

D R A F T

SUMMARY

Modifies procedures when court orders conditional release of person found guilty except for insanity.

A BILL FOR AN ACT

Relating to conditional release; amending ORS 161.309, 161.325, 161.327 and 161.349.

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

SECTION 1. ORS 161.327 is amended to read:

161.327. (1) After the defendant is found guilty except for insanity pursuant to ORS 161.319, if the court finds by a preponderance of the evidence that a person found guilty except for insanity of a felony is affected by a qualifying mental disorder and presents a substantial danger to others, the court shall order as follows:

(a) If the court finds that the person is not a proper subject for conditional release, the court shall order the person committed to a state hospital or, if the person is under 18 years of age, to a secure intensive community inpatient facility for custody, care and treatment. When the court orders a person committed under this paragraph, the court shall place the person under the jurisdiction of the Psychiatric Security Review Board.

(b) If the court finds that the person can be adequately controlled with supervision and treatment if conditionally released and that necessary supervision and treatment are available, the court shall order the person conditionally released.

(2)(a) If a party intends to request conditional release under this

1 **section, the party shall notify the opposing party, the court and the**
2 **board of the request.**

3 **(b) Upon receipt of a request for conditional release under this**
4 **section, the court shall order that a community mental health pro-**
5 **gram director, or the director's designee, consult with the defendant.**
6 **The court shall order the release of any records to the director that**
7 **are necessary to complete the consultation. After the consultation, the**
8 **director or director's designee shall provide to the court and to the**
9 **board a report of the findings resulting from the consultation.**

10 **(c) Upon receipt of the report described in paragraph (b) of this**
11 **subsection, the board shall as soon as practicable provide the court**
12 **with a recommended conditional release plan.**

13 **(3)(a) In determining whether a person should be conditionally re-**
14 **leased, the court:**

15 **(A) May order evaluations, examinations and compliance as pro-**
16 **vided in ORS 161.336 (3) and 161.346 (2); and**

17 **(B) Shall have as its primary concern the protection of society.**

18 **(b) The court shall review the report resulting from the consulta-**
19 **tion described in subsection (2)(b) of this section and the recommended**
20 **conditional release plan described in subsection (2)(c) of this section**
21 **prior to ordering conditional release under this section.**

22 **[(2)] (4) When a person is conditionally released under this section, the**
23 **person is subject to those supervisory orders of the court as are in the best**
24 **interests of justice, the protection of society and the welfare of the person.**
25 **The court shall designate a person or state, county or local agency to su-**
26 **pervise the person upon release, subject to those conditions as the court di-**
27 **rects in the order for conditional release. Prior to the designation, the court**
28 **shall notify the person or agency to whom conditional release is contem-**
29 **plated and provide the person or agency an opportunity to be heard before**
30 **the court. After receiving an order entered under subsection (1)(b) of this**
31 **section, 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) *In determining whether a person should be conditionally released, the court:*]

[(a) *May order evaluations, examinations and compliance as provided in ORS 161.336 (3) and 161.346 (2);*]

[(b) *Shall order that the person be examined by a local mental health program designated by the board and a report of the examination be provided to the court if each felony for which the defendant was found guilty except for insanity is a Class C felony; and*]

[(c) *Shall have as its primary concern the protection of society.*]

[(4)] (5) Upon placing a person on conditional release, the court shall **within one judicial day provide to the board an electronic copy of the conditional release order. The court shall additionally** notify the board in writing of [*the court's conditional release order,*] the supervisor appointed and all other conditions of release, and the person shall be on conditional release pending hearing before the board. Upon compliance with this section, the court's jurisdiction over the person is terminated.

[(5)] (6) The total period of commitment or conditional release under ORS 161.315 to 161.351 may not exceed the maximum sentence provided by statute for the crime for which the person was found guilty except for insanity.

[(6)] (7) An order of the court under this section is a final order appealable by the person found guilty except for insanity in accordance with ORS 19.205 (5). Notwithstanding ORS 19.255, notice of an appeal under this section shall be served and filed within 90 days after the order appealed from is entered in the register. The person shall be entitled on appeal to suitable counsel possessing skills and experience commensurate with the nature and complexity of the case. If the person is financially eligible, suitable counsel shall be appointed in the manner provided in ORS 138.500 (1), and the com-

1 pensation for counsel and costs and expenses of the person necessary to the
2 appeal shall be determined and paid as provided in ORS 138.500.

