

HB 2309 -2 STAFF MEASURE SUMMARY

House Committee On Judiciary

Prepared By: Josh Nasbe, Counsel

Meeting Dates: 3/20

WHAT THE MEASURE DOES:

Authorizes Oregon Health Authority to adopt rules prescribing the content of reports evaluating criminal defendant's ability to aid and assist in their own defense.

REVENUE: May have revenue impact, but no statement yet issued

FISCAL: May have fiscal impact, but no statement yet issued

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

-2 Replaces the bill and provides that a report documenting a committed defendant's progress may consist of an update to an earlier examination.

BACKGROUND:

The due process clause of the United States Constitution prohibits the criminal prosecution of an incompetent defendant; a "defendant may not be put to trial unless he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding...and a rational as well as factual understanding of the proceedings against him." *Cooper v. Oklahoma*, 517 U.S. 348, 354 (1996). In Oregon, the process for determining the defendant's fitness for trial - colloquially described as the ability to 'aid and assist' - is described in ORS 161.360 to 161.370.

Pursuant to these statutes, a defendant may be subjected to a psychiatric or psychological examination conducted in a jail, locally in the community or at a state mental hospital. When the examination results in a court order suspending the criminal proceeding until the defendant gains fitness for trial, the defendant may receive restorative mental health treatment in the community or at a state mental hospital. Following a commitment to a state mental hospital for restorative treatment, the director of the facility is required to provide the court with regular progress reports. House Bill 2309 authorizes the Oregon Health Authority to adopt rules prescribing the contents of the initial evaluation submitted to the court, as well as any subsequent progress reports concerning a committed defendant.