

D R A F T

SUMMARY

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

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

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

SECTION 1. ORS 161.309 is amended to read:

161.309. (1) The defendant may not introduce evidence on the issue of insanity under ORS 161.295, unless the defendant:

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

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

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

(3)(a) A defendant who is required under subsection (1) or (2) of this section to give notice shall file a written notice of purpose at [*the time the defendant pleads not guilty*] **least 45 days before trial.**

(b) Notwithstanding paragraph (a) of this subsection, the court

1 **may, for good cause, permit** the defendant [*may*] **to** file the notice [*at any*
2 *time after the plea but*] **within 45 days** before trial [*when just cause for*
3 *failure to file the notice at the time of making the plea is shown*].

4 (c) If the defendant fails to file notice **under this subsection**, the de-
5 fendant may not introduce evidence for the establishment of a defense under
6 ORS 161.295 or 161.300 unless the court, in its discretion, permits the evi-
7 dence to be introduced where just cause for failure to file the notice is
8 shown.

9 (4) A defendant who is required under subsection (1) of this section to file
10 a report of a psychiatric or psychological evaluation shall file the report
11 before trial. The report must be based on an evaluation conducted after the
12 date of the alleged offense and must address the issue of insanity under ORS
13 161.295 and the dispositional determination described in ORS 161.325. If the
14 defendant fails to file a complete report before trial, the defendant may not
15 introduce evidence for the establishment of a defense under ORS 161.295
16 unless:

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

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

21 (5)(a) A court may not accept a plea of guilty except for insanity to a
22 felony unless a report described in subsection (4) of this section is filed with
23 the court. If the report has not been filed, the court may order that a psy-
24 chiatric or psychological evaluation of the defendant be conducted by a cer-
25 tified evaluator and a report of the evaluation be filed with the court.

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

30 (c) A certified evaluator performing an evaluation of a defendant on the
31 issue of insanity under this subsection is not obligated to evaluate the de-

1 fendant for fitness to proceed unless, during the evaluation, the certified
2 evaluator determines that the defendant's fitness to proceed is drawn in
3 question.

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

7 **SECTION 2. The amendments to ORS 161.309 by section 1 of this**
8 **2019 Act apply to offenses alleged to have been committed on or after**
9 **the effective date of this 2019 Act.**

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