

Senate Bill 846

Sponsored by Senator BATES

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**.

Calculates maximum period of jurisdiction of Psychiatric Security Review Board over person found guilty except for insanity of offense based on sentence person would have received had person been convicted of crime.

Requires court to discharge person, initiate civil commitment proceedings or conditionally release person under jurisdiction of court if person found guilty of presumptive jail offense except for insanity. Requires court to discharge person or commit person to jurisdiction of board if person found guilty of presumptive prison offense except for insanity.

Authorizes board to request that committing court initiate civil commitment proceedings when jurisdiction of board expires if board has probable cause to believe that person is danger to self or others.

Calculates maximum time person may be treated for fitness based on sentence defendant may receive if convicted of most serious charge.

Requires defendant who lacks fitness to proceed by reason of mental disease or defect to be released on supervision if most serious charge would result in presumptive jail sentence. Authorizes commitment of defendant who lacks fitness to proceed by reason of mental disease or defect if most serious charge would result in presumptive prison sentence.

A BILL FOR AN ACT

1
2 Relating to mentally ill defendants; creating new provisions; amending ORS 161.325, 161.326, 161.327,
3 161.328, 161.336, 161.341, 161.351, 161.360, 161.365, 161.370, 161.390, 181.595 and 419C.473; and
4 repealing ORS 161.329.

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

6 **SECTION 1.** ORS 161.325 is amended to read:

7 161.325. (1) After entry of judgment of guilty except for insanity, the court shall:*[on the basis*
8 *of the evidence given at the trial or at a separate hearing, if requested by either party, make an order*
9 *as provided in ORS 161.327 or 161.329, whichever is appropriate.]*

10 *[(2) If the court makes an order as provided in ORS 161.327, it shall also:]*

11 (a) Determine on the record the offense of which the person otherwise would have been
12 convicted[;].

13 (b) **Determine on the record the maximum sentence the person could have received had**
14 **the person been convicted of the offense. In making this determination, the court shall**
15 **comply with ORS 137.123 and, for offenses subject to the sentencing guidelines grid of the**
16 **Oregon Criminal Justice Commission, shall include the presumptive sentence. If the**
17 **presumptive sentence is a sentence of probation, for purposes of this section, the**
18 **presumptive sentence is the maximum number of sanction units that the court may impose**
19 **as part of a probationary sentence under the rules of the commission.**

20 (c) State on the record the mental disease or defect on which the defendant relied for the guilty
21 except for insanity defense[; and].

22 *[(c)]* (d) Make specific findings on whether there is a victim of the crime for which the defendant
23 has been found guilty except for insanity and, if so, whether the victim wishes to be notified, under

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 ORS 161.326 (2), of any Psychiatric Security Review Board hearings concerning the defendant and
2 of any conditional release, discharge or escape of the defendant.

3 **(e) On the basis of the evidence given at the trial or at a separate hearing, if requested**
4 **by either party, make an order as provided in ORS 161.327. The court shall include the**
5 **findings described in this subsection in the order.**

6 *[(3) The court shall include any such findings in its order.]*

7 *[(4)]* **(2)** Except under circumstances described in ORS 137.076 (4), whenever a defendant charged
8 with any offense listed in ORS 137.076 (1) has been found guilty of that offense except for insanity,
9 the court shall, in any order entered under ORS 161.327 or 161.329, direct the defendant to submit
10 to the obtaining of a blood or buccal sample in the manner provided in ORS 137.076.

11 **SECTION 2.** ORS 161.328 is amended to read:

12 161.328. **As used in ORS 161.315 to 161.351:**

13 **(1) “Presumptive jail offense” means a determination made by the court under 161.325**
14 **that the defendant was found guilty of offense except for insanity for which the maximum**
15 **sentence the person could have received had the person been convicted of the offense does**
16 **not include a term of imprisonment of more than 12 months.**

17 **(2) “Presumptive prison offense” means a determination made by the court under 161.325**
18 **that the defendant was found guilty of an offense except for insanity for which the maximum**
19 **sentence the person could have received had the person been convicted of the offense in-**
20 **cludes a term of imprisonment of more than 12 months.** *[Following the entry of a judgment*
21 *pursuant to ORS 161.319 and the dispositional determination under ORS 161.325, if the court finds that*
22 *the person would have been guilty of a misdemeanor during a criminal episode in the course of which*
23 *the person did not cause physical injury or risk of physical injury to another, and if the court has*
24 *probable cause to believe that the person is dangerous to self or others as a result of a mental disorder,*
25 *the court may initiate civil commitment proceedings under ORS 426.070 to 426.130.]*

26 **SECTION 3.** ORS 161.327 is amended to read:

