

# House Bill 2697

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim 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**.

Requires defendant or youth to file report of psychiatric or psychological evaluation, conducted by certified evaluator, with court before defendant or youth may introduce evidence related to insanity defense. Provides exception for just cause when defendant tried by jury.

Prohibits court from accepting guilty except for insanity plea to certain offenses unless court is provided with report of psychiatric or psychological evaluation of defendant. Authorizes court to order evaluation.

Requires court to order evaluation if person is found guilty except for insanity of Class C felony, and report of evaluation is not provided to court.

Directs court to conditionally release defendant found guilty except for insanity of misdemeanor under certain circumstances.

Requires that psychiatric or psychological evaluation of defendant be conducted by certified evaluator when court orders certain evaluations of defendant to determine whether defendant is fit to proceed. Directs court to release defendant on supervision under certain circumstances when defendant is found unfit to proceed and charged with misdemeanors.

Requires Oregon Health Authority to adopt rules necessary to certify psychiatrists and psychologists for purposes of certain evaluations reported to court.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to crime; creating new provisions; amending ORS 161.309, 161.315, 161.327, 161.329, 161.365,  
3 161.370 and 419C.524; and declaring an emergency.

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

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

6 161.309. (1) [*No evidence may be introduced by*] The defendant **may not introduce evidence** on  
7 the issue of insanity under ORS 161.295, unless the defendant:

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

10 (b) **Files with the court a report of a psychiatric or psychological evaluation, conducted**  
11 **by a certified evaluator, in the manner provided in subsection (4) of this section.**

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

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

**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 (4) A defendant who is required under subsection (1) of this section to file a report of a  
 2 psychiatric or psychological evaluation shall file the report before trial. The report must be  
 3 based on an evaluation conducted after the date of the alleged offense and must address the  
 4 issue of insanity under ORS 161.295 and the dispositional determination described in ORS  
 5 161.325. If the defendant fails to file a complete report before trial, the defendant may not  
 6 introduce evidence for the establishment of a defense under ORS 161.295 unless:

7 (a) The court, in its discretion, permits the evidence to be introduced where just cause  
 8 for failure to file the report is shown; and

9 (b) If the defendant is charged with an offense described in ORS 161.327 (1)(a), the de-  
 10 fendant is tried by a jury.

11 (5)(a) A court may not accept a plea of guilty except for insanity to an offense described  
 12 in ORS 161.327 (1)(a) unless a report described in subsection (4) of this section is filed with  
 13 the court. If the report has not been filed, the court may order that a psychiatric or psy-  
 14 chological evaluation of the defendant be conducted by a certified evaluator and a report of  
 15 the evaluation be filed with the court.

16 (b) When the court orders an evaluation of a financially eligible person under this sub-  
 17 section, the court shall order the public defense services executive director to pay a rea-  
 18 sonable fee for the evaluation from funds available for that purpose.

19 (6) As used in this section, “certified evaluator” means a psychiatrist or psychologist who  
 20 holds a valid certification under the provisions of section 7 of this 2011 Act.

21 **SECTION 2.** ORS 161.327 is amended to read:

22 161.327. [(1)(a)] (1) Following the entry of a judgment pursuant to ORS 161.319 [*and the dispo-*  
 23 *sitional determination under ORS 161.325, if the court finds that the person would have been guilty of*  
 24 *a felony, or of a misdemeanor during a criminal episode in the course of which the person caused*  
 25 *physical injury or risk of physical injury to another, the court shall order that a psychiatric or psy-*  
 26 *chological evaluation be performed and a report of the evaluation be provided to the court if an eval-*  
 27 *uation was not performed or a report was not provided to the court prior to trial. Upon receipt of the*  
 28 *evaluation, the court shall order that the*], **the court shall order that a person be placed under the**  
 29 **jurisdiction of the Psychiatric Security Review Board for care and treatment if:**

30 (a) **The person was found guilty except for insanity of a felony, or of a misdemeanor**  
 31 **during a criminal episode in the course of which the person caused physical injury or risk**  
 32 **of physical injury to another; and**

33 (b) The court finds by a preponderance of the evidence that the person is affected by mental  
 34 disease or defect and presents a substantial danger to others requiring commitment **or conditional**  
 35 **release.** [to:]

36 [(A) A state hospital designated by the Oregon Health Authority if the person is at least 18 years  
 37 of age; or]

38 [(B) A secure intensive community inpatient facility designated by the authority if the person is  
 39 under 18 years of age.]

