

D R A F T

SUMMARY

Authorizes court, upon finding defendant unfit to proceed by reason of incapacity, to order involuntary medication of defendant under specified conditions.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to involuntary medication of defendant who is found unfit to proceed by reason of incapacity; creating new provisions; amending ORS 127.720 and 161.370; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 161.370 is amended to read:

161.370. (1) When the defendant's fitness to proceed is drawn in question, the issue shall be determined by the court. If neither the prosecuting attorney nor counsel for the defendant contests the *[finding]* **findings or treatment recommendations** of the report filed under ORS 161.365, the court may make the determination on the basis of the report. If the *[finding is]* **findings or treatment recommendations are** contested, the court shall hold a hearing on the issue. If the report is received in evidence in the hearing, the party who contests the *[finding]* **findings or treatment recommendations** has the right to summon and to cross-examine any psychiatrist or psychologist who submitted the report and to offer evidence upon the issue. Other evidence regarding the defendant's fitness to proceed may be introduced by either party.

(2) If the court determines that the defendant lacks fitness to proceed, the criminal proceeding against the defendant shall be suspended and:

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

(a) If the court finds that the defendant is dangerous to self or others as a result of mental disease or defect, or that the services and supervision necessary to restore the defendant's fitness to proceed are not available in the community, the court:

(A) 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; **and**

(B) May order the defendant to be administered medication without the defendant's informed consent if the court finds that:

(i) Administration of the medication is substantially likely to render the defendant fit to proceed;

(ii) The medication to be administered is substantially unlikely to have side effects that will interfere significantly with the defendant's ability to assist counsel in conducting a trial defense;

(iii) There are no less intrusive means for administering the medication;

(iv) Administration of the medication is in the defendant's best interest and medically appropriate; and

(v) There are important governmental interests at stake in bringing the defendant to trial and the involuntary administration of the medication will significantly further those governmental interests; or

(b) If the court does not make a finding described in paragraph (a) of this subsection, or if the court determines that care other than commitment for incapacity to stand trial would better serve the defendant and the community, the court shall release the defendant on supervision for as long as the unfitness endures.

(3) When a defendant is released on supervision under this section, the court may place conditions that the court deems appropriate on the release, including the requirement that the defendant regularly report to the au-

thority or a community mental health program for examination to determine if the defendant has regained capacity to stand trial.

(4) When the court, on its own motion or upon the application of the superintendent of the hospital or director of the facility in which the defendant is committed, a person examining the defendant as a condition of release on supervision, or either party, determines, after a hearing, if a hearing is requested, that the defendant has regained fitness to proceed, the criminal proceeding shall be resumed. If, however, the court is of the view that so much time has elapsed since the commitment or release of the defendant on supervision that it would be unjust to resume the criminal proceeding, the court on motion of either party may dismiss the charge and may order the defendant to be discharged or cause a proceeding to be commenced forthwith under ORS 426.070 to 426.170 or 427.235 to 427.290.

(5) The superintendent of a state hospital or director of a facility to which the defendant is committed shall cause the defendant to be evaluated within 60 days from the defendant's delivery into the superintendent's or director's custody, for the purpose of determining whether there is a substantial probability that, in the foreseeable future, the defendant will have the capacity to stand trial. In addition, the superintendent or director shall:

(a) Immediately notify the committing court if the defendant, at any time, gains or regains the capacity to stand trial or will never have the capacity to stand trial.

(b) Within 90 days of the defendant's delivery into the superintendent's or director's custody, notify the committing court that:

(A) The defendant has the present capacity to stand trial;

(B) There is no substantial probability that, in the foreseeable future, the defendant will gain or regain the capacity to stand trial; or

(C) There is a substantial probability that, in the foreseeable future, the defendant will gain or regain the capacity to stand trial. If the probability exists, the superintendent or director shall give the court an estimate of the time in which the defendant, with appropriate treatment, is expected to gain

1 or regain capacity.

2 (6)(a) If the superintendent or director determines that there is a sub-
3 stantial probability that, in the foreseeable future, the defendant will gain
4 or regain the capacity to stand trial, unless the court otherwise orders, the
5 defendant shall remain in the superintendent's or director's custody where
6 the defendant shall receive treatment designed for the purpose of enabling
7 the defendant to gain or regain capacity. In keeping with the notice re-
8 quirement under subsection (5)(b) of this section, the superintendent or di-
9 rector shall, for the duration of the defendant's period of commitment, submit
10 a progress report to the committing court, concerning the defendant's ca-
11 pacity or incapacity, at least once every 180 days as measured from the date
12 of the defendant's delivery into the superintendent's or director's custody.

