

House Bill 2307

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor Kate Brown for Oregon Health Authority)

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**.

Provides that certified evaluator who conducts court-ordered evaluation of criminal defendant concerning issue of insanity is not obligated to evaluate defendant's fitness to proceed unless issue of defendant's fitness to proceed arises during evaluation.

A BILL FOR AN ACT

1
2 Relating to evaluations on the issue of insanity; amending ORS 161.309 and 161.315.

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) The defendant may not introduce evidence 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; and

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

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

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

20 (4) A defendant who is required under subsection (1) of this section to file a report of a psy-
21 chiatric or psychological evaluation shall file the report before trial. The report must be based on
22 an evaluation conducted after the date of the alleged offense and must address the issue of insanity
23 under ORS 161.295 and the dispositional determination described in ORS 161.325. If the defendant
24 fails to file a complete report before trial, the defendant may not introduce evidence for the estab-
25 lishment of a defense under ORS 161.295 unless:

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

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

29 (5)(a) A court may not accept a plea of guilty except for insanity to a felony unless a report
30 described in subsection (4) of this section is filed with the court. If the report has not been filed, the

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 court may order that a psychiatric or psychological evaluation of the defendant be conducted by a
2 certified evaluator and a report of the evaluation be filed with the court.

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

6 (c) **A certified evaluator performing an evaluation of a defendant on the issue of insanity**
7 **under this subsection is not obligated to evaluate the defendant for fitness to proceed unless,**
8 **during the evaluation, the certified evaluator determines that the defendant's fitness to**
9 **proceed is drawn in question.**

10 (6) As used in this section, "certified evaluator" means a psychiatrist or psychologist who holds
11 a valid certification under the provisions of ORS 161.392.

12 **SECTION 2.** ORS 161.315 is amended to read:

13 161.315. (1) Upon filing of notice or the introduction of evidence by the defendant as provided
14 in ORS 161.309, the state shall have the right to have at least one psychiatrist or licensed psychol-
15 ogist of its selection examine the defendant. The state shall file notice with the court of its intention
16 to have the defendant examined.

17 (2)(a) Upon filing of the notice, the court, in its discretion, may order the defendant committed
18 to a state institution or any other suitable facility, if the defendant is 18 years of age or older, for
19 observation and examination as the court may designate for a period not to exceed 30 days.

20 (b) If the defendant is under 18 years of age, upon filing of the notice, the court, in its dis-
21 cretion, may order the defendant committed to a secure intensive community inpatient facility des-
22 ignated by the Oregon Health Authority for observation and examination as the court may designate
23 for a period not to exceed 30 days.

24 (3) If the defendant objects to the examiner chosen by the state, the court for good cause shown
25 may direct the state to select a different examiner.

26 (4) **An examiner performing an examination on the issue of insanity of a defendant under**
27 **this section is not obligated to examine the defendant for fitness to proceed unless, during**
28 **the examination, the examiner determines that the defendant's fitness to proceed is drawn**
29 **in question.**

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