

SB 132 STAFF MEASURE SUMMARY

Senate Committee On Judiciary

Prepared By: Josh Nasbe, Counsel

Meeting Dates: 3/29

WHAT THE MEASURE DOES:

Prohibits court from committing defendant to state hospital for competency evaluation, if defendant charged with Class B or Class C misdemeanor. Authorizes superintendent of state hospital to evaluate defendant charged with Class A misdemeanor or felony as outpatient, in state hospital or in other facility, including hospital or correctional facility. Requires court to release for outpatient treatment incompetent defendant court has determined is dangerous or cannot be treated in community, if defendant charged with Class B or Class C misdemeanor. Authorizes superintendent of state hospital to place defendant in any facility for restorative treatment, including hospital or correctional facility. Authorizes continued commitment of defendant charged with murder who has gained fitness to proceed, under specified circumstances. Authorizes court to order involuntary medication of defendant in custody of superintendent of state hospital. Clarifies that statutory process for determining fitness to proceed applies to violations of municipal ordinances, probation violations and contempt allegations

REVENUE: May have revenue impact, but no statement yet issued

FISCAL: May have fiscal impact, but no statement yet issued

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

No amendment.

BACKGROUND:

The due process clause of the United States Constitution prohibits the criminal prosecution of an incompetent defendant; a "defendant may not be put to trial unless he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding...and a rational as well as factual understanding of the proceedings against him." *Cooper v. Oklahoma*, 517 U.S. 348, 354 (1996). In Oregon, the process for determining a defendant's fitness for criminal prosecution, commonly called the ability to "aid and assist," is described in ORS 161.360 to 161.370.

This statutory scheme describes a two-step process. First, a defendant may be evaluated to determine whether the defendant is able to aid and assist. Second, if after receiving the results of this evaluation, the court determines the defendant is unable to aid and assist, the court is required to suspend the criminal proceedings and order that the defendant be provided with restorative treatment. Pursuant to ORS 161.370, the court is able to commit the defendant to the state hospital for treatment only if the court finds that the defendant is dangerous to self or others or if the court determines, after consulting with the community mental health director, that the defendant cannot be safely treated in the community. Thereafter, the defendant is treated until competency is restored, it is determined that there is no substantial probability that competency can be restored or until too much time has elapsed that it would be unjust to resume criminal proceedings.