

SENATE AMENDMENTS TO SENATE BILL 432

By COMMITTEE ON JUDICIARY

May 2

1 On page 1 of the printed bill, line 2, after “crime;” delete the rest of the line and line 3 and
2 insert “amending ORS 161.370; and declaring an emergency.”.

3 Delete lines 5 through 23 and delete pages 2 through 10 and insert:

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 report. If the finding is contested, the court shall hold
9 a hearing on the issue. If the report is received in evidence upon such hearing, the party who con-
10 tests the finding thereof shall have the right to summon and to cross-examine any psychiatrist or
11 psychologist who submitted the report and to offer evidence upon the issue. Other evidence regard-
12 ing the defendant’s fitness to proceed may be introduced by either party.

13 “(2) If the court determines that the defendant lacks fitness to proceed, the proceeding against
14 the defendant shall be suspended, except as provided in subsection (12) of this section, and the court
15 shall commit the defendant to the custody of the superintendent of a state mental hospital desig-
16 nated by the Oregon Health Authority if the defendant is at least 18 years of age, or to the custody
17 of the director of a secure intensive community inpatient facility designated by the authority if the
18 defendant is under 18 years of age, or shall release the defendant on supervision for as long as such
19 unfitness shall endure. The court may release the defendant on supervision if it determines that care
20 other than commitment for incapacity to stand trial would better serve the defendant and the com-
21 munity. It may place conditions which it deems appropriate on the release, including the require-
22 ment that the defendant regularly report to the authority or a community mental health program for
23 examination to determine if the defendant has regained capacity to stand trial. When the court, on
24 its own motion or upon the application of the superintendent of the hospital or director of the secure
25 intensive community inpatient facility in which the defendant is committed, a person examining the
26 defendant as a condition of release on supervision, or either party, determines, after a hearing, if a
27 hearing is requested, that the defendant has regained fitness to proceed, the proceeding shall be
28 resumed. If, however, the court is of the view that so much time has elapsed since the commitment
29 or release of the defendant on supervision that it would be unjust to resume the criminal proceeding,
30 the court on motion of either party may dismiss the charge and may order the defendant to be dis-
31 charged or cause a proceeding to be commenced forthwith under ORS 426.070 to 426.170 or 427.235
32 to 427.290.

33 “(3) The superintendent of a state hospital or director of a secure intensive community inpatient
34 facility shall cause the defendant to be evaluated within 60 days from the defendant’s delivery into
35 the superintendent’s or director’s custody, for the purpose of determining whether there is a sub-

1 substantial probability that, in the foreseeable future, the defendant will have the capacity to stand
2 trial.

3 “(4) In addition, the superintendent or director shall:

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

6 “(b) Within 90 days of the defendant’s delivery into the superintendent’s or director’s custody,
7 notify the committing court that:

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

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

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

15 “(5) If the superintendent or director determines that there is a substantial probability that, in
16 the foreseeable future, the defendant will gain or regain the capacity to stand trial, unless the court
17 otherwise orders, the defendant shall remain in the superintendent’s or director’s custody where the
18 defendant shall receive treatment designed for the purpose of enabling the defendant to gain or re-
19 gain capacity. In keeping with the notice requirement under subsection (4)(b) of this section, the
20 superintendent or director shall, for the duration of the defendant’s period of commitment, submit
21 a progress report to the committing court, concerning the defendant’s capacity or incapacity, at
22 least once every 180 days as measured from the date of the defendant’s delivery into the
23 superintendent’s or director’s custody.

24 “(6)(a) A defendant who remains committed under subsection (5) of this section shall be dis-
25 charged within a period of time that is reasonable for making a determination concerning whether
26 or not, and when, the defendant may gain or regain capacity. However, regardless of the number
27 of charges with which the defendant is accused, in no event shall the defendant be committed for
28 longer than whichever of the following, measured from the defendant’s initial custody date, is
29 shorter:

30 “[a] (A) Three years; or

31 “[b] (B) A period of time equal to the maximum sentence the court could have imposed if the
32 defendant had been convicted.

33 “(b) **For purposes of calculating the maximum period of commitment described in para-**
34 **graph (a) of this subsection:**

35 “(A) **The initial custody date is the date on which the defendant is first committed under**
36 **this section on any charge alleged in the accusatory instrument; and**

37 “(B) **The defendant shall be given credit against each charge alleged in the accusatory**
38 **instrument for each day the defendant is committed under this section, whether the days**
39 **are consecutive or are interrupted by a period of time during which the defendant has re-**
40 **gained fitness to proceed.**

41 “(7) The superintendent or director shall notify the committing court of the defendant’s im-
42 pending discharge 30 days before the date on which the superintendent or director is required to
43 discharge the defendant under subsection (6) of this section.

44 “(8) When the committing court receives a notice from the superintendent or director under ei-
45 ther subsection (4) or (7) of this section concerning the defendant’s progress or lack thereof, the

1 committing court shall determine after a hearing, if a hearing is requested, whether the defendant
2 presently has the capacity to stand trial.

3 “(9) If under subsection (8) of this section the court determines that the defendant lacks the
4 capacity to stand trial, the court shall further determine whether there is a substantial probability
5 that the defendant, in the foreseeable future, will gain or regain the capacity to stand trial and
6 whether the defendant is entitled to discharge under subsection (6) of this section. If the court de-
7 termines that there is no substantial probability that the defendant, in the foreseeable future, will
8 gain or regain the capacity to stand trial or that the defendant is entitled to discharge under sub-
9 section (6) of this section, the court shall dismiss, without prejudice, all charges against the de-
10 fendant and:

11 “(a) Order that the defendant be discharged; or

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

13 “(10) All notices required under this section shall be filed with the clerk of the court and de-
14 livered to both the district attorney and the counsel for the defendant.

15 “(11) If the defendant regains fitness to proceed, the term of any sentence received by the de-
16 fendant for conviction of the crime charged shall be reduced by the amount of time the defendant
17 was committed under this section to the custody of a state mental hospital, or to the custody of a
18 secure intensive community inpatient facility, designated by the Oregon Health Authority.

19 “(12) The fact that the defendant is unfit to proceed does not preclude any objection through
20 counsel and without the personal participation of the defendant on the grounds that the indictment
21 is insufficient, that the statute of limitations has run, that double jeopardy principles apply or upon
22 any other ground at the discretion of the court which the court deems susceptible of fair determi-
23 nation prior to trial.

24 “**SECTION 2. This 2011 Act being necessary for the immediate preservation of the public**
25 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
26 **on its passage.”.**

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