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

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

45 (2) The court shall determine whether the person should be committed [to a state hospital, or to

1 *a secure intensive community inpatient facility, designated by the authority]* or conditionally released  
 2 pending any hearing before the board as follows:

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

9 (b) If the court finds that the person presents a substantial danger to others but that the person  
 10 can be adequately controlled with supervision and treatment if conditionally released and that nec-  
 11 essary supervision and treatment are available, the court may order the person conditionally re-  
 12 leased.

13 **(c) Notwithstanding paragraphs (a) and (b) of this subsection, the court shall order the**  
 14 **person conditionally released if the court finds that:**

15 **(A) Each offense for which the person was found guilty except for insanity is a**  
 16 **misdemeanor; and**

17 **(B) The maximum length of incarceration the court could have imposed, if the person**  
 18 **had been convicted of each offense, is one year or less.**

19 **(3) When a person is conditionally released under this section, the person is** subject to  
 20 those supervisory orders of the court as are in the best interests of justice, the protection of society  
 21 and the welfare of the person. The court shall designate a person or state, county or local agency  
 22 to supervise the person upon release, subject to those conditions as the court directs in the order  
 23 for conditional release. Prior to the designation, the court shall notify the person or agency to whom  
 24 conditional release is contemplated and provide the person or agency an opportunity to be heard  
 25 before the court. After receiving an order entered under *[this paragraph]* **subsection (2)(b) or (c)**  
 26 **of this section**, the person or agency designated shall assume supervision of the person pursuant  
 27 to the direction of the Psychiatric Security Review Board. The person or agency designated as  
 28 supervisor shall be required to report in writing no less than once per month to the board con-  
 29 cerning the supervised person's compliance with the conditions of release.

30 *[(3)]* **(4)** For purposes of this section, a person affected by a mental disease or defect in a state  
 31 of remission is considered to have a mental disease or defect requiring supervision when the disease  
 32 may, with reasonable medical probability, occasionally become active and, when active, render the  
 33 person a danger to others.

34 *[(4)]* **(5)** In determining whether a person should be conditionally released, the court:

35 **(a)** May order evaluations, examinations and compliance as provided in ORS 161.336 (4) and  
 36 161.346 (2), **provided that the evaluation or examination is conducted by a local mental health**  
 37 **facility designated by the board; and**

38 **(b) Shall order that the person be examined by a local mental health facility designated**  
 39 **by the board and a report of the examination be provided to the court if:**

40 **(A) Each offense for which the defendant was found guilty except for insanity is a Class**  
 41 **C felony; and**

42 **(B) A report of a psychiatric or psychological evaluation of the defendant has not been**  
 43 **provided to the court.**

44 *[(5)]* **(6)** In determining whether a person should be committed to a state hospital or to a secure  
 45 intensive community inpatient facility or conditionally released, the court shall have as its primary

1 concern the protection of society.

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

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

10 [(7)] (9) An order of the court under this section is a final order appealable by the person found  
 11 guilty except for insanity in accordance with ORS 19.205 (5). Notwithstanding ORS 19.255, notice  
 12 of an appeal under this section shall be served and filed within 90 days after the order appealed from  
 13 is entered in the register. The person shall be entitled on appeal to suitable counsel possessing  
 14 skills and experience commensurate with the nature and complexity of the case. If the person is fi-  
 15 nancially eligible, suitable counsel shall be appointed in the manner provided in ORS 138.500 (1), and  
 16 the compensation for counsel and costs and expenses of the person necessary to the appeal shall be  
 17 determined and paid as provided in ORS 138.500.

18 [(8)] (10) Upon placing a person under the jurisdiction of the board, the court shall notify the  
 19 person of the right to appeal and the right to a hearing before the board in accordance with ORS  
 20 161.336 (7) and 161.341 (4).

