

SB 378 -2 STAFF MEASURE SUMMARY

Senate Committee On Judiciary

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Meeting Dates: 3/11

WHAT THE MEASURE DOES:

Requires an examination regarding a defendant's fitness to proceed be completed no more than 14 days after the order for the examination if the defendant is in custody or has been committed for purposes of evaluation.

Requires community mental health in each county in conjunction with the defense bar and district attorney's office, to establish and maintain a panel of qualified evaluators who are certified under ORS 161.392. Requires presiding court judges to report the number of fitness to proceed evaluations ordered and performed in 14 days twice a year in the years 2020-2025.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

-2 Directs the Criminal Justice Commission in collaboration with Disability Rights Oregon and the Oregon Health Authority to conduct a study identifying barriers to the completion of fitness to proceed evaluation and commitment or admission of defendants for inpatient fitness to proceed evaluations under ORS 161.365, 161.370 and other applicable law. Requires the results of the study be reported to the Legislative Assembly by September 15, 2021. Allocates money to the Criminal Justice Commission to grant to Disability Rights Oregon for the purposes of the study. Directs state government agencies to furnish information necessary for the study to the extent permitted by laws relating to confidentiality.

BACKGROUND:

If there is doubt as to whether a defendant is able to aid and assist in their own defense, the court may require the defendant to consult with a community mental health program to determine whether there are services available in the community to restore the defendant's fitness, order an examination of the defendant by a certified evaluator, or order the defendant be committed for the purposes of examination. ORS 161.365.

In *Trueblood v. Washington State Department of Social and Health Services*, (2016) the Ninth Circuit Court of Appeals held that defendants have a constitutional right to a prompt fitness evaluation if ordered by the court. Upon remand from the Ninth Circuit, the Western District of Washington interpreted that decision to require that an evaluation be completed within 14 days if the defendant remains in jail. *Trueblood v. Washington State Department of Social and Health Services*, WL 4418180 (W.D. Wash. 2016). Reports from Disability Rights Oregon suggest that in some counties defendants with mental health issues currently wait between three to six weeks in jail for evaluations, with some defendants waiting months.

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