



**TO: Rep. Jason Kropf, Chair
Rep. Willy Chotzen, Vice Chair
Rep. Kim Wallan, Vice Chair
Members of House Judiciary Committee**

FR: Oregon District Attorneys Association

RE: HB 2471 - Support

February 24, 2025

Thank you for the opportunity to provide testimony from the Oregon District Attorneys Association (ODAA) in support of House Bill 2471. This legislation ensures that the insanity defense remains available in Oregon only to criminal defendants whose actions are the result of a qualifying mental disorder, and not the result of non-qualifying conditions and disorders.

ORS 161.295 states:

- (1) A person is guilty except for insanity if, **as a result of qualifying mental disorder at the time of engaging in criminal conduct**, the person lacks substantial capacity to either appreciate the criminality of the conduct or to conform the conduct to the requirements of law.
- (2) As used in chapter 743, Oregon Laws 1971, the term “qualifying mental disorder” does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct, nor does the term include any abnormality constituting solely a personality disorder.

Whether a person’s lack of substantial capacity is a result of a qualifying mental disorder at the time of the crime is a critical foundational element in every case where the defense is raised. The defense is intended to be narrow. Personality disorders, substance use disorders, temporary insanity due to voluntary intoxication, paraphilia and pedophilia, and impulse control disorders have historically been excluded as qualifying mental disorders. Therefore, in order for a person with a non-qualifying disorder to successfully assert the defense, there would also need to be a qualifying disorder that is “the result of” the lack of substantial capacity, as opposed to an excluded disorder.

A recent case, *State v. Meiser*, 372 Or 438 (2024) interpreted “as a result of” to mean a “consequence” or “effect.” The Court further explained that multiple factors could combine to

bring about a result, regardless of the relative contribution of each factor. As a result, criminal defendants who previously would not qualify for the defense because a non-qualifying disorder was the driving factor in their mental state and behavior, are asserting it.

Meiser represents a drastic and dangerous change to the law, allowing defendants to avoid conviction if a qualifying mental disorder contributes in any way to their actions, even if a non-qualifying disorder was present and primarily responsible at the time of the offense. It makes Oregon an outlier among the states in its treatment of the insanity defense, and will significantly increase the number of defendants who qualify to assert it. Individuals who are primarily impacted by non-qualifying disorders will be inappropriately placed under the Psychiatric Security Review Board (PSRB) and at the Oregon State Hospital (OSH). Further, because the PSRB must find that a qualifying mental disorder, when active, will render a person dangerous in order to retain jurisdiction, commitment of individuals whose non-qualifying disorders are controlling creates a risk that, once committed by the courts, the PSRB may not be able to retain jurisdiction.

HB 2471 corrects the interpretation of “as a result of” that was announced in *Meiser* and ensures that a qualifying mental disorder actually causes the incapacity that is used to absolve a defendant of criminal responsibility, rather than an otherwise non-qualifying disorder. It does not eliminate the defense, nor does it prohibit an individual with co-occurring disorders from asserting it as long as the qualifying mental disorder is what causes the lack of capacity. Additionally, it does not change the analysis undertaken by the PSRB when determining when the Board may retain jurisdiction over individuals. It strikes a fair balance that maintains the defense for mentally ill individuals who act as a result of their qualifying disorders, while ensuring that it is not misused or overused in an already over-taxed mental health system.

We are in active negotiations on this bill, and encourage you to review the redlined document which has been enclosed to this testimony and reflects our intended fix. We strongly urge your support of this critical legislation and thank you sincerely for your consideration.

D R A F T

SUMMARY

Digest: The Act changes when a person is guilty except for insanity. The Act takes effect on the 91st day after sine die. (Flesch Readability Score: 72.6).

Modifies when a person is guilty except for insanity.

Takes effect on the 91st day following adjournment sine die.

A BILL FOR AN ACT

1

2 Relating to guilty except for insanity; creating new provisions; amending
3 ORS 161.295; and prescribing an effective date.

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

5 **SECTION 1.** ORS 161.295 is amended to read:

6 161.295. (1) A person is guilty except for insanity if, [*as a result of a*
7 *qualifying mental disorder*] at the time of engaging in criminal conduct, the
8 person lacks substantial capacity either to appreciate the criminality of the
9 conduct or to conform the conduct to the requirements of law, **and the in-**
10 **capacity is primarily the result of a qualifying mental disorder is**
independently sufficient by itself to cause the incapacity.

11 (2) As used in chapter 743, Oregon Laws 1971, the term “qualifying mental
12 disorder” does not include an abnormality manifested only by repeated
13 criminal or otherwise antisocial conduct, nor does the term include any
14 abnormality constituting solely a personality disorder.

15 **SECTION 2.** The amendments to ORS 161.295 by section 1 of this
16 2025 Act apply to conduct occurring on or after the effective date of
17 this 2025 Act.

18 **SECTION 3.** This 2025 Act takes effect on the 91st day after the date
19 on which the 2025 regular session of the Eighty-third Legislative As-