

Senate Bill 25

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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**.

Directs public bodies, and private entities in possession of relevant records, to comply, within specified time period, with court order for release of records to state mental hospital or other facility for purposes of forensic evaluation.

Requires report resulting from forensic evaluation on issue of mental defense to be filed with court electronically. Allows forensic evaluation on issue of fitness to proceed to be filed with court electronically.

Extends time period of commitment for mental defense examination from 30 days to 60 days.

Requires that court provide, by end of next business day, copies of orders relating to fitness to proceed to state mental hospital or other facility, and, if defendant is found to lack fitness, to any entity ordered to provide services and supervision to restore fitness.

A BILL FOR AN ACT

1
2 Relating to forensic evaluations; creating new provisions; and amending ORS 161.315, 161.365 and
3 161.370.

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

5 **SECTION 1. Section 2 of this 2019 Act is added to and made a part of ORS 161.290 to**
6 **161.370.**

7 **SECTION 2. All public bodies, as defined in ORS 174.109, and any private entity in pos-**
8 **session of mental health records concerning the defendant, shall, within five days of the or-**
9 **der, comply with a court order for the release of records or other documents to the state**
10 **mental hospital or other facility designated by the Oregon Health Authority for the purpose**
11 **of conducting an examination or evaluation under ORS 161.365 or 161.370.**

12 **SECTION 3. ORS 161.315 is amended to read:**

13 161.315. (1) Upon filing of notice or the introduction of evidence by the defendant as provided
14 in ORS 161.309, the state shall have the right to have at least one psychiatrist or licensed psychol-
15 ogist of its selection examine the defendant. The state shall file notice with the court of its intention
16 to have the defendant examined.

17 (2)(a) Upon filing of the notice, the court, in its discretion, may order the defendant committed
18 to a state institution or any other suitable facility, if the defendant is 18 years of age or older, for
19 observation and examination as the court may designate for a period not to exceed [30] **60** days.

20 (b) If the defendant is under 18 years of age, upon filing of the notice, the court, in its discretion,
21 may order the defendant committed to a secure intensive community inpatient facility designated
22 by the Oregon Health Authority for observation and examination as the court may designate for a
23 period not to exceed [30] **60** days.

24 (3) If the defendant objects to the examiner chosen by the state, the court for good cause shown
25 may direct the state to select a different examiner.

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) An examiner performing an examination on the issue of insanity of a defendant under this
 2 section is not obligated to examine the defendant for fitness to proceed unless, during the examina-
 3 tion, the examiner determines that the defendant's fitness to proceed is drawn in question.

4 **(5) A report resulting from an examination under this section shall be filed with the**
 5 **court electronically.**

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

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

15 [(a)] **(A)** Order that a psychiatric or psychological examination of the defendant be conducted
 16 by a certified evaluator as defined in ORS 161.309 and a report of the examination be prepared; or

17 [(b)] **(B)** Order the defendant to be committed for the purpose of an examination for a period
 18 not exceeding 30 days to a state mental hospital or other facility designated by the Oregon Health
 19 Authority if the defendant is at least 18 years of age, or to a secure intensive community inpatient
 20 facility designated by the authority if the defendant is under 18 years of age.

21 **(b) The court shall ensure that any order entered under this subsection is provided to**
 22 **the state mental hospital or other facility by the end of the next business day.**

23 (2) The report of an examination described in this section must include, but is not necessarily
 24 limited to, the following:

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

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

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

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

31 (3) Except when the defendant and the court both request to the contrary, the report may not
 32 contain any findings or conclusions as to whether the defendant as a result of a qualifying mental
 33 disorder was subject to the provisions of ORS 161.295 or 161.300 at the time of the criminal act
 34 charged.

35 (4) If the examination by the psychiatrist or psychologist cannot be conducted by reason of the
 36 unwillingness of the defendant to participate in the examination, the report must so state and must
 37 include, if possible, an opinion as to whether the unwillingness of the defendant was the result of
 38 a qualifying mental disorder affecting capacity to proceed.

39 (5) The report must be filed with the [*clerk of the*] court[,] **and may be filed electronically. The**
 40 **clerk of the court** [*who*] shall cause copies to be delivered to the district attorney and to counsel
 41 for defendant.

