

House Bill 3004

Sponsored by Representative KRUMMEL; Representatives BARKER, BOONE, BOQUIST, KRIEGER, MAURER, NELSON, THATCHER, WHISNANT, Senators L GEORGE, STARR

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires Director of Department of Corrections to evaluate prisoner prior to release from custody to determine if prisoner is violent sexual predator likely to commit violent sexual offense due to mental or emotional disturbance. Provides for civil commitment upon release from prison of person determined by court to be violent sexual predator.

Allows peace officer to take into custody person believed to be violent sexual predator. Provides for civil commitment of such person.

A BILL FOR AN ACT

1
2 Relating to commitment of violent sexual predators; creating new provisions; and amending ORS
3 426.005, 426.075, 426.100, 426.120, 426.228 and 426.232.

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

5 **SECTION 1. As used in sections 1 to 6 of this 2007 Act:**

6 (1) **"Secure facility" means a residential facility, for persons committed under section 2**
7 **of this 2007 Act, that uses security measures sufficient to prevent escape by persons com-**
8 **mitted.**

9 (2) **"Violent sexual offense" means a crime listed in ORS 137.765 (3).**

10 (3) **"Violent sexual predator" means a person who has been convicted of a violent sexual**
11 **offense, or who has been found to have committed an act that would have been a violent**
12 **sexual offense had the person committing it been an adult, and who suffers from a mental**
13 **or emotional disturbance that makes the person likely to engage in violent sexual offenses**
14 **if not confined to a secure facility.**

15 **SECTION 2. (1) Whenever the Director of the Department of Corrections determines that**
16 **a person who is in custody under the jurisdiction of the department, and is serving a deter-**
17 **minate prison sentence or whose parole has been revoked, may be a violent sexual predator,**
18 **the director shall, at least three months prior to the person's scheduled date for release from**
19 **prison, refer the person for evaluation in accordance with this section.**

20 (2) **The Department of Corrections shall conduct an assessment to determine if the per-**
21 **son is a violent sexual predator based upon psychological evaluation and a review of the**
22 **person's social, criminal and institutional history. If the director determines that the person**
23 **is a violent sexual predator, the director shall recommend to the district attorney in the**
24 **community where the person is to be released that the person be committed to protect the**
25 **public.**

26 (3) **Upon receipt of the recommendation under subsection (2) of this section, the district**
27 **attorney shall refer the matter to the community mental health and developmental disabili-**
28 **ties program director, operating under ORS 430.610 to 430.695, to evaluate the person in ac-**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 cordance with a standardized assessment protocol to determine if the person is a violent
 2 sexual predator. The standardized assessment protocol shall include evaluation of diagnosable
 3 mental or emotional disturbances as well as factors known to be associated with the risk
 4 of offending again. Risk factors to be considered shall include social, criminal and institu-
 5 tional history, type, degree and duration of sexual deviance and severity of mental disorder.

6 (4) Pursuant to subsection (3) of this section, the person shall undergo two separate
 7 evaluations, each one conducted by a licensed practicing psychiatrist or psychologist. If the
 8 evaluators concur that the person has a diagnosed mental or emotional disturbance that
 9 makes the person likely to engage in a violent sexual offense if not confined in a secure fa-
 10 cility, the community mental health and developmental disabilities program director shall
 11 notify the circuit court in the county where the person is confined of the program director's
 12 determination and the basis for the determination.

13 (5) Upon receipt of the notice from the community mental health and developmental
 14 disabilities program director under subsection (4) of this section, if the court determines that
 15 there is probable cause to believe that the person is a violent sexual predator, it shall,
 16 through the issuance of a citation as provided in ORS 426.090, cause the person to be brought
 17 before it at a time and place as it may direct for a hearing under ORS 426.095 to determine
 18 whether the person is a violent sexual predator. The hearing shall be conducted in accord-
 19 ance with ORS 426.075, 426.095, 426.100, 426.110 and 426.120. All rules of evidence applicable
 20 to civil cases, and all constitutional rights available to defendants in criminal trials, other
 21 than the right not to be tried while incompetent and the right to proof beyond a reasonable
 22 doubt, shall apply.

