

**PRELIMINARY STAFF MEASURE SUMMARY****CARRIER:**

Senate Committee on Judiciary

**REVENUE: No revenue impact****FISCAL: Minimal fiscal impact, no statement issued****SUBSEQUENT REFERRAL TO:****Action:****Vote:****Yeas:****Nays:****Exc.:****Prepared By:** Eric Deitrick, Counsel**Meeting Dates:** 4/30

**WHAT THE MEASURE DOES:** Requires community mental health director or designee to consult with incapacitated defendants in all criminal cases. Directs community mental health director or designee to determine whether community restoration services are available and provide findings to the court. Establishes that consultation must occur prior to commitment at state hospital for restoration.

**ISSUES DISCUSSED:****EFFECT OF COMMITTEE AMENDMENT:** No amendment.

**BACKGROUND:** It is a requirement of our criminal justice system that the defendant understands and participates in the criminal proceedings. This requirement has several sources. ORS 161.360 – 161.370 requires the court to suspend criminal proceedings when, as a result of mental disease or defect, the defendant is unable to understand the nature of the proceedings, assist with counsel, or participate in the defense. It also authorizes the court to order treatment and commitment in order to restore the defendant to capacity.

ORS 161.370 includes a preference for community-based restoration. Commitment to the state hospital for restoration is only permissible when there is a finding that the defendant is dangerous or there are no community-based restorative services.

House Bill 2420 A requires a consultation between the community mental health director and the defendant when the court has reasons to doubt the defendant's fitness to proceed. It also requires the director to provide findings to the court regarding community-based restoration before commitment to state hospital occur.

House Vote: 59-0-1