

SB 24 B STAFF MEASURE SUMMARY**Carrier:** Rep. Greenlick, Rep. Williamson**House Committee On Judiciary****Action Date:** 05/23/19**Action:** Do pass with amendments to the A-Eng bill. (Printed B-Eng.)**Vote:** 10-0-1-0**Yeas:** 10 - Bynum, Gorsek, Greenlick, Lewis, McLane, Piluso, Power, Sprenger, Stark, Williamson**Exc:** 1 - Barker**Fiscal:** Has minimal fiscal impact**Revenue:** No revenue impact**Prepared By:** Addie Smith, Counsel**Meeting Dates:** 5/22, 5/23**WHAT THE MEASURE DOES:**

Modifies process for evaluation of defendant and determination of defendant's fitness to participate in own defense. Permits the court to consult with the local community mental health program and entities responsible for supervision to determine whether the defendant can safely be restored to fitness in the community. Limits the duration that a hospital can retain custody of an individual to the time necessary to complete the examination, which may include observation but may not exceed 30 days. Modifies process for returning defendant to facility or defendant at state hospital upon conclusion of examination. Requires the examiner performing a fitness to proceed examination to include a determination as to whether a hospital level of care is required due to the defendant's dangerousness or acuity of symptoms. Requires examiner to provide a copy of the examination to the appropriate community mental health program. Requires the court to determine whether services and supervision necessary to safely allow the defendant to gain fitness to proceed are available in the community. Requires results of the community mental health provider evaluation to be provided to the court for consideration. Allows commitment of misdemeanants and violators only when a hospital level of care is deemed necessary by an evaluator or community mental health program, unless a court enters written findings as to why commitment is required. Provides for a review hearing for defendants every 14 days when a hospital level of care is inappropriate and community resources are unavailable. Requires the court and parties, upon receipt of the consultation report, to consider and pursue a disposition consistent with release criteria that is the least restrictive and best serves the needs of the defendant and the interest of justice. Lists potential dispositions. Permits the court to order status reports for defendants engaged in community restoration. Requires the community mental health program to provide the court notice when the defendant regains fitness. Requires consultation with the community mental health program when the state hospital or other facility determines that an individual no longer needs to be committed. Requires the community mental health director to report the results of the consultation within 14 days. Specifies court procedures for ordering continued commitment. Protects the confidentiality of fitness to proceed examination and mental defense reports with specific exceptions. Specifies process for mental defense evaluation and findings of examiner. Provides Oregon Health Authority with rulemaking authority. Declares emergency, effective on passage.

ISSUES DISCUSSED:

- Work group process
- Marion County efforts to reduce aid and assist population
- State Hospital census and capacity
- Current status of cases holding Oregon Health Authority in contempt of court
- Relevant case law

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- Effects of holding individuals with mental health conditions in jail
- Types of charges against those in the state hospital

EFFECT OF AMENDMENT:

Replaces the measure. Includes amendments to resolve conflict with SB 25.

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 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 rehabilitation services. ORS 161.370.

Case law has further outlined defendant's constitutional rights to a timely evaluation. *See Oregon Advocacy Center v. Mink*, 322 F.2d. 1101 (2003) (holding defendants have a constitutional right to transfer from jail to the state hospital within seven days for the purpose of a fitness to proceed evaluation); *Trueblood v. Washington State Department of Social and Health Services*, 622 F. 3d. 1037 (2016), (holding defendants have a constitutional right to a prompt fitness evaluation if ordered by the court); *Trueblood v. Washington State Department of Social and Health Services*, WL 4418180 (W.D. Wash. 2016) (requiring that evaluations must be completed within 14 days if defendant remains in jail).

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 work group 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 work group process.

Senate Bill 24 B makes changes to the fitness to proceed processes in ORS 161.365 and ORS 161.370 including that courts consider ordering rehabilitation in the least restrictive setting possible or, when appropriate, finding of an alternative disposition for a defendant who does not require a hospital level of care. It also prohibits the commitment of persons charged with violations and misdemeanors for restoration services at the State Hospital unless the judge makes specific findings and requires the court to consider the community mental health provider consultation before the court's determination regarding restoration.