

# Senate Bill 378

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Judiciary for Disability Rights Oregon)

## 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 that court-ordered fitness to proceed examination and filing of examination report occur within 14 days of examination order if defendant is in custody.

Directs community mental health program director in each county to establish panel of certified evaluators available on short notice to perform fitness to proceed examinations.

Directs presiding judge of each judicial district to biennially report to interim committees of Legislative Assembly related to judiciary concerning conformance with time limit for filing of fitness to proceed examinations. Sunsets reporting requirement January 2, 2025.

## A BILL FOR AN ACT

1  
2 Relating to fitness to proceed examinations; creating new provisions; and amending ORS 161.365.

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

4 **SECTION 1.** ORS 161.365 is amended to read:

5 161.365. (1) When the court has reason to doubt the defendant's fitness to proceed by reason of  
6 incapacity as described in ORS 161.360, the court may call any witness to its assistance in reaching  
7 its decision and shall order that a community mental health program director or the director's  
8 designee consult with the defendant to determine whether services and supervision necessary to  
9 safely restore the defendant's fitness to proceed are available in the community. After the consul-  
10 tation, the program director or the director's designee shall provide to the court a copy of the  
11 findings resulting from the consultation. If the court determines the assistance of a psychiatrist or  
12 psychologist would be helpful, the court may:

13 (a) Order that a psychiatric or psychological examination of the defendant be conducted by a  
14 certified evaluator as defined in ORS 161.309 and a report of the examination be prepared; or

15 (b) Order the defendant to be committed for the purpose of an examination for a period not ex-  
16 ceeding 30 days to a state mental hospital or other facility designated by the Oregon Health Au-  
17 thority if the defendant is at least 18 years of age, or to a secure intensive community inpatient  
18 facility designated by the authority if the defendant is under 18 years of age.

19 **(2) If the defendant is in custody at the time that the court orders an examination under**  
20 **subsection (1) of this section, and remains in custody or is committed for the examination,**  
21 **the examination must occur, and the report described in subsection (3) of this section must**  
22 **be completed and filed as described in subsection (6) of this section, within 14 days of the**  
23 **court order for the examination.**

24 [(2)] (3) The report of an examination described in this section must include, but is not neces-  
25 sarily limited to, the following:

26 (a) A description of the nature of the examination;

27 (b) A statement of the mental condition of the defendant;

**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 (c) If the defendant suffers from a qualifying mental disorder, an opinion as to whether the de-  
 2 fendant is incapacitated within the description set out in ORS 161.360; and

3 (d) If the defendant is incapacitated within the description set out in ORS 161.360, a recom-  
 4 mendation of treatment and services necessary to restore capacity.

5 [(3)] (4) Except when the defendant and the court both request to the contrary, the report may  
 6 not contain any findings or conclusions as to whether the defendant as a result of a qualifying  
 7 mental disorder was subject to the provisions of ORS 161.295 or 161.300 at the time of the criminal  
 8 act charged.

9 [(4)] (5) If the examination by the psychiatrist or psychologist cannot be conducted by reason  
 10 of the unwillingness of the defendant to participate in the examination, the report must so state and  
 11 must include, if possible, an opinion as to whether the unwillingness of the defendant was the result  
 12 of a qualifying mental disorder affecting capacity to proceed.

13 [(5)] (6) The report must be filed with the clerk of the court, who shall cause copies to be de-  
 14 livered to the district attorney and to counsel for defendant.

15 [(6)(a)] (7)(a) When upon motion of the court or a financially eligible defendant, the court has  
 16 ordered a psychiatric or psychological examination of the defendant, a county or justice court shall  
 17 order the county to pay, and a circuit court shall order the public defense services executive di-  
 18 rector to pay from funds available for the purpose:

19 (A) A reasonable fee if the examination of the defendant is conducted by a psychiatrist or psy-  
 20 chologist in private practice; and

21 (B) All costs including transportation of the defendant if the examination is conducted by a  
 22 psychiatrist or psychologist in the employ of the Oregon Health Authority or a community mental  
 23 health program established under ORS 430.610 to 430.670.

24 (b) When an examination is ordered at the request or with the acquiescence of a defendant who  
 25 is determined not to be financially eligible, the examination shall be performed at the defendant's  
 26 expense. When an examination is ordered at the request of the prosecution, the county shall pay for  
 27 the expense of the examination.

28 [(7)] (8) The Oregon Health Authority shall establish by rule standards for the consultation de-  
 29 scribed in subsection (1) of this section.

30 **(9) The community mental health program director in each county, in consultation with**  
 31 **the district attorney of the county and defense counsel practicing within the county, shall**  
 32 **establish and maintain a panel of psychiatrists and psychologists who:**

33 **(a) Hold valid certification under ORS 161.392; and**

34 **(b) Are generally available to perform an examination ordered under subsection (1) of**  
 35 **this section within the time period required by subsection (2) of this section.**

36 **SECTION 2. Beginning September 15, 2020, and no later than March 15 and September**  
 37 **15 of each year thereafter, the presiding judge of the circuit court in each judicial district**  
 38 **shall report to the interim committees of the Legislative Assembly related to the judiciary,**  
 39 **in the manner provided under ORS 192.245:**

40 **(1) The total number of examinations ordered under ORS 161.365 (1) within the previous**  
 41 **six months; and**

42 **(2) The number of reports of examinations described in subsection (1) of this section that**  
 43 **were filed within the time period required by ORS 161.365 (2).**

44 **SECTION 3. Section 2 of this 2019 Act is repealed on January 2, 2025.**