27 161.327. *[(1)(a)]* **(1)** Following the entry of a judgment pursuant to ORS 161.319 and the disposi-
28 tional determination under ORS 161.325, if the court finds that the person *[would have been guilty*
29 *of a felony, or of a misdemeanor during a criminal episode in the course of which the person caused*
30 *physical injury or risk of physical injury to another,]:*

31 **(a) Is no longer affected by mental disease or defect, or, if so affected, no longer presents**
32 **a substantial danger to others and is not in need of care, supervision or treatment, the court**
33 **shall order the person discharged from custody, notwithstanding paragraph (b) or (c) of this**
34 **subsection.**

35 **(b) Would have been guilty of a misdemeanor or a presumptive jail offense:**

36 **(A) The court may initiate civil commitment proceedings under ORS 426.070 to 426.130 if**
37 **the court has probable cause to believe that the person is dangerous to self or others as a**
38 **result of a mental disorder.**

39 **(B) The court may order the person conditionally released, subject to the supervisory**
40 **orders of the court as are in the best interest of justice, the protection of society and the**
41 **welfare of the person. The court shall designate a person or state, county or local agency to**
42 **supervise the person upon release, subject to those conditions as the court directs in the**
43 **order for conditional release. Prior to the designation, the court shall notify the person or**
44 **agency to whom conditional release is contemplated and provide the person or agency an**
45 **opportunity to be heard before the court. After receiving an order entered under this para-**

1 **graph, the person or agency designated shall assume supervision of the person pursuant to**
 2 **the direction of the Psychiatric Security Review Board. The person or agency designated as**
 3 **supervisor shall be required to report in writing no less than once per month to the board**
 4 **concerning the supervised person's compliance with the conditions of release. As a condition**
 5 **of release, the court may require the person to report to any state or local mental health**
 6 **facility for evaluation.**

7 (c) **Would have been guilty of a presumptive prison offense**, the court shall order that a
 8 psychiatric or psychological evaluation be performed and a report of the evaluation be provided to
 9 the court if an evaluation was not performed or a report was not provided to the court prior to trial.
 10 Upon receipt of the evaluation, the court shall order that the person be placed under the jurisdiction
 11 of the Psychiatric Security Review Board for care and treatment if the court finds by a preponder-
 12 ance of the evidence that the person is affected by mental disease or defect and presents a sub-
 13 stantial danger to others. *[requiring commitment to:]*

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

16 *[(B) a secure intensive community inpatient facility designated by the Department of Human Ser-*
 17 *vices if the person is under 18 years of age.]*

18 *[(b)]* (2) The period of jurisdiction of the board **or the court** is equal to the maximum sentence
 19 *[provided by statute for the crime for which the person was found guilty except for insanity]* **the court**
 20 **finds under ORS 161.325 that the person could have received had the person been convicted**
 21 **of the offense.**

22 *[(c)]* (3) When a court orders a psychiatric or psychological evaluation of a financially eligible
 23 person under **subsection (1) of this [subsection] section**, the court shall order the public defense
 24 services executive director to pay a reasonable fee for the evaluation from funds available for the
 25 purpose.

26 *[(2)]* (4) The court shall determine whether *[the]* a person **placed under the jurisdiction of the**
 27 **board under subsection (1)(c) of this section** should be committed to a state hospital, or to a
 28 secure intensive community inpatient facility, *[designated by the Department of Human Services]* or
 29 conditionally released pending any hearing before the board as follows:

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

36 (b) If the court finds that the person presents a substantial danger to others but that the person
 37 can be adequately controlled with supervision and treatment if conditionally released and that nec-
 38 essary supervision and treatment are available, the court may order the person conditionally
 39 released*[, subject to those supervisory orders of the court as are in the best interests of justice, the*
 40 *protection of society and the welfare of the person. The court shall designate a person or state, county*
 41 *or local agency to supervise the person upon release, subject to those conditions as the court directs in*
 42 *the order for conditional release. Prior to the designation, the court shall notify the person or agency*
 43 *to whom conditional release is contemplated and provide the person or agency an opportunity to be*
 44 *heard before the court. After receiving an order entered under this paragraph, the person or agency*
 45 *designated shall assume supervision of the person pursuant to the direction of the Psychiatric Security*

1 *Review Board. The person or agency designated as supervisor shall be required to report in writing*
2 *no less than once per month to the board concerning the supervised person's compliance with the con-*
3 *ditions of release.] in accordance with subsection (1)(b)(B) of this section.*

4 [(3)] (5) For purposes of this section, a person affected by a mental disease or defect in a state
5 of remission is considered to have a mental disease or defect requiring supervision when the disease
6 may, with reasonable medical probability, occasionally become active and, when active, render the
7 person a danger to others.

