

House Bill 2858

Sponsored by COMMITTEE ON JUDICIARY (at the request of Oregon Psychiatric Association, Oregon Psychological Association)

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**.

Requires defendant to submit report of pretrial evaluation performed by certified psychiatrist or psychologist prior to asserting guilt except for insanity. Directs Department of Human Services to certify evaluators.

A BILL FOR AN ACT

1
2 Relating to guilt except for insanity; amending ORS 161.309 and 161.327.

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

4 **SECTION 1.** ORS 161.309 is amended to read:

5 161.309. (1) No evidence may be introduced by the defendant on the issue of insanity under ORS
6 161.295, unless the defendant:

7 (a) Gives notice of intent to do so in the manner provided in subsection (3) of this section[.];
8 **and**

9 (b) **Prior to trial, submits to the court the report of an evaluation performed by a psy-**
10 **chiatrist or psychologist certified by the Department of Human Services under subsection (5)**
11 **of this section. The evaluation must be performed after the date of the alleged offense and**
12 **the report shall address the issue of insanity under ORS 161.295 and the dispositional deter-**
13 **mination under ORS 161.325, 161.327, 161.328 or 161.329.**

14 (2) The defendant may not introduce in the case in chief expert testimony regarding partial re-
15 sponsibility or diminished capacity under ORS 161.300 unless the defendant gives notice of intent to
16 do so in the manner provided in subsection (3) of this section.

17 (3) A defendant who is required under subsection (1) or (2) of this section to give notice shall
18 file a written notice of purpose at the time the defendant pleads not guilty. The defendant may file
19 such notice at any time after the plea but before trial when just cause for failure to file the notice
20 at the time of making the plea is made to appear to the satisfaction of the court. If the defendant
21 fails to file notice, the defendant [*shall not be entitled to*] **may not** introduce evidence for the es-
22 tablishment of a defense under ORS 161.295 or 161.300 unless the court, in its discretion, permits
23 such evidence to be introduced where just cause for failure to file the notice is [*made to appear*]
24 **shown.**

25 (4) **A defendant who is required under subsection (1) of this section to submit a report**
26 **to the court and who fails to do so may not introduce evidence for the establishment of a**
27 **defense under ORS 161.295 unless the court, in its discretion, permits such evidence to be**
28 **introduced where just cause for failure to submit the report is shown.**

29 (5) **The department shall adopt rules necessary to certify evaluators for the purpose of**
30 **subsection (1) of this section.**

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.

SECTION 2. ORS 161.327 is amended to read:

161.327. (1)(a) Following the entry of a judgment pursuant to ORS 161.319 and the dispositional determination under ORS 161.325, if the court finds that the person would have been guilty of a felony, or of a misdemeanor during a criminal episode in the course of which the person caused physical injury or risk of physical injury to another, *[the court shall order that a psychiatric or psychological evaluation be performed and a report of the evaluation be provided to the court if an evaluation was not performed or a report was not provided to the court prior to trial. Upon receipt of the evaluation,]* the court shall order that the person be placed under the jurisdiction of the Psychiatric Security Review Board for care and treatment if the court finds by a preponderance of the evidence that the person is affected by mental disease or defect and presents a substantial danger to others requiring commitment to:

(A) A state hospital designated by the Department of Human Services if the person is at least 18 years of age; or

(B) A secure intensive community inpatient facility designated by the Department of Human Services if the person is under 18 years of age.

(b) The period of jurisdiction of the board is equal to the maximum sentence provided by statute for the crime for which the person was found guilty except for insanity.

[(c) When a court orders a psychiatric or psychological evaluation of a financially eligible person under this subsection, the court shall order the public defense services executive director to pay a reasonable fee for the evaluation from funds available for the purpose.]

(2) The court shall determine whether the person should be committed to a state hospital, or to a secure intensive community inpatient facility, designated by the Department of Human Services or conditionally released pending any hearing before the board as follows:

(a) If the court finds that the person presents a substantial danger to others and is not a proper subject for conditional release, the court shall order the person committed to a state hospital designated by the Department of Human Services if the person is at least 18 years of age, or to a secure intensive community inpatient facility designated by the Department of Human Services if the person is under 18 years of age, for custody, care and treatment pending hearing before the board in accordance with ORS 161.341 to 161.351.

(b) If the court finds that the person presents a substantial danger to others but that the person can be adequately controlled with supervision and treatment if conditionally released and that necessary supervision and treatment are available, the court may order the person conditionally released, subject to those supervisory orders of the court as are in the best interests of justice, the protection of society and the welfare of the person. The court shall designate a person or state, county or local agency to supervise the person upon release, subject to those conditions as the court directs in the order for conditional release. Prior to the designation, the court shall notify the person or agency to whom conditional release is contemplated and provide the person or agency an opportunity to be heard before the court. After receiving an order entered under this paragraph, the person or agency designated shall assume supervision of the person pursuant to the direction of the Psychiatric Security Review Board. The person or agency designated as supervisor shall be required to report in writing no less than once per month to the board concerning the supervised person's compliance with the conditions of release.

(3) For purposes of this section, a person affected by a mental disease or defect in a state of remission is considered to have a mental disease or defect requiring supervision when the disease may, with reasonable medical probability, occasionally become active and, when active, render the

1 person a danger to others.

2 (4) In determining whether a person should be conditionally released, the court may order
3 evaluations, examinations and compliance as provided in ORS 161.336 (4) and 161.346 (2).

4 (5) In determining whether a person should be committed to a state hospital or to a secure in-
5 tensive community inpatient facility or conditionally released, the court shall have as its primary
6 concern the protection of society.

7 (6) Upon placing a person on conditional release, the court shall notify the board in writing of
8 the court's conditional release order, the supervisor appointed, and all other conditions of release,
9 and the person shall be on conditional release pending hearing before the board in accordance with
10 ORS 161.336 to 161.351. Upon compliance with this subsection and subsections (1) and (2) of this
11 section, the court's jurisdiction over the person is terminated and the board assumes jurisdiction
12 over the person.

13 (7) An order of the court under this section is a final order appealable by the person found
14 guilty except for insanity in accordance with ORS 19.205 (5). Notwithstanding ORS 19.255, notice
15 of an appeal under this section shall be served and filed within 90 days after the order appealed from
16 is entered in the register. The person shall be entitled on appeal to suitable counsel possessing
17 skills and experience commensurate with the nature and complexity of the case. If the person is fi-
18 nancially eligible, suitable counsel shall be appointed in the manner provided in ORS 138.500 (1), and
19 the compensation for counsel and costs and expenses of the person necessary to the appeal shall be
20 determined and paid as provided in ORS 138.500.

21 (8) Upon placing a person under the jurisdiction of the board, the court shall notify the person
22 of the right to appeal and the right to a hearing before the board in accordance with ORS 161.336
23 (7) and 161.341 (4).

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