42 (6)(a) When upon motion of the court or a financially eligible defendant, the court has ordered
 43 a psychiatric or psychological examination of the defendant, a county or justice court shall order
 44 the county to pay, and a circuit court shall order the public defense services executive director to
 45 pay from funds available for the purpose:

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

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

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

10 (7) The Oregon Health Authority shall establish by rule standards for the consultation described
11 in subsection (1) of this section.

12 **SECTION 5.** ORS 161.370 is amended to read:

13 161.370. (1) When the defendant's fitness to proceed is drawn in question, the issue shall be de-
14 termined by the court. If neither the prosecuting attorney nor counsel for the defendant contests the
15 finding of the report filed under ORS 161.365, the court may make the determination on the basis
16 of the report. If the finding is contested, the court shall hold a hearing on the issue. If the report
17 is received in evidence in the hearing, the party who contests the finding has the right to summon
18 and to cross-examine any psychiatrist or psychologist who submitted the report and to offer evidence
19 upon the issue. Other evidence regarding the defendant's fitness to proceed may be introduced by
20 either party.

21 (2)(a) If the court determines that the defendant lacks fitness to proceed, the criminal proceed-
22 ing against the defendant shall be suspended and:

23 [(a)] (A) If the court finds that the defendant is dangerous to self or others as a result of a
24 qualifying mental disorder, or that, based on the findings resulting from the consultation described
25 in ORS 161.365 (1), the services and supervision necessary to restore the defendant's fitness to pro-
26 ceed are not available in the community, the court shall commit the defendant to the custody of the
27 superintendent of a state mental hospital or director of a facility, designated by the Oregon Health
28 Authority, if the defendant is at least 18 years of age, or to the custody of the director of a secure
29 intensive community inpatient facility designated by the authority if the defendant is under 18 years
30 of age; or

31 [(b)] (B) If the court does not make a finding described in [paragraph (a)] **subparagraph (A)** of
32 this [subsection] **paragraph**, or if the court determines that care other than commitment for inca-
33 pacity to stand trial would better serve the defendant and the community, the court shall release
34 the defendant on supervision for as long as the unfitness endures.

35 **(b) The court shall ensure that an order entered under this subsection is provided, by the**
36 **end of the next business day, to any entity ordered to provide services and supervision nec-**
37 **essary to restore the defendant's fitness to proceed.**

38 (3) When a defendant is released on supervision under subsection [(2)(b)] **(2)(a)(B)** of this sec-
39 tion, the court may place conditions that the court deems appropriate on the release, including the
40 requirement that the defendant regularly report to the authority or a community mental health
41 program for examination to determine if the defendant has gained or regained capacity to stand
42 trial.

43 (4) When the court, on its own motion or upon the application of the superintendent of the
44 hospital or director of the facility in which the defendant is committed, a person examining the de-
45 fendant as a condition of release on supervision, or either party, determines, after a hearing, if a

1 hearing is requested, that the defendant has gained or regained fitness to proceed, the criminal
2 proceeding shall be resumed. If, however, the court is of the view that so much time has elapsed
3 since the commitment or release of the defendant on supervision that it would be unjust to resume
4 the criminal proceeding, the court on motion of either party may dismiss the charge and may order
5 the defendant to be discharged or cause a proceeding to be commenced forthwith under ORS 426.070
6 to 426.170 or 427.235 to 427.290.

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

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

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

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

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

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

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

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

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

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

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

42 (7)(a) A defendant who remains committed under subsection (6) of this section shall be dis-
43 charged within a period of time that is reasonable for making a determination concerning whether
44 or not, and when, the defendant may gain or regain capacity. However, regardless of the number
45 of charges with which the defendant is accused, in no event shall the defendant be committed for

1 longer than whichever of the following, measured from the defendant's initial custody date, is
2 shorter:

3 (A) Three years; or

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

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

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

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

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

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

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

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

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

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

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

34 (11) All notices required under this section shall be filed with the [*clerk of the*] court and **may**
35 **be filed electronically. The clerk of the court shall cause copies of the notices to be** delivered
36 to both the district attorney and the counsel for the defendant.

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

41 (13) Notwithstanding the suspension of the criminal proceeding under subsection (2) of this
42 section, the fact that the defendant is unfit to proceed does not preclude any objection through
43 counsel and without the personal participation of the defendant on the grounds that the indictment
44 is insufficient, that the statute of limitations has run, that double jeopardy principles apply or upon
45 any other ground at the discretion of the court which the court deems susceptible of fair determi-

1 nation prior to trial.

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

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