21 **SECTION 3.** ORS 161.329 is amended to read:

22 161.329. Following the entry of a judgment pursuant to ORS 161.319 *[and the dispositional de-*  
 23 *termination under ORS 161.325]*, **the court shall order a person found guilty except for insanity**  
 24 **of a crime discharged from custody** if the court finds that:

25 (1) The person is no longer affected by mental disease or defect, or, if so affected, no longer  
 26 presents a substantial danger to others and is not in need of care, supervision or treatment[, *the*  
 27 *court shall order the person discharged from custody.*]; **or**

28 (2) **Each offense for which the person was found guilty except for insanity is a**  
 29 **misdemeanor committed during a criminal episode in the course of which the person did not**  
 30 **cause physical injury or risk of physical injury to another.**

31 **SECTION 4.** ORS 419C.524 is amended to read:

32 419C.524. (1) A youth may not introduce evidence on the issue of the defense set forth in ORS  
 33 419C.522 unless the youth:

34 (a) Gives notice of intent to do so in the manner provided in subsection (2) of this section[.];  
 35 **and**

36 (b) **Files with the court a report of a psychiatric or psychological evaluation, conducted**  
 37 **by a certified evaluator, in the manner provided in subsection (5) of this section.**

38 (2) A youth who is required under subsection (1) of this section to give notice must do so by  
 39 filing a written notice of intent. A youth who is not in detention must file the notice of intent no  
 40 later than 60 days after the petition is filed unless the court finds good cause to extend the time.  
 41 If the youth fails to file notice timely, the youth may not introduce evidence for the establishment  
 42 of the defense set forth in ORS 419C.522 unless the court permits the evidence to be introduced  
 43 when just cause for failure to file the notice is shown.

44 (3) Just cause for failure to file notice timely exists if the youth was not represented by counsel  
 45 until after the filing period.

1 (4) The filing of a notice of intent under this section by a youth in detention constitutes express  
 2 consent of the youth for continued detention under ORS 419C.150.

3 (5) **A youth who is required under subsection (1) of this section to file a report of a psy-**  
 4 **chiatric or psychological evaluation shall file the report before trial. The report must be**  
 5 **based on an evaluation conducted after the date of the alleged act and must address the issue**  
 6 **of insanity under ORS 419C.411 (2) and the dispositional determinations described in ORS**  
 7 **419C.411 (7) and 419C.529. If the youth fails to file a complete report before trial, the youth**  
 8 **may not introduce evidence for the establishment of the defense set forth in ORS 419C.522**  
 9 **unless the court permits the evidence to be introduced when just cause for failure to file the**  
 10 **report is shown.**

11 (6) **As used in this section, “certified evaluator” means a psychiatrist or psychologist who**  
 12 **holds a valid certification under the provisions of section 7 of this 2011 Act.**

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

14 161.365. (1) [*Whenever*] **When** the court has reason to doubt the defendant’s fitness to proceed  
 15 by reason of incapacity as [*defined*] **described** in ORS 161.360, the court may call **any witness** to  
 16 its assistance in reaching its decision [*any witness and may appoint a psychiatrist or psychologist to*  
 17 *examine the defendant and advise the court*].

18 [(2)] If the court determines the assistance of a psychiatrist or psychologist would be helpful, the  
 19 court may:

20 (a) **Order that a psychiatric or psychological examination of the defendant, conducted by**  
 21 **a certified evaluator as defined in ORS 161.309, be conducted and a report of the examination**  
 22 **be prepared; or**

23 (b) Order the defendant to be committed for the purpose of an examination for a period not  
 24 exceeding 30 days to a state mental hospital designated by the Oregon Health Authority if the de-  
 25 fendant is at least 18 years of age, or to a secure intensive community inpatient facility designated  
 26 by the authority if the defendant is under 18 years of age.

