

House Bill 2080

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Presession filed (at the request of Governor John A. Kitzhaber for Oregon State Police)

SUMMARY

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

Requires that certain court orders indicate that person subject to order is barred from possessing, receiving, shipping or transporting firearm or firearm ammunition.

A BILL FOR AN ACT

1
2 Relating to firearms; amending ORS 161.325, 161.327, 161.370, 426.130 and 427.290.

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

4 **SECTION 1.** ORS 161.325, as amended by section 9, chapter 89, Oregon Laws 2010, is amended
5 to read:

6 161.325. *[(1)]* **(1)(a)** After entry of judgment of guilty except for insanity, the court shall, on the
7 basis of the evidence given at the trial or at a separate hearing, if requested by either party, make
8 an order as provided in ORS 161.327 or 161.329, whichever is appropriate.

9 **(b) The order entered under ORS 161.327 or 161.329 must indicate that the person found**
10 **guilty except for insanity of a crime is barred from possessing, receiving, shipping or trans-**
11 **porting a firearm or firearm ammunition.**

12 (2) If the court makes an order as provided in ORS 161.327, it shall also:

13 (a) Determine on the record the offense of which the person otherwise would have been con-
14 victed;

15 (b) State on the record the mental disease or defect on which the defendant relied for the guilty
16 except for insanity defense; and

17 (c) Make specific findings on whether there is a victim of the crime for which the defendant has
18 been found guilty except for insanity and, if so, whether the victim wishes to be notified, under ORS
19 161.326 (2), of any Psychiatric Security Review Board hearings and orders concerning the defendant
20 and of any conditional release, discharge or escape of the defendant.

21 (3) The court shall include any such findings in its order.

22 (4) Except under circumstances described in ORS 137.076 (4), whenever a defendant charged
23 with any offense listed in ORS 137.076 (1) has been found guilty of that offense except for insanity,
24 the court shall, in any order entered under ORS 161.327 or 161.329, direct the defendant to submit
25 to the obtaining of a blood or buccal sample in the manner provided in ORS 137.076.

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

27 161.327. (1)(a) Following the entry of a judgment pursuant to ORS 161.319 and the dispositional
28 determination under ORS 161.325, if the court finds that the person would have been guilty of a
29 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, the court shall order that a psychiatric or
31 psychological evaluation be performed and a report of the evaluation be provided to the court if an

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

6 (A) A state hospital designated by the Oregon Health Authority if the person is at least 18 years
7 of age; or

8 (B) A secure intensive community inpatient facility designated by the authority if the person is
9 under 18 years of age.

10 (b) The period of jurisdiction of the board is equal to the maximum sentence provided by statute
11 for the crime for which the person was found guilty except for insanity.

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

15 (2) The court shall determine whether the person should be committed to a state hospital, or to
16 a secure intensive community inpatient facility, designated by the authority or conditionally re-
17 leased pending any hearing before the board as follows:

18 (a) If the court finds that the person presents a substantial danger to others and is not a proper
19 subject for conditional release, the court shall order the person committed to a state hospital des-
20 ignated by the authority if the person is at least 18 years of age, or to a secure intensive community
21 inpatient facility designated by the authority if the person is under 18 years of age, for custody, care
22 and treatment pending hearing before the board in accordance with ORS 161.341 to 161.351.

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

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

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

42 (5) In determining whether a person should be committed to a state hospital or to a secure in-
43 tensive community inpatient facility or conditionally released, the court shall have as its primary
44 concern the protection of society.

45 (6) Upon placing a person on conditional release, the court shall notify the board in writing of

1 the court's conditional release order, the supervisor appointed, and all other conditions of release,
2 and the person shall be on conditional release pending hearing before the board in accordance with
3 ORS 161.336 to 161.351. Upon compliance with this subsection and subsections (1) and (2) of this
4 section, the court's jurisdiction over the person is terminated and the board assumes jurisdiction
5 over the person.

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

14 (8) Upon placing a person under the jurisdiction of the board, the court shall notify the
15 person:

16 (a) Of the right to appeal and the right to a hearing before the board in accordance with ORS
17 161.336 (7) and 161.341 (4); and

18 (b) **That the person is barred from possessing, receiving, shipping or transporting a**
19 **firearm or firearm ammunition.**

20 **SECTION 3.** ORS 161.370 is amended to read:

21 161.370. (1) When the defendant's fitness to proceed is drawn in question, the issue shall be de-
22 termined by the court. If neither the prosecuting attorney nor counsel for the defendant contests the
23 finding of the report filed by a psychiatrist or psychologist under ORS 161.365, the court may make
24 the determination on the basis of such report. If the finding is contested, the court shall hold a
25 hearing on the issue. If the report is received in evidence upon such hearing, the party who contests
26 the finding thereof shall have the right to summon and to cross-examine any psychiatrist or psy-
27 chologist who submitted the report and to offer evidence upon the issue. Other evidence regarding
28 the defendant's fitness to proceed may be introduced by either party.