8 [(4)] (6) In determining whether a person should be conditionally released, the court may order
9 evaluations, examinations and compliance as provided in ORS 161.336 (4) and 161.346 (2).

10 [(5)] (7) In determining whether a person should be committed to a state hospital or to a secure
11 intensive community inpatient facility or conditionally released, the court shall have as its primary
12 concern the protection of society.

13 [(6)] (8) Upon placing a person on conditional release, the court shall notify the board in writing
14 of the court's conditional release order, the supervisor appointed, and all other conditions of release,
15 and the person shall be on conditional release pending hearing before the board in accordance with
16 ORS 161.336 to 161.351. Upon compliance with this subsection and subsections [(1) and (2)] (1) to
17 (4) of this section, the court's jurisdiction over the person is terminated and the board assumes ju-
18 risdiction over the person.

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

27 [(8)] (10) Upon placing a person under the jurisdiction of the board, the court shall notify the
28 person of the right to appeal and the right to a hearing before the board in accordance with ORS
29 161.336 (7) and 161.341 (4).

30 **SECTION 4.** ORS 161.336 is amended to read:

31 161.336. (1) If the Psychiatric Security Review Board determines that the person presents a
32 substantial danger to others but can be adequately controlled with supervision and treatment if
33 conditionally released and that necessary supervision and treatment are available, the board may
34 order the person conditionally released, subject to those supervisory orders of the board as are in
35 the best interests of justice, the protection of society and the welfare of the person. The board may
36 designate any person or state, county or local agency the board considers capable of supervising the
37 person upon release, subject to those conditions as the board directs in the order for conditional
38 release. Prior to the designation, the board shall notify the person or agency to whom conditional
39 release is contemplated and provide the person or agency an opportunity to be heard before the
40 board. After receiving an order entered under this section, the person or agency designated shall
41 assume supervision of the person pursuant to the direction of the board.

42 (2) Conditions of release contained in orders entered under this section may be modified from
43 time to time and conditional releases may be terminated by order of the board as provided in ORS
44 161.351.

45 (3) For purposes of this section, a person affected by a mental disease or defect in a state of

1 remission is considered to have a mental disease or defect requiring supervision when the disease
2 may, with reasonable medical probability, occasionally become active and, when active, render the
3 person a danger to others. The person may be continued on conditional release by the board as
4 provided in this section.

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

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

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

15 (d) Copies of all reports submitted to the board pursuant to this section shall be furnished to the
16 person and the person's counsel. The confidentiality of these reports is determined pursuant to ORS
17 192.501 to 192.505.

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

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

43 (6) The community mental health and developmental disabilities program director, the director
44 of the facility providing treatment to a person on conditional release, any peace officer or any per-
45 son responsible for the supervision of a person on conditional release may take a person on condi-

1 tional release into custody or request that the person be taken into custody if there is reasonable
 2 cause to believe the person is a substantial danger to others because of mental disease or defect and
 3 that the person is in need of immediate care, custody or treatment. Any person taken into custody
 4 pursuant to this subsection shall be transported as soon as practicable to a state hospital designated
 5 by the Department of Human Services if the person is at least 18 years of age, or to a secure in-
 6 tensive community inpatient facility designated by the Department of Human Services if the person
 7 is under 18 years of age. A person taken into custody under this subsection has the same rights as
 8 any person appearing before the board pursuant to ORS 161.346.

9 (7)(a) Any person conditionally released under this section may apply to the board for discharge
 10 from or modification of an order of conditional release on the ground that the person is no longer
 11 affected by mental disease or defect or, if still so affected, no longer presents a substantial danger
 12 to others and no longer requires supervision, medication, care or treatment. Notice of the hearing
 13 on an application for discharge or modification of an order of conditional release shall be made to
 14 the Attorney General. The applicant, at the hearing pursuant to this subsection, must prove by a
 15 preponderance of the evidence the applicant's fitness for discharge or modification of the order of
 16 conditional release. Applications by the person for discharge or modification of conditional release
 17 shall not be filed more often than once every six months.

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

22 (8) The total period of commitment and conditional release ordered pursuant to this section may
 23 not exceed the maximum sentence [*provided by statute for the crime for which the person was found*
 24 *guilty except for insanity*] **the court finds under ORS 161.325 that the person could have re-**
 25 **ceived had the person been convicted of the offense.**

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

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

32 **SECTION 5.** ORS 161.341 is amended to read:

