

Finding of “Guilty Except for Insanity”

Process by which one comes under the Board

- Individual is charged with a **new** crime.
 - No probation violations
- Defense counsel seeks an evaluation by a psychologist or psychiatrist, preferably forensically trained, to determine if client qualifies for defense.
 - Not every person with mental illness or mental defect necessarily qualifies

ORS 161.295

- GEI if **as a result of mental disease or defect (md/d)** at the time of engaging in criminal conduct, the individual **lacks substantial capacity either to appreciate criminality of conduct or to conform conduct** to requirements of law.
- Applicable to felonies, misdemeanors & juvenile proceedings.
- Available in DUII and DWS cases

ORS 161.295

- Md/d does not include any abnormality manifested only by repeated criminal or otherwise anti-social conduct, nor do they include an abnormality constituting a personality disorder.
 - This is only statutory “definition” of md/d.
 - Bd has admin. rule further defining...859-10-005
- Md/d in remission is considered md/d for jurisdiction purposes
- Personality disorders excluded in 1983

ORS 161.305

- ‘GEI’ is an affirmative defense
 - Defendant must prove by preponderance
 - Trial judge cannot impose defense over represented defendant’s objection
 - State v. Peterson
 - Trial counsel cannot assert defense over defendant’s objection
 - State v. Bozman

ORS 161.309

- Defendant must give notice of intent to assert defense
- Notice shall be in writing
- If fail to do so, court has discretion to permit introduction for just cause

ORS 161.315

- Once defendant raises defense, State has right to its own psych examination.
- Must give notice to court.
- Court may order client to OSH for that assessment for no more than 30 days.

ORS 161.313

- When the defense is raised in jury trial, court **must** give an instruction.
 - but it must be complete and accurate statement of the law
 - State v. George

ORS 161.325

- Once GEI, either placed under PSRB or discharged
- Order shall include:
 - offense for which defendant would have been convicted
 - if there's victim and whether victim desires notification
 - md/d on which defendant relied
 - order to submit blood sample for certain enumerated offenses

ORS 161.327

- Once GEI, placed under PSRB if crime was
 - A felony,
 - Or a misdemeanor during which defendant caused physical injury or risk of physical injury **and**
 - Court finds defendant is affected by md/d **and**
 - Presents substantial danger to **others** requiring commitment or CR

Length of jurisdiction

- Equal to the maximum sentence provided by statute for the crime for which the person was found GEI
 - Consecutive terms may be imposed but must be supported by findings comporting with ORS 137.123
 - State v. Brooks

Length of jurisdiction

(continue...)

- SGs do not apply
 - State v. Nelson

- PSRB does not have authority to rewrite court's order even if court errs in setting max. sentence
 - Romanov v. PSRB

Physical placement upon GEI finding

- **Commit to OSH** -- if substantial danger and not a proper subject for release
- **Conditionally release** -- if substantial danger but can be adequately controlled with supervision and treatment **and** the necessary supervision and treatment are available.
- In making decision, court shall have as its primary concern the protection of society.

Court Conditional Release

- CR to special conditions of the court that are in the best interests of justice, protection of society and welfare of the person
- Court **must** designate some person or agency to supervise person.
- **Prior to designation**, the court **shall** notify person being considered and provide opportunity to be heard.
- Court **shall** notify Board in writing of its order, supervisor appointed and all conditions of release.

ORS 161.328

- If court finds defendant GEI of misdemeanor during which he did not cause physical injury or risk of physical injury to another, and
- Court has p.c. to believe person is dangerous to self or others as a result of mental disorder,
- Court can initiate c/c proceedings.

ORS 161.329

- If defendant is no longer affected by md/d **or** no longer substantial danger to others and is not in need of care, supervision or treatment, the court **shall** discharge the person.