

Senate Bill 362

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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 to file notice of intent to introduce evidence of mental defense at least 45 days before trial. Authorizes court, for good cause, to allow defendant to file notice within 45 days before trial.

A BILL FOR AN ACT

1
2 Relating to notice of mental defense; creating new provisions; and amending ORS 161.309.

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) 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*] **least 45 days before**
15 **trial.**

16 (b) **Notwithstanding paragraph (a) of this subsection, the court may, for good cause,**
17 **permit** the defendant [*may*] **to** file the notice [*at any time after the plea but*] **within 45 days** before
18 trial [*when just cause for failure to file the notice at the time of making the plea is shown*].

19 (c) If the defendant fails to file notice **under this subsection**, the defendant may not introduce
20 evidence for the establishment of a defense under ORS 161.295 or 161.300 unless the court, in its
21 discretion, permits the evidence to be introduced where just cause for failure to file the notice is
22 shown.

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

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

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

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

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

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

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

15 **SECTION 2. The amendments to ORS 161.309 by section 1 of this 2019 Act apply to of-**
16 **fenses alleged to have been committed on or after the effective date of this 2019 Act.**

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