33 161.341. (1) If the Psychiatric Security Review Board finds, upon its initial hearing, that the
 34 person presents a substantial danger to others and is not a proper subject for conditional release,
 35 the board shall order the person committed to, or retained in, a state hospital [*designated by the*
 36 *Department of Human Services if the person is at least 18 years of age,*] or, **if the person is under**
 37 **18 years of age, [to] a secure intensive community inpatient facility [*designated by the Department***
 38 ***of Human Services if the person is under 18 years of age,*] for custody, care and treatment. The period**
 39 **of commitment ordered by the board may not exceed the maximum sentence [*provided by statute for***
 40 ***the crime for which the person was found guilty except for insanity*] **the court finds under ORS****
 41 **161.325 that the person could have received had the person been convicted of the crime under**
 42 **ORS 163.325.**

43 (2) If at any time after the commitment of a person to a state hospital, or to a secure intensive
 44 community inpatient facility, [*designated by the Department of Human Services*] under this section,
 45 the superintendent of the hospital or the director of the secure intensive community inpatient fa-

1 cility is of the opinion that the person is no longer affected by mental disease or defect, or, if so
2 affected, no longer presents a substantial danger to others or that the person continues to be af-
3 fected by mental disease or defect and continues to be a danger to others, but that the person can
4 be controlled with proper care, medication, supervision and treatment if conditionally released, the
5 superintendent or director shall apply to the board for an order of discharge or conditional release.
6 The application shall be accompanied by a report setting forth the facts supporting the opinion of
7 the superintendent or director. If the application is for conditional release, the application must also
8 be accompanied by a verified conditional release plan. The board shall hold a hearing on the appli-
9 cation within 60 days of its receipt. Not less than 20 days prior to the hearing before the board,
10 copies of the report shall be sent to the Attorney General.

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

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

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

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

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

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

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

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

44 (b) In no case shall a person be held pursuant to this section for a period of time exceeding two
45 years without a hearing before the board to determine whether the person should be conditionally

1 released or discharged.

2 **SECTION 6.** ORS 161.326 is amended to read:

3 161.326. (1) Whenever a person already under the board's jurisdiction commits a new crime, the
4 court or the board shall make the findings described in ORS 161.325 [(2)] (1).

5 (2) If the trial court or the board determines that a victim desires notification as described in
6 ORS 161.325 [(2)] (1), the board shall make a reasonable effort to notify the victim of board hearings,
7 conditional release, discharge or escape.

8 **SECTION 7.** ORS 161.351 is amended to read:

9 161.351. (1) Any person placed under the jurisdiction of the Psychiatric Security Review Board
10 pursuant to ORS 161.336 or 161.341 shall be discharged at such time as the board, upon a hearing,
11 shall find by a preponderance of the evidence that the person is no longer affected by mental disease
12 or defect or, if so affected, no longer presents a substantial danger to others which requires regular
13 medical care, medication, supervision or treatment.

14 (2) For purposes of this section, a person affected by a mental disease or defect in a state of
15 remission is considered to have a mental disease or defect. A person whose mental disease or defect
16 may, with reasonable medical probability, occasionally become active and when it becomes active
17 will render the person a danger to others, shall not be discharged. The person shall continue under
18 such supervision and treatment as the board deems necessary to protect the person and others.

19 (3) Any person who has been placed under the jurisdiction of the board and who has spent five
20 years on conditional release shall be brought before the board for hearing within 30 days of the
21 expiration of the five-year period. The board shall review the person's status and determine whether
22 the person should be discharged from the jurisdiction of the board.

23 **(4) When a person is discharged from the jurisdiction of the board as a result of the ex-**
24 **piration of the maximum period of jurisdiction, the board may request that the committing**
25 **court initiate civil commitment proceedings under ORS 426.070 to 426.130 if the board has**
26 **probable cause to believe that the person is dangerous to self or others as a result of a**
27 **mental disorder.**

28 **SECTION 8.** ORS 161.390 is amended to read:

29 161.390. (1) The Department of Human Services shall:

30 **(a) Designate the appropriate state hospital or secure intensive community inpatient fa-**
31 **ility when ORS 161.315 to 161.351 requires that a person be committed to a hospital or in-**
32 **patient facility or when a person is committed under ORS 161.365 or 161.370; and**

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

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

43 (3) In carrying out a conditional release plan prepared under subsection (2) of this section, the
44 Department of Human Services may contract with a community mental health and developmental
45 disabilities program, other public agency or private corporation or an individual to provide super-

1 vision and treatment for the conditionally released person.

2 **SECTION 9.** ORS 161.360 is amended to read:

3 161.360. [(1) *If, before or during the trial in any criminal case, the court has reason to doubt the*
4 *defendant's fitness to proceed by reason of incapacity, the court may order an examination in the*
5 *manner provided in ORS 161.365.*]

6 [(2)] A defendant may be found incapacitated if, as a result of mental disease or defect, the de-
7 fendant is unable:

8 [(a)] (1) To understand the nature of the proceedings against the defendant; [or]

9 [(b)] (2) To assist and cooperate with the counsel of the defendant; or

10 [(c)] (3) To participate in the defense of the defendant.

