

House Bill 3342

Sponsored by COMMITTEE ON JUDICIARY (at the request of Oregon District Attorneys Association)

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**.

Provides that person found guilty except for insanity of aggravated murder, murder or certain person felonies must be sentenced to legal custody of Department of Corrections. Creates procedure to determine whether person should be housed in correctional institution or state hospital or secure intensive community inpatient treatment facility.

Modifies definition of mental disease or defect for purposes of determining whether person is guilty except for insanity and requires that defendant prove mental disease or defect by clear and convincing evidence.

A BILL FOR AN ACT

1
2 Relating to guilt except for insanity; creating new provisions; and amending ORS 161.295, 161.305,
3 161.327, 161.328, 161.329, 161.336, 161.341 and 161.390.

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

5 **SECTION 1.** ORS 161.329 is amended to read:

6 161.329. **Except as otherwise provided in ORS 161.327 (1)(a) or (b),** following the entry of a
7 judgment pursuant to ORS 161.319 and the dispositional determination under ORS 161.325, if the
8 court finds that the person is no longer affected by mental disease or defect, or, if so affected, no
9 longer presents a substantial danger to others and is not in need of care, supervision or treatment,
10 the court shall order the person discharged from custody.

11 **SECTION 2.** ORS 161.327 is amended to read:

12 161.327. *[(1)(a)]* **(1)** Following the entry of a judgment pursuant to ORS 161.319 and the disposi-
13 tional determination under ORS 161.325, if the court finds that the person would have been guilty
14 of:

15 **(a) Aggravated murder as defined in ORS 163.095, the court shall conduct the sentencing**
16 **proceeding described in ORS 163.150 (3) and sentence the person accordingly. The court shall**
17 **commit the person to the legal custody of the Department of Corrections and,**
18 **notwithstanding ORS 137.124, order that the person be placed in a state hospital or, if the**
19 **person is under 18 years of age, a secure intensive community inpatient facility.**

20 **(b) An offense listed in ORS 137.700, the court shall sentence the person in accordance**
21 **with ORS 137.700. The court shall commit the person to the legal custody of the Department**
22 **of Corrections and, notwithstanding ORS 137.124, order that the person be placed in a state**
23 **hospital or, if the person is under 18 years of age, a secure intensive community inpatient**
24 **facility.**

25 **(c) A felony that is not described in paragraph (a) or (b) of this subsection,** or of a
26 misdemeanor during a criminal episode in the course of which the person caused physical injury or
27 risk of physical injury to another, the court shall order that a psychiatric or psychological evalu-
28 ation be performed and a report of the evaluation be provided to the court if an evaluation was not

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 performed or a report was not provided to the court prior to trial. Upon receipt of the evaluation,
 2 the court shall order that the person be placed under the jurisdiction of the Psychiatric Security
 3 Review Board for care and treatment if the court finds by a preponderance of the evidence that the
 4 person is affected by mental disease or defect and presents a substantial danger to others requiring
 5 commitment to[:]

6 [(A)] a state hospital [*designated by the Department of Human Services if the person is at least*
 7 *18 years of age; or*]

8 [(B)] **or, if the person is under 18 years of age**, a secure intensive community inpatient fa-
 9 cility [*designated by the Department of Human Services if the person is under 18 years of age*].

10 **(d) A misdemeanor during a criminal episode in the course of which the person did not**
 11 **cause physical injury or risk of physical injury to another, the court may initiate civil com-**
 12 **mitment proceedings under ORS 426.070 to 426.130 if the court has probable cause to believe**
 13 **that the person is dangerous to self or others as a result of a mental disorder.**

14 [(b)] (2) The period of jurisdiction of the board is equal to the maximum sentence provided by
 15 statute for the crime for which the person was found guilty except for insanity.

16 [(c)] (3) When a court orders a psychiatric or psychological evaluation of a financially eligible
 17 person under this subsection, the court shall order the public defense services executive director to
 18 pay a reasonable fee for the evaluation from funds available for the purpose.

