



What is a “.365” evaluation?

Under ORS 161.365, a preliminary evaluation is conducted to determine if a criminal defendant is able to aid and assist in their own defense so that they may stand trial. The judge uses the .365 evaluation to help decide whether to find the defendant unable to aid and assist under ORS 161.370.

Is a “.365” patient subject to the federal court order in *Mink*?

No. A .365 evaluation is conducted before a defendant is found unable to aid and assist. The federal court order in *Mink* does not apply to defendants who have not yet been found unable to aid and assist.

What happens when the court issues an ORS 161.365 order for evaluation by the Forensic Evaluation Service (FES) at Oregon State Hospital (OSH)?

An ORS 161.365 order for evaluation by FES at OSH only results in an evaluation of the defendant’s capacity to stand trial. The defendant is not admitted to OSH nor is the defendant treated under an ORS 161.365 order.

Does an ORS 161.365 evaluation have to be completed by FES?

No. If an evaluation is ordered for a defendant who is not currently at OSH, we suggest having the evaluation done by a community evaluator because it will likely be much faster. A list of the certified forensic evaluators in Oregon can be found [here](#).

Of note, if the ORS 161.365 order is specifically written for the evaluation to be conducted by FES at OSH, the order will need to be rescinded and a new order that allows a non-OSH evaluation will need to be submitted. Evaluation order templates can be found on the [Legal Affairs website](#).

What is a “.370” evaluation?

Under ORS 161.370, an evaluation is conducted to determine whether there is a substantial probability that, in the foreseeable future, the defendant will have the capacity to stand trial.

The defendant has an ORS 161.365 order, why is their evaluation with FES scheduled so far out?

For many reasons, FES must prioritize .370 evaluations. Due to the court order stemming from *Oregon Advocacy Center v Mink* (2002), defendants with an ORS 161.370 order must be admitted to OSH within seven days. The .370 evaluations are then scheduled based on the length of time that the defendant has been admitted and court-ordered due dates.

FES’ workload has increased immensely every year due to the high numbers of court orders it receives requiring it to conduct .370 evaluations of defendants both inside and outside of OSH. A significant percentage of FES’ .370 evaluations are of defendants being restored in the community. We recommend that OSH’s FES evaluate OSH’s patients and community evaluators evaluate community patients. A list of the certified forensic evaluators in Oregon can be found [here](#).

Is a .365 evaluation needed prior to an ORS 161.370 order for a defendant to be admitted to OSH?

No, but this is a common misconception. There is no statutory requirement for a .365 evaluation to be completed prior to the court finding that a defendant is unable to aid and assist pursuant to ORS 161.370.

The defendant has already had an ORS 161.365 evaluation in the community, should another be ordered for OSH's FES to conduct?

In these situations, the FES conclusion is usually the same as the already submitted evaluation. Because the wait time for a .365 evaluation is longer than that for a .370 evaluation, an ORS 161.370 order will lead to an earlier admission to OSH.

What about 30-day observation under ORS 161.365? Will that get the defendant into OSH sooner?

A defendant will be admitted more quickly under an ORS 161.370 order.

Admission to OSH for 30-day observation occurs only if initiated by OSH following the completion of a .365 evaluation. Because .370 defendants are court-ordered to be admitted within seven days and .370 evaluations are court-ordered to be completed within specific times frames, ORS 161.365 admissions and evaluations get scheduled farther out. As such, the current wait time is quite long for a 30-day observation pursuant to an ORS 161.365 order.

How does the expedited admissions process work?

Expedited admissions under ORS 161.365 occur only when initiated by OSH following an FES-completed .365 evaluation. These admissions are for a period of observation up to 30 days and the current wait time for an admission of this type is quite long. Expedited admission or consultation can be requested for a defendant with an ORS 161.370 order without initiation by OSH. There are several criteria for expedited admission and for further information, please refer to the [Request for Oregon State Hospital Expedited Consultation/Admission](#) document from OSH Admissions Office.

I would like to get the defendant to OSH sooner and they have an ORS 161.365 order. What should I do?

The best way to proceed would be for the ORS 161.365 order to be rescinded and an ORS 161.370 order to be issued. The ORS 161.370 order would compel a sooner admission to OSH and provide for a longer observation and treatment period than an ORS 161.365 order. There is no statutory requirement for an ORS 161.365 evaluation to be completed prior to the court finding that a defendant is unable to aid and assist pursuant to ORS 161.370.