3 [(7)] (8) Following the order described in subsection (1) of this section,
4 the court shall notify the person of the right to appeal and the right to a
5 hearing before the board in accordance with ORS 161.336 (5) and 161.341 (3).

6 **(9) The board shall hold a review hearing within 90 days for a person**
7 **conditionally released under this section.**

8 **SECTION 2.** ORS 161.309 is amended to read:

9 161.309. (1) The defendant may not introduce evidence on the issue of in-
10 sanity under ORS 161.295, unless the defendant:

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

13 (b) Files with the court a report of a psychiatric or psychological evalu-
14 ation, conducted by a certified evaluator, in the manner provided in sub-
15 section (4) of this section.

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

20 (3)(a) A defendant who is required under subsection (1) or (2) of this sec-
21 tion to give notice shall file a written notice of purpose at least 45 days
22 before trial.

23 (b) Notwithstanding paragraph (a) of this subsection, the court may, for
24 good cause, permit the defendant to file the notice within 45 days before
25 trial.

26 (c) If the defendant fails to file notice under this subsection, the defend-
27 ant may not introduce evidence for the establishment of a defense under ORS
28 161.295 or 161.300 unless the court, in its discretion, permits the evidence to
29 be introduced where just cause for failure to file the notice is shown.

30 (4) A defendant who is required under subsection (1) of this section to file
31 a report of a psychiatric or psychological evaluation shall file the report

before trial. The report must be based on an evaluation conducted after the date of the alleged offense and must address the issue of insanity under ORS 161.295 and the dispositional determination described in ORS 161.325. If the defendant fails to file a complete report before trial, the defendant may not introduce evidence for the establishment of a defense under ORS 161.295 unless:

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

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

(5)(a) A court may not accept a plea of guilty except for insanity to a felony unless a report described in subsection (4) of this section is filed with the court. If the report has not been filed, the court may order that a psychiatric or psychological evaluation of the defendant be conducted by a certified evaluator and a report of the evaluation be filed with the court.

(b) When the court orders an 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 that purpose.

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

(6) Prior to accepting a plea of guilty except for insanity to a felony, the court shall inform the defendant of the possibility that the court may order commitment or conditional discharge after entry of judgment, and of the maximum total period of commitment or conditional discharge under ORS 161.327 [(5)] (6).

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

161.392.

SECTION 3. ORS 161.325 is amended to read:

161.325. (1) After the defendant is found guilty except for insanity, the court shall, on the basis of the evidence given at the trial or at a separate hearing, if requested by either party, order a disposition as provided in ORS 161.327, 161.328 or 161.329, whichever is appropriate.

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

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

(b) State on the record the qualifying mental disorder on which the defendant relied for the guilty except for insanity defense;

(c) State on the record the maximum total period of commitment or conditional discharge under ORS 161.327 [(5)] (6); and

(d) Make specific findings on whether there is a victim of the crime for which the defendant has been found guilty except for insanity and, if so, whether the victim wishes to be notified, under ORS 161.326, of any hearings and orders concerning the defendant and of any conditional release, discharge or escape of the defendant.

(3) The court shall include in its order the information described in subsection (2) of this section.

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

SECTION 4. ORS 161.349 is amended to read:

161.349. (1) When a person who is committed to a state hospital or a secure intensive community inpatient facility under ORS 161.315 to 161.351 is convicted of a crime and sentenced to a term of incarceration and when the person is sentenced to a term of incarceration as a sanction for violating the

1 conditions of probation, parole or post-prison supervision, the sentencing
2 court shall stay execution of the sentence pending the conditional release
3 or discharge of the person or the expiration of the period of time described
4 in ORS 161.327 [(5)] (6). When the person is conditionally released or dis-
5 charged by the Psychiatric Security Review Board under ORS 161.315 to
6 161.351, or when the maximum period of jurisdiction described in ORS 161.327
7 [(5)] (6) expires, the stay shall be lifted by operation of law and the person
8 shall be delivered to the custody of the Department of Corrections or the
9 supervisory authority to begin service of the sentence imposed.

10 (2) When a person described in subsection (1) of this section is delivered
11 to the custody of the department or the supervisory authority as described
12 in this section, the board shall notify the department or the supervisory au-
13 thority when the period of time described in ORS 161.327 [(5)] (6) will expire.

14 (3) The department or supervisory authority shall notify the board when
15 the person has served the term of incarceration imposed by the court and the
16 board shall resume exercising active jurisdiction over the person in accord-
17 ance with ORS 161.315 to 161.351.

18 (4) As used in this section, “supervisory authority” has the meaning given
19 that term in ORS 144.087.