23 (6) After hearing all of the evidence, and reviewing the findings of the examiners ap-
 24 pointed under ORS 426.110, the court shall determine whether the person is a violent sexual
 25 predator. If, in the opinion of the court, the person is:

26 (a) Not a violent sexual predator, the person shall be subject to the State Board of Parole
 27 and Post-Prison Supervision in accordance with ORS chapter 144 upon release from the
 28 custody of the department.

29 (b) A violent sexual predator based upon clear and convincing evidence, the court shall
 30 order commitment of the person to a secure facility immediately upon release from the
 31 custody of the department, unless the person establishes by clear and convincing evidence
 32 that a less restrictive treatment program is available that is consistent with the person's
 33 treatment needs and public safety requirements.

34 **SECTION 3.** (1) A person committed as a violent sexual predator shall have the right to
 35 petition for release after 18 months, and every two years thereafter.

36 (2) The Director of Human Services shall convene a special review board for persons
 37 committed as violent sexual predators. The board shall consist of three members experi-
 38 enced in the field of mental illness. At least one member of the board shall be a psychiatrist
 39 and one member shall be an attorney. A member may not be affiliated with the Department
 40 of Human Services. The board shall meet as necessary to hear:

- 41 (a) Petitions for release;
- 42 (b) Petitions for transfer from a secure facility; and
- 43 (c) Petitions for discharge, provisional discharge and revocation of provisional discharge.

44 (3) The special review board shall issue its recommendation to the director within 30 days
 45 of a hearing.

1 (4) Persons may be transferred by the director between secure facilities without a special
2 review board hearing.

3 **SECTION 4.** (1) A person who is committed as a violent sexual predator may not be
4 provisionally discharged unless it appears to the satisfaction of the Director of Human Ser-
5 vices, after a hearing and a favorable recommendation by a majority of the special review
6 board under section 3 of this 2007 Act, that the person is no longer likely to engage in a vi-
7 olent sexual offense due to a mental or emotional disturbance.

8 (2) The following factors are to be considered in determining whether a provisional dis-
9 charge shall be recommended:

10 (a) Whether the person's course of hospitalization and present mental status indicate
11 there is no longer a need for treatment and supervision in the person's current treatment
12 setting; and

13 (b) Whether the conditions of the provisional discharge plan will provide a reasonable
14 degree of protection to the public and will enable the person to adjust successfully to the
15 community.

16 (3) A provisional discharge plan shall be developed, implemented and monitored by the
17 Department of Human Services in conjunction with the person, the secure facility and other
18 appropriate persons. At least quarterly, the department shall review the plan with the person
19 and submit a written report to the director and the secure facility concerning the person's
20 status and compliance with each term of the plan.

21 (4) A provisional discharge pursuant to this section may not automatically terminate.
22 The director shall notify the person that the terms of a provisional discharge shall continue
23 unless the person requests and is granted a change in the conditions of the provisional dis-
24 charge or unless the person petitions the special review board for a full discharge and the
25 discharge is granted.

26 (5) The director may revoke a provisional discharge if:

27 (a) The person has departed from the conditions of the provisional discharge plan;

28 (b) The person is exhibiting signs of a mental or emotional disturbance that may require
29 hospital evaluation or treatment; or

30 (c) The person is exhibiting behavior that is dangerous to self or others.

31 (6) The director shall commence a revocation by serving a notice of intent to revoke the
32 provisional discharge upon the person and the person's attorney. The notice shall set forth
33 the grounds upon which the intention to revoke is based, and shall inform the person of the
34 rights of a person under this section.

35 (7) If an emergency exists, the department may revoke the provisional discharge and,
36 either orally or in writing, order that the person be immediately returned to the secure fa-
37 cility. The director shall prepare a report documenting reasons for revocation under this
38 subsection within seven days after the person is returned to the secure facility.

39 (8) Upon revocation of a provisional discharge, the director shall request the person to
40 return to the secure facility voluntarily. If the person refuses to return voluntarily, the de-
41 partment shall request that a peace officer take the person into custody and return the
42 person to the secure facility.

