

SB 378 A STAFF MEASURE SUMMARY

Carrier: Sen. Bentz

Senate Committee On Judiciary

Action Date: 03/21/19

Action: Do pass with amendments. (Printed A-Eng.)

Vote: 7-0-0-0

Yeas: 7 - Bentz, Fagan, Gelser, Linthicum, Manning Jr, Prozanski, Thatcher

Fiscal: Fiscal impact issued

Revenue: No revenue impact

Prepared By: Addie Smith, Counsel

Meeting Dates: 3/11, 3/21

WHAT THE MEASURE DOES:

Directs the Criminal Justice Commission, in collaboration with Disability Rights Oregon, the Oregon Health Authority, and the Oregon Justice Department, to conduct a study identifying barriers to the timely completion of inpatient, outpatient, and private fitness to proceed evaluations and the timely commitment of defendants for inpatient fitness to proceed evaluations under ORS 161.365 or 161.370. Requires the results of the study be reported to the Legislative Assembly by September 15, 2021. Allocates money to the Criminal Justice Commission to grant to Disability Rights Oregon for the purposes of the study. Directs state government agencies to furnish information necessary for the study to the extent permitted by laws relating to confidentiality.

ISSUES DISCUSSED:

- Cost of compliance with court decisions
- Barriers to compliance with court decisions
- Need for good cause exceptions
- Rights of individuals with mental health disorders in criminal proceedings
- Provisions of the amendment

EFFECT OF AMENDMENT:

Replaces measure.

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, order an examination of the defendant by a certified evaluator, or order the defendant be committed for the purposes of examination. ORS 161.365.

In *Trueblood v. Washington State Department of Social and Health Services*, 622 F. 3d. 1037 (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.

Senate Bill 378 A requires the Criminal Justice Commission, in collaboration with Disability Rights Oregon, the Oregon Health Authority, and the Oregon Justice Department, to conduct a study identifying barriers to the timely completion of fitness to proceed evaluations.