19 [(2)] (4) The court shall determine whether [*the*] **a person placed under the jurisdiction of the**
 20 **board under subsection (1)(c) of this section** should be committed to a state hospital, or to a
 21 secure intensive community inpatient facility, designated by the Department of Human Services or
 22 conditionally released pending any hearing before the board as follows:

23 (a) If the court finds that the person presents a substantial danger to others and is not a proper
 24 subject for conditional release, the court shall order the person committed to a state hospital [*des-*
 25 *ignated by the Department of Human Services if the person is at least 18 years of age,*] **or, if the**
 26 **person is under 18 years of age**, to a secure intensive community inpatient facility [*designated by*
 27 *the Department of Human Services if the person is under 18 years of age*], for custody, care and
 28 treatment pending hearing before the board in accordance with ORS 161.341 to 161.351.

29 (b) If the court finds that the person presents a substantial danger to others but that the person
 30 can be adequately controlled with supervision and treatment if conditionally released and that nec-
 31 essary supervision and treatment are available, the court may order the person conditionally re-
 32 leased, subject to those supervisory orders of the court as are in the best interests of justice, the
 33 protection of society and the welfare of the person. The court shall designate a person or state,
 34 county or local agency to supervise the person upon release, subject to those conditions as the court
 35 directs in the order for conditional release. Prior to the designation, the court shall notify the per-
 36 son or agency to whom conditional release is contemplated and provide the person or agency an
 37 opportunity to be heard before the court. After receiving an order entered under this paragraph, the
 38 person or agency designated shall assume supervision of the person pursuant to the direction of the
 39 Psychiatric Security Review Board. The person or agency designated as supervisor shall be required
 40 to report in writing no less than once per month to the board concerning the supervised person's
 41 compliance with the conditions of release.

42 [(3)] (5) For purposes of this section, a person affected by a mental disease or defect in a state
 43 of remission is considered to have a mental disease or defect requiring supervision when the disease
 44 may, with reasonable medical probability, occasionally become active and, when active, render the
 45 person a danger to others.

1 [(4)] (6) In determining whether a person should be conditionally released, the court may order
 2 evaluations, examinations and compliance as provided in ORS 161.336 (4) and 161.346 (2).

3 [(5)] (7) In determining whether a person should be committed to a state hospital or to a secure
 4 intensive community inpatient facility or conditionally released, the court shall have as its primary
 5 concern the protection of society.

6 [(6)] (8) Upon placing a person on conditional release, the court shall notify the board in writing
 7 of the court's conditional release order, the supervisor appointed, and all other conditions of release,
 8 and the person shall be on conditional release pending hearing before the board in accordance with
 9 ORS 161.336 to 161.351. Upon compliance with this subsection and subsections (1) [*and (2)*] **to (4)**
 10 of this section, the court's jurisdiction over the person is terminated [*and the board assumes juris-*
 11 *isdiction over the person*].

12 [(7)] (9) An order of the court under this section is a final order appealable by the person found
 13 guilty except for insanity in accordance with ORS 19.205 (5). Notwithstanding ORS 19.255, notice
 14 of an appeal under this section shall be served and filed within 90 days after the order appealed from
 15 is entered in the register. The person shall be entitled on appeal to suitable counsel possessing
 16 skills and experience commensurate with the nature and complexity of the case. If the person is fi-
 17 nancially eligible, suitable counsel shall be appointed in the manner provided in ORS 138.500 (1), and
 18 the compensation for counsel and costs and expenses of the person necessary to the appeal shall be
 19 determined and paid as provided in ORS 138.500.

20 [(8)] (10) Upon placing a person under the jurisdiction of the board, the court shall notify the
 21 person of the right to appeal and the right to a hearing before the board in accordance with ORS
 22 161.336 (7) and 161.341 (4).