11 **SECTION 10.** ORS 161.365 is amended to read:

12 161.365. (1) [*Whenever the court has reason to doubt the defendant's fitness to proceed by reason*
13 *of incapacity as defined in ORS 161.360,*] **If, before or during the trial in any criminal case, the**
14 **court has reason to doubt the defendant's fitness to proceed by reason of incapacity as de-**
15 **fin****ed in ORS 161.360, the court may order an examination in accordance with this section.**

16 (2) The court may call to its assistance in reaching its decision any witness and may appoint
17 a psychiatrist or psychologist to examine the defendant and advise the court.

18 [(2)] (3) **If the defendant is charged with a presumptive prison offense as defined in ORS**
19 **161.370 and** the court determines the assistance of a psychiatrist or psychologist would be helpful,
20 the court may order the defendant to be committed for the purpose of an examination for a period
21 not exceeding 30 days to a state mental hospital [*designated by the Department of Human Services*
22 *if the defendant is at least 18 years of age,*] or, **if the person is under 18 years of age,** to a secure
23 intensive community inpatient facility [*designated by the Department of Human Services if the de-*
24 *fendant is under 18 years of age*].

25 (4) The report of each examination **described in this section** shall include, but is not neces-
26 sarily limited to, the following:

27 (a) A description of the nature of the examination;

28 (b) A statement of the mental condition of the defendant; and

29 (c) If the defendant suffers from a mental disease or defect, an opinion as to whether the de-
30 fendant is incapacitated within the definition set out in ORS 161.360.

31 [(3)] (5) Except when the defendant and the court both request to the contrary, the report may
32 not contain any findings or conclusions as to whether the defendant as a result of mental disease
33 or defect was subject to the provisions of ORS 161.295 or 161.300 at the time of the criminal act
34 charged.

35 [(4)] (6) If the examination by the psychiatrist or psychologist cannot be conducted by reason
36 of the unwillingness of the defendant to participate therein, the report shall so state and shall in-
37 clude, if possible, an opinion as to whether such unwillingness of the defendant was the result of
38 mental disease or defect affecting capacity to proceed.

39 [(5)] (7) The report of the examination shall be filed in triplicate with the clerk of the court,
40 who shall cause copies to be delivered to the district attorney and to counsel for defendant.

41 [(6)] (8) When upon motion of the court or a financially eligible defendant, the court has ordered
42 a psychiatric or psychological examination of the defendant, a county or justice court shall order
43 the county to pay, and a circuit court shall order the public defense services executive director to
44 pay from funds available for the purpose:

45 (a) A reasonable fee if the examination of the defendant is conducted by a psychiatrist or psy-

1 chologist in private practice; and

2 (b) All costs including transportation of the defendant if the examination is conducted by a
3 psychiatrist or psychologist in the employ of the Department of Human Services or a community
4 mental health and developmental disabilities program established under ORS 430.610 to 430.670.

5 [(7)] **(9)** When such an examination is ordered at the request or with the acquiescence of a de-
6 fendant who is determined not to be financially eligible, the examination shall be performed at the
7 defendant's expense. When such an examination is ordered at the request of the prosecution, the
8 county shall pay for the expense of the examination.

9 **SECTION 11.** ORS 161.370 is amended to read:

10 161.370. (1) When the defendant's fitness to proceed is [*drawn*] in question, the issue shall be
11 determined by the court. If neither the prosecuting attorney nor counsel for the defendant contests
12 the finding of the report filed by a psychiatrist or psychologist under ORS 161.365, the court may
13 make the determination on the basis of [*such*] **the** report. If the finding is contested, the court shall
14 hold a hearing on the issue. If the report is received in evidence [*upon such*] **in a contested** hearing,
15 the party who contests the finding [*thereof shall have*] **has** the right to summon and [*to*] cross-
16 examine any psychiatrist or psychologist who submitted the report and to offer evidence upon the
17 issue. Other evidence regarding the defendant's fitness to proceed may be introduced by either
18 party.

19 (2) If the court determines that the defendant lacks fitness to proceed, the proceeding against
20 the defendant shall be suspended, except as provided in subsection [(12)] **(13)** of this section[, *and*
21 *the court shall*]. **If the defendant:**

22 **(a) Is not charged with a presumptive prison offense, the court shall release the defend-**
23 **ant on supervision for no longer than the six months, less credit for time served.**

24 **(b) Is charged with a presumptive prison offense, the court shall:**

25 **(A)** Commit the defendant to the custody of the superintendent of a state mental hospital [*des-*
26 *ignated by the Department of Human Services if the defendant is at least 18 years of age*], or, **if the**
27 **defendant is under 18 years of age**, to the custody of the director of a secure intensive community
28 inpatient facility [*designated by the Department of Human Services if the defendant is under 18 years*
29 *of age, or shall*]; **or**

30 **(B)** Release the defendant on supervision for [*as long as such unfitness shall endure*] **no longer**
31 **than the maximum commitment period described in subsection (7) of this section.** The court
32 may release the defendant on supervision **under this subparagraph** if [*it*] **the court** determines
33 that care other than commitment for incapacity to stand trial would better serve the defendant and
34 the community.

