

Senate Bill 375

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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**.

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

1
2 Relating to guilty except for insanity; amending ORS 161.309 and 161.325.

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

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 described in subsection (4) of this section is filed with the court. If the report has not been filed, the
 2 court may order that a psychiatric or psychological evaluation of the defendant be conducted by a
 3 certified evaluator and a report of the evaluation be filed with the court.

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

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

11 **(6) Prior to accepting a plea of guilty except for insanity to a felony, the court shall in-**
 12 **form the defendant of the possibility that the court may order commitment or conditional**
 13 **discharge after entry of judgment, and of the maximum total period of commitment or con-**
 14 **ditional discharge under ORS 161.327 (5).**

15 [(6)] (7) As used in this section, "certified evaluator" means a psychiatrist or psychologist who
 16 holds a valid certification under the provisions of ORS 161.392.

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

18 161.325. (1) After entry of judgment of guilty except for insanity, the court shall, on the basis
 19 of the evidence given at the trial or at a separate hearing, if requested by either party, enter an
 20 order as provided in ORS 161.327, 161.328 or 161.329, whichever is appropriate.

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

22 (a) Determine on the record the offense of which the person otherwise would have been con-
 23 victed;

24 (b) State on the record the qualifying mental disorder on which the defendant relied for the
 25 guilty except for insanity defense; [and]

26 (c) **State on the record the maximum total period of commitment or conditional dis-**
 27 **charge under ORS 161.327 (5); and**

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

32 (3) The court shall include [any such findings] in its order **the information described in sub-**
 33 **section (2) of this section.**

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