

SB 1575 -1 STAFF MEASURE SUMMARY

Senate Committee On Judiciary

Prepared By: Addie Smith, Counsel

Meeting Dates: 2/10, 2/11

WHAT THE MEASURE DOES:

Modifies provisions related to fitness to proceed. Reorganizes and restructures statutes related to fitness to proceed. Defines terms related to fitness to proceed. Modifies procedures and criteria for committing defendant charged with felony to state mental hospital or other facility in order to gain or regain fitness to proceed. Requires court to find that defendant requires hospital level of care due to public safety concerns or acuity of symptoms of defendant's mental disorder, and that appropriate community restoration services are not provided. Modifies procedures and criteria for committing defendant charged with misdemeanor to Oregon State Hospital or other facility in order to gain or regain fitness to proceed. Requires either recommendation from certified evaluator that defendant requires hospital level of care and statement from community mental health program director concerning available community restoration services, or for court to make certain findings concerning severity of defendant's symptoms, present public safety concerns and whether appropriate community restoration services are provided. Modifies procedures to return a defendant to community restoration services and differentiates between defendant charged with misdemeanor and defendant charged with felony when circumstances authorizing commitment of defendant no longer exist.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

-1 Makes a variety of technical corrections. Clarifies the role of pretrial services in community restoration services. Includes risk to self in the definition of public safety concerns. Provides for the confidentiality of any documents prepared by the state hospital for the purposes of ORS 161.365 and ORS 161.370. Clarifies that a community mental health provider may inform the court when a defendant at the state hospital is appropriate for community restoration services. Clarifies the standards by which the court can continue the commitment of an individual when the state hospital or a community mental health provider has deemed appropriate for community restoration services. Allows the court to consider information that is trustworthy and reliable when making determinations regarding a defendant's fitness to proceed. Requires city to pay for municipal court ordered psychological examinations.

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.

In the 2018-19 interim the Oregon State Hospital convened a workgroup to address the increase in the fitness to proceed population at the hospital and to review the statutory scheme that governs fitness to proceed cases in Oregon's criminal courts. The product of that workgroup was SB 24 (2019). That bill substantially overhauled Oregon's fitness to proceed statutes. Specifically, it requires courts to consider ordering rehabilitation services in

SB 1575 -1 STAFF MEASURE SUMMARY

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 to the State Hospital of persons charged with violations and only allows for the commitment to the State Hospital of persons who have committed misdemeanors when a hospital level of care is necessary. Finally, it requires review hearings where the court must consider alternative placements and dispositions at seven day intervals for any individual found to be unfit and placed in custody while awaiting services at the state hospital or in the community.

After the close of the 2019 session, the Oregon State Hospital in partnership with the Oregon Judicial Department and the Senate Committee on the Judiciary convened an SB 24(2019) implementation workgroup. That workgroup included membership from over 50 participants representing a variety of disciplines around the state of Oregon, including but not limited to, judges, district attorneys, defense attorneys, community mental health representatives, DOJ, and other interested organizations. That workgroup both sought to ensure the successful implementation of SB 24 and assess whether there were any needed legislative changes to the fitness to proceed statutes based on the experiences of workgroup members during the implementation of the bill.

SB 1575 is the consensus product of that workgroup, it makes a series of adjustments to the fitness to proceed statutes as they were modified by SB 24 (2019) .