

# Senate Bill 328

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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**.

Modifies definitions of "mental disease or defect" and "serious mental condition" for purposes of committing young persons alleged to be within jurisdiction of juvenile court to custody of Psychiatric Security Review Board when supervision and treatment is necessary for public safety.

## A BILL FOR AN ACT

1  
2 Relating to juveniles with mental disease or defect; creating new provisions; and amending ORS  
3 419C.520, 419C.529 and 419C.538.

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

5 **SECTION 1. Section 2 of this 2007 Act is added to and made a part of ORS 419C.529 to**  
6 **419C.544.**

7 **SECTION 2. The juvenile panel of the Psychiatric Security Review Board exercises con-**  
8 **tinuing jurisdiction over a young person committed to, or retained in, a hospital or facility**  
9 **designated by the Department of Human Services under ORS 419C.529. If the board deter-**  
10 **mines after review that the placement of a young person in the particular hospital or facility**  
11 **is so inappropriate as to create a substantial danger to the young person or others, the board**  
12 **may direct the department to place the young person in a specific type of facility or direct**  
13 **specific care or supervision, but the actual placement of the young person is the responsi-**  
14 **bility of the department. The board may also direct the department to place the young person**  
15 **in a locked or other type of secure hospital or facility.**

16 **SECTION 3. ORS 419C.520 is amended to read:**

17 419C.520. As used in ORS 419C.411, 419C.522 to 419C.527 and 419C.529 to 419C.544:

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

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

21 [(a)] an abnormality:

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

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

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

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

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

30 (a) A mental illness of major depression;

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

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

3 **(d)(A) A mental defect manifested by mental retardation or developmental disability if a**  
 4 **mental deficiency exists concurrently with qualitative deficits in activities of daily living not**  
 5 **otherwise attributable to mental illness or substance abuse or influenced by current**  
 6 **situational trauma.**

7 **(B) For purposes of this paragraph:**

8 (i) **“Activities of daily living” includes but is not limited to bathing and personal hygiene,**  
 9 **eating, mobility, bowel and bladder management and communicating.**

10 (ii) **“Mental retardation” means significantly subaverage general intellectual function.**  
 11 **Definitions and classifications for mental retardation shall be consistent with the Manual on**  
 12 **Terminology and Classification in Mental Retardation of the American Association on Mental**  
 13 **Deficiency, 1977 Revision.**

14 **SECTION 4.** ORS 419C.529 is amended to read:

15 419C.529. (1) After the entry of a jurisdictional order under ORS 419C.411 (2), if the court finds  
 16 by a preponderance of the evidence that the young person, at the time of disposition, has a serious  
 17 mental condition or has a mental disease or defect other than a serious mental condition and pre-  
 18 sents a substantial danger to others, requiring conditional release or commitment to a hospital or  
 19 facility designated **on an individual case basis** by the Department of Human Services **as provided**  
 20 **in subsection (6) of this section**, the court shall order the young person placed under the juris-  
 21 diction of the Psychiatric Security Review Board.

22 (2) The court shall determine whether the young person should be committed to a hospital or  
 23 facility designated **on an individual case basis** by the department, **as provided in subsection (6)**  
 24 **of this section**, or conditionally released pending a hearing before the juvenile panel of the Psy-  
 25 chiatric Security Review Board as follows:

26 (a) If the court finds that the young person is not a proper subject for conditional release, the  
 27 court shall order the young person committed to a **secure** hospital or a **secure intensive com-**  
 28 **munity inpatient** facility designated **on an individual case basis** by the department, **as provided**  
 29 **in subsection (6) of this section**, for custody, supervision and treatment pending a hearing before  
 30 the juvenile panel in accordance with ORS 419C.532, 419C.535, 419C.538, 419C.540 and 419C.542 and  
 31 shall order the young person placed under the jurisdiction of the board.