29 (2) If the court determines that the defendant lacks fitness to proceed, the proceeding against
30 the defendant shall be suspended, except as provided in subsection (12) of this section, and the court
31 shall commit the defendant to the custody of the superintendent of a state mental hospital desig-
32 nated by the Oregon Health Authority if the defendant is at least 18 years of age, or to the custody
33 of the director of a secure intensive community inpatient facility designated by the authority if the
34 defendant is under 18 years of age, or shall release the defendant on supervision for as long as such
35 unfitness shall endure. The court may release the defendant on supervision if it determines that care
36 other than commitment for incapacity to stand trial would better serve the defendant and the com-
37 munity. It may place conditions which it deems appropriate on the release, including the require-
38 ment that the defendant regularly report to the authority or a community mental health program for
39 examination to determine if the defendant has regained capacity to stand trial. When the court, on
40 its own motion or upon the application of the superintendent of the hospital or director of the secure
41 intensive community inpatient facility in which the defendant is committed, a person examining the
42 defendant as a condition of release on supervision, or either party, determines, after a hearing, if a
43 hearing is requested, that the defendant has regained fitness to proceed, the proceeding shall be
44 resumed. If, however, the court is of the view that so much time has elapsed since the commitment
45 or release of the defendant on supervision that it would be unjust to resume the criminal proceeding,

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

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

9 (4) In addition, the superintendent or director shall:

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 ex-
 20 pected to gain or regain capacity.

21 (5) If the superintendent or director determines that there is a substantial probability that, in
 22 the foreseeable future, the defendant will gain or regain the capacity to stand trial, unless the court
 23 otherwise orders, the defendant shall remain in the superintendent's or director's custody where the
 24 defendant shall receive treatment designed for the purpose of enabling the defendant to gain or re-
 25 gain capacity. In keeping with the notice requirement under subsection (4)(b) of this section, the
 26 superintendent or director shall, for the duration of the defendant's period of commitment, submit
 27 a progress report to the committing court, concerning the defendant's capacity or incapacity, at
 28 least once every 180 days as measured from the date of the defendant's delivery into the
 29 superintendent's or director's custody.

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

35 (a) Three years; or

36 (b) A period of time equal to the maximum sentence the court could have imposed if the de-
 37 fendant had been convicted.

38 (7) The superintendent or director shall notify the committing court of the defendant's impending
 39 discharge 30 days before the date on which the superintendent or director is required to discharge
 40 the defendant under subsection (6) of this section.

41 (8) When the committing court receives a notice from the superintendent or director under ei-
 42 ther subsection (4) or (7) of this section concerning the defendant's progress or lack thereof, the
 43 committing court shall determine after a hearing, if a hearing is requested, whether the defendant
 44 presently has the capacity to stand trial.

45 (9) If under subsection (8) of this section the court determines that the defendant lacks the ca-

1 capacity to stand trial, the court shall further determine whether there is a substantial probability
 2 that the defendant, in the foreseeable future, will gain or regain the capacity to stand trial and
 3 whether the defendant is entitled to discharge under subsection (6) of this section. If the court de-
 4 termines that there is no substantial probability that the defendant, in the foreseeable future, will
 5 gain or regain the capacity to stand trial or that the defendant is entitled to discharge under sub-
 6 section (6) of this section, the court shall dismiss, without prejudice, all charges against the de-
 7 fendant and:

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

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

10 (10) All notices required under this section shall be filed with the clerk of the court and deliv-
 11 ered to both the district attorney and the counsel for the defendant.

12 (11) If the defendant regains fitness to proceed, the term of any sentence received by the de-
 13 fendant for conviction of the crime charged shall be reduced by the amount of time the defendant
 14 was committed under this section to the custody of a state mental hospital, or to the custody of a
 15 secure intensive community inpatient facility, designated by the Oregon Health Authority.

16 (12) The fact that the defendant is unfit to proceed does not preclude any objection through
 17 counsel and without the personal participation of the defendant on the grounds that the indictment
 18 is insufficient, that the statute of limitations has run, that double jeopardy principles apply or upon
 19 any other ground at the discretion of the court which the court deems susceptible of fair determi-
 20 nation prior to trial.

21 **(13) If the court enters an order finding the defendant lacks fitness to proceed under this**
 22 **section, the order must indicate that the defendant is barred from possessing, receiving,**
 23 **shipping or transporting a firearm or firearm ammunition.**

24 **SECTION 4.** ORS 426.130 is amended to read:

25 426.130. (1) After hearing all of the evidence, and reviewing the findings of the examining per-
 26 sons, the court shall determine whether the person is mentally ill. If, in the opinion of the court, the
 27 person is:

28 (a) Not mentally ill, the person shall be discharged forthwith.