27 (c) The report of [*each*] **an** examination [*shall*] **described in this section must** include, but is  
 28 not necessarily limited to, the following:

29 [(a)] (A) A description of the nature of the examination;

30 [(b)] (B) A statement of the mental condition of the defendant; and

31 [(c)] (C) If the defendant suffers from a mental disease or defect, an opinion as to whether the  
 32 defendant is incapacitated within the [*definition*] **description** set out in ORS 161.360.

33 [(3)] (2) Except when the defendant and the court both request to the contrary, the report may  
 34 not contain any findings or conclusions as to whether the defendant as a result of mental disease  
 35 or defect was subject to the provisions of ORS 161.295 or 161.300 at the time of the criminal act  
 36 charged.

37 [(4)] (3) If the examination by the psychiatrist or psychologist cannot be conducted by reason  
 38 of the unwillingness of the defendant to participate [*therein*] **in the examination**, the report shall  
 39 so state and shall include, if possible, an opinion as to whether [*such*] **the** unwillingness of the de-  
 40 fendant was the result of mental disease or defect affecting capacity to proceed.

41 [(5)] (4) The report [*of the examination*] shall be filed in triplicate with the clerk of the court,  
 42 who shall cause copies to be delivered to the district attorney and to counsel for defendant.

43 [(6)] (5)(a) When upon motion of the court or a financially eligible defendant, the court has or-  
 44 dered a psychiatric or psychological examination of the defendant, a county or justice court shall  
 45 order the county to pay, and a circuit court shall order the public defense services executive di-

1 rector to pay from funds available for the purpose:

2 [(a)] **(A)** A reasonable fee if the examination of the defendant is conducted by a psychiatrist or  
3 psychologist in private practice; and

4 [(b)] **(B)** All costs including transportation of the defendant if the examination is conducted by  
5 a psychiatrist or psychologist in the employ of the Oregon Health Authority or a community mental  
6 health program established under ORS 430.610 to 430.670.

7 [(7)] **(b)** When [such] an examination is ordered at the request or with the acquiescence of a  
8 defendant who is determined not to be financially eligible, the examination shall be performed at the  
9 defendant's expense. When [such] an examination is ordered at the request of the prosecution, the  
10 county shall pay for the expense of the examination.

11 **SECTION 6.** ORS 161.370 is amended to read:

12 161.370. (1) When the defendant's fitness to proceed is drawn in question, the issue shall be de-  
13 termined by the court. If neither the prosecuting attorney nor counsel for the defendant contests the  
14 finding of the report filed [by a psychiatrist or psychologist] under ORS 161.365, the court may make  
15 the determination on the basis of [such] **the** report. If the finding is contested, the court shall hold  
16 a hearing on the issue. If the report is received in evidence [upon such] **in the** hearing, the party  
17 who contests the finding [thereof shall have] **has** the right to summon and to cross-examine any  
18 psychiatrist or psychologist who submitted the report and to offer evidence upon the issue. Other  
19 evidence regarding the defendant's fitness to proceed may be introduced by either party.

20 (2) If the court determines that the defendant lacks fitness to proceed, the **criminal** proceeding  
21 against the defendant shall be suspended[, *except as provided in subsection (12) of this section,*] and  
22 the court shall:

23 **(a)** Commit the defendant to the custody of the superintendent of a state mental hospital desig-  
24 nated by the Oregon Health Authority if the defendant is at least 18 years of age, or to the custody  
25 of the director of a secure intensive community inpatient facility designated by the authority if the  
26 defendant is under 18 years of age[, *or shall*]; **or**

27 **(b)** Release the defendant on supervision for as long as [such] **the** unfitness [shall endure] **en-**  
28 **dures.**

29 **(3)** The court [may] **shall** release the defendant on supervision if [it] **the court** determines  
30 that:

31 **(a)** Care other than commitment for incapacity to stand trial would better serve the defendant  
32 and the community; **or**

33 **(b)(A) Each offense with which the defendant is charged is a misdemeanor; and**

34 **(B) The maximum sentence the court could impose, if the defendant were convicted of**  
35 **each offense, is incarceration for one year or less.**

