

Fitness to Proceed aka Aid and Assist

Process by which court makes determination that a defendant is competent to face charge(s) brought against him

ORS 161.360

- If court has reason to doubt defendant's fitness, it may order an examination.
- One is incapacitated if, as a result of md/d, he is unable:
 - to understand the nature of the proceedings;
 - to assist and cooperate with counsel; or
 - to participate in one's own defense

ORS 161.365 - Procedure for determining fitness

- Court may appoint psychiatrist or psychologist to examine defendant and advise court.
- Court may order defendant committed for purpose of that exam for not more than 30 days to state mental hospital
- Report shall provide mental condition of defendant and opine whether he is incapacitated.

ORS 161.370—Determination of fitness; effect of finding of unfitness

- Court makes the finding—either:
 - Based on the report or,
 - If contested, after a hearing.
- If defendant lacks capacity to proceed, criminal proceedings are suspended and the court shall:
 - Commit to OSH or
 - May release the defendant on supervision for as long as unfitness lasts.

ORS 161.370—Determination of fitness; effect of finding of unfitness

(continue...)

- Release may occur if court determines care other than commitment would better serve defendant and community.
 - May place conditions on release.
- When court advised defendant has regained fitness, criminal proceeding resumes.

If committed:

- OSH shall evaluate within 60 days of arrival to determine if there is substantial probability that, in foreseeable future, defendant will have capacity to stand trial.
- OSH shall notify court immediately if defendant has regained capacity or will never have capacity.
- OSH shall notify court within 90 days that the defendant
 - Has present capacity
 - Will not likely regain capacity in the foreseeable future
 - Will likely regain capacity in future

If committed:

(continued...)

- If likely to regain capacity defendant stays at OSH to receive treatment designed to enable him to gain capacity.
 - Progress report due to court at least every 180 days.
 - Others return to court.

Limitations

- Defendant who remains for treatment shall, in no event, be committed for longer than:
 - 3 years or
 - A period of time equal to maximum sentence court could have imposed if convicted

Court Determinations

- After notification from OSH re: progress or lack thereof, Court shall make determination of present capacity at hearing, if requested.
- If defendant will likely **not** regain capacity or has completed the maximum time set for this purpose, the court shall
 - dismiss, without prejudice, all charges against defendant and
 - order discharge; or
 - initiate civil commitment proceedings