43 (9) Any person aggrieved by a revocation decision may petition the special review board
44 under section 3 of this 2007 Act within seven days, exclusive of Saturdays, Sundays and legal
45 holidays, after service of the revocation notice or order under subsection (6) or (7) of this

1 section for a review of the revocation. A hearing on the petition shall be scheduled within
 2 30 days. The board shall review the circumstances leading to the revocation and shall re-
 3 commend to the director whether or not the revocation shall be upheld. The board may also
 4 recommend amendments to the terms of the provisional discharge at the time of a revoca-
 5 tion hearing.

6 (10)(a) With the consent of the head of the secure facility, a person may voluntarily re-
 7 turn from provisional discharge for a period of up to 30 days, or up to 60 days with the
 8 consent of the department. If the person is not returned to provisional discharge status
 9 within 60 days, the provisional discharge is revoked. Within 15 days after service of the
 10 notice of the revocation, the person may request a review of the matter before the special
 11 review board. The board may recommend the person’s return to provisional discharge status.

12 (b) The department may petition for a further review by the special review board if the
 13 person’s return to the community results in substantive change to the existing provisional
 14 discharge plan. All the terms and conditions of the provisional discharge order shall remain
 15 unchanged if the person is released again.

16 **SECTION 5.** (1) A person who is committed as a violent sexual predator may not be dis-
 17 charged unless it appears to the satisfaction of the Director of Human Services, after a
 18 hearing and a favorable recommendation by a majority of the special review board under
 19 section 3 of this 2007 Act, that the person is no longer dangerous to the public and is no
 20 longer in need of treatment and supervision.

21 (2) In determining whether a discharge shall be recommended, the special review board
 22 and director shall consider whether specific conditions exist to provide a reasonable degree
 23 of protection to the public and to assist the person in adjusting to the community. If the
 24 desired conditions do not exist, the discharge may not be granted.

25 **SECTION 6.** A person committed as a violent sexual predator shall be treated as a patient
 26 and provided with the least restrictive treatment that is appropriate and meets the needs
 27 of public safety. In no case shall a person committed as a violent sexual predator be housed
 28 in a correctional institution, and the person shall be provided, at a minimum, with all rights
 29 and privileges enjoyed by an inmate in a correctional institution.

30 **SECTION 7.** ORS 426.005 is amended to read:

31 426.005. (1) As used in ORS 426.005 to 426.390, unless the context requires otherwise:

32 (a) “Department” means the Department of Human Services.

33 (b) “Director of the facility” means a superintendent of a state mental hospital, the chief of
 34 psychiatric services in a community hospital or the person in charge of treatment and rehabilitation
 35 programs at other treatment facilities.

36 (c) “Facility” means a state mental hospital, community hospital, residential facility,
 37 detoxification center, day treatment facility or such other facility as the department determines
 38 suitable, any of which may provide diagnosis and evaluation, medical care, detoxification, social
 39 services or rehabilitation for committed mentally ill persons.

40 (d) “Mentally ill person” means a person who, because of a mental disorder, is one or more of
 41 the following:

42 (A) Dangerous to self or others.

43 (B) Unable to provide for basic personal needs and is not receiving such care as is necessary
 44 for health or safety.

45 (C) A person who:

1 (i) Is chronically mentally ill, as defined in ORS 426.495;

2 (ii) Within the previous three years, has twice been placed in a hospital or approved inpatient
3 facility by the department under ORS 426.060;

4 (iii) Is exhibiting symptoms or behavior substantially similar to those that preceded and led to
5 one or more of the hospitalizations or inpatient placements referred to in sub-subparagraph (ii) of
6 this subparagraph; and

7 (iv) Unless treated, will continue, to a reasonable medical probability, to physically or mentally
8 deteriorate so that the person will become a person described under either or both subparagraph (A)
9 or (B) of this paragraph.

10 **(D) A violent sexual predator as defined in section 1 of this 2007 Act.**

11 (e) “Nonhospital facility” means any facility, other than a hospital, that is approved by the de-
12 partment to provide adequate security, psychiatric, nursing and other services to persons under ORS
13 426.232 or 426.233.

14 (f) “Prehearing period of detention” means a period of time calculated from the initiation of
15 custody during which a person may be detained under ORS 426.228, 426.231, 426.232 or 426.233.

