

# Senate Bill 164

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## 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**.

Permits juvenile court to enter order committing certain young persons with serious mental condition to custody of Psychiatric Security Review Board when supervision and treatment is necessary for public safety. Permits Department of Human Services to establish rules for conditional release of certain young persons with serious mental condition if number of young persons with serious mental condition committed exceeds number of beds funded by Legislative Assembly.

## A BILL FOR AN ACT

1  
2 Relating to juveniles with mental disease or defect; amending ORS 419C.520, 419C.529 and 419C.538.

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

4 **SECTION 1.** ORS 419C.520 is amended to read:

5 419C.520. As used in ORS 419C.411, 419C.522 to 419C.527 and 419C.529 to 419C.544:

6 (1) "Conditional release" includes but is not limited to the monitoring of mental and physical  
7 health treatment.

8 (2) "Mental disease or defect" does not include[:]

9 [(a)] an abnormality:

10 [(A)] (a) Manifested only by repeated criminal or otherwise antisocial conduct;

11 [(B)] (b) Constituting solely a personality disorder; or

12 [(C)] (c) Constituting solely a conduct disorder[; or].

13 [(b) *A mental defect manifesting in significantly subaverage general intellectual functioning that is*  
14 *accompanied by significant limitations in adaptive functioning in at least two areas or characterized*  
15 *by severe and pervasive impairment manifested during the developmental period.*]

16 (3) "Serious mental condition" means a condition that requires supervision and treatment ser-  
17 vices for the safety of others and is:

18 (a) A mental illness of major depression;

19 (b) A mental illness of bipolar disorder; [or]

20 (c) A mental illness of psychotic disorder[.]; or

21 **(d) A mental defect manifested by significantly subaverage general intellectual function-**  
22 **ing existing concurrently with qualitative deficits in activities of daily living not otherwise**  
23 **attributable to mental illness or substance abuse or influenced by current situational**  
24 **trauma. For purposes of this paragraph, "activities of daily living" includes but is not limited**  
25 **to bathing and personal hygiene, dressing and grooming, mobility, bowel and bladder man-**  
26 **agement, or communication and safety skills. Definitions and classifications under this**  
27 **paragraph shall be consistent with the Manual on Terminology and Classification in Mental**  
28 **Retardation of the American Association on Mental Deficiency, 1977 Revision.**

**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        **SECTION 2.** ORS 419C.529 is amended to read:

2        419C.529. (1) After the entry of a jurisdictional order under ORS 419C.411 (2), if the court finds  
3 by a preponderance of the evidence that the young person, at the time of disposition, has a serious  
4 mental condition or has a mental disease or defect other than a serious mental condition and pre-  
5 sents a substantial danger to others, requiring conditional release or commitment to a hospital or  
6 facility designated by the Department of Human Services, the court shall order the young person  
7 placed under the jurisdiction of the Psychiatric Security Review Board.

8        (2) The court shall determine whether the young person should be committed to a hospital or  
9 facility designated by the department or conditionally released pending a hearing before the juvenile  
10 panel of the Psychiatric Security Review Board as follows:

11        (a) If the court finds that the young person is not a proper subject for conditional release, the  
12 court shall order the young person committed to a hospital or facility designated by the department  
13 for custody, supervision and treatment pending a hearing before the juvenile panel in accordance  
14 with ORS 419C.532, 419C.535, 419C.538, 419C.540 and 419C.542 and shall order the young person  
15 placed under the jurisdiction of the board.

16        (b) If the court finds that the young person can be adequately controlled with supervision and  
17 treatment services if conditionally released and that necessary supervision and treatment services  
18 are available, the court may order the young person conditionally released, subject to those super-  
19 visory orders of the court that are in the best interests of justice and the young person. The court  
20 shall designate a qualified mental health **or developmental disabilities** treatment provider or state,  
21 county or local agency to supervise the young person on release, subject to those conditions as the  
22 court directs in the order for conditional release. Prior to the designation, the court shall notify the  
23 qualified mental health **or developmental disabilities** treatment provider or agency to whom con-  
24 ditional release is contemplated and provide the qualified mental health **or developmental disabil-**  
25 **ities** treatment provider or agency an opportunity to be heard before the court. After receiving an  
26 order entered under this paragraph, the qualified mental health **or developmental disabilities**  
27 treatment provider or agency designated shall assume supervision of the young person subject to the  
28 direction of the juvenile panel. The qualified mental health **or developmental disabilities** treatment  
29 provider or agency designated as supervisor shall report in writing no less than once per month to  
30 the juvenile panel concerning the supervised young person's compliance with the conditions of re-  
31 lease.

32        (c) For purposes of determining whether to order commitment to a hospital or facility or con-  
33 ditional release, the primary concern of the court is the protection of society.

34        (3) In determining whether a young person should be conditionally released, the court may order  
35 examinations or evaluations deemed necessary.

36        (4) Upon placing a young person on conditional release and ordering the young person placed  
37 under the jurisdiction of the board, the court shall notify the juvenile panel in writing of the court's  
38 conditional release order, the supervisor designated and all other conditions of release pending a  
39 hearing before the juvenile panel in accordance with ORS 419C.532, 419C.535, 419C.538, 419C.540  
40 and 419C.542.

41        (5) When making an order under this section, the court shall:

42        (a) Determine whether the parent or guardian of the young person is able and willing to assist  
43 the young person in obtaining necessary mental health **or developmental disabilities** services and  
44 is willing to acquiesce in the decisions of the juvenile panel. If the court finds that the parent or  
45 guardian:

1 (A) Is able and willing to do so, the court shall order the parent or guardian to sign an irrev-  
 2 ocable consent form in which the parent agrees to any placement decision made by the juvenile  
 3 panel.

4 (B) Is unable or unwilling to do so, the court shall order that the young person be placed in the  
 5 legal custody of the Department of Human Services for the purpose of obtaining necessary mental  
 6 health **or developmental disabilities** services.

7 (b) Make specific findings on whether there is a victim and, if so, whether the victim wishes to  
 8 be notified of any board hearings concerning the young person and of any conditional release, dis-  
 9 charge or escape of the young person.

10 (c) Include in the order a list of the persons who wish to be notified of any board hearing con-  
 11 cerning the young person.

12 (d) Determine on the record the act committed by the young person for which the young person  
 13 was found responsible except for insanity.

14 (e) State on the record the mental disease or defense on which the young person relied for the  
 15 responsible except for insanity defense.

16 **(6) The Department of Human Services shall designate locked and secure inpatient facil-**  
 17 **ities for the care and treatment of young persons with a serious mental condition by reason**  
 18 **of mental defect as described in ORS 419C.520 (3)(d) who may be committed by the court for**  
 19 **care and treatment under this section. Notwithstanding subsection (2)(a) of this section, the**  
 20 **department may not serve more young persons determined to have a serious mental condi-**  
 21 **tion by reason of mental defect in designated facilities than the total number of beds funded**  
 22 **by the Legislative Assembly for the purpose of care or treatment of such young persons. If**  
 23 **the number of young persons determined to have a serious mental condition by reason of**  
 24 **mental defect that are committed to state care or treatment exceeds the number of beds**  
 25 **funded by the Legislative Assembly for the purpose of care or treatment, such young persons**  
 26 **shall be designated for conditional release according to administrative rules adopted by the**  
 27 **Psychiatric Security Review Board in consultation with the department. Administrative rules**  
 28 **governing conditional release under this subsection shall balance the care and treatment**  
 29 **needs of the young person with the interest of public safety.**

30 **SECTION 3.** ORS 419C.538 is amended to read:

31 419C.538. (1) When the juvenile panel of the Psychiatric Security Review Board orders a young  
 32 person conditionally released under ORS 419C.532 (4), the juvenile panel may designate a qualified  
 33 mental health **or developmental disabilities** treatment provider or state, county or local agency to  
 34 supervise the young person on release subject to those conditions as the juvenile panel directs in  
 35 the order for conditional release. Prior to the designation, the juvenile panel shall notify the quali-  
 36 fied mental health **or developmental disabilities** treatment provider or agency to whom conditional  
 37 release is contemplated and provide the qualified mental health **or developmental disabilities**  
 38 treatment provider or agency an opportunity to be heard before the juvenile panel. After receiving  
 39 an order entered under ORS 419C.532 (4), the qualified mental health **or developmental disabilities**  
 40 treatment provider or agency designated shall assume supervision of the young person pursuant to  
 41 the direction of the juvenile panel.

42 (2) Conditions of release contained in orders entered under ORS 419C.532 (4) may be modified  
 43 from time to time and conditional release may be terminated by order of the juvenile panel as pro-  
 44 vided in ORS 419C.532 and 419C.542.

45 (3)(a) As a condition of release, the juvenile panel may require the young person to report to

1 any state, county or local mental health **or developmental disabilities** facility for evaluation.  
2 Whenever medical, psychiatric or psychological treatment is recommended, the juvenile panel may  
3 order the young person, as a condition of release, to cooperate with and accept the treatment of the  
4 facility.

5 (b) The facility to which the young person has been referred for evaluation shall perform the  
6 evaluation and submit a written report of its findings to the juvenile panel. If the facility finds that  
7 treatment of the young person is appropriate, the facility shall include its recommendations for  
8 treatment in the report to the juvenile panel.

9 (c) Whenever treatment is provided by the facility, the facility shall furnish reports to the ju-  
10 venile panel on a regular basis concerning the progress of the young person.

11 (d) The facility shall comply with any other conditions of release prescribed by order of the ju-  
12 venile panel.

13 (4) **Except as provided in ORS 419C.529 (6)**, if at any time it appears to the juvenile panel or  
14 the chairperson of the juvenile panel that a young person has violated the terms of conditional re-  
15 lease or that the mental health of the young person has changed, the juvenile panel or the chair-  
16 person of the juvenile panel may order the young person returned to a hospital or facility designated  
17 by the Department of Human Services for evaluation and treatment. A written order of the juvenile  
18 panel, or the chairperson of the juvenile panel on behalf of the juvenile panel, is sufficient warrant  
19 for any peace officer to take the young person into custody and transport the young person ac-  
20 cordingly. A peace officer shall execute the order, and the young person shall be returned as soon  
21 as practicable to a facility designated by the department. Within 20 days following the return of the  
22 young person to the facility designated by the department, the juvenile panel shall conduct a hear-  
23 ing. At a hearing required by this subsection, the state has the burden of proving the young person's  
24 lack of fitness for conditional release.

25 (5) The community mental health and developmental disabilities program director, the director  
26 of the facility providing treatment for the young person on conditional release, a peace officer or a  
27 person responsible for the supervision of a young person on conditional release may take a young  
28 person into custody or request that the young person be taken into custody if there is reasonable  
29 cause to believe the young person presents a substantial danger to others and that the young person  
30 is in need of immediate custody, supervision and treatment. **Except as provided in ORS 419C.529**  
31 **(6)**, a young person taken into custody under this subsection must immediately be transported to a  
32 hospital or facility designated by the department. Within 20 days following the return of the young  
33 person to the facility designated by the department, the juvenile panel shall conduct a hearing. At  
34 a hearing required by this subsection, the state has the burden of proving the young person's lack  
35 of fitness for conditional release.

36 (6)(a) A young person conditionally released under ORS 419C.532 (4) may apply to the juvenile  
37 panel for discharge from or modification of an order of conditional release on the ground that the  
38 young person no longer has a mental disease or defect or, if affected by a mental disease or defect  
39 other than a serious mental condition, no longer presents a substantial danger to others and no  
40 longer requires supervision or treatment services. Within 60 days after receiving an application  
41 under this paragraph, the juvenile panel shall conduct a hearing. At a hearing required by this  
42 paragraph, the young person has the burden of proving the young person's fitness for discharge or  
43 modification of the order of conditional release. A young person may not apply for discharge or  
44 modification of conditional release more often than once every six months.

45 (b) Upon application by any qualified mental health **or developmental disabilities** treatment

1 provider or state, county or local agency responsible for supervision or treatment services pursuant  
2 to an order of conditional release, the juvenile panel shall conduct a hearing to determine if the  
3 conditions of release should be continued, modified or terminated. The application must be accom-  
4 panied by a report setting forth the facts supporting the application. At a hearing required by this  
5 paragraph, the state has the burden of proving the young person's lack of fitness for discharge or  
6 modification of the order of conditional release.

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