

HB 2405 A STAFF MEASURE SUMMARY

Carrier: Rep. Diehl

House Committee On Judiciary

Action Date: 03/20/23

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

Vote: 10-0-0-0

Yeas: 10 - Andersen, Bynum, Chaichi, Conrad, Kropf, Lewis, Morgan, Reynolds, Tran, Wallan

Fiscal: Has minimal fiscal impact

Revenue: Has minimal revenue impact

Prepared By: Lucy Ohlsen, LPRO Analyst

Meeting Dates: 2/21, 3/20

WHAT THE MEASURE DOES:

Directs courts intending to dismiss all charges involving orders of commitment against a defendant currently located at a state mental hospital or other facility, due to the defendant's lack of fitness to proceed, to order the defendant immediately transported back to the jurisdiction in which charges were initiated; provides that dismissal of charges shall take effect only upon defendant's arrival in jurisdiction in which charges were initiated.

ISSUES DISCUSSED:

- Current practices
- Similar release statutes in Oregon law
- Transport infrastructure currently in place

EFFECT OF AMENDMENT:

Clarifies that provision directing court to order defendant immediately transported back to the jurisdiction in which charges were initiated applies only if court intends to dismiss all charges involving orders of commitment.

BACKGROUND:

Pursuant to ORS 161.365, 161.367 and 161.370, in a criminal proceeding, when the court has reason to doubt a defendant's capacity to understand the proceedings against them and their capacity to assist in their defense, the court is required to determine whether the defendant has the fitness to proceed, and if not, whether there is a substantial probability that the defendant will gain or regain fitness to proceed in the foreseeable future. If the court determines it is not substantially probable that the defendant will gain or regain fitness to proceed, the court is required to dismiss all charges against the defendant and either order that the defendant be discharged or that civil commitment proceedings be initiated. In cases where the court determines that the defendant has subsequently gained or regained fitness to proceed, the court is required to resume the criminal proceedings unless it determines that doing so would be unjust, in which case the court may dismiss the charges and order that the defendant be discharged or that civil commitment proceedings be initiated. In some circumstances, when a court orders a dismissal of charges due to a defendant's lack of fitness to proceed or because resuming criminal proceedings would be unjust, the defendant is committed and currently located at a state mental hospital or other facility.

House Bill 2405 A directs a court intending to dismiss all charges involving orders of commitment against a defendant, who is currently located at a state mental hospital or other facility due to the defendant's lack of fitness, to proceed to order the defendant immediately transported back to the jurisdiction in which the charges were initiated. The dismissal would not take effect until the defendant arrived in the jurisdiction in which charges were initiated.