16 (2) Whenever a community mental health and developmental disabilities program director, di-
17 rector of the facility, superintendent of a state hospital or administrator of a facility is referred to,
18 the reference includes any designee such person has designated to act on the person’s behalf in the
19 exercise of duties.

20 **SECTION 8.** ORS 426.075 is amended to read:

21 426.075. This section establishes procedures that are required to be followed before the hearing
22 if a court, under ORS 426.070, orders a hearing under ORS 426.095 **or if the court orders a hearing**
23 **under section 2 of this 2007 Act.** The following apply as described:

24 (1) The court shall be fully advised of all drugs and other treatment known to have been ad-
25 ministered to the allegedly mentally ill person that may substantially affect the ability of the person
26 to prepare for or function effectively at the hearing. The following shall advise the court as re-
27 quired by this subsection:

28 (a) When not otherwise provided by paragraph (b) of this subsection, the community mental
29 health and developmental disabilities program director or designee.

30 (b) When the person has been detained by a warrant of detention under ORS 426.070, 426.180,
31 426.228, 426.232 or 426.233, the treating physician.

32 (2) The court shall appoint examiners under ORS 426.110 sufficiently long before the hearing so
33 that they may begin their preparation for the hearing. The records established by the Department
34 of Human Services by rule and the investigation report shall be made available to the examiners
35 at least 24 hours before the hearing in order that the examiners may review the medical record and
36 have an opportunity to inquire of the medical personnel concerning the treatment of the allegedly
37 mentally ill person relating to the detention period prior to the hearing.

38 (3) The medical record described in subsection (2) of this section shall be made available to
39 counsel for the allegedly mentally ill person at least 24 hours prior to the hearing.

40 (4) When requested by a party to the action, the party’s attorney shall subpoena physicians who
41 are or have been treating the allegedly mentally ill person. Any treating physician subpoenaed under
42 this subsection shall be subpoenaed as an expert witness.

43 **SECTION 9.** ORS 426.100 is amended to read:

44 426.100. (1) At the time the allegedly mentally ill person is brought before the court, the court
45 shall advise the person of the following:

1 (a) The reason for being brought before the court;

2 (b) The nature of the proceedings;

3 (c) The possible results of the proceedings;

4 (d) The right to subpoena witnesses; and

5 (e) The person's rights regarding representation by or appointment of counsel.

6 (2) Subsection (3) of this section establishes the rights of allegedly mentally ill persons in each
7 of the following circumstances:

8 (a) When the person is held by warrant of detention issued under ORS 426.070.

9 (b) In commitment hearings under ORS 426.095.

10 (c) When the person is detained as provided under ORS 426.228, 426.232 or 426.233.

11 (d) In recommitment hearings under ORS 426.307.

12 (3) When provided under subsection (2) of this section, an allegedly mentally ill person has the
13 following rights relating to representation by or appointment of counsel:

14 (a) The right to obtain suitable legal counsel possessing skills and experience commensurate
15 with the nature of the allegations and complexity of the case during the proceedings.

16 (b) If the person is determined to be financially eligible for appointed counsel at state expense,
17 the court will appoint legal counsel to represent the person. If a person is appointed counsel at state
18 expense, payment of expenses and compensation relating to legal counsel shall be made as provided
19 under ORS 426.250.

20 (c) If the allegedly mentally ill person does not request legal counsel, the legal guardian, relative
21 or friend may request the assistance of suitable legal counsel on behalf of the person.

22 (d) If no request for legal counsel is made, the court shall appoint suitable legal counsel unless
23 counsel is expressly, knowingly and intelligently refused by the person.

24 (e) If the person is being involuntarily detained before a hearing on the issue of commitment,
25 the right under paragraph (a) of this subsection to contact an attorney or under paragraph (b) of this
26 subsection to have an attorney appointed may be exercised as soon as reasonably possible.

27 (f) In all cases suitable legal counsel shall be present at the hearing and may be present at ex-
28 amination and may examine all witnesses offering testimony, and otherwise represent the person.