29 (b) Mentally ill based upon clear and convincing evidence, the court:

30 (A) Shall order the release of the individual and dismiss the case if:

31 (i) The mentally ill person is willing and able to participate in treatment on a voluntary basis;
 32 and

33 (ii) The court finds that the person will probably do so.

34 (B) May order conditional release under this subparagraph subject to the qualifications and re-
 35 quirements under ORS 426.125. If the court orders conditional release under this subparagraph, the
 36 court shall establish a period of commitment for the conditional release.

37 (C) May order commitment of the individual to the Oregon Health Authority for treatment if,
 38 in the opinion of the court, subparagraph (A) or (B) of this paragraph is not in the best interest of
 39 the mentally ill person. If the court orders commitment under this subparagraph:

40 (i) The court shall establish a period of commitment.

41 (ii) The authority may place the committed person in outpatient commitment under ORS 426.127.

42 (D) Shall order that the person be prohibited from [*purchasing or possessing a firearm if, in the*
 43 *opinion of the court, there is a reasonable likelihood*] **possessing, receiving, shipping or trans-**
 44 **porting a firearm or firearm ammunition if the court finds that** the person would constitute a
 45 danger to self or others or to the community at large as a result of the person's mental or psycho-

1 logical state as demonstrated by past behavior or participation in incidents involving unlawful vi-
 2 olence or threats of unlawful violence, or by reason of a single incident of extreme, violent, unlawful
 3 conduct. When a court makes an order under this subparagraph, the court shall cause a copy of the
 4 order to be delivered to the sheriff of the county who will enter the information into the Law
 5 Enforcement Data System.

6 (2) A court that orders a conditional release or a commitment under this section shall establish
 7 a period of commitment for the person subject to the order. Any period of commitment ordered for
 8 commitment or conditional release under this section shall be for a period of time not to exceed 180
 9 days.

10 (3) If the commitment proceeding was initiated under ORS 426.070 (1)(a) and if the notice in-
 11 cluded a request under ORS 426.070 (2)(d)(B), the court shall notify the two persons of the court's
 12 determination under subsection (1) of this section.

13 **SECTION 5.** ORS 427.290 is amended to read:

14 427.290. (1) After hearing all of the evidence, and reviewing the findings of the investigation and
 15 other examiners, the court shall determine whether the person is mentally retarded and because of
 16 **the** mental retardation is either dangerous to self or others or is unable to provide for the personal
 17 needs of the person and is not receiving care as is necessary for the health, safety or habilitation
 18 of the person. If in the opinion of the court the person is not mentally retarded, the person shall
 19 be discharged forthwith. If in the opinion of the court the person is, by clear and convincing evi-
 20 dence, mentally retarded, the court may order as follows:

21 [(1)] (a) If the mentally retarded person can give informed consent and is willing and able to
 22 participate in treatment and training on a voluntary basis, and the court finds that the person will
 23 do so, the court shall order release of the person and dismiss the case.

24 [(2)] (b) If a relative, [a] friend or legal guardian of the mentally retarded person requests that
 25 the relative, friend or legal guardian be allowed to care for the mentally retarded person for a pe-
 26 riod of one year in a place satisfactory to the judge and shows that the relative, friend or legal
 27 guardian is able to care for the mentally retarded person and that there are adequate financial re-
 28 sources available for the care of the mentally retarded person, the court may commit the mentally
 29 retarded person and order that the mentally retarded person be conditionally released and placed
 30 in the care and custody of the relative, friend or legal guardian. The order may be revoked and the
 31 mentally retarded person committed to the Department of Human Services for the balance of the
 32 year whenever, in the opinion of the court, it is in the best interest of the mentally retarded person.

33 [(3)] (c) If in the opinion of the court voluntary treatment and training or conditional release
 34 is not in the best interest of the mentally retarded person, the court may order the commitment of
 35 the person to the department for care, treatment or training. The commitment shall be for a period
 36 not to exceed one year with provisions for continuing commitment pursuant to ORS 427.020.

37 [(4)] (d) If in the opinion of the court the mentally retarded person may be incapacitated, the
 38 court may appoint a legal guardian or conservator pursuant to ORS chapter 125. The appointment
 39 of a guardian or conservator shall be a separate order from the order of commitment.

40 **(2) When the court determines that a person is mentally retarded and enters an order**
 41 **under this section, the order must indicate that the person is barred from possessing, re-**
 42 **ceiving, shipping or transporting a firearm or firearm ammunition.**