

**SB 25 A STAFF MEASURE SUMMARY****Carrier:** Sen. Fagan**Senate Committee On Judiciary****Action Date:** 03/11/19**Action:** Do pass with amendments. (Printed A-Eng.)**Vote:** 6-0-1-0**Yeas:** 6 - Bentz, Fagan, Gelser, Linthicum, Manning Jr, Prozanski**Exc:** 1 - Thatcher**Fiscal:** Has minimal fiscal impact**Revenue:** No revenue impact**Prepared By:** Addie Smith, Counsel**Meeting Dates:** 2/27, 3/11**WHAT THE MEASURE DOES:**

Instructs all public bodies and private medical providers, in possession of mental health records concerning a defendant, to release those records to the Oregon State Hospital (OSH) or other facility designated to conduct fitness to proceed examinations within five days of the court order. Provides that Oregon Youth Authority, the Department of Corrections, and schools have 15 days to provide records. Allows OSH to file forensic evaluations regarding fitness to proceed and mental defense via the Judicial Department's electronic filing system. Requires court ordering rehabilitative services, other services, or supervision as the result of a fitness to proceed hearing, to provide that order to OSH or any entity ordered to provide services and supervision to restore fitness by the end of the next business day. Requires copies of a fitness to proceed evaluation be provided to the community mental health program director. Clarifies that timelines for court actions are based on judicial days, not business days. Protects the confidentiality of examinations with specific exceptions. Declares emergency, effective on passage.

**ISSUES DISCUSSED:**

- Court cases requiring timely fitness to proceed examination
- Increase in OSH commitment for purposes of conducting fitness to proceed examination or restoration
- Role of community mental health providers in fitness to proceed process

**EFFECT OF AMENDMENT:**

Clarifies that private medical providers, not private entities, must provide records within five business days. Provides that Oregon Youth Authority, the Department of Corrections, and schools have 15 days to provide records. Defines days for schools to exclude any day that the central administration office is closed. Allows, but does not require, electronic filing of forensic evaluations regarding mental defense. Protects the confidentiality of examinations with specific exceptions. Clarifies language ensuring the provision of court orders within one day. Restores the time for commitment to state facility for evaluation regarding a mental defense from 30 days to 60 days. Requires copies of a fitness to proceed evaluation be provided to the community mental health program director. Clarifies that timelines for court action are based on judicial days, not business days. Declares emergency, effective on passage.

**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 unable to aid in their own defense, the criminal proceeding against the defendant is

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

Additionally, individuals who wish to introduce a defense of insanity must provide notice and file an evaluation conducted by a certified evaluator. ORS 161.309. The state then has the right to have its own evaluation completed. ORS 161.315. When the state files notice requesting such an evaluation the court may, at its discretion, order the defendant committed to the state hospital or another institution for 30 days for observation and evaluation. ORS 161.315.

In *Oregon Advocacy Center v. Mink*, 322 F.2d. 1101(2003), the Ninth Circuit Court of Appeals found that defendants had a constitutional right to transfer to the state hospital within seven days for the purpose of a fitness to proceed evaluation, citing “the undisputed harms that incapacitated criminal defendants suffer when they spend weeks or months in jail waiting for transfer.” Recent reporting found that in 2018, over 200 defendants were not transferred within seven days. Of those, 63 were charged with misdemeanors.

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.

In the 2017-2018 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 25 A is the product of that work group. It creates timelines for courts to deliver orders for fitness to proceed evaluations and services to restore fitness to relevant entities. It also creates timelines for public and private entities to deliver relevant mental health records to fitness evaluators. It allows evaluations regarding fitness to proceed and mental defense to be filed with the court electronically.