29 (4) The responsibility for representing the state's interest in commitment proceedings, including,
30 but not limited to, preparation of the state's case and appearances at commitment hearings is as
31 follows:

32 (a) The Attorney General's office shall have the responsibility relating to proceedings initiated
33 by state hospital staff that are any of the following:

34 (A) Recommitment proceedings under ORS 426.307; or

35 (B) Proceedings under ORS 426.228, 426.232 or 426.233.

36 (b) The district attorney **in proceedings under section 2 of this 2007 Act** or if requested to
37 do so by the governing body of the county.

38 (c) In lieu of the district attorney under paragraph (b) of this subsection, a counsel designated
39 by the governing body of a county shall take the responsibility. A county governing body may des-
40 ignate counsel to take responsibility under this paragraph either for single proceedings or for all
41 such proceedings the county will be obligated to pay for under ORS 426.250. If a county governing
42 body elects to proceed under this paragraph, the county governing body shall so notify the district
43 attorney. The expenses of an attorney appointed under this paragraph shall be paid as provided
44 under ORS 426.250.

45 **SECTION 10.** ORS 426.120 is amended to read:

1 426.120. (1) Persons appointed under ORS 426.110 to conduct the examination shall do the fol-
 2 lowing:

3 (a) Examine the person as to mental condition;

4 (b) Initiate the examination process prior to the hearing. Any failure to comply with this par-
 5 agraph shall not, in itself, constitute sufficient grounds to challenge the examination conducted by
 6 an examiner;

7 (c) Make their separate reports in writing, under oath, to the court; and

8 (d) Upon completion of the hearing, file the reports with the clerk of the court.

9 (2) The following is a nonexclusive list of requirements relating to the content of examination
 10 reports prepared under subsection (1) of this section:

11 (a) If the examining persons find, and show by their reports, that the person examined is a
 12 mentally ill person, the reports shall include a recommendation as to the type of treatment facility
 13 best calculated to help the person recover from mental illness.

14 (b) Each report shall also advise the court whether in the opinion of the examiner the mentally
 15 ill person would cooperate with and benefit from a program of voluntary treatment.

16 (c) Reports shall contain the information required by the Department of Human Services by rule.
 17 The department shall adopt rules necessary to carry out this paragraph.

18 (3) The examiner shall be allowed access to physicians, nurses or social workers and to medical
 19 records compiled during the current involuntary prehearing period of detention, **evaluations con-**
 20 **ducted under section 2 of this 2007 Act** and the investigation report. Records and communications
 21 described in this subsection and communications related thereto are not privileged under ORS
 22 40.230, 40.235, 40.240 or 40.250.

23 **SECTION 11.** ORS 426.228 is amended to read:

24 426.228. (1) A peace officer may take into custody a person who the officer has probable cause
 25 to believe is dangerous to self or to any other person and is in need of immediate care, custody or
 26 treatment for mental illness. As directed by the community mental health and developmental dis-
 27 abilities program director, a peace officer shall remove a person taken into custody under this section
 28 to the nearest hospital or nonhospital facility approved by the Department of Human Services. The
 29 officer shall prepare a written report and deliver it to the treating physician. The report shall state:

30 (a) The reason for custody;

31 (b) The date, time and place the person was taken into custody; and

32 (c) The name of the community mental health and developmental disabilities program director
 33 and a telephone number where the director may be reached at all times.

34 (2) A peace officer shall take a person into custody when the community mental health and de-
 35 velopmental disabilities program director, pursuant to ORS 426.233, notifies the peace officer that
 36 the director has probable cause to believe that the person is imminently dangerous to self or to any
 37 other person. As directed by the community mental health and developmental disabilities program
 38 director, the peace officer shall remove the person to a hospital or nonhospital facility approved by
 39 the department. The community mental health and developmental disabilities program director shall
 40 prepare a written report that the peace officer shall deliver to the treating physician. The report
 41 shall state:

42 (a) The reason for custody;

43 (b) The date, time and place the person was taken into custody; and

44 (c) The name of the community mental health and developmental disabilities program director
 45 and a telephone number where the director may be reached at all times.

