

## **SB 25 -3 STAFF MEASURE SUMMARY**

### **Senate Committee On Judiciary**

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**Prepared By:** Addie Smith, Counsel

**Meeting Dates:** 2/27, 3/11

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#### **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 Oregon State Hospital (OSH) or other facility designated to conduct fitness to proceed examinations within five days. Permits the OSH to file forensic evaluations regarding fitness to proceed via the Judicial Department's electronic filing system. Requires OSH to file forensic evaluations regarding a mental defense via the Judicial Department's electronic filing system. Extends the time for commitment to state facility for evaluation regarding a mental defense 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 OSH 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:**

-3 Clarifies that it is private medical providers that must provide records in five business days not private entities. Provides Oregon Youth Authority, the Department of Corrections, and schools have 15 days to provide records. Defines days for schools to exclude any day that the central administration office is closed. Removes language changing commitment for an insanity evaluation to 60 days. Allows, but does not require, electronic filing of forensic evaluations regarding mental defense. Adds confidentiality provisions with specific exceptions. Clarifies language ensuring the provision of court orders within one day. Restores the time for commitment to state facility for evaluation regarding a mental defense from 30 days to 60 days. Requires that copies of a fitness to proceed evaluation be provided to "the community mental health program director." Clarifies that timelines for court action are based on judicial days not business days. Declares emergency; effective on passage.

##### **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 then 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 there is doubt as to whether a defendant is able to aid and assist in their own defense, the court may require the defendant to consult with a community mental health program to determine whether there are services available in the community to restore the defendant's fitness, order an examination of the defendant by a certified evaluator, or order the defendant be committed to the state hospital for the purposes of evaluation. ORS 161.365. 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 "fitness 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 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 a services. ORS 161.370.

In *Oregon Advocacy Center v. Mink* (2003) the Ninth Circuit Court of Appeals found that defendants had a constitutional right to transfer to the state hospital within seven days for the purpose of a fitness to proceed evaluation, citing “the undisputed harms that incapacitated criminal defendants suffer when they spend weeks or months in jail waiting for transfer.” Recent reporting found that in 2018 over 200 defendants were not transferred in this time--63 of whom were only charged with misdemeanors. Identified barriers included a lack of available beds at the institution, late filing of paperwork by county court officers, delays on the part of county sheriffs to schedule transport to the Oregon State Hospital in Salem, and in rare cases, bad weather.

In *Trueblood v. Washington State Department of Social and Health Services*, (2016) the Ninth Circuit Court of Appeals held that defendants have a constitutional right to a prompt fitness evaluation if ordered by the court. Upon remand from the Ninth Circuit, the Western District of Washington interpreted that decision to require that an evaluation be completed within 14 days if the defendant remains in jail. *Trueblood v. Washington State Department of Social and Health Services*, WL 4418180 (W.D. Wash. 2016). Reports from Disability Rights Oregon suggest that in some counties defendants with mental health issues currently wait between three to six weeks in jail for evaluations, with some defendants waiting months.

The population of defendants committed to the Oregon State Hospital (OSH) for the purpose of restoring their fitness to proceed and for a fitness to proceed evaluation has increased steadily since 2012. In 2012, the average daily fitness to proceed population at the state hospital was 109; in January 2019 that number was 259. Similarly, in 2012 there were 0 individuals admitted for the sole purpose of a fitness to proceed evaluation while there were 83 committed for this purpose in 2018. The highest rate of increase has been for misdemeanants.

In the interim, the Oregon State Hospital convened a workgroup to examine ways to improve the fitness to proceed processes, decrease the state hospital population and increase community rehabilitation programs and support. Concerns about the confidentiality of defendants' mental health evaluations were also raised during the workgroup process.

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 guilty except insane be filed with the court electronically and allows evaluations regarding fitness to proceed to be filed with the court electronically. Finally, it extends the time available to perform insanity evaluations from 30 days to 60 days.