

**SB 132 A STAFF MEASURE SUMMARY**

**House Committee On Judiciary**

---

**Prepared By:** Josh Nasbe, Counsel

**Meeting Dates:** 5/22

---

**WHAT THE MEASURE DOES:**

Authorizes superintendent of state hospital to conduct competency evaluation of criminal defendant in jail, at other institution or as outpatient at hospital, following court order committing defendant to custody of superintendent. Authorizes treatment of incompetent criminal defendant in prison, if defendant serving prison sentence. Allows court to commit criminal defendant charged with murder to custody of superintendent or Oregon Health Authority facility for one year when necessary to maintain competency. Excludes one year maintenance hold from calculating defendant's maximum period of commitment. Creates statutory process for court to order involuntary medication of incompetent defendant

**ISSUES DISCUSSED:**

**EFFECT OF AMENDMENT:**

No amendment.

**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 a defendant's fitness for criminal prosecution, commonly called the ability to "aid and assist," is described in ORS 161.360 to 161.370.

This statutory scheme describes a two-step process. First, a defendant may be evaluated to determine whether he or she is able to aid and assist. Second, if after receiving the results of this evaluation, the court determines the defendant is unable to aid and assist, the court is required to suspend the criminal proceedings and order that the defendant be provided with restorative treatment. Pursuant to ORS 161.370, the court is able to commit the defendant to the state hospital for treatment only if the court finds that the defendant is dangerous to self or others or if the court determines, after consulting with the community mental health director, that the defendant cannot be safely treated in the community. Thereafter, the defendant is treated until competency is restored, it is determined that there is no substantial probability that competency can be restored or until too much time has elapsed that it would be unjust to resume criminal proceedings.

Senate Bill 132-A provides the superintendent of the state hospital with the ability to conduct aid and assist evaluations in jail, at another institution or as an outpatient at the state hospital. The bill allows the superintendent to treat a defendant committed to the superintendent's custody but serving a prison sentence in a Department of Corrections institution, in the institution if appropriate and necessary to protect the defendant and others. In addition, the bill allows criminal defendants who are charged with murder to be committed for a one-year period, for the purpose of maintaining competency. Finally, the bill creates a statutory process that allows the court to order the involuntarily medication of a defendant who is unable to aid and assist.