1 (3) If more than one hour will be required to transport the person to the hospital or nonhospital
 2 facility from the location where the person was taken into custody, the peace officer shall obtain,
 3 if possible, a certificate from a physician licensed by the Board of Medical Examiners for the State
 4 of Oregon stating that the travel will not be detrimental to the person's physical health and that the
 5 person is dangerous to self or to any other person and is in need of immediate care or treatment for
 6 mental illness. The physician shall have personally examined the allegedly mentally ill person within
 7 24 hours prior to signing the certificate.

8 (4) When a peace officer or other authorized person, acting under this section, delivers a person
 9 to a hospital or nonhospital facility, a physician licensed by the Board of Medical Examiners for the
 10 State of Oregon shall examine the person immediately. If the physician finds the person to be **dan-**
 11 **gerous to self or to any other person and** in need of emergency care or treatment for mental
 12 illness, the physician shall proceed under ORS 426.232, otherwise the person shall not be retained
 13 in custody. If the person is to be released from custody, the peace officer or the community mental
 14 health and developmental disabilities program director shall return the person to the place where
 15 the person was taken into custody unless the person declines that service.

16 (5) A peace officer may transfer a person in custody under this section to the custody of a per-
 17 son authorized by the county governing body under ORS 426.233 (3). The peace officer may meet the
 18 authorized person at any location that is in accordance with ORS 426.140 to effect the transfer.
 19 When transferring a person in custody to an authorized person, the peace officer shall deliver the
 20 report required under subsections (1) and (2) of this section to the authorized person.

21 (6) A person authorized under ORS 426.233 (3) shall take a person into custody when directed
 22 to do so by a peace officer or by a community mental health and developmental disabilities program
 23 director under ORS 426.233.

24 (7) A person authorized under ORS 426.233 (3) shall perform the duties of the peace officer or
 25 the community mental health and developmental disabilities program director required by this sec-
 26 tion and ORS 426.233 if the peace officer or the director has not already done so.

27 (8) A person authorized under ORS 426.233 (3) may transfer a person in custody under this
 28 section to the custody of another person authorized under ORS 426.233 (3) or a peace officer. The
 29 authorized person transferring custody may meet another authorized person or a peace officer at
 30 any location that is in accordance with ORS 426.140 to effect the transfer.

31 (9)(a) When a peace officer takes a person into custody under this section, and the peace officer
 32 reasonably suspects that the person is a foreign national, the peace officer shall inform the person
 33 of the person's right to communicate with an official from the consulate of the person's country.

34 (b) A peace officer is not civilly or criminally liable for failure to provide the information re-
 35 quired by this subsection. Failure to provide the information required by this subsection does not
 36 in itself constitute grounds for the exclusion of evidence that would otherwise be admissible in a
 37 proceeding.

38 **SECTION 12.** ORS 426.232 is amended to read:

39 426.232. (1) When a physician licensed to practice medicine by the Board of Medical Examiners
 40 for the State of Oregon believes a person who is brought to a hospital or nonhospital facility by a
 41 peace officer under ORS 426.228, a person authorized under ORS 426.233 or a person who is at a
 42 hospital or nonhospital facility is dangerous to self or to any other person and is in need of emer-
 43 gency care or treatment for mental illness, the physician may do one of the following:

44 (a) After consulting with a physician or a qualified mental health professional, as defined by rule
 45 of the Department of Human Services, detain the person and cause the person to be admitted or, if

1 the person is already admitted, cause the person to be retained in a hospital where the physician
2 has admitting privileges or is on staff. Neither the physician nor the qualified mental health pro-
3 fessional may be related by blood or marriage to the person.

4 (b) Approve the person for emergency care or treatment at a nonhospital facility approved by
5 the department.

6 (2) When approving a person for emergency care or treatment at a nonhospital facility under
7 this section, the physician shall notify immediately the community mental health and developmental
8 disabilities program director in the county where the person was taken into custody and maintain
9 the person, if the person is being held at a hospital, for as long as is feasible given the needs of the
10 person for mental or physical health or safety, **or due concern for the safety of the**
11 **community**. However, [*under no circumstances may the person be held*] **except when a person is**
12 **being held under ORS 426.237, a person may not be held** for longer than five judicial days.

13
