

A-Engrossed
House Bill 2701

Ordered by the House April 28
Including House Amendments dated April 28

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Judiciary for Disability Rights Oregon)

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.

[Modifies process for commitment of persons found guilty except for insanity or found to be incapacitated. Authorizes court or Psychiatric Security Review Board to commit person to custody of Oregon Health Authority.]

[Requires court to conditionally release person found guilty except for insanity of misdemeanor.]

[Directs Oregon Health Authority to certify psychiatrists and psychologists for purposes of certain evaluations of persons found guilty except for insanity or found to be incapacitated.]

[Requires that certain court-ordered evaluations of defendant be conducted by certified psychiatrist or psychologist.]

Directs superintendent of state hospital to notify Psychiatric Security Review Board when person committed to hospital after being found guilty except for insanity no longer requires hospital care. Requires board to conditionally release person within 60 days of receipt of notice.

Requires superintendent of state hospital to prepare treatment plan for, and conduct certain assessments of, persons committed to hospital after being found guilty except for insanity. Requires Oregon Health Authority to adopt rules describing contents of, and timelines applicable to, treatment plan and assessments.

Modifies manner of calculating initial custody date of person committed to state hospital as result of lack of fitness to proceed with criminal trial.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to crime; creating new provisions; amending ORS 161.327, 161.332, 161.336, 161.341, 161.346,
3 161.370 and 161.390; and declaring an emergency.

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

5 **SECTION 1. (1)(a) When a person is committed to a state hospital under ORS 161.315 to**
6 **161.351, the superintendent shall conduct an initial clinical assessment and an initial risk**
7 **assessment of the person in accordance with the rules adopted under ORS 161.390.**

8 **(b) After the initial clinical assessment and the initial risk assessment described in par-**
9 **agraph (a) of this subsection is conducted, the superintendent shall update the clinical as-**
10 **essment and risk assessment of the person in accordance with the rules adopted under ORS**
11 **161.390.**

12 **(2) The superintendent shall prepare a treatment plan for the person in accordance with**
13 **the rules adopted under ORS 161.390 after the initial clinical assessment and the initial risk**
14 **assessment are completed. Following the completion of a subsequent clinical assessment and**
15 **risk assessment described in subsection (1)(b) of this section, the superintendent shall update**
16 **the treatment plan to address the person's progress toward meeting the plan and any**
17 **changed treatment, conditional release or discharge needs.**

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 **(3) When the superintendent determines that a person committed to a state hospital**
2 **under ORS 161.315 to 161.351 has met the clinical goals set for the person and no longer re-**
3 **quires hospital care, the superintendent shall notify the Psychiatric Security Review Board**
4 **and the Oregon Health Authority of that determination.**

5 **(4) If a preconditional release plan or a predischarge plan has not been completed on the**
6 **date the superintendent makes the notification described in subsection (3) of this section, the**
7 **authority shall complete the plan within 45 days.**

8 **(5) As used in this section, “superintendent” means the superintendent of the state hos-**
9 **pital to which the person is committed, or the superintendent’s authorized representative.**

10 **SECTION 2.** ORS 161.336 is amended to read:

11 161.336. (1)(a) If the Psychiatric Security Review Board determines that the person presents a
12 substantial danger to others but can be adequately controlled with supervision and treatment if
13 conditionally released and that necessary supervision and treatment are available, the board may
14 order the person conditionally released[.].

15 **(b) When the superintendent, as defined in section 1 of this 2011 Act, notifies the board**
16 **under section 1 of this 2011 Act that a person under the jurisdiction of the board has met**
17 **the clinical goals set for the person and no longer requires hospital care, the board shall**
18 **order the person conditionally released no later than 60 days after receiving the notice. When**
19 **a person is conditionally released under this paragraph:**

20 **(A) The board may not require the person to reside in a setting that is more restrictive**
21 **than necessary