23 **SECTION 3.** ORS 161.328 is amended to read:

24 161.328. [*Following the entry of a judgment pursuant to ORS 161.319 and the dispositional deter-*
 25 *mination under ORS 161.325, if the court finds that the person would have been guilty of a*
 26 *misdemeanor during a criminal episode in the course of which the person did not cause physical injury*
 27 *or risk of physical injury to another, and if the court has probable cause to believe that the person is*
 28 *dangerous to self or others as a result of a mental disorder, the court may initiate civil commitment*
 29 *proceedings under ORS 426.070 to 426.130.]*

30 **(1) No less than 90 days after a person is placed in a state hospital or secure intensive**
 31 **community inpatient facility under ORS 161.327 (1)(a) or (b), the Psychiatric Security Review**
 32 **Board shall, after a hearing, determine whether the person is no longer affected by mental**
 33 **disease or defect or, if so affected, no longer requires continued commitment to a state**
 34 **hospital or secure intensive community inpatient facility. If the board determines:**

35 **(a) That the person requires continued commitment to a state hospital or secure inten-**
 36 **sive community inpatient facility, the person shall remain so committed.**

37 **(b) That the person is no longer affected by mental disease or defect, or if so affected,**
 38 **no longer requires continued commitment to a state hospital or secure intensive community**
 39 **inpatient facility, the person shall be transferred to the physical custody of the Department**
 40 **of Corrections to serve the remainder of the person's sentence.**

41 **(2) When a person is:**

42 **(a) Committed to a state hospital or secure intensive inpatient facility, the board shall**
 43 **conduct a hearing described in subsection (1) of this section on application of the person or**
 44 **the superintendent of the state hospital or the director of the secure intensive community**
 45 **inpatient facility.**

1 (b) In the physical custody of the department under this section, and the department
 2 determines that the person requires commitment to a state hospital or secure intensive
 3 community inpatient facility, the board shall conduct a hearing described in subsection (1)
 4 of this section.

5 (3) For purposes of this section, a person affected by a mental disease or defect in a state
 6 of remission no longer requires continued commitment to a state hospital or a secure in-
 7 tensive community inpatient facility.

8 (4) Notwithstanding ORS 163.327 (1)(a) or (b), the board may exercise jurisdiction over a
 9 person described in ORS 163.327 (1)(a) or (b) while the person is committed to a state hospital
 10 or a secure intensive inpatient facility, except that the person may not be conditionally re-
 11 leased or discharged under ORS 161.315 to 161.351.

12 (5)(a) A person sentenced to life imprisonment as described in ORS 163.105 (1)(c) may be
 13 released on parole only in accordance with ORS 163.105 (2) to (4) and any rules adopted by
 14 the State Board of Parole and Post-Prison Supervision.

15 (b) A person sentenced under ORS 163.327 (1)(b) shall be released on post-prison super-
 16 vision after the person has served the sentence imposed.

17 (c) A person described in paragraph (a) or (b) of this section shall be given credit for time
 18 served in a correctional facility or a state hospital or secure intensive community inpatient
 19 facility.

20 **SECTION 4.** ORS 161.295 is amended to read:

21 161.295. (1) A person is guilty except for insanity if, as a result of mental disease or defect at
 22 the time of engaging in criminal conduct, the person lacks substantial capacity either to appreciate
 23 the criminality of the conduct or to conform the conduct to the requirements of law.

24 (2) As used in chapter 743, Oregon Laws 1971, the terms “mental disease or defect” do not in-
 25 clude:

26 (a) An abnormality manifested only by repeated criminal or otherwise antisocial conduct[, *nor*
 27 *do they include*];

28 (b) Any abnormality constituting solely a personality disorder[.];

29 (c) **A disorder that results from acute voluntary intoxication or withdrawal from alcohol**
 30 **or a controlled substance;**

31 (d) **Any form of alcohol or controlled substance-induced psychosis;**

32 (e) **Character defects or psychosexual or impulse control disorders;**

33 (f) **Temporary conditions arising from the pressure of circumstances;**

34 (g) **Moral decadence or depravity; or**

35 (h) **Passion growing out of anger, jealousy, revenge, hatred or other similar sentiment.**

36 **SECTION 5.** ORS 161.305 is amended to read:

37 161.305. Mental disease or defect constituting insanity under ORS 161.295 is an affirmative de-
 38 fense **that, notwithstanding ORS 161.055 (2), the defendant must prove by clear and convinc-**
 39 **ing evidence.**

40 **SECTION 6.** ORS 161.390 is amended to read:

41 161.390. (1) The Department of Human Services shall:

