

# D R A F T

## SUMMARY

Directs court to inform defendant of potential commitment or conditional discharge prior to accepting plea of guilty except for insanity. Directs court to state on record and include in order maximum period of commitment or conditional discharge upon entry of judgment of guilty except for insanity.

## A BILL FOR AN ACT

Relating to guilty except for insanity; amending ORS 161.309 and 161.325.

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

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

161.309. (1) The defendant may not introduce evidence on the issue of insanity under ORS 161.295, unless the defendant:

(a) Gives notice of intent to do so in the manner provided in subsection (3) of this section; and

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

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

(3) A defendant who is required under subsection (1) or (2) of this section to give notice shall file a written notice of purpose at the time the defendant pleads not guilty. The defendant may file the notice at any time after the plea but before trial when just cause for failure to file the notice at the time of making the plea is shown. If the defendant fails to file notice, the de-

1 defendant may not introduce evidence for the establishment of a defense under  
2 ORS 161.295 or 161.300 unless the court, in its discretion, permits the evi-  
3 dence to be introduced where just cause for failure to file the notice is  
4 shown.

5 (4) A defendant who is required under subsection (1) of this section to file  
6 a report of a psychiatric or psychological evaluation shall file the report  
7 before trial. The report must be based on an evaluation conducted after the  
8 date of the alleged offense and must address the issue of insanity under ORS  
9 161.295 and the dispositional determination described in ORS 161.325. If the  
10 defendant fails to file a complete report before trial, the defendant may not  
11 introduce evidence for the establishment of a defense under ORS 161.295  
12 unless:

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

15 (b) If the defendant is charged with a felony, the defendant is tried by a  
16 jury.

17 (5)(a) A court may not accept a plea of guilty except for insanity to a  
18 felony unless a report described in subsection (4) of this section is filed with  
19 the court. If the report has not been filed, the court may order that a psy-  
20 chiatric or psychological evaluation of the defendant be conducted by a cer-  
21 tified evaluator and a report of the evaluation be filed with the court.

22 (b) When the court orders an evaluation of a financially eligible person  
23 under this subsection, the court shall order the public defense services  
24 executive director to pay a reasonable fee for the evaluation from funds  
25 available for that purpose.

26 (c) A certified evaluator performing an evaluation of a defendant on the  
27 issue of insanity under this subsection is not obligated to evaluate the de-  
28 fendant for fitness to proceed unless, during the evaluation, the certified  
29 evaluator determines that the defendant's fitness to proceed is drawn in  
30 question.

31 **(6) Prior to accepting a plea of guilty except for insanity to a felony,**

1 **the court shall inform the defendant of the possibility that the court**  
2 **may order commitment or conditional discharge after entry of judg-**  
3 **ment, and of the maximum total period of commitment or conditional**  
4 **discharge under ORS 161.327 (5).**

5 [(6)] (7) As used in this section, “certified evaluator” means a psychiatrist  
6 or psychologist who holds a valid certification under the provisions of ORS  
7 161.392.

8 **SECTION 2.** ORS 161.325 is amended to read:

9 161.325. (1) After entry of judgment of guilty except for insanity, the court  
10 shall, on the basis of the evidence given at the trial or at a separate hearing,  
11 if requested by either party, enter an order as provided in ORS 161.327,  
12 161.328 or 161.329, whichever is appropriate.

13 (2) If the court enters an order as provided in ORS 161.327, it shall also:

14 (a) Determine on the record the offense of which the person otherwise  
15 would have been convicted;

16 (b) State on the record the qualifying mental disorder on which the de-  
17 fendant relied for the guilty except for insanity defense; [*and*]

18 **(c) State on the record the maximum total period of commitment**  
19 **or conditional discharge under ORS 161.327 (5).**

20 [(c)] (d) Make specific findings on whether there is a victim of the crime  
21 for which the defendant has been found guilty except for insanity and, if so,  
22 whether the victim wishes to be notified, under ORS 161.326, of any hearings  
23 and orders concerning the defendant and of any conditional release, dis-  
24 charge or escape of the defendant.

25 (3) The court shall include [*any such findings*] in its order **the informa-**  
26 **tion described in subsection (2) of this section.**

27 (4) Except under circumstances described in ORS 137.076 (4), whenever a  
28 defendant charged with any offense listed in ORS 137.076 (1) has been found  
29 guilty of that offense except for insanity, the court shall, in any order en-  
30 tered under ORS 161.327, 161.328 or 161.329, direct the defendant to submit  
31 to the obtaining of a blood or buccal sample in the manner provided in ORS

1 137.076.

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