36 **(4) [It] When a defendant is released on supervision under this section, the court** may  
37 place conditions [which it] **that the court** deems appropriate on the release, including the require-  
38 ment that the defendant regularly report to the authority or a community mental health program for  
39 examination to determine if the defendant has regained capacity to stand trial. When the court, on  
40 its own motion or upon the application of the superintendent of the hospital or director of the secure  
41 intensive community inpatient facility in which the defendant is committed, a person examining the  
42 defendant as a condition of release on supervision, or either party, determines, after a hearing, if a  
43 hearing is requested, that the defendant has regained fitness to proceed, the **criminal** proceeding  
44 shall be resumed. If, however, the court is of the view that so much time has elapsed since the  
45 commitment or release of the defendant on supervision that it would be unjust to resume the crim-

1 inal proceeding, the court on motion of either party may dismiss the charge and may order the de-  
 2 fendant to be discharged or cause a proceeding to be commenced forthwith under ORS 426.070 to  
 3 426.170 or 427.235 to 427.290.

4 [(3)] (5) The superintendent of a state hospital or director of a secure intensive community in-  
 5 patient facility shall cause the defendant to be evaluated within 60 days from the defendant's deliv-  
 6 ery into the superintendent's or director's custody, for the purpose of determining whether there is  
 7 a substantial probability that, in the foreseeable future, the defendant will have the capacity to  
 8 stand trial.

9 [(4)] (6) In addition, the superintendent or director shall:

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

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

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

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

17 (C) There is a substantial probability that, in the foreseeable future, the defendant will gain or  
 18 regain the capacity to stand trial. If [*such a*] **the** probability exists, the superintendent or director  
 19 shall give the court an estimate of the time in which the defendant, with appropriate treatment, is  
 20 expected to gain or regain capacity.

21 [(5)] (7) If the superintendent or director determines that there is a substantial probability that,  
 22 in the foreseeable future, the defendant will gain or regain the capacity to stand trial, unless the  
 23 court otherwise orders, the defendant shall remain in the superintendent's or director's custody  
 24 where the defendant shall receive treatment designed for the purpose of enabling the defendant to  
 25 gain or regain capacity. In keeping with the notice requirement under subsection [(4)(b)] (6)(b) of  
 26 this section, the superintendent or director shall, for the duration of the defendant's period of com-  
 27 mitment, submit a progress report to the committing court, concerning the defendant's capacity or  
 28 incapacity, at least once every 180 days as measured from the date of the defendant's delivery into  
 29 the superintendent's or director's custody.

30 [(6)] (8) A defendant who remains committed under subsection [(5)] (7) of this section shall be  
 31 discharged within a period of time that is reasonable for making a determination concerning  
 32 whether or not, and when, the defendant may gain or regain capacity. However, regardless of the  
 33 number of charges with which the defendant is accused, in no event shall the defendant be com-  
 34 mitted for longer than whichever of the following, measured from the defendant's initial custody  
 35 date, is shorter:

36 (a) Three years; or

37 (b) A period of time equal to the maximum sentence the court could have imposed if the de-  
 38 fendant had been convicted.

39 [(7)] (9) The superintendent or director shall notify the committing court of the defendant's im-  
 40 pending discharge 30 days before the date on which the superintendent or director is required to  
 41 discharge the defendant under subsection [(6)] (8) of this section.

42 [(8)] (10) When the committing court receives a notice from the superintendent or director under  
 43 [*either*] subsection [(4) or (7)] (6) or (9) of this section concerning the defendant's progress or lack  
 44 thereof, the committing court shall determine, after a hearing, if a hearing is requested, whether the  
 45 defendant presently has the capacity to stand trial.

1        [(9)] (11) If under subsection [(8)] (10) of this section the court determines that the defendant  
 2 lacks the capacity to stand trial, the court shall further determine whether there is a substantial  
 3 probability that the defendant, in the foreseeable future, will gain or regain the capacity to stand  
 4 trial and whether the defendant is entitled to discharge under subsection [(6)] (8) of this section. If  
 5 the court determines that there is no substantial probability that the defendant, in the foreseeable  
 6 future, will gain or regain the capacity to stand trial or that the defendant is entitled to discharge  
 7 under subsection [(6)] (8) of this section, the court shall dismiss, without prejudice, all charges  
 8 against the defendant and:

- 9        (a) Order that the defendant be discharged; or
- 10       (b) Initiate commitment proceedings under ORS 426.070 or 427.235 to 427.290.