42 (a) **Notwithstanding that a person is under the legal custody of the Department of Cor-**
 43 **rections or the jurisdiction of the Psychiatric Security Review Board, designate the appro-**
 44 **appropriate state hospital or secure intensive community inpatient facility when a person is**
 45 **committed to a state hospital or secure intensive community inpatient facility under ORS**

1 **161.315 to 161.351.**

2 (b) Promulgate rules for the assignment of persons to state mental hospitals or secure intensive
 3 community inpatient facilities under ORS 161.341, 161.365 and 161.370 and for establishing standards
 4 for evaluation and treatment of persons committed to a state hospital or a secure intensive com-
 5 munity inpatient facility, designated by the department, or ordered to a community mental health
 6 and developmental disabilities program under ORS 161.315 to 161.351 and 428.210.

7 (2) Whenever the Psychiatric Security Review Board requires the preparation of a predischarge
 8 or preconditional release plan before a hearing or as a condition of granting discharge or condi-
 9 tional release for a person committed under ORS 161.327 or 161.341 to a state hospital or a secure
 10 intensive community inpatient facility for custody, care and treatment, the Department of Human
 11 Services is responsible for and shall prepare the plan.

12 (3) In carrying out a conditional release plan prepared under subsection (2) of this section, the
 13 Department of Human Services may contract with a community mental health and developmental
 14 disabilities program, other public agency or private corporation or an individual to provide super-
 15 vision and treatment for the conditionally released person.

16 **SECTION 7.** ORS 161.336 is amended to read:

17 161.336. (1) If the Psychiatric Security Review Board determines that the person presents a
 18 substantial danger to others but can be adequately controlled with supervision and treatment if
 19 conditionally released and that necessary supervision and treatment are available, the board may
 20 order the person conditionally released, subject to those supervisory orders of the board as are in
 21 the best interests of justice, the protection of society and the welfare of the person. The board may
 22 designate any person or state, county or local agency the board considers capable of supervising the
 23 person upon release, subject to those conditions as the board directs in the order for conditional
 24 release. Prior to the designation, the board shall notify the person or agency to whom conditional
 25 release is contemplated and provide the person or agency an opportunity to be heard before the
 26 board. After receiving an order entered under this section, the person or agency designated shall
 27 assume supervision of the person pursuant to the direction of the board.

28 (2) Conditions of release contained in orders entered under this section may be modified from
 29 time to time and conditional releases may be terminated by order of the board as provided in ORS
 30 161.351.

31 (3) For purposes of this section, a person affected by a mental disease or defect in a state of
 32 remission is considered to have a mental disease or defect requiring supervision when the disease
 33 may, with reasonable medical probability, occasionally become active and, when active, render the
 34 person a danger to others. The person may be continued on conditional release by the board as
 35 provided in this section.

36 (4)(a) As a condition of release, the board may require the person to report to any state or local
 37 mental health facility for evaluation. Whenever medical, psychiatric or psychological treatment is
 38 recommended, the board may order the person, as a condition of release, to cooperate with and ac-
 39 cept the treatment from the facility.

40 (b) The facility to which the person has been referred for evaluation shall perform the evalu-
 41 ation and submit a written report of its findings to the board. If the facility finds that treatment of
 42 the person is appropriate, it shall include its recommendations for treatment in the report to the
 43 board.

44 (c) Whenever treatment is provided by the facility, it shall furnish reports to the board on a
 45 regular basis concerning the progress of the person.

1 (d) Copies of all reports submitted to the board pursuant to this section shall be furnished to the
2 person and the person's counsel. The confidentiality of these reports is determined pursuant to ORS
3 192.501 to 192.505.

4 (e) The facility shall comply with any other conditions of release prescribed by order of the
5 board.

