

Senate Bill 637

Sponsored by COMMITTEE ON JUDICIARY

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**.

Authorizes court, upon finding defendant unfit to proceed by reason of incapacity, to order involuntary medication of defendant under specified conditions.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to involuntary medication of defendant who is found unfit to proceed by reason of inca-
3 pacity; creating new provisions; amending ORS 127.720 and 161.370; and declaring an emergency.

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

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

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

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

17 (a) If the court finds that the defendant is dangerous to self or others as a result of mental
18 disease or defect, or that the services and supervision necessary to restore the defendant's fitness
19 to proceed are not available in the community, the court:

20 (A) Shall commit the defendant to the custody of the superintendent of a state mental hospital
21 or director of a facility, designated by the Oregon Health Authority, if the defendant is at least 18
22 years of age, or to the custody of the director of a secure intensive community inpatient facility
23 designated by the authority if the defendant is under 18 years of age; **and**

24 (B) **May order the defendant to be administered medication without the defendant's in-**
25 **formed consent if the court finds that:**

26 (i) **Administration of the medication is substantially likely to render the defendant fit to**
27 **proceed;**

28 (ii) **The medication to be administered is substantially unlikely to have side effects that**
29 **will interfere significantly with the defendant's ability to assist counsel in conducting a trial**
30 **defense;**

31 (iii) **There are no less intrusive means for administering the medication;**

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 **(iv) Administration of the medication is in the defendant's best interest and medically**
2 **appropriate; and**

3 **(v) There are important governmental interests at stake in bringing the defendant to**
4 **trial and the involuntary administration of the medication will significantly further those**
5 **governmental interests; or**

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

10 (3) When a defendant is released on supervision under this section, the court may place condi-
11 tions that the court deems appropriate on the release, including the requirement that the defendant
12 regularly report to the authority or a community mental health program for examination to deter-
13 mine if the defendant has regained capacity to stand trial.

14 (4) When the court, on its own motion or upon the application of the superintendent of the
15 hospital or director of the facility in which the defendant is committed, a person examining the de-
16 fendant as a condition of release on supervision, or either party, determines, after a hearing, if a
17 hearing is requested, that the defendant has regained fitness to proceed, the criminal proceeding
18 shall be resumed. If, however, the court is of the view that so much time has elapsed since the
19 commitment or release of the defendant on supervision that it would be unjust to resume the crim-
20 inal proceeding, the court on motion of either party may dismiss the charge and may order the de-
21 fendant to be discharged or cause a proceeding to be commenced forthwith under ORS 426.070 to
22 426.170 or 427.235 to 427.290.

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

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

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

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

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

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

39 (6)(a) If the superintendent or director determines that there is a substantial probability that,
40 in the foreseeable future, the defendant will gain or regain the capacity to stand trial, unless the
41 court otherwise orders, the defendant shall remain in the superintendent's or director's custody
42 where the defendant shall receive treatment designed for the purpose of enabling the defendant to
43 gain or regain capacity. In keeping with the notice requirement under subsection (5)(b) of this sec-
44 tion, the superintendent or director shall, for the duration of the defendant's period of commitment,
45 submit a progress report to the committing court, concerning the defendant's capacity or incapacity,

1 at least once every 180 days as measured from the date of the defendant's delivery into the
2 superintendent's or director's custody.

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

9 (7)(a) A defendant who remains committed under subsection (6) of this section shall be dis-
10 charged within a period of time that is reasonable for making a determination concerning whether
11 or not, and when, the defendant may gain or regain capacity. However, regardless of the number
12 of charges with which the defendant is accused, in no event shall the defendant be committed for
13 longer than whichever of the following, measured from the defendant's initial custody date, is
14 shorter:

15 (A) Three years; or

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

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

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

22 (B) The defendant shall be given credit against each charge alleged in the accusatory instrument
23 for each day the defendant is committed under this section, whether the days are consecutive or are
24 interrupted by a period of time during which the defendant has regained fitness to proceed.

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

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

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

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

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

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

43 (12) If the defendant regains fitness to proceed, the term of any sentence received by the de-
44 fendant for conviction of the crime charged shall be reduced by the amount of time the defendant
45 was committed under this section to the custody of a state mental hospital, or to the custody of a

1 secure intensive community inpatient facility, designated by the Oregon Health Authority.

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

8 **SECTION 2.** ORS 127.720 is amended to read:

9 127.720. (1) The physician or provider may subject the principal to mental health treatment in
 10 a manner contrary to the principal's wishes as expressed in a declaration for mental health treat-
 11 ment only:

12 (a) If the principal is committed to the Oregon Health Authority pursuant to ORS 426.005 to
 13 426.390 and treatment is authorized in compliance with ORS 426.385 (3) and administrative rule.

14 (b) If treatment is authorized in compliance with administrative rule and:

15 (A) The principal is committed to a state hospital or secure intensive community inpatient fa-
 16 cility:

17 (i) As a result of being found guilty except for insanity under ORS 161.295 or responsible except
 18 for insanity under ORS 419C.411; **or**

19 (ii) Under ORS 161.365; or

20 [(iii) Under ORS 161.370; or]

21 (B) The principal is transferred to a state hospital or other facility under ORS 179.473 or
 22 419C.530.

23 **(c) If the principal is committed to a state mental hospital or facility, or a secure inten-**
 24 **sive community inpatient facility, under ORS 161.370 and the court has ordered the admin-**
 25 **istration of medication in accordance with ORS 161.370.**

26 [(c)] **(d)** In cases of emergency endangering life or health.

27 (2) A declaration does not limit any authority provided in ORS 426.005 to 426.390 either to take
 28 a person into custody, or to admit, retain or treat a person in a health care facility.

29 **SECTION 3. The amendments to ORS 127.720 and 161.370 by sections 1 and 2 of this 2013**
 30 **Act apply to proceedings under ORS 161.370 to determine a defendant's fitness to proceed**
 31 **that are initiated on or after the effective date of this 2013 Act.**

32 **SECTION 4. This 2013 Act being necessary for the immediate preservation of the public**
 33 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**
 34 **on its passage.**