

HB 2306 -1 STAFF MEASURE SUMMARY

House Committee On Judiciary

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Meeting Dates: 3/20

WHAT THE MEASURE DOES:

Directs Oregon Health Authority to adopt rules requiring certain entities to share specific information related to criminal defendants who are, as the result of mental disease or defect, unable to aid and assist in their 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:

-1 Prohibits court from committing incompetent defendant directly to state hospital following a finding that defendant is dangerous to self or others or that necessary services and supervision are unavailable in the community. Requires court to commit defendant to custody of Oregon Health Authority and directs Authority to determine, in consultation with community mental health director, the location of restorative services. Allows Authority to file notice requiring court to release incompetent defendant on supervision. Conditions court's ability to commit incompetent defendant to custody of Authority on receipt of report by certified evaluator. Prohibits redisclosure of defendant's information shared pursuant to Authority rules.

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. In some cases, a single defendant may be evaluated and treated numerous times at multiple locations. Although the evaluation and treatment are conducted in the context of a public criminal trial, the mental health nexus may raise legal and privacy concerns involving the sharing of medical information. House Bill 2306 addresses this issue by requiring the Oregon Health Authority to adopt rules requiring that certain medical and legal information be shared among the various entities involved with the defendant's criminal case.