

House Bill 3311

Sponsored by COMMITTEE ON JUDICIARY (at the request of Oregon District Attorneys Association)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires that defendant charged with specified crime remain committed for specified period of time if court finds defendant lacks capacity to stand trial and has no substantial probability, in foreseeable future, of gaining or regaining capacity to stand trial.

A BILL FOR AN ACT

1
2 Relating to determinations of fitness to proceed.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1. (1) As used in this section, "defendant" means a person who has been**
5 **charged in an accusatory instrument with:**

6 (a) **Aggravated murder under ORS 163.095;**

7 (b) **Murder under ORS 163.115;**

8 (c) **Rape in the first degree under ORS 163.375;**

9 (d) **Sodomy in the first degree under ORS 163.405;**

10 (e) **Unlawful sexual penetration in the first degree under ORS 163.411; or**

11 (f) **An attempt to commit any of the crimes listed in this subsection.**

12 (2) **When a defendant's fitness to proceed is drawn into question, the court shall deter-**
13 **mine the issue. If neither the prosecuting attorney nor counsel for the defendant contests**
14 **the finding of the report filed by a psychiatrist or psychologist under ORS 161.365, the court**
15 **may make the determination on the basis of the report. If the finding is contested, the court**
16 **shall hold a hearing on the issue.**

17 (3) **If the report is received in evidence at the hearing, the party who contests the finding**
18 **in the report has the right to summon and to cross-examine any psychiatrist or psychologist**
19 **who submitted the report and to offer evidence upon the issue. Other evidence regarding the**
20 **defendant's fitness to proceed may be introduced by either party.**

21 (4) **If the court determines that the defendant lacks fitness to proceed, the court shall**
22 **further determine whether there is a substantial probability that the defendant, in the fore-**
23 **seeable future, will gain or regain the capacity to stand trial.**

24 (5) **If the court determines that there is no substantial probability that the defendant, in**
25 **the foreseeable future, will gain or regain the capacity to stand trial, the court shall commit**
26 **the defendant to the custody of the superintendent of a state mental hospital designated by**
27 **the Department of Human Services if the defendant is at least 18 years of age, or to the**
28 **custody of the director of a secure intensive community inpatient facility designated by the**
29 **Department of Human Services if the defendant is under 18 years of age.**

30 (6) **Notwithstanding ORS 161.370, the court shall commit a defendant described in sub-**
31 **section (5) of this section for a period of time equal to the maximum sentence the court**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 could have imposed if the defendant had been convicted.

2 (7) When the court, on its own motion or upon the application of the superintendent of
 3 the hospital or the director of the secure intensive community inpatient facility in which the
 4 defendant is committed, a person examining the defendant, or either party, determines, after
 5 a hearing, if a hearing is requested, that the defendant has regained fitness to proceed, the
 6 criminal proceeding shall be resumed.

7 (8) The superintendent of a state hospital or the director of a secure intensive commu-
 8 nity inpatient facility shall cause the defendant to be evaluated within 60 days from the de-
 9 fendant's delivery into the superintendent's or director's custody, for the purpose of
 10 determining whether there is a substantial probability that, in the foreseeable future, the
 11 defendant will have the capacity to stand trial.

12 (9) In addition, the superintendent or director shall:

13 (a) Immediately notify the committing court if the defendant, at any time, gains or re-
 14 gains the capacity to stand trial or will never have the capacity to stand trial.

15 (b) Within 90 days of the defendant's delivery into the superintendent's or director's
 16 custody, notify the committing court that:

17 (A) The defendant has the present capacity to stand trial;

18 (B) There is no substantial probability that, in the foreseeable future, the defendant will
 19 gain or regain the capacity to stand trial; or

20 (C) There is a substantial probability that, in the foreseeable future, the defendant will
 21 gain or regain the capacity to stand trial. If such a probability exists, the superintendent or
 22 director shall give the court an estimate of the time in which the defendant, with appropriate
 23 treatment, is expected to gain or regain capacity.

24 (10) If the superintendent or director determines that there is a substantial probability
 25 that, in the foreseeable future, the defendant will gain or regain the capacity to stand trial,
 26 unless the court otherwise orders, the defendant shall remain in the superintendent's or di-
 27 rector's custody, where the defendant shall receive treatment designed for the purpose of
 28 enabling the defendant to gain or regain capacity. The superintendent or director shall, for
 29 the duration of the defendant's period of commitment, submit a progress report to the
 30 committing court, concerning the defendant's capacity or incapacity, at least once a year as
 31 measured from the date of the defendant's delivery into the superintendent's or director's
 32 custody.

33 (11) All notices required under this section shall be filed with the clerk of the court and
 34 delivered to both the district attorney and the counsel for the defendant.

35 (12) If the defendant regains fitness to proceed, the term of any sentence received by the
 36 defendant for conviction of the crime charged shall be reduced by the amount of time the
 37 defendant was committed under this section to the custody of a state mental hospital, or to
 38 the custody of a secure intensive community inpatient facility, designated by the Department
 39 of Human Services.

40 (13) The fact that the defendant is unfit to proceed does not preclude any objection
 41 through counsel and without the personal participation of the defendant on the grounds that
 42 the indictment is insufficient, that the statute of limitations has run, that double jeopardy
 43 principles apply or upon any other ground at the discretion of the court that the court deems
 44 susceptible of fair determination prior to trial.

45 **SECTION 2.** Section 1 of this 2007 Act applies to proceedings to determine fitness com-

1 **menced on or after the effective date of this 2007 Act.**

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