

# House Bill 3007

Sponsored by Representative CLEM

## 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 court to release misdemeanor defendant on supervision for period of at least six months if defendant not fit for trial.

## A BILL FOR AN ACT

1  
2 Relating to capacity to stand trial; amending ORS 161.370.

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

4 **SECTION 1.** ORS 161.370 is amended to read:

5 161.370. (1) When the defendant's fitness to proceed is *[drawn]* in question, the issue shall be  
6 determined by the court. If neither the prosecuting attorney nor counsel for the defendant contests  
7 the finding of the report filed by a psychiatrist or psychologist under ORS 161.365, the court may  
8 make the determination on the basis of *[such]* **the** report. If the finding is contested, the court shall  
9 hold a hearing on the issue. If the report is received in evidence *[upon such]* **during a contested**  
10 hearing, the party who contests the finding *[thereof shall have]* **has** the right to summon and *[to]*  
11 cross-examine any psychiatrist or psychologist who submitted the report and to offer evidence upon  
12 the issue. Other evidence regarding the defendant's fitness to proceed may be introduced by either  
13 party.

14 *[(2)]* **(2)(a)** If the court determines that the defendant lacks fitness to proceed, the proceeding  
15 against the defendant shall be suspended, except as provided in subsection *[(12)]* **(13)** of this  
16 section, *and the*.

17 **(b) If the defendant is charged with a felony, the court shall commit the defendant to the**  
18 custody of the superintendent of a state mental hospital designated by the Department of Human  
19 Services if the defendant is at least 18 years of age, or to the custody of the director of a secure  
20 intensive community inpatient facility designated by the Department of Human Services if the de-  
21 fendant is under 18 years of age, or shall release the defendant on supervision for as long as such  
22 unfitness shall endure. The court may release the defendant on supervision if it determines that care  
23 other than commitment for incapacity to stand trial would better serve the defendant and the com-  
24 munity.

25 **(c) If the defendant is not charged with a felony, the court shall release the defendant**  
26 **on supervision for a period of at least six months. At the conclusion of the initial six-month**  
27 **period of supervision, unless the court enters the order described in subsection (4) of this**  
28 **section, the court shall continue the defendant's release on supervision or commit the de-**  
29 **fendant to the custody of the official described in paragraph (b) of this subsection.**

30 **(3) When the court releases a defendant on supervision under this section, the court shall**  
31 *[It may]* place conditions which it deems appropriate on the release, including *[the]* a requirement

**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 that the defendant regularly report to the Department of Human Services or a community mental  
 2 health and developmental disabilities program for examination to determine if the defendant has  
 3 regained capacity to stand trial.

4 (4) When the court, on its own motion or upon the application of the superintendent of the  
 5 hospital or director of the secure intensive community inpatient facility in which the defendant is  
 6 committed, a person examining the defendant as a condition of release on supervision, or either  
 7 party, determines, after a hearing, if a hearing is requested, that the defendant has regained fitness  
 8 to proceed, the proceeding shall be resumed. If, however, the court is of the view that so much time  
 9 has elapsed since the commitment or release of the defendant on supervision that it would be unjust  
 10 to resume the criminal proceeding, the court on motion of either party may dismiss the charge and  
 11 may order the defendant to be discharged or cause a proceeding to be commenced forthwith under  
 12 ORS 426.070 to 426.170 or 427.235 to 427.290.

13 [(3)] (5) The superintendent of a state hospital or director of a secure intensive community in-  
 14 patient facility shall cause the defendant to be evaluated within 60 days from the defendant's deliv-  
 15 ery into the superintendent's or director's custody, for the purpose of determining whether there is  
 16 a substantial probability that, in the foreseeable future, the defendant will have the capacity to  
 17 stand trial.

18 [(4)] In addition, the superintendent or director shall:

19 (a) Immediately notify the committing court if the defendant, at any time, gains or regains the  
 20 capacity to stand trial or will never have the capacity to stand trial.

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

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

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

26 (C) There is a substantial probability that, in the foreseeable future, the defendant will gain or  
 27 regain the capacity to stand trial. If such a probability exists, the superintendent or director shall  
 28 give the court an estimate of the time in which the defendant, with appropriate treatment, is ex-  
 29 pected to gain or regain capacity.

30 [(5)] (6) If the superintendent or director determines that there is a substantial probability that,  
 31 in the foreseeable future, the defendant will gain or regain the capacity to stand trial, unless the  
 32 court otherwise orders, the defendant shall remain in the superintendent's or director's custody  
 33 where the defendant shall receive treatment designed for the purpose of enabling the defendant to  
 34 gain or regain capacity. In keeping with the notice requirement under subsection [(4)(b)] (5)(b) of  
 35 this section, the superintendent or director shall, for the duration of the defendant's period of com-  
 36 mitment, submit a progress report to the committing court, concerning the defendant's capacity or  
 37 incapacity, at least once every 180 days as measured from the date of the defendant's delivery into  
 38 the superintendent's or director's custody.

39 [(6)] (7) A defendant who remains committed under subsection [(5)] (6) of this section shall be  
 40 discharged within a period of time that is reasonable for making a determination concerning  
 41 whether or not, and when, the defendant may gain or regain capacity. However, regardless of the  
 42 number of charges with which the defendant is accused, in no event shall the defendant be com-  
 43 mitted for longer than whichever of the following, measured from the defendant's initial custody  
 44 date, is shorter:

45 (a) Three years; or

1 (b) A period of time equal to the maximum sentence the court could have imposed if the de-  
2 fendant had been convicted.

3 [(7)] (8) The superintendent or director shall notify the committing court of the defendant's im-  
4 pending discharge 30 days before the date on which the superintendent or director is required to  
5 discharge the defendant under subsection [(6)] (7) of this section.

6 [(8)] (9) When the committing court receives a notice from the superintendent or director under  
7 either subsection [(4) or (7)] (5) or (8) of this section concerning the defendant's progress or lack  
8 thereof, the committing court shall determine after a hearing, if a hearing is requested, whether the  
9 defendant presently has the capacity to stand trial.

10 [(9)] (10) If under subsection [(8)] (9) of this section the court determines that the defendant  
11 lacks the capacity to stand trial, the court shall further determine whether there is a substantial  
12 probability that the defendant, in the foreseeable future, will gain or regain the capacity to stand  
13 trial and whether the defendant is entitled to discharge under subsection [(6)] (7) of this section. If  
14 the court determines that there is no substantial probability that the defendant, in the foreseeable  
15 future, will gain or regain the capacity to stand trial or that the defendant is entitled to discharge  
16 under subsection [(6)] (7) of this section, the court shall dismiss, without prejudice, all charges  
17 against the defendant and:

18 (a) Order that the defendant be discharged; or

19 (b) Initiate commitment proceedings under ORS 426.070 or 427.235 to 427.290.

20 [(10)] (11) All notices required under this section shall be filed with the clerk of the court and  
21 delivered to both the district attorney and the counsel for the defendant.

22 [(11)] (12) If the defendant regains fitness to proceed, the term of any sentence received by the  
23 defendant for conviction of the crime charged shall be reduced by the amount of time the defendant  
24 was committed under this section to the custody of a state mental hospital, or to the custody of a  
25 secure intensive community inpatient facility, designated by the Department of Human Services.

26 [(12)] (13) The fact that the defendant is unfit to proceed does not preclude any objection  
27 through counsel and without the personal participation of the defendant on the grounds that the  
28 indictment is insufficient, that the statute of limitations has run, that double jeopardy principles  
29 apply or upon any other ground at the discretion of the court which the court deems susceptible  
30 of fair determination prior to trial.

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