

D R A F T

SUMMARY

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
3 amending ORS 161.365.

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

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

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

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

4 (b) Order the defendant to be committed for the purpose of an examina-
5 tion for a period not exceeding 30 days to a state mental hospital or other
6 facility designated by the Oregon Health Authority if the defendant is at
7 least 18 years of age, or to a secure intensive community inpatient facility
8 designated by the authority if the defendant is under 18 years of age.

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

15 [(2)] (3) The report of an examination described in this section must in-
16 clude, but is not necessarily limited to, the following:

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

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

19 (c) If the defendant suffers from a qualifying mental disorder, an opinion
20 as to whether the defendant is incapacitated within the description set out
21 in ORS 161.360; and

22 (d) If the defendant is incapacitated within the description set out in ORS
23 161.360, a recommendation of treatment and services necessary to restore
24 capacity.

25 [(3)] (4) Except when the defendant and the court both request to the
26 contrary, the report may not contain any findings or conclusions as to
27 whether the defendant as a result of a qualifying mental disorder was subject
28 to the provisions of ORS 161.295 or 161.300 at the time of the criminal act
29 charged.

30 [(4)] (5) If the examination by the psychiatrist or psychologist cannot be
31 conducted by reason of the unwillingness of the defendant to participate in

1 the examination, the report must so state and must include, if possible, an
2 opinion as to whether the unwillingness of the defendant was the result of
3 a qualifying mental disorder affecting capacity to proceed.

4 [(5)] (6) The report must be filed with the clerk of the court, who shall
5 cause copies to be delivered to the district attorney and to counsel for de-
6 fendant.

7 [(6)(a)] (7)(a) When upon motion of the court or a financially eligible
8 defendant, the court has ordered a psychiatric or psychological examination
9 of the defendant, a county or justice court shall order the county to pay, and
10 a circuit court shall order the public defense services executive director to
11 pay from funds available for the purpose:

12 (A) A reasonable fee if the examination of the defendant is conducted by
13 a psychiatrist or psychologist in private practice; and

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

18 (b) When an examination is ordered at the request or with the
19 acquiescence of a defendant who is determined not to be financially eligible,
20 the examination shall be performed at the defendant's expense. When an ex-
21 amination is ordered at the request of the prosecution, the county shall pay
22 for the expense of the examination.

23 [(7)] (8) The Oregon Health Authority shall establish by rule standards
24 for the consultation described in subsection (1) of this section.

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

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

30 (b) **Are generally available to perform an examination ordered un-**
31 **der subsection (1) of this section within the time period required by**

1 subsection (2) of this section.

2 **SECTION 2. Beginning September 15, 2020, and no later than March**
3 **15 and September 15 of each year thereafter, the presiding judge of the**
4 **circuit court in each judicial district shall report to the interim com-**
5 **mittees of the Legislative Assembly related to the judiciary, in the**
6 **manner provided under ORS 192.245:**

7 (1) The total number of examinations ordered under ORS 161.365 (1)
8 within the previous six months; and

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

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

13
