

Enrolled
Senate Bill 375

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CHAPTER

AN ACT

Relating to guilty except for insanity; amending ORS 161.309, 161.325, 161.327, 161.328 and 161.329.

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 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. 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 for the establishment of a defense under ORS 161.295 or 161.300 unless the court, in its discretion, permits the evidence to be introduced where just cause for failure to file the notice is shown.

(4) A defendant who is required under subsection (1) of this section to file 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 2. ORS 161.325 is amended to read:

161.325. (1) After [entry of judgment of] **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, [enter an] 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; [and]

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

[(c)] **(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 [any such findings] 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 3. ORS 161.327 is amended to read:

161.327. (1) [Following the entry of a judgment] **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 [enter an] 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) When a person is conditionally released under this section, the person is subject to those supervisory orders of the court as are in the best interests of justice, the protection of society and the welfare of the person. The court shall designate a person or state, county or local agency to supervise the person upon release, subject to those conditions as the court directs in the order for

conditional release. Prior to the designation, the court shall notify the person or agency to whom conditional release is contemplated and provide the person or agency an opportunity to be heard before the court. After receiving an order entered under subsection (1)(b) of this 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) Upon placing a person on conditional release, the court shall 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) 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) 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 compensation for counsel and costs and expenses of the person necessary to the appeal shall be determined and paid as provided in ORS 138.500.

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

SECTION 4. ORS 161.328 is amended to read:

161.328. (1) [*Following the entry of a judgment*] **After the defendant is found guilty except for insanity** pursuant to ORS 161.319, the court shall order a person committed to a state mental hospital or other facility designated by the Oregon Health Authority if:

(a) Each offense for which the person is found guilty except for insanity is a misdemeanor; and

(b) The court finds that the person is affected by a qualifying mental disorder and presents a substantial danger to others that requires commitment.

(2) The total period of commitment under this section may not exceed the maximum sentence provided by statute for the crime for which the person was found guilty except for insanity.

(3) If the superintendent of the state mental hospital or the director of the facility to which the person is committed determines that a person committed under this section is no longer affected by a qualifying mental disorder or, if so affected, no longer presents a substantial danger to others that requires commitment, the superintendent or director shall file notice of that determination with the committing court. Upon filing of the notice, the superintendent or director shall discharge the person from custody.

SECTION 5. ORS 161.329 is amended to read:

161.329. [*Following the entry of a judgment*] **After the defendant is found guilty except for insanity** pursuant to ORS 161.319, the court shall order that the person be discharged from custody if:

(1) The court finds that the person is no longer affected by a qualifying mental disorder, or, if so affected, no longer presents a substantial danger to others and is not in need of care, supervision or treatment; or

(2)(a) Each offense for which the person is found guilty except for insanity is a misdemeanor; and

(b) The court finds that the person does not present a substantial danger to others that requires commitment.

Passed by Senate March 7, 2019

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House June 3, 2019

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Tina Kotek, Speaker of House

Received by Governor:

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Approved:

.....M.,....., 2019

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2019

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Bev Clarno, Secretary of State