6 (5) If at any time while the person is under the jurisdiction of the board it appears to the board
7 or its chairperson that the person has violated the terms of the conditional release or that the
8 mental health of the individual has changed, the board or its chairperson may order the person re-
9 turned for evaluation or treatment to a state hospital [*designated by the Department of Human Ser-*
10 *VICES if the person is at least 18 years of age,*] or, **if the person is under 18 years of age**, to a secure
11 intensive community inpatient facility [*designated by the Department of Human Services if the person*
12 *is under 18 years of age*]. A written order of the board, or its chairperson on behalf of the board, is
13 sufficient warrant for any law enforcement officer to take into custody such person and transport
14 the person accordingly. A sheriff, municipal police officer, constable, parole and probation officer,
15 prison official or other peace officer shall execute the order, and the person shall be returned as
16 soon as practicable to the custody of the Department of Human Services. Within 20 days following
17 the return of the person to the custody of the Department of Human Services, the board shall con-
18 duct a hearing. Notice of the time and place of the hearing shall be given to the person, the at-
19 torney representing the person and the Attorney General. The board may continue the person on
20 conditional release or, if it finds by a preponderance of the evidence that the person is affected by
21 mental disease or defect and presents a substantial danger to others and cannot be adequately
22 controlled if conditional release is continued, it may order the person committed to a state hospital
23 [*designated by the Department of Human Services if the person is at least 18 years of age,*] or, **if the**
24 **person is under 18 years of age**, to a secure intensive community inpatient facility [*designated by*
25 *the Department of Human Services if the person is under 18 years of age*]. The state must prove by
26 a preponderance of the evidence the person's unfitness for conditional release. A person in custody
27 pursuant to this subsection has the same rights as any person appearing before the board pursuant
28 to ORS 161.346.

29 (6) The community mental health and developmental disabilities program director, the director
30 of the facility providing treatment to a person on conditional release, any peace officer or any per-
31 son responsible for the supervision of a person on conditional release may take a person on condi-
32 tional release into custody or request that the person be taken into custody if there is reasonable
33 cause to believe the person is a substantial danger to others because of mental disease or defect and
34 that the person is in need of immediate care, custody or treatment. Any person taken into custody
35 pursuant to this subsection shall be transported as soon as practicable to a state hospital [*designated*
36 *by the Department of Human Services if the person is at least 18 years of age,*] or, **if the person is**
37 **under 18 years of age**, to a secure intensive community inpatient facility [*designated by the De-*
38 *partment of Human Services if the person is under 18 years of age*]. A person taken into custody under
39 this subsection has the same rights as any person appearing before the board pursuant to ORS
40 161.346.

41 (7)(a) Any person conditionally released under this section may apply to the board for discharge
42 from or modification of an order of conditional release on the ground that the person is no longer
43 affected by mental disease or defect or, if still so affected, no longer presents a substantial danger
44 to others and no longer requires supervision, medication, care or treatment. Notice of the hearing
45 on an application for discharge or modification of an order of conditional release shall be made to

1 the Attorney General. The applicant, at the hearing pursuant to this subsection, must prove by a
 2 preponderance of the evidence the applicant's fitness for discharge or modification of the order of
 3 conditional release. Applications by the person for discharge or modification of conditional release
 4 shall not be filed more often than once every six months.

5 (b) Upon application by any person or agency responsible for supervision or treatment pursuant
 6 to an order of conditional release, the board shall conduct a hearing to determine if the conditions
 7 of release shall be continued, modified or terminated. The application shall be accompanied by a
 8 report setting forth the facts supporting the application.

9 (8) The total period of commitment and conditional release ordered pursuant to this section may
 10 not exceed the maximum sentence provided by statute for the crime for which the person was found
 11 guilty except for insanity.

12 (9) The board shall maintain and keep current the medical, social and criminal history of all
 13 persons committed to its jurisdiction. The confidentiality of records maintained by the board shall
 14 be determined pursuant to ORS 192.501 to 192.505.

15 (10) In determining whether a person should be committed to a state hospital or to a secure
 16 intensive community inpatient facility, conditionally released or discharged, the board shall have as
 17 its primary concern the protection of society.

18 **SECTION 8.** ORS 161.341 is amended to read:

19 161.341. (1) If the Psychiatric Security Review Board finds, upon its initial hearing, that the
 20 person presents a substantial danger to others and is not a proper subject for conditional release,
 21 the board shall order the person committed to, or retained in, a state hospital [*designated by the*
 22 *Department of Human Services if the person is at least 18 years of age,*] or, **if the person is under**
 23 **18 years of age,** to a secure intensive community inpatient facility [*designated by the Department*
 24 *of Human Services if the person is under 18 years of age, for custody, care and treatment*]. The period
 25 of commitment ordered by the board may not exceed the maximum sentence provided by statute for
 26 the crime for which the person was found guilty except for insanity.

