

**STAFF MEASURE SUMMARY****House Committee On Judiciary****Fiscal:** Fiscal impact issued**Revenue:** No Revenue Impact**Action Date:** 03/30/15**Action:** Do Pass As Amended, Be Printed Engrossed, And Bill Be Referred To Ways  
And Means.**Meeting Dates:** 03/17, 03/30**Vote:**

Yeas: 9 - Barker, Barton, Greenlick, Krieger, Lininger, Olson, Post, Sprenger, Williamson

**Prepared By:** Eric Deitrick, Counsel**WHAT THE MEASURE DOES:**

Modifies Oregon's Criminal Code to permit "fitness to proceed" evaluations for probation violation allegations. Authorizes court to order evaluations, treatment, and commitment of defendant to gain or regain capacity in probation violation allegations. Prohibits restoration at the state hospital for probation violations unless the defendant's probationary sentence was the result of a downward departure or optional probation from a prison sentence.

**ISSUES DISCUSSED:**

- Bill is product of work group that included Legislative Counsel, Department of Justice, Police, District Attorneys, Sheriffs, Oregon Criminal Defense Lawyers Association, Disability Rights Oregon, and the Oregon Health Authority
- Currently, there is no statutory authority for courts to treat a defendant until fit in the context of a probation violation
- One basis for the court to sentence a defendant to probation rather than prison is when the defendant suffers from a mental disease or defect at the time of offense
- Courts and district attorneys may be less inclined to downward depart to probation if there is no statutory authority to initiate fitness proceedings on probation violations

**EFFECT OF COMMITTEE AMENDMENT:**

Limits the manner in which the court can treat a defendant who is unable to aid and assist in their defense. Prohibits the court from committing a defendant to the state hospital unless that person's probationary sentence resulted from a downward departure from prison or optional probation.

**BACKGROUND:**

It is a requirement of our criminal justice system that the defendant understands and participates in 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. In addition, defense counsel has ethical obligations to ensure the defendant is making autonomous decisions. Judges have ethical and constitutional obligations to ensure defendants are making voluntary and intelligent decisions.

Currently, ORS 161.360 limits the court's authority to proceedings before or during the underlying trial. There is no statutory framework regarding capacity and probation violation allegations, even though the same ethical and constitutional obligations exist.

House Bill 2382 A establishes a statutory framework and requires the court to suspend probation violation proceedings when the defendant lacks capacity. It authorizes the court to order evaluations, treatment, and commitment of defendant to gain or

regain capacity in probation violation allegations. It limits the court to community-based restoration hospitalization unless that person's probationary sentence resulted from a downward departure from prison or optional probation.