

House Bill 3215

Sponsored by Representative BYNUM (at the request of Javonnie Shearn)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires superintendent of state mental hospital, or director of facility designated by Oregon Health Authority, to ensure that defendant committed for lacking fitness to proceed receives treatment designed to allow defendant to attain defendant's highest level of health, safety and independence and prepare defendant for eventual release into community.

A BILL FOR AN ACT

1
2 Relating to commitment for fitness to proceed; amending ORS 161.370.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1.** ORS 161.370 is amended to read:

5 161.370. (1) When the defendant's fitness to proceed is drawn in question, the issue shall be de-
6 termined by the court. If neither the prosecuting attorney nor counsel for the defendant contests the
7 finding of the report filed under ORS 161.365, the court may make the determination on the basis
8 of the report. If the finding is contested, the court shall hold a hearing on the issue. If the report
9 is received in evidence in the hearing, the party who contests the finding has the right to summon
10 and to cross-examine any psychiatrist or psychologist who submitted the report and to offer evidence
11 upon the issue. Other evidence regarding the defendant's fitness to proceed may be introduced by
12 either party.

13 (2) If the court determines that the defendant lacks fitness to proceed, the criminal proceeding
14 against the defendant shall be suspended and:

15 (a) If the court finds that the defendant is dangerous to self or others as a result of a qualifying
16 mental disorder, or that, based on the findings resulting from the consultation described in ORS
17 161.365 (1), the services and supervision necessary to restore the defendant's fitness to proceed are
18 not available in the community, the court shall commit the defendant to the custody of the super-
19 intendent of a state mental hospital or director of a facility, designated by the Oregon Health Au-
20 thority, if the defendant is at least 18 years of age, or to the custody of the director of a secure
21 intensive community inpatient facility designated by the authority if the defendant is under 18 years
22 of age; or

23 (b) If the court does not make a finding described in paragraph (a) of this subsection, or if the
24 court determines that care other than commitment for incapacity to stand trial would better serve
25 the defendant and the community, the court shall release the defendant on supervision for as long
26 as the unfitness endures.

27 (3) When a defendant is released on supervision under subsection (2)(b) of this section, the court
28 may place conditions that the court deems appropriate on the release, including the requirement
29 that the defendant regularly report to the authority or a community mental health program for ex-
30 amination to determine if the defendant has gained or regained capacity to stand trial.

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.
New sections are in **boldfaced** type.

1 (4) When the court, on its own motion or upon the application of the superintendent of the
 2 hospital or director of the facility in which the defendant is committed, a person examining the de-
 3 fendant as a condition of release on supervision, or either party, determines, after a hearing, if a
 4 hearing is requested, that the defendant has gained or regained fitness to proceed, the criminal
 5 proceeding shall be resumed. If, however, the court is of the view that so much time has elapsed
 6 since the commitment or release of the defendant on supervision that it would be unjust to resume
 7 the criminal proceeding, the court on motion of either party may dismiss the charge and may order
 8 the defendant to be discharged or cause a proceeding to be commenced forthwith under ORS 426.070
 9 to 426.170 or 427.235 to 427.290.

10 (5) The superintendent of a state hospital or director of a facility to which the defendant is
 11 committed shall cause the defendant to be evaluated within 60 days from the defendant's delivery
 12 into the superintendent's or director's custody, for the purpose of determining whether there is a
 13 substantial probability that, in the foreseeable future, the defendant will have the capacity to stand
 14 trial. In addition, the superintendent or director shall:

15 (a) Immediately notify the committing court if the defendant, at any time, gains or regains the
 16 capacity to stand trial or will never have the capacity to stand trial.

17 (b) Within 90 days of the defendant's delivery into the superintendent's or director's custody,
 18 notify the committing court that:

19 (A) The defendant has the present capacity to stand trial;

20 (B) There is no substantial probability that, in the foreseeable future, the defendant will gain
 21 or regain the capacity to stand trial; or

22 (C) There is a substantial probability that, in the foreseeable future, the defendant will gain or
 23 regain the capacity to stand trial. If the probability exists, the superintendent or director shall give
 24 the court an estimate of the time in which the defendant, with appropriate treatment, is expected
 25 to gain or regain capacity.

26 (6)(a) If the superintendent or director determines that there is a substantial probability that,
 27 in the foreseeable future, the defendant will gain or regain the capacity to stand trial, unless the
 28 court otherwise orders, the defendant shall remain in the superintendent's or director's custody
 29 where the defendant shall receive treatment designed for the purpose of enabling the defendant to
 30 gain or regain capacity. In keeping with the notice requirement under subsection (5)(b) of this sec-
 31 tion, the superintendent or director shall, for the duration of the defendant's period of commit-
 32 ment, submit a progress report to the committing court, concerning the defendant's capacity or incapacity,
 33 at least once every 180 days as measured from the date of the defendant's delivery into the
 34 superintendent's or director's custody.

