aid and assist within **90 days** of the date when you were transferred.

If you are still found unable after 90 days, your treatment provider will begin reporting on your ability to aid and assist every 180 days. The goal of your commitment is to help you get better so that you can aid and assist in your own defense.

## What is the longest I can be held for competency restoration?

The maximum time you can be held at the state hospital for restoration treatment depends on your charge – see below. If you have questions about your treatment timeframe, you can ask your treatment team or your defense attorney.

### COMMUNITY RESTORATION:

Currently, there is no time limit for community restoration treatment.



## HOSPITAL RESTORATION:

**Misdemeanor:** You can be held for one year or the maximum sentence that could have been given for your charges, whichever is shorter.

**Felony:** You can be held for three years or the maximum sentence that could have been given for your charges, whichever is shorter.

On average, people who are ordered to the state hospital for aid and assist treatment stay about 80 days. But, the state hospital is working with local communities to reduce the amount of time people stay.



# What are the possible outcomes of the re-evaluation?

## YOU ARE FOUND ABLE:

The evaluator believes you are **able** aid and assist in your defense. You will be sent back to your county to await trial or a resolution of your case.

## YOU ARE FOUND NOT YET ABLE:

The evaluator believes that you are **not yet able** to aid and assist in your defense, but you may be able in the future.

You will remain at the state hospital or community restoration placement until you are found able, found never able, or the length of time you can be held has expired. Your treatment team reports to the judge on your condition every 180 days.

## YOU ARE FOUND NEVER ABLE:

The evaluator believes it is unlikely you will be able to aid and assist in your defense in the foreseeable future. This is usually called a finding of “**never able.**” If the evaluator believes you are “never able,” they will tell the court and the restoration order may be stopped. In this case the court may dismiss the charges.

However, you can be **civily committed** if you are found to be dangerous to yourself or others or unable to care for your own basic needs. In this case, you may stay in the hospital. For more information on the civil commitment process, **contact Disability Rights Oregon** or go to [droregon.org](http://droregon.org).



# You May Have the Right to Vote

You have the right to vote during these times:

You have been charged with a crime but you have not been sentenced

You are being evaluated or receiving restoration treatment in the aid and assist process

You are serving a misdemeanor sentence, even in jail

You served your sentence for a felony and are on parole or post-prison supervision in the community

You do not have the right to vote during these times:

You are serving your sentence for a felony conviction

You are incarcerated for a parole violation on a felony conviction

While you are committed to the state hospital or any other facility, you keep many of your rights including voting. If there is an election being held and you have previously registered to vote, you should be able to get a ballot and vote through 8:00 p.m. on election day. You can help choose elected officials who make decisions about public services, housing, education, the criminal justice system, mental health services, health care, and more. **Your voice is important.** Local elections are held up to four times a year.



# Update your voter registration

Jails and the state hospital should give you voter registration forms. You can vote while you are in jail or at the state hospital, under the conditions listed above. To get a ballot, you need to update your voter registration. If you are concerned about your voting rights, call Disability Rights Oregon at 888-339-VOTE or 503-243-2081.

**Oregon State Hospital (OSH):** If you have questions or need help with voting, contact the Benefits Coordinator Unit. OSH staff will help you to register and turn in your ballot.

## OSH Benefits Coordinator Unit

Salem: 503-947-2522

Junction City: 541-465-2791





# Public Benefits During Hospitalization or Detention

If you received government benefits, such as Social Security Benefits or the Oregon Health Plan, those benefits may be suspended, or may end, while you are in jail or at the state hospital.

If you have a [representative payee](#), you should contact that person regarding your benefits while you are in jail or the state hospital.

**In jail:** You can talk to social workers or discharge planners about getting benefits reinstated when you are discharged.

**At OSH:** You can talk to a social worker or the Benefits Coordinator Unit at the state hospital about getting benefits reinstated when you are discharged.

You can talk to your state hospital social worker about applying for benefits and services, even if you have not received them before. You may qualify for residential or in-home services to help with self-care, as well as the Oregon Health Plan, SSI, or SSDI.

## Benefits contacts

Social Security  
Administration

800-772-1213  
[www.ssa.gov](http://www.ssa.gov)

Oregon Health  
Plan

800-699-9075

OSH Benefits  
Coordinator Unit

Salem: 503-947-2522  
JC: 541-465-2791



# Your Rights at Discharge

## Will I receive discharge planning from the state hospital?

Yes. Some people are released from the state hospital back to jail, where they wait for their case to resolve. Some people transition from the state hospital(OSH) to a community setting.

### TRANSITIONING BACK TO JAIL:

If you have concerns about the transition or supports services, talk with your OSH social worker. OSH should send three days' worth of medications, a prescription, and a pharmacy voucher to the jail. The jail should continue the healthcare that you were receiving at OSH, unless you refuse. Disability Rights Oregon has a separate publication that explains your rights in jail. For more information, [contact Disability Rights Oregon](#) or go to [droregon.org](http://droregon.org).

### TRANSITIONING BACK TO THE COMMUNITY:

You can contact your Community Mental Health Program (CMHP) about services available in your county. Your OSH social worker should be able to direct you to a specific contact person at your CMHP. OSH and the CMHP should work together to ensure that you have your needs met when you discharge.

## Will I receive discharge planning from jail?

Resources are different in every county. You can ask jail staff about arranging housing, medical, mental health, and support services when you are released.



# Acknowledgments

This information is available in alternate formats, including large print, Braille, audio, or electronic text file.

Disability Rights Oregon and this publication are funded by federal and state grantors. This publication is the sole responsibility of Disability Rights Oregon and does not necessarily represent the official views of our grantors. For a complete list of grantors, [visit droregon.org/funding](https://droregon.org/funding).

Disability Rights Oregon upholds the civil rights of people with disabilities to live, work, and engage in the community. The nonprofit works to transform systems, policies, and practices to give more people the opportunity to reach their full potential. For 40 years, the organization has served as Oregon's Protection & Advocacy system.

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Photo credit: Tim Roessel

Revision date: March 2020



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Questions?

Write or call us.

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Regular office hours:  
Monday through Friday  
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