

SB 24 A STAFF MEASURE SUMMARY

House Committee On Judiciary

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Meeting Dates: 5/13, 5/16

WHAT THE MEASURE DOES:

Modifies process for evaluation of defendant and determination of defendant's fitness to participate in own defense. Permits the court to find good cause to allow for observation of an individual placed at the state hospital for a fitness to proceed or mental defense examination. Allows the state hospital to provide treatment when an individual has been placed in its care for a fitness to proceed examination. Prohibits the court from committing a defendant charged with a violation or misdemeanor to the state hospital or another facility for restoration unless the fitness to proceed examination or the community mental health program consultation finds that the defendant requires a hospital level of care. Modifies process for returning defendant to facility or defendant at state hospital upon conclusion of examination. Requires the examiner performing a fitness to proceed examination to include a determination as to whether a hospital level of care is required due to the defendant's dangerousness or acuity of symptoms. Requires examiner to provide a copy of the examination to the appropriate community mental health program. Requires the court to determine whether services and supervision necessary to safely allow the defendant to gain fitness to proceed are available in the community. Mandates that the results of the community mental health provider evaluation are provided to the court. Provides timelines. Requires the court and parties, upon receipt of the consultation report, to consider and pursue a disposition consistent with release criteria, that is the least restrictive, and best serves the needs of the defendant and the interest of justice. Lists potential dispositions. Permits the court to order status reports for defendants engaged in community restoration. Requires the community mental health program to provide the court notice when the defendant regains fitness. Requires consultation with the community mental health program when the state hospital or other facility determines that an individual no longer needs to be committed. Requires the community mental health director to report the results of the consultation within 14 days. Specifies court procedures for ordering continued commitment. Protects the confidentiality of fitness to proceed examination and mental defense reports with specific exceptions. Specifies process for mental defense evaluation and findings of examiner. Provides Oregon Health Authority with rulemaking authority. Declares emergency, effective on passage.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

No amendment.

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 to the state hospital for the purposes of evaluation. ORS 161.365. If a defendant is determined unable to aid in their own defense, the criminal proceeding against the defendant is suspended until such time as the defendant has gained or regained their fitness to proceed. ORS 161.370.

Under current statutes, if the court finds that the defendant is dangerous to self or others, or that after consultation with community mental health, the services and supervision necessary to restore the defendant's

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fitness to proceed are not available in the community, the court must commit the individual to the state hospital for rehabilitation services. ORS 161.370.

Case law has further outlined defendant's constitutional rights to a timely evaluation. See *Oregon Advocacy Center v. Mink*, 322 F.2d. 1101 (2003) (defendants have a constitutional right to transfer from jail to the state hospital within seven days for the purpose of a fitness to proceed evaluation); *Trueblood v. Washington State Department of Social and Health Services*, 622 F. 3d. 1037 (2016), (defendants have a constitutional right to a prompt fitness evaluation if ordered by the court); *Trueblood v. Washington State Department of Social and Health Services*, WL 4418180 (W.D. Wash. 2016) (an evaluation must be completed within 14 days if the defendant remains in jail).

The population of defendants committed to the Oregon State Hospital (OSH) for the purpose of restoring their fitness to proceed and for a fitness to proceed evaluation has increased steadily since 2012. In 2012, the average daily fitness to proceed population at the state hospital was 109; in January 2019 that number was 259. Similarly, in 2012, there were 0 individuals admitted for the sole purpose of a fitness to proceed evaluation while there were 83 committed for this purpose in 2018. The highest rate of increase has been for misdemeanants.

In the interim, the Oregon State Hospital convened a work group to examine ways to improve the fitness to proceed processes, decrease the state hospital population, and increase community rehabilitation programs and support. Concerns about the confidentiality of defendants' mental health evaluations were also raised during the work group process.

Senate Bill 24 A makes changes to the fitness to proceed processes in ORS 161.365 and ORS 161.370 that require a court to consider ordering examination and rehabilitation in the least restrictive setting possible or when appropriate finding of an alternative disposition for a defendant who does not require a hospital level of care. It also prohibits the commitment of persons charged with violations and misdemeanors for restoration and moves the requirement for community consultation to after a fitness to proceed examination but before the court's determination of the defendant's fitness to proceed.