35 (b) Notwithstanding paragraph (a) of this subsection, if the superintendent or director deter-
 36 mines that a defendant committed under this section is no longer dangerous to self or others as a
 37 result of a qualifying mental disorder, or that the services and supervision necessary to restore the
 38 defendant's fitness to proceed are available in the community, the superintendent or director shall
 39 file notice of that determination with the court. Upon receipt of the notice, the court shall order
 40 the person released on supervision as described in subsection (3) of this section.

41 (c) A progress report described in paragraph (a) of this subsection may consist of an update to:

42 (A) The original examination report conducted under ORS 161.365; or

43 (B) An evaluation conducted under subsection (5) of this section, if the defendant did not receive
 44 an examination under ORS 161.365.

45 (7)(a) A defendant who remains committed under subsection (6) of this section shall be dis-

1 charged within a period of time that is reasonable for making a determination concerning whether
 2 or not, and when, the defendant may gain or regain capacity. However, regardless of the number
 3 of charges with which the defendant is accused, in no event shall the defendant be committed for
 4 longer than whichever of the following, measured from the defendant's initial custody date, is
 5 shorter:

6 (A) Three years; or

7 (B) A period of time equal to the maximum sentence the court could have imposed if the de-
 8 fendant had been convicted.

9 (b) For purposes of calculating the maximum period of commitment described in paragraph (a)
 10 of this subsection:

11 (A) The initial custody date is the date on which the defendant is first committed under this
 12 section on any charge alleged in the accusatory instrument; and

13 (B) The defendant shall be given credit against each charge alleged in the accusatory instru-
 14 ment:

15 (i) For each day the defendant is committed under this section, whether the days are consecutive
 16 or are interrupted by a period of time during which the defendant has gained or regained fitness to
 17 proceed; and

18 (ii) Unless the defendant is charged with aggravated murder or a crime listed in ORS 137.700
 19 (2), for each day the defendant is held in jail, whether the days are consecutive or are interrupted
 20 by a period of time during which the defendant lacks fitness to proceed.

21 (8) The superintendent or director shall notify the committing court of the defendant's impending
 22 discharge 30 days before the date on which the superintendent or director is required to discharge
 23 the defendant under subsection (7) of this section.

24 (9) When the committing court receives a notice from the superintendent or director under
 25 subsection (5) or (8) of this section concerning the defendant's progress or lack thereof, the com-
 26 mitting court shall determine, after a hearing, if a hearing is requested, whether the defendant
 27 presently has the capacity to stand trial.

28 (10) If at any time the court determines that the defendant lacks the capacity to stand trial, the
 29 court shall further determine whether there is a substantial probability that the defendant, in the
 30 foreseeable future, will gain or regain the capacity to stand trial and whether the defendant is en-
 31 titled to discharge under subsection (7) of this section. If the court determines that there is no
 32 substantial probability that the defendant, in the foreseeable future, will gain or regain the capacity
 33 to stand trial or that the defendant is entitled to discharge under subsection (7) of this section, the
 34 court shall dismiss, without prejudice, all charges against the defendant and:

35 (a) Order that the defendant be discharged; or

36 (b) Initiate commitment proceedings under ORS 426.070 or 427.235 to 427.290.

37 (11) All notices required under this section shall be filed with the clerk of the court and deliv-
 38 ered to both the district attorney and the counsel for the defendant.

39 (12) If the defendant gains or regains fitness to proceed, the term of any sentence received by
 40 the defendant for conviction of the crime charged shall be reduced by the amount of time the de-
 41 fendant was committed under this section to the custody of a state mental hospital, or to the custody
 42 of a secure intensive community inpatient facility, designated by the Oregon Health Authority.

43 (13) Notwithstanding the suspension of the criminal proceeding under subsection (2) of this
 44 section, the fact that the defendant is unfit to proceed does not preclude any objection through
 45 counsel and without the personal participation of the defendant on the grounds that the indictment

1 is insufficient, that the statute of limitations has run, that double jeopardy principles apply or upon
2 any other ground at the discretion of the court which the court deems susceptible of fair determi-
3 nation prior to trial.

4 (14) At the time that the court determines that the defendant lacks fitness to proceed under
5 subsection (2) of this section, the court shall notify the defendant that federal law prohibits the de-
6 fendant from purchasing or possessing a firearm unless the person obtains relief from the prohibition
7 under federal law. The court shall again notify the defendant of the prohibition if the court finds
8 that the defendant has gained or regained fitness to proceed under subsection (4) of this section.

9 **(15) When a defendant is committed under this section to the custody of the super-**
10 **intendent of a state mental hospital or the director of a facility designated by the Oregon**
11 **Health Authority, the superintendent or director shall ensure that, in addition to receiving**
12 **treatment designed for the purpose of enabling the defendant to gain or regain capacity, the**
13 **defendant also receives treatment designed to allow the defendant to attain the defendant's**
14 **highest level of health, safety and independence and prepare the defendant for eventual re-**
15 **lease into the community.**

16 _____