27 (2) If at any time after the commitment of a person to a state hospital, or to a secure intensive
 28 community inpatient facility, [*designated by the Department of Human Services under this section,*] the
 29 superintendent of the hospital or the director of the secure intensive community inpatient facility
 30 is of the opinion that the person is no longer affected by mental disease or defect, or, if so affected,
 31 no longer presents a substantial danger to others or that the person continues to be affected by
 32 mental disease or defect and continues to be a danger to others, but that the person can be con-
 33 trolled with proper care, medication, supervision and treatment if conditionally released, the super-
 34 intendent or director shall apply to the board for an order of discharge or conditional release. The
 35 application shall be accompanied by a report setting forth the facts supporting the opinion of the
 36 superintendent or director. If the application is for conditional release, the application must also be
 37 accompanied by a verified conditional release plan. The board shall hold a hearing on the applica-
 38 tion within 60 days of its receipt. Not less than 20 days prior to the hearing before the board, copies
 39 of the report shall be sent to the Attorney General.

40 (3) The attorney representing the state may choose a psychiatrist or licensed psychologist to
 41 examine the person prior to the initial or any later decision by the board on discharge or condi-
 42 tional release. The results of the examination shall be in writing and filed with the board, and shall
 43 include, but need not be limited to, an opinion as to the mental condition of the person, whether the
 44 person presents a substantial danger to others and whether the person could be adequately con-
 45 trolled with treatment as a condition of release.

1 (4) Any person who has been committed to a state hospital, or to a secure intensive community
 2 inpatient facility, [*designated by the Department of Human Services*] for custody, care and treatment
 3 or another person acting on the person's behalf may apply to the board for an order of discharge
 4 or conditional release upon the grounds:

5 (a) That the person is no longer affected by mental disease or defect;

6 (b) If so affected, that the person no longer presents a substantial danger to others; or

7 (c) That the person continues to be affected by a mental disease or defect and would continue
 8 to be a danger to others without treatment, but that the person can be adequately controlled and
 9 given proper care and treatment if placed on conditional release.

10 (5) When application is made under subsection (4) of this section, the board shall require that
 11 a report from the superintendent of the hospital or the director of the secure intensive community
 12 inpatient facility be prepared and transmitted as provided in subsection (2) of this section. The ap-
 13 plicant must prove by a preponderance of the evidence the applicant's fitness for discharge or con-
 14 ditional release under the standards of subsection (4) of this section, unless more than two years
 15 has passed since the state had the burden of proof on that issue, in which case the state shall have
 16 the burden of proving by a preponderance of the evidence the applicant's lack of fitness for dis-
 17 charge or conditional release. Applications for discharge or conditional release under subsection (4)
 18 of this section shall not be filed more often than once every six months commencing with the date
 19 of the initial board hearing.

20 (6) The board is not required to hold a hearing on a first application under subsection (4) of this
 21 section any sooner than 90 days after the initial hearing. However, hearings resulting from any
 22 subsequent requests shall be held within 60 days of the filing of the application.

23 (7)(a) In no case shall any person committed by the court under ORS 161.327 to a state hospital,
 24 or to a secure intensive community inpatient facility, [*designated by the Department of Human Ser-*
 25 *vices*] be held in the hospital or facility for more than 90 days from the date of the court's commit-
 26 ment order without an initial hearing before the board to determine whether the person should be
 27 conditionally released or discharged.

28 (b) In no case shall a person be held pursuant to this section for a period of time exceeding two
 29 years without a hearing before the board to determine whether the person should be conditionally
 30 released or discharged.

31 **SECTION 9. ORS 161.327 is added to and made a part of ORS 161.315 to 161.351.**

32 **SECTION 10. The amendments to ORS 161.295, 161.305, 161.327, 161.328, 161.329, 161.336,**
 33 **161.341 and 161.390 by sections 1 to 8 of this 2009 Act apply to persons alleged to have com-**
 34 **mitted an offense on or after the effective date of this 2009 Act.**