

**HB 2308 A STAFF MEASURE SUMMARY**  
**House Committee On Judiciary**

**Carrier:** Rep. Gorsek

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**Action Date:** 04/14/17  
**Action:** Do pass with amendments. (Printed A-Eng.)  
**Vote:** 10-0-1-0  
**Yeas:** 10 - Barker, Gorsek, Greenlick, Lininger, Olson, Post, Sanchez, Stark, Vial, Williamson  
**Exc:** 1 - Sprenger  
**Fiscal:** Has minimal fiscal impact  
**Revenue:** No revenue impact  
**Prepared By:** Josh Nasbe, Counsel

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**WHAT THE MEASURE DOES:**

Includes each day served in jail in calculating maximum period of time criminal defendant may be committed for restorative mental health services pending trial. Excludes defendants charged with aggravated murder or specified crimes with mandatory minimum sentences.

**ISSUES DISCUSSED:**

- Constitutional limitation on maximum period of restorative services
- Exclusion of specific serious crimes

**EFFECT OF AMENDMENT:**

Excludes defendants charged with aggravated murder or specified crimes with mandatory minimum sentences.

**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.

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. If, however, the defendant is committed for too long, or if the court determines that the defendant will never be restored to fitness, the court is required to dismiss the criminal case and may initiate civil commitment proceedings. By statute, a defendant who is unable to aid and assist may not be committed for restorative treatment for more than three years or for the length of the maximum sentence the defendant is facing, whichever is shorter. Unless the defendant is charged with aggravated murder or specifically identified crimes with a mandatory minimum sentence, House Bill 2308-A requires that each day the defendant is held in jail be counted against this maximum period of commitment.