

HB 2309 A STAFF MEASURE SUMMARY

Carrier: Rep. Olson

House Committee On Judiciary

Action Date: 03/20/17

Action: Do pass with amendments. (Printed A-Eng.)

Vote: 9-0-2-0

Yeas: 9 - Barker, Gorsek, Greenlick, Olson, Sanchez, Sprenger, Stark, Vial, Williamson

Exc: 2 - Lininger, Post

Fiscal: No fiscal impact

Revenue: No revenue impact

Prepared By: Josh Nasbe, Counsel

WHAT THE MEASURE DOES:

Provides that progress report submitted to trial court to describe treatment of incompetent criminal defendant may consist of update to an earlier conducted examination.

ISSUES DISCUSSED:

- Initial evaluations are comprehensive
- Allowing update is effective use of limited resources

EFFECT OF AMENDMENT:

Replaces the measure.

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 2309A provides that these progress reports can consist of an update to an earlier examination conducted by the hospital or facility.