11       [(10)] (12) All notices required under this section shall be filed with the clerk of the court and  
 12 delivered to both the district attorney and the counsel for the defendant.

13       [(11)] (13) If the defendant regains fitness to proceed, the term of any sentence received by the  
 14 defendant for conviction of the crime charged shall be reduced by the amount of time the defendant  
 15 was committed under this section to the custody of a state mental hospital, or to the custody of a  
 16 secure intensive community inpatient facility, designated by the Oregon Health Authority.

17       [(12)] (14) **Notwithstanding the suspension of the criminal proceeding under subsection (2)**  
 18 **of this section**, the fact that the defendant is unfit to proceed does not preclude any objection  
 19 through counsel and without the personal participation of the defendant on the grounds that the  
 20 indictment is insufficient, that the statute of limitations has run, that double jeopardy principles  
 21 apply or upon any other ground at the discretion of the court which the court deems susceptible  
 22 of fair determination prior to trial.

23       **SECTION 7. (1) The Oregon Health Authority shall adopt rules necessary to certify psy-**  
 24 **chiatrists and licensed psychologists for the purpose of performing evaluations and exam-**  
 25 **inations described in ORS 161.309, 161.365 and 419C.524. The rules must include a description**  
 26 **of the standards and qualifications necessary for certification.**

27       **(2) The authority shall consult with the Psychiatric Security Review Board about pro-**  
 28 **posed rules described in subsection (1) of this section before issuing the proposed rules for**  
 29 **public comment and before adopting the rules.**

30       **SECTION 8.** ORS 161.315 is amended to read:

31       161.315. Upon filing of notice or the introduction of evidence by the defendant as provided in  
 32 ORS 161.309 [(3)], the state shall have the right to have at least one psychiatrist or licensed psy-  
 33 chologist of its selection examine the defendant. The state shall file notice with the court of its in-  
 34 tention to have the defendant examined. Upon filing of the notice, the court, in its discretion, may  
 35 order the defendant committed to a state institution or any other suitable facility, if the defendant  
 36 is 18 years of age or older, for observation and examination as the court may designate for a period  
 37 not to exceed 30 days. If the defendant is under 18 years of age, upon filing of the notice, the court,  
 38 in its discretion, may order the defendant committed to a secure intensive community inpatient fa-  
 39 cility designated by the Oregon Health Authority for observation and examination as the court may  
 40 designate for a period not to exceed 30 days. If the defendant objects to the examiner chosen by the  
 41 state, the court for good cause shown may direct the state to select a different examiner.

42       **SECTION 9. (1) Section 7 of this 2011 Act and the amendments to ORS 161.309, 161.315,**  
 43 **161.327, 161.329, 161.365, 161.370 and 419C.524 by sections 1 to 6 and 8 of this 2011 Act become**  
 44 **operative on January 1, 2012.**

45       **(2) The Oregon Health Authority and the Psychiatric Security Review Board may adopt**



1 rules or take any other action before the operative date specified in subsection (1) of this  
2 section that is necessary to enable the authority or the board to exercise, on and after the  
3 operative date specified in subsection (1) of this section, all the duties, functions and powers  
4 conferred on the authority or the board by this 2011 Act.

5 SECTION 10. (1) The amendments to ORS 161.309, 161.315, 161.327, 161.329, 161.365 and  
6 161.370 by sections 1, 2, 3, 5, 6 and 8 of this 2011 Act apply to prosecutions for conduct oc-  
7 ccurring on or after January 1, 2012.

8 (2) The amendments to ORS 419C.524 by section 4 of this 2011 Act apply to juvenile ad-  
9 judications for conduct occurring on or after January 1, 2012.

10 SECTION 11. This 2011 Act being necessary for the immediate preservation of the public  
11 peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect  
12 on its passage.  
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