35 **(3) When the court releases a defendant on supervision under this section, the court** [*It*]
36 may place conditions [*which it*] **that the court** deems appropriate on the release, including the re-
37 quirement that the defendant regularly report to the Department of Human Services or a community
38 mental health and developmental disabilities program for examination to determine if the defendant
39 has regained capacity to stand trial.

40 **(4)** When the court, on its own motion or upon the application of the superintendent of the
41 hospital or director of the secure intensive community inpatient facility in which the defendant is
42 committed, a person examining the defendant as a condition of release on supervision, or either
43 party, determines, after a hearing, if a hearing is requested, that the defendant has regained fitness
44 to proceed, the proceeding shall be resumed. If, however, the court is of the view that so much time
45 has elapsed since the commitment or release of the defendant on supervision that it would be unjust

1 to resume the criminal proceeding, the court on motion of either party may dismiss the charge and
 2 may order the defendant to be discharged or cause a proceeding to be commenced forthwith under
 3 ORS 426.070 to 426.170 or 427.235 to 427.290.

4 [(3)] (5) The superintendent of a state hospital or director of a secure intensive community in-
 5 patient facility shall cause the defendant to be evaluated within 60 days from the defendant's deliv-
 6 ery into the superintendent's or director's custody, for the purpose of determining whether there is
 7 a substantial probability that, in the foreseeable future, the defendant will have the capacity to
 8 stand trial.

9 [(4)] In addition, the superintendent or director shall **notify the committing court:**

10 (a) Immediately [*notify the committing court*], if the defendant, at any time, gains or regains the
 11 capacity to stand trial or will never have the capacity to stand trial.

12 (b) Within 90 days of the defendant's delivery into the superintendent's or director's custody,
 13 [*notify the committing court*] that:

14 (A) The defendant has the present capacity to stand trial;

15 (B) There is no substantial probability that, in the foreseeable future, the defendant will gain
 16 or regain the capacity to stand trial; or

17 (C) There is a substantial probability that, in the foreseeable future, the defendant will gain or
 18 regain the capacity to stand trial. If such a probability exists, the superintendent or director shall
 19 give the court an estimate of the time in which the defendant, with appropriate treatment, [*is*] **could**
 20 **reasonably be** expected to gain or regain capacity.

21 [(5)] (6)(a) If the superintendent or director determines that [*there is a substantial probability*
 22 *that, in the foreseeable future,*] the defendant [*will*] **could reasonably be expected to** gain or regain
 23 the capacity to stand trial **within the time estimated under subsection (5)(b)(C) of this**
 24 **section**, unless the court otherwise orders, the defendant shall remain in the superintendent's or
 25 director's custody where the defendant shall receive treatment designed for the purpose of enabling
 26 the defendant to gain or regain capacity.

27 (b) In keeping with the notice requirement under subsection [(4)(b)] (5)(b) of this section, the
 28 superintendent or director shall, for the duration of the defendant's period of commitment, submit
 29 a progress report to the committing court, concerning the defendant's capacity or incapacity, at
 30 least once every 180 days as measured from the date of the defendant's delivery into the super-
 31 intendent's or director's custody.

32 [(6)] (7)(a) A defendant who remains committed under subsection [(5)] (6) of this section shall
 33 be discharged within a period of time that is reasonable for making a determination concerning
 34 whether or not, and when, the defendant may gain or regain capacity. [*However, regardless of the*
 35 *number of charges with which the defendant is accused, in no event shall the defendant be committed*
 36 *for longer than whichever of the following, measured from the defendant's initial custody date, is*
 37 *shorter:*]

38 [(a)] *Three years; or*

39 [(b)] *A period of time equal to the maximum sentence the court could have imposed if the defendant*
 40 *had been convicted.*] **In no event may a defendant charged with:**

41 (A) **Aggravated murder as defined in ORS 163.095, murder as defined in ORS 163.115 or**
 42 **an offense listed in ORS 137.700 be committed for longer than 36 months, less credit for time**
 43 **served.**

44 (B) **A presumptive prison offense other than an offense described in subparagraph (A)**
 45 **of this subsection, be committed for longer than 18 months or the maximum commitment**

1 **term, whichever is shorter, less credit for time served.**

2 **(b) In determining the maximum commitment term for an offense subject to the sen-**
 3 **tencing guidelines grid of the Oregon Criminal Justice Commission, the court shall apply the**
 4 **defendant's criminal history on the date of the commitment order. If the presumptive sen-**
 5 **tence is a sentence of probation, the maximum commitment period is equal to the maximum**
 6 **number of sanction units that the court may impose as part of a probationary sentence un-**
 7 **der the rules of the commission.**

8 [(7)] **(8)** The superintendent or director shall notify the committing court of the defendant's im-
 9 pending discharge 30 days before the date on which the superintendent or director is required to
 10 discharge the defendant under subsection [(6)] **(7)** of this section.

