

HB 2405 A -A3, -A4 STAFF MEASURE SUMMARY

Senate Committee On Judiciary

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Meeting Dates: 4/26, 5/17

WHAT THE MEASURE DOES:

Directs courts intending to dismiss all charges involving orders of commitment against a defendant currently located at a state mental hospital or other facility, due to the defendant's lack of fitness to proceed, to order the defendant immediately transported back to the jurisdiction in which charges were initiated; provides that dismissal of charges shall take effect only upon defendant's arrival in jurisdiction in which charges were initiated.

Revenue: Minimal revenue impact.

Fiscal: Minimal fiscal impact.

House vote: Ayes, 54; Nays, 2; Excused, 4.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

-A3 Provides that court intending to dismiss all charges involving orders of commitment against a defendant shall order the defendant be transported to a jurisdiction in which the defendant previously resided, even if that jurisdiction is not the one in which charges were initiated, upon notice from the superintendent of the state mental hospital or director of the facility to which the defendant is committed that transition services have been arranged in the alternate jurisdiction. Directs superintendent of a state mental hospital or director of a facility to which defendant is committed to determine, when there is no substantial probability that a defendant will gain or regain fitness to proceed in the foreseeable future, whether transition services have been arranged for the defendant in a jurisdiction in which the defendant previously resided that is not the jurisdiction in which charges initiated, and to notify the court accordingly.

-A4 Directs superintendent of a state mental hospital or director of a facility to which defendant is committed to determine, when there is no substantial probability that a defendant will gain or regain fitness to proceed in the foreseeable future, whether an appropriate placement has been arranged for the defendant in a jurisdiction that is not the jurisdiction in which charges initiated, and to notify the court, parties, and county mental health department in placement county accordingly. Directs court intending to dismiss all charges involving orders of commitment against a defendant, upon notice by the superintendent of the state mental hospital or director of the facility to which the defendant is committed that an appropriate placement has been arranged for the defendant in a jurisdiction that is not the jurisdiction in which charges were initiated and the fitness determination is not being contested, to consult with the other jurisdiction and jointly develop a plan to address the discharge or initiation of commitment proceedings. Specifies that a court ordering a defendant to be transported to a jurisdiction other than where charges initiated must provide the victim with an opportunity to be heard concerning the plan.

BACKGROUND:

Pursuant to ORS 161.365, 161.367 and 161.370, in a criminal proceeding, when the court has reason to doubt a defendant's capacity to understand the proceedings against them and their capacity to assist in their defense, the court is required to determine whether the defendant has the fitness to proceed, and if not, whether there is a substantial probability that the defendant will gain or regain fitness to proceed in the foreseeable future. If the

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court determines it is not substantially probable that the defendant will gain or regain fitness to proceed, the court is required to dismiss all charges against the defendant and either order that the defendant be discharged or that civil commitment proceedings be initiated. In cases where the court determines that the defendant has subsequently gained or regained fitness to proceed, the court is required to resume the criminal proceedings unless it determines that doing so would be unjust, in which case the court may dismiss the charges and order that the defendant be discharged or that civil commitment proceedings be initiated. In some circumstances, when a court orders a dismissal of charges due to a defendant's lack of fitness to proceed or because resuming criminal proceedings would be unjust, the defendant is committed and currently located at a state mental hospital or other facility.

House Bill 2405 A directs a court intending to dismiss all charges involving orders of commitment against a defendant, who is currently located at a state mental hospital or other facility due to the defendant's lack of fitness, to proceed to order the defendant immediately transported back to the jurisdiction in which the charges were initiated. The dismissal would not take effect until the defendant arrived in the jurisdiction in which charges were initiated.