SB 184 -1 STAFF MEASURE SUMMARY

Senate Committee On Judiciary

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Meeting Dates: 2/27

WHAT THE MEASURE DOES:

Makes consistent the evaluation procedures in fitness to proceed processes. Inserts "certified evaluator" in place of "psychiatrist or psychologist."Cross references the definition of "certified evaluator" in ORS 161.309. Includes commitment procedures for an extremely dangerous person with mental illness in the list of options a court may consider if criminal charges are dismissed. Requires the superintendent of the state hospital to notify the court within 60 days of commitment if court-ordered involuntary medication is necessary for the defendant to gain or regain capacity to proceed. Requires the superintendent, if involuntary medication is necessary, to submit a report describing the benefits and side effects of recommended medication, information regarding the defendant's refusal to take the recommended medication, and the likelihood that the medication will allow the defendant to regain fitness. Allows the prosecuting attorney to request the involuntary administration of the recommended medication. Requires the court to hold a hearing on the issues of involuntary medication. Dictates the findings required to involuntarily medicate a defendant: 1) involuntary medication is not otherwise authorized by law; 2) there are important state interests at stake in the defendant's prosecution; 3) the medication will significantly further the important state interest because it is substantially likely to render the defendant fit to proceed, and it is unlikely to cause side effects that will impair the fairness of the trial; and 4) there are no alternative less intrusive treatments that would procedure the same results. Instructs the court, if ordering involuntary medication of the defendant, to specify the medication or type of medication, the maximum dosage of the medication, and the duration of time that the defendant may be involuntary medicated which cannot exceed the maximum period of the defendant's commitment or 180 days, whichever is shorter.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

-1 Clarifies that a prosecutor must file a motion requesting involuntary medication of a defendant. Clarifies that the filing of that motion triggers the required court hearing.

BACKGROUND:

If a defendant is unable to aid in their own defense, the proceeding against the defendant is suspended until such time as the defendant has gained or regained their "fitness to proceed." ORS 161.370. ORS 161.360-375 contain the procedures that govern a determination that an individual is unfit to proceed and the rehabilitative efforts employed to help an individual gain or regain their fitness to proceed.

In 2011, the legislature defined which psychiatrists and psychologist could perform fitness to proceed evaluations, defining these individuals as "certified evaluators."

Under current statutes, a court may consider dismissing a criminal proceeding because so much time has elapsed since the commitment or release of the defendant on supervision for the purposes of rehabilitation that resuming the criminal proceeding would be unjust. *See* 161.370. In doing so, the statutes instruct the court to consider whether civil commitment may be appropriate for the defendant, but fail to include commitment of extremely dangerous person with mental illness in the list of processes to be considered. *See* 161.370.

In *Sell v. United States*, 539 US 166 (2003) the United States Supreme Court articulated standards by which an individual can be involuntarily medicated in order to help them gain or regain their fitness to proceed. In *State v. Lopes*, 355 Or 72 (2014), the Oregon Supreme Court rearticulated and applied those requirements in an Oregon case.

> "If the sole basis for an order for involuntary medication is restoration of trial capacity, a court must make four findings…a court must conclude (1) that important state interests are at stake in prosecuting the defendant; (2) that medication will significantly further those important state interests, because it is substantially likely that the medication will restore the defendant to competency and substantially unlikely that the medication will cause side effects that will impair the fairness of the trial; (3) that the medication is necessary to further those important state interests, because there are no less intrusive treatments that would produce the same results; and (4) that the administration of the medication is medically appropriate, because it is in the patient's best medical interest in light of his medical condition."

Lopes, 355 at 524 (citing *Sell,* 539 at 180-82).

Senate Bill 184 replaces the use of the terms "psychiatrist and psychologist" in ORS 161.365 and 161.370 with the term "certified evaluator" and adds commitment of an extremely dangerous person with mental illness onto the list of commitment statutes a court may consider if criminal charges are dismissed. It also codifies the requirements announced in *Sell* and *Lopes,* providing in statute the process for seeking the involuntarily medication of a defendant in order to restore their capacity to aid and assist in their defense at trial.