13 (b) Notwithstanding paragraph (a) of this subsection, if the superinten-
14 dent or director determines that a defendant committed under this section
15 is no longer dangerous to self or others as a result of mental disease or de-
16 fect, or that the services and supervision necessary to restore the defendant's
17 fitness to proceed are available in the community, the superintendent or di-
18 rector shall file notice of that determination with the court. Upon receipt
19 of the notice, the court shall order the person released on supervision as
20 described in subsection (3) of this section.

21 (7)(a) A defendant who remains committed under subsection (6) of this
22 section shall be discharged within a period of time that is reasonable for
23 making a determination concerning whether or not, and when, the defendant
24 may gain or regain capacity. However, regardless of the number of charges
25 with which the defendant is accused, in no event shall the defendant be
26 committed for longer than whichever of the following, measured from the
27 defendant's initial custody date, is shorter:

28 (A) Three years; or

29 (B) A period of time equal to the maximum sentence the court could have
30 imposed if the defendant had been convicted.

31 (b) For purposes of calculating the maximum period of commitment de-

scribed in paragraph (a) of this subsection:

(A) The initial custody date is the date on which the defendant is first committed under this section on any charge alleged in the accusatory instrument; and

(B) The defendant shall be given credit against each charge alleged in the accusatory instrument for each day the defendant is committed under this section, whether the days are consecutive or are interrupted by a period of time during which the defendant has regained fitness to proceed.

(8) The superintendent or director shall notify the committing court of the defendant's impending discharge 30 days before the date on which the superintendent or director is required to discharge the defendant under subsection (7) of this section.

(9) When the committing court receives a notice from the superintendent or director under subsection (5) or (8) of this section concerning the defendant's progress or lack thereof, the committing court shall determine, after a hearing, if a hearing is requested, whether the defendant presently has the capacity to stand trial.

(10) If at any time the court determines that the defendant lacks the capacity to stand trial, the court shall further determine whether there is a substantial probability that the defendant, in the foreseeable future, will gain or regain the capacity to stand trial and whether the defendant is entitled to discharge under subsection (7) of this section. If the court determines that there is no substantial probability that the defendant, in the foreseeable future, will gain or regain the capacity to stand trial or that the defendant is entitled to discharge under subsection (7) of this section, the court shall dismiss, without prejudice, all charges against the defendant and:

(a) Order that the defendant be discharged; or

(b) Initiate commitment proceedings under ORS 426.070 or 427.235 to 427.290.

(11) All notices required under this section shall be filed with the clerk of the court and delivered to both the district attorney and the counsel for

the defendant.

(12) If the defendant regains fitness to proceed, the term of any sentence received by the defendant for conviction of the crime charged shall be reduced by the amount of time the defendant was committed under this section to the custody of a state mental hospital, or to the custody of a secure intensive community inpatient facility, designated by the Oregon Health Authority.

(13) Notwithstanding the suspension of the criminal proceeding under subsection (2) of this section, the fact that the defendant is unfit to proceed does not preclude any objection through counsel and without the personal participation of the defendant on the grounds that the indictment is insufficient, that the statute of limitations has run, that double jeopardy principles apply or upon any other ground at the discretion of the court which the court deems susceptible of fair determination prior to trial.

SECTION 2. ORS 127.720 is amended to read:

127.720. (1) The physician or provider may subject the principal to mental health treatment in a manner contrary to the principal's wishes as expressed in a declaration for mental health treatment only:

(a) If the principal is committed to the Oregon Health Authority pursuant to ORS 426.005 to 426.390 and treatment is authorized in compliance with ORS 426.385 (3) and administrative rule.

(b) If treatment is authorized in compliance with administrative rule and:

(A) The principal is committed to a state hospital or secure intensive community inpatient facility:

(i) As a result of being found guilty except for insanity under ORS 161.295 or responsible except for insanity under ORS 419C.411; **or**

(ii) Under ORS 161.365; or

[(iii) Under ORS 161.370; or]

(B) The principal is transferred to a state hospital or other facility under ORS 179.473 or 419C.530.

(c) If the principal is committed to a state mental hospital or fa-

1 cility, or a secure intensive community inpatient facility, under ORS
2 161.370 and the court has ordered the administration of medication in
3 accordance with ORS 161.370.

4 [(c)] (d) In cases of emergency endangering life or health.

5 (2) A declaration does not limit any authority provided in ORS 426.005 to
6 426.390 either to take a person into custody, or to admit, retain or treat a
7 person in a health care facility.

8 **SECTION 3.** The amendments to ORS 127.720 and 161.370 by sections
9 1 and 2 of this 2013 Act apply to proceedings under ORS 161.370 to de-
10 termine a defendant's fitness to proceed that are initiated on or after
11 the effective date of this 2013 Act.

12 **SECTION 4.** This 2013 Act being necessary for the immediate pres-
13 ervation of the public peace, health and safety, an emergency is de-
14 clared to exist, and this 2013 Act takes effect on its passage.