11 [(8)] **(9)** When the committing court receives a notice from the superintendent or director under
 12 either subsection [(4) or (7)] **(5) or (8)** of this section concerning the defendant's progress or lack
 13 thereof, the committing court shall determine after a hearing, if a hearing is requested, whether the
 14 defendant presently has the capacity to stand trial.

15 [(9)] **(10)** If under subsection [(8)] **(9)** of this section the court determines that the defendant
 16 lacks the capacity to stand trial, the court shall further determine whether there is a substantial
 17 probability that the defendant, in the foreseeable future, will gain or regain the capacity to stand
 18 trial and whether the defendant is entitled to discharge under subsection [(6)] **(7)** of this section. If
 19 the court determines that there is no substantial probability that the defendant, in the foreseeable
 20 future, will gain or regain the capacity to stand trial or that the defendant is entitled to discharge
 21 under subsection [(6)] **(7)** of this section, the court shall dismiss, without prejudice, all charges
 22 against the defendant and:

23 (a) Order that the defendant be discharged; or

24 (b) Initiate commitment proceedings under ORS 426.070 or 427.235 to 427.290.

25 [(10)] **(11)** All notices required under this section shall be filed with the clerk of the court and
 26 delivered to both the district attorney and the counsel for the defendant.

27 [(11)] **(12)** If the defendant regains fitness to proceed, the term of any sentence received by the
 28 defendant for conviction of the crime charged shall be reduced by the amount of time the defendant
 29 was committed under this section to the custody of a state mental hospital, or to the custody of a
 30 secure intensive community inpatient facility, designated by the Department of Human Services.

31 [(12)] **(13)** The fact that the defendant is unfit to proceed does not preclude any objection
 32 through counsel and without the personal participation of the defendant on the grounds that the
 33 indictment is insufficient, that the statute of limitations has run, that double jeopardy principles
 34 apply or upon any other ground at the discretion of the court which the court deems susceptible
 35 of fair determination prior to trial.

36 **(14) As used in this section:**

37 **(a) "Credit for time served" means the total period of time in the criminal action that**
 38 **the defendant has been incarcerated in a correctional facility or committed to a state hos-**
 39 **pital or secure intensive community inpatient facility.**

40 **(b) "Maximum commitment term" means the longest term of imprisonment that could**
 41 **be imposed for any single offense with which the defendant is charged.**

42 **(c) "Presumptive prison offense" means an offense for which the maximum commitment**
 43 **term is greater than 12 months.**

44 **SECTION 12.** ORS 181.595 is amended to read:

45 181.595. (1)(a) Except as otherwise provided in paragraph (b) of this subsection, the agency or

1 official to whom a person reports under subsection (3) of this section shall complete a sex offender
2 registration form concerning the person when the person reports under subsection (3) of this section.

3 (b) When a person who is under supervision reports to the agency supervising the person, the
4 supervising agency may require the person to report instead to the Department of State Police, a
5 chief of police or a county sheriff and provide the supervising agency with proof of the completed
6 registration.

7 (2) Subsection (3) of this section applies to a person who:

8 (a) Is discharged, paroled or released on any form of supervised or conditional release from a
9 jail, prison or other correctional facility or detention facility in this state at which the person was
10 confined as a result of:

11 (A) Conviction of a sex crime;

12 (B) Having been found guilty except for insanity of a sex crime; or

13 (C) Having been found to be within the jurisdiction of the juvenile court for having committed
14 an act that if committed by an adult would constitute a sex crime;

15 (b) Is paroled to this state under ORS 144.610 after being convicted in another jurisdiction of a
16 crime that would constitute a sex crime if committed in this state;

17 (c) Is paroled to or otherwise placed in this state after having been found by a court in another
18 jurisdiction to have committed an act while the person was under 18 years of age that would con-
19 stitute a sex crime if committed in this state by an adult;

20 (d) Is discharged or placed on conditional release by the juvenile panel of the Psychiatric Se-
21 curity Review Board after having been found to be responsible except for insanity under ORS
22 419C.411 for an act that would constitute a sex crime if committed by an adult; or

23 (e) Is discharged by the court under ORS [161.329] **161.327** after having been found guilty except
24 for insanity of a sex crime.

