

SB 25 -1 STAFF MEASURE SUMMARY

Senate Committee On Judiciary

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Meeting Dates: 2/27

WHAT THE MEASURE DOES:

Instructs all public bodies and private entities in possession of mental health records concerning a defendant to comply with court orders to release those records to the state hospital or other facility designated to conduct fitness to proceed examinations or evaluations within five days. Permits the Oregon State Hospital to file forensic evaluations regarding fitness to proceed via the Judicial Department's electronic filing system. Requires the Oregon State Hospital to file forensic evaluations regarding an mental defense via the Judicial Department's electronic filing system. Extends the time for commitment to state facility for observation and evaluation regarding a defense of insanity from 30 days to 60 days. Requires court ordering rehabilitative services, other services, or supervision as the result of a fitness to proceed hearing to provide that order to the state hospital or any entity ordered to provide services and supervision to restore fitness by the end of the next business day.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

-1 Clarifies that it is private medical providers that must provide records in five days not private entities. Removes language changing commitment for observation and an insanity evaluation to 60 days. Allows, but does not require, electronic filing of forensic evaluations regarding mental defense. Adds confidentiality provisions. Clarifies language ensuring the provision of court orders within one day. Requires that copies of a fitness to proceed evaluation be provided to "the community mental health program director." Clarifies that all days described are judicial days not business days.

BACKGROUND:

Individuals who wish to introduce a defense of insanity must provide notice and file an evaluation conducted by a certified evaluator. ORS 161.309. The state has the right to have its own evaluation completed. ORS 161.315. When the state files notice requesting such an evaluation the court may, at its discretion order, the defendant committed to the state hospital or another institution for 30 days for observation and evaluation. ORS 161.315.

If a defendant is unable to aid in their own defense, the criminal proceeding against the defendant is suspended until such time as the defendant has gained or regained their "fit to proceed." ORS 161.370. Under current statutes, if the court finds that the defendant is dangerous to self or others, or that after consultation with community mental health, that the services and supervision necessary to restore the defendant's fitness to proceed are not available in the community, the court must commit the individual to the state hospital for an examination and services. ORS 161.365.

The population of individuals committed to the Oregon State Hospital (OSH) for the purpose of restoring their fitness to proceed has increased since 2000. In 2000, the average daily fitness to proceed population at the state hospital was 69; in January 2019 that number was 259. Court ordered evaluation are also at an all-time high. To address these problems, OSH convened a workgroup during the interim to examine ways to decrease the fitness to proceed population at the state by improving the fitness to proceed processes and increasing community rehabilitation programs and support. Concerns about the confidentiality of defendants' mental health evaluations were raised during those workgroup process.

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Senate Bill 25 is the product of that work group. It creates timelines for courts to deliver orders for fitness to proceed evaluations and services to restore fitness to relevant entities. It also creates timelines for public and private entities to deliver relevant mental health records to Fitness evaluators. It requires forensic evaluations regarding a mental defense be filed with the court electronically and allows evaluations regarding fitness to proceed to be filed with the court electronically. It extends the time available to perform insanity evaluations from 30 days to 60 days.