

SB 24 -1 STAFF MEASURE SUMMARY

Senate Committee On Judiciary

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Meeting Dates: 3/11

WHAT THE MEASURE DOES:

Moves the requirement that a community mental health consultation occur from ORS 161.365 to ORS 161.370, requiring it after a fitness to proceed examination but before the court's determination of the defendant's fitness to proceed. Provides that when the court orders the commitment of the defendant to the Oregon State Hospital (OSH) or other facility it can be for the purpose of treatment and examination. Provides that a defendant committed to OSH or other facility for examination on issue of fitness to proceed or mental defense be transported to hospital or facility for examination, after which the hospital or director of the facility may order defendant transported back or kept for treatment. Extends time period of commitment for mental defense examination from 30 days to 60 days. Authorizes OSH to provide a copy of fitness examination to the community mental health program. Prohibits the commitment of misdemeanants rehabilitation to gain or regain fitness to proceed unless there is a finding that the defendant requires a hospital level of care. Prohibits the commitment of defendants charged only with violations of municipal ordinances for rehabilitation to gain or regain fitness to proceed. Clarifies that defendants committed to OSH or another facility for treatment and rehabilitation to gain or regain fitness to proceed who are charged with lesser offenses must receive credit for time spent in jail prior to and after commitment to state hospital. Extends the length of time that a defendant can be committed for a mental defense evaluation to 60 days. Directs OSH to assign a specific number of fitness to proceed beds per county. Allows counties to get negotiate with each other for additional beds. Directs the Oregon health authority to propagate rules to effectuate the provisions of this measure.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

-1 Replaces the measure. Authorizes the court when committing a defendant to the state hospital for a fitness to proceed examination to order up to 21 days for observation and/or to authorize treatment. Provides that defendant committed to state mental hospital or other facility for examination on issue of fitness to proceed or mental defense be transported to hospital or facility for examination after which the state hospital may request an amended order from the court if it is necessary for the defendant to remain at the hospital or facility for further treatment and observation. Includes in the content of the examination report whether a hospital level of care is necessary for the defendant who is not fit to proceed. Directs the evaluator to provide a copy of the fitness examination to the community mental health program. Provides for the confidentiality of the evaluation report. Requires the court to order the least restrictive treatment option possible. Requires the court to order consultation with the community mental health provider to determine what services and supervision are necessary to rehabilitate the defendant and make them fit to proceed. Requires that the community mental health provider consultation occur within seven days of the order for consultation if the defendant is in custody or ten days of the order for consultation if the defendant is not in custody. Directs the court and parties to consider and pursue, if appropriate, an option other than commitment when the report from the community mental health provider finds that it would better serve the needs of the parties. Delineates alternative options for the court to consider if commitment would not serve the needs of the parties, including dismissal. Requires the community mental health provider to continue to review available community resources and maintain communication with the defendant if the defendant is committed. Prohibits the court from ordering commitment to the state hospital

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without reviewing the community mental health provider consultation report. Requires state hospital to engage in constant discharge planning. Permits the court to order the community mental health program to provide progress reports to the court if the defendant is ordered to participate in rehabilitative services in the community. Requires the community mental health provider to notify the court when a defendant has gained or regained fitness if the defendant is ordered to participate in rehabilitative in the community. Prohibits the commitment of misdemeanants and municipal violators to the state hospital unless there is a finding that the defendant requires a hospital level of care. Directs the court to hold a release hearing within seven judicial days if the evaluator or community mental health provider determines that the defendant does not require a hospital level of care. Allows the court to order alternative treatment options, including dismissal, if the defendant does not require a hospital level of care. Requires the court to order community mental health programs to consult with the defendant within seven days and provide findings to court within 14 days, after notice from the state hospital about the defendant's eligibility for release; and if the court fails to hold a hearing, requires the court to order release of the defendant. Declares emergency; effective on passage.

BACKGROUND:

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, may order an examination of the defendant by a certified evaluator, or may order the defendant be committed to the state hospital for the purposes of evaluation. ORS 161.365. If a defendant is determined 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 rehabilitation 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 from jail 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.

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

Senate Bill 24 makes changes to the fitness to proceed processes in ORS 161.365 and ORS 161.370 that require a court to consider ordering examination and rehabilitation in the least restrictive setting possible or creating an alternative disposition for a defendant who does not require a hospital level of care. It also prohibits the commitment of violators and misdemeanants and moves the requirement for community consultation to after a fitness to proceed examination but before the court's determination of the defendant's fitness to proceed.