25 (3)(a) Within 10 days following discharge, release on parole, post-prison supervision or other
26 supervised or conditional release, the person shall report, in person, to the Department of State
27 Police, a chief of police or a county sheriff or to the supervising agency, if any.

28 (b) After making the report required by paragraph (a) of this subsection, the person shall report,
29 in person:

30 (A) Within 10 days of a change of residence;

31 (B) Once each year within 10 days of the person's birth date, regardless of whether the person
32 changed residence;

33 (C) Within 10 days of the first day the person works at, carries on a vocation at or attends an
34 institution of higher education; and

35 (D) Within 10 days of a change in work, vocation or attendance status at an institution of higher
36 education.

37 (c) The person shall make the reports required by paragraph (b) of this subsection to the de-
38 partment, a chief of police, a county sheriff or the supervising agency, if any.

39 (d) If the person required to report under this subsection is a youth offender or young person,
40 as defined in ORS 419A.004, who is under supervision, the person shall make the reports required
41 by paragraphs (a) and (b) of this subsection to the agency supervising the person.

42 (e) The obligation to report under this subsection terminates if the conviction or adjudication
43 that gave rise to the obligation is reversed or vacated or if the registrant is pardoned.

44 (4) As part of the registration requirement under this section, the Department of State Police,
45 the chief of police, the county sheriff or the supervising agency:

1 (a) Shall photograph the person and obtain the signature of the person; and

2 (b) May fingerprint the person.

3 **SECTION 13.** ORS 419C.473 is amended to read:

4 419C.473. (1) Whenever a youth offender has been found to be within the jurisdiction of the court
5 under ORS 419C.005 for having committed an act that if done by an adult would constitute a felony
6 listed in subsection (2) of this section, the court shall order the youth offender to submit to the ob-
7 taining of a blood or buccal sample in the manner provided by ORS 137.076. The court shall further
8 order that as soon as practicable after the entry of the dispositional order, the law enforcement
9 agency attending upon the court shall cause a blood or buccal sample to be obtained and transmit-
10 ted in accordance with ORS 137.076. The court may also order the youth offender to reimburse the
11 appropriate agency for the cost of obtaining and transmitting the blood or buccal sample.

12 (2) The felonies to which subsection (1) of this section applies are:

13 (a) Rape, sodomy, unlawful sexual penetration, sexual abuse in the first or second degree, public
14 indecency, incest or using a child in a display of sexually explicit conduct, as those offenses are
15 defined in ORS 163.355 to 163.427, 163.465 (1)(c), 163.525 and 163.670;

16 (b) Burglary in the second degree, as defined in ORS 164.215, when committed with intent to
17 commit any offense listed in paragraph (a) of this subsection;

18 (c) Promoting or compelling prostitution, as defined in ORS 167.012 and 167.017;

19 (d) Burglary in the first degree, as defined in ORS 164.225;

20 (e) Assault in the first degree, as defined in ORS 163.185;

21 (f) Conspiracy or attempt to commit any Class A or Class B felony listed in paragraphs (a) to
22 (e) of this subsection; or

23 (g) Murder or aggravated murder.

24 (3) No order for the obtaining and transmitting of a blood or buccal sample is required to be
25 entered if:

26 (a) The Department of State Police notifies the court or the law enforcement agency attending
27 upon the court that it has previously received an adequate blood or buccal sample taken from the
28 youth offender in accordance with this section, ORS 137.076 or 161.325 [(4)] (2); or

29 (b) The court determines that obtaining a sample would create a substantial and unreasonable
30 risk to the health of the youth offender.

31 (4) Notwithstanding any other provision of law, blood and buccal samples and other physical
32 evidence and criminal identification information obtained under authority of this section or as a
33 result of analysis conducted pursuant to ORS 181.085 may be maintained, stored, destroyed and re-
34 leased to authorized persons or agencies under the conditions established in ORS 181.085 and rules
35 adopted by the Department of State Police under the authority of that section.

36 **SECTION 14. ORS 161.329 is repealed.**

37 **SECTION 15. ORS 161.327 is added to and made a part of ORS 161.315 to 161.351.**

38 **SECTION 16. The amendments to ORS 161.325, 161.326, 161.327, 161.328, 161.336, 161.341,**
39 **161.351, 161.360, 161.365, 161.370, 161.390, 181.595 and 419C.473 by sections 1 to 13 of this 2009**
40 **Act and the repeal of ORS 161.329 by section 14 of this 2009 Act apply to persons charged**
41 **with an offense on or after the effective date of this 2009 Act.**