



PERMANENT ADMINISTRATIVE ORDER

BHS 24-2025

CHAPTER 309

OREGON HEALTH AUTHORITY

HEALTH SYSTEMS DIVISION: BEHAVIORAL HEALTH SERVICES

FILED

10/27/2025 2:42 PM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Content of Written Evaluations Assessing Competency and Criminal Responsibility

EFFECTIVE DATE: 11/02/2025

AGENCY APPROVED DATE: 10/27/2025

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AMEND: 309-090-0025

REPEAL: Temporary 309-090-0025 from BHS 14-2025

RULE TITLE: Content of Written Evaluations Assessing Competency and Criminal Responsibility

NOTICE FILED DATE: 02/11/2016

RULE SUMMARY: 309-090-0025(4) covers what must be included in a GEI report. The dispositional determination requirement in ORS 161.309(4) was inadvertently left off in the last rule update. We are also adding youth in ORS 419C.524.

RULE TEXT:

(1) At minimum, each forensic evaluation report shall include the following:

- (a) Identifying information of the defendant or youth;
 - (b) Description of the forensic examination;
 - (c) Criminal charges;
 - (d) Referral source and the referral question;
 - (e) Evaluative procedure, techniques and tests used in the examination and the purpose for each;
 - (f) Informed consent and limits of confidentiality;
 - (g) Summary of relevant records reviewed for the evaluation;
 - (h) Background information and relevant history of mental and physical illnesses;
 - (i) Substance use and treatment histories;
 - (j) Medications;
 - (k) Hospital, jail, or community restoration course;
 - (l) Setting where the evaluation interview took place;
 - (m) Summary of a mental status examination;
 - (n) Substantiated diagnosis in the terminology of the American Psychiatric Association's current Diagnostic and Statistical Manual of Mental Disorders (DSM-5-TR);
 - (o) Discussion of the possibility of malingering.
- (2) A fitness to proceed forensic evaluation report also shall:

- (a) Include, at a minimum, opinions and explanations related to the defendant's or youth's:
 - (A) Understanding of their charges, the possible verdicts and the possible penalties;
 - (B) Understanding of the trial participants and the trial process;
 - (C) Ability to assist counsel in preparing and implementing a defense; and
 - (D) Ability to make relevant decisions autonomously.
- (b) Not include the defendant's or youth's statements about the alleged criminal conduct unless necessary to support the evaluator's finding of competence or incompetence.
- (3) If the defendant is determined to be incapacitated within the description set out in ORS 161.360, the forensic evaluation report shall include a recommendation of treatment and other services necessary to allow the defendant to gain or regain capacity, including whether a hospital level of care is required due to the acuity of symptoms of the defendant's qualifying mental disorder.
 - (a) A recommendation that a defendant requires a hospital level of care due to the acuity of symptoms must be based upon:
 - (A) The defendant's current diagnosis and symptomology;
 - (B) The defendant's current ability to engage in treatment;
 - (C) Present safety concerns relating to the defendant; and
 - (D) Any other pertinent information known to the evaluator.
 - (b) If the defendant is in a placement in a facility, the evaluator may defer to the treatment provider's recommendation regarding whether a hospital level of care is needed.
- (4) A criminal responsibility forensic evaluation report also shall include, at a minimum, opinions and explanations addressing:
 - (a) The defendant's or youth's account of the alleged offense including thoughts, feelings and behavior;
 - (b) Summary of relevant records including police reports,
 - (c) An expert opinion regarding the role of substance use in the alleged offense;
 - (d) The defendant's or youth's mental state at the time of the alleged offense;
 - (e) An expert opinion regarding whether the defendant or youth, as a result of qualifying mental disorder lacks criminal responsibility; and
 - (f) The dispositional determination(s) as required by ORS 161.309 and ORS 419C.524
- (5) A certified evaluator performing an evaluation of a defendant on the issue of insanity pursuant to ORS 161.309 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) Progress reports described in ORS 161.371(2).
 - (a) Progress reports shall delineate any changes in mental status or clinical functioning related to the defendant's fitness to proceed that occurred in the period since the most recent prior evaluation report, including, at a minimum, opinions related to the defendant's fitness to proceed as outlined in section (2)(a) of this rule.
 - (b) If the defendant has not regained capacity, the progress report shall include a recommendation pursuant to section (3) of this rule.
 - (c) Progress reports may consist of an update to:
 - (A) The original examination report conducted under ORS 161.365; or
 - (B) An evaluation conducted under ORS 161.371(1), if the defendant did not receive an examination under ORS 161.365.
 - (d) If the progress report consists of an update as described in sub-section (c) above, the progress report shall identify which prior evaluation report(s) it is relying upon, including the docket number(s), date(s), and author(s) of the previous report(s).
 - (e) Progress reports are not required to include all criteria listed in section (1) of this rule if the evaluator determines that the criterion has been adequately addressed in the prior evaluation report(s) and there is no relevant new or supplemental information to add for that criterion.

(f) Progress reports shall not include the defendant's statements about the alleged criminal conduct unless necessary to support the evaluator's finding of competence or incompetence.

STATUTORY/OTHER AUTHORITY: ORS 161.392, 413.042, 419C.382, ORS 161.309, ORS 419C.524

STATUTES/OTHER IMPLEMENTED: ORS 161.290-373, 161.392, 419C.378-386, 419C.411, 419C.520-529, ORS 161.309, ORS 419C.524