32 (b) If the court finds that the young person can be adequately controlled with supervision and  
 33 treatment services if conditionally released and that necessary supervision and treatment services  
 34 are available, the court may order the young person conditionally released, subject to those super-  
 35 visory orders of the court that are in the best interests of justice and the young person. The court  
 36 shall designate a qualified mental health **or developmental disabilities** treatment provider or state,  
 37 county or local agency to supervise the young person on release, subject to those conditions as the  
 38 court directs in the order for conditional release. Prior to the designation, the court shall notify the  
 39 qualified mental health **or developmental disabilities** treatment provider or agency to whom con-  
 40 ditional release is contemplated and provide the qualified mental health **or developmental disabil-**  
 41 **ities** treatment provider or agency an opportunity to be heard before the court. After receiving an  
 42 order entered under this paragraph, the qualified mental health **or developmental disabilities**  
 43 treatment provider or agency designated shall assume supervision of the young person subject to the  
 44 direction of the juvenile panel. The qualified mental health **or developmental disabilities** treatment  
 45 provider or agency designated as supervisor shall report in writing no less than once per month to

1 the juvenile panel concerning the supervised young person's compliance with the conditions of re-  
2 lease.

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

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

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

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

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

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

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

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

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

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

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

32 **(6) When the department designates a hospital or facility for commitment of a young**  
33 **person under this section, the department shall take into account the care and treatment**  
34 **needs of the young person, the resources of the department and the safety of the public.**

35 **SECTION 5.** ORS 419C.538 is amended to read:

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

1 the direction of the juvenile panel.

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

5 (3)(a) As a condition of release, the juvenile panel may require the young person to report to  
6 any state, county or local mental health **or developmental disabilities** facility for evaluation.  
7 Whenever medical, psychiatric or psychological treatment is recommended, the juvenile panel may  
8 order the young person, as a condition of release, to cooperate with and accept the treatment of the  
9 facility.

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

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

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

18 (4) If at any time it appears to the juvenile panel or the chairperson of the juvenile panel that  
19 a young person has violated the terms of conditional release or that the mental health of the young  
20 person has changed, the juvenile panel or the chairperson of the juvenile panel may order the young  
21 person returned to a hospital or facility designated by the Department of Human Services for eval-  
22 uation and treatment. A written order of the juvenile panel, or the chairperson of the juvenile panel  
23 on behalf of the juvenile panel, is sufficient warrant for any peace officer to take the young person  
24 into custody and transport the young person accordingly. A peace officer shall execute the order,  
25 and the young person shall be returned as soon as practicable to a facility designated by the de-  
26 partment. Within 20 days following the return of the young person to the facility designated by the  
27 department, the juvenile panel shall conduct a hearing. At a hearing required by this subsection, the  
28 state has the burden of proving the young person's lack of fitness for conditional release.

29 (5) The community mental health and developmental disabilities program director, the director  
30 of the facility providing treatment for the young person on conditional release, a peace officer or a  
31 person responsible for the supervision of a young person on conditional release may take a young  
32 person into custody or request that the young person be taken into custody if there is reasonable  
33 cause to believe the young person presents a substantial danger to others and that the young person  
34 is in need of immediate custody, supervision and treatment. A young person taken into custody un-  
35 der this subsection must immediately be transported to a hospital or facility designated by the de-  
36 partment. Within 20 days following the return of the young person to the facility designated by the  
37 department, the juvenile panel shall conduct a hearing. At a hearing required by this subsection, the  
38 state has the burden of proving the young person's lack of fitness for conditional release.

39 (6)(a) A young person conditionally released under ORS 419C.532 (4) may apply to the juvenile  
40 panel for discharge from or modification of an order of conditional release on the ground that the  
41 young person no longer has a mental disease or defect or, if affected by a mental disease or defect  
42 other than a serious mental condition, no longer presents a substantial danger to others and no  
43 longer requires supervision or treatment services. Within 60 days after receiving an application  
44 under this paragraph, the juvenile panel shall conduct a hearing. At a hearing required by this  
45 paragraph, the young person has the burden of proving the young person's fitness for discharge or

1 modification of the order of conditional release. A young person may not apply for discharge or  
2 modification of conditional release more often than once every six months.

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

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