



**DEPARTMENT OF JUSTICE**  
OFFICE OF THE ATTORNEY GENERAL

DATE: March 18, 2019  
TO: Honorable Floyd Prozanski, Chair of the Senate Committee on Judiciary  
FROM: Aaron Knott, Legislative Director  
SUBJECT: SB 362: Notice of Mental Defense

This testimony is presented in support of SB 362.

**Background**

ORS 161.309(3) provides that a criminal defendant who is required to provide notice of their intent to use an insanity defense must do so at 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 defendant may not introduce evidence to establish an insanity defense unless the court permits the evidence to be introduced for just cause shown.

In *State v. Robinson*, 288 Or App 194 (2017), the defendant did not provide notice at the time of her plea that she intended on pursuing an insanity defense, and everyone agreed that there was no basis for her doing so at that time. About six months later—but still a month before trial—defense counsel obtained a preliminary psychologist’s report indicating that an insanity defense was a possibility. Defense counsel did not provide any written notice as required by ORS 161.309. Two weeks later, defense counsel received the final report, and the next day provided written notice of intent to pursue the insanity defense. The state moved to exclude the evidence on insanity, arguing that there was no just cause for not filing the written notice when defense counsel first became aware of the possibility. The trial court excluded that evidence, but the Court of Appeals reversed.

Interpreting the statute, the Court of Appeals held that a defendant merely had to show just cause for not filing the notice at the time of arraignment. And, if she had just cause for not providing the written notice at that time, she could wait up to the day of trial to provide the notice—even if she became aware of her intent to rely on such a defense long before trial. The court acknowledged that this interpretation would make trial preparation extremely difficult for the state but noted that the current language of the statute compelled the result, absent a legislative change.

## **Concept**

SB 362 puts the onus on defendant to provide notice of intent to use an insanity defense by requiring the defendant to provide written notice at least 45 days before trial, instead of at the time the defendant enters his or her guilty plea at arraignment, with discretion reserved to the court to allow notice on a shorter window upon a good cause finding. This will prevent the state from finding out about an insanity defense at the last minute and having to weigh whether to move for a set-over, saving considerable time and expense for prosecutors and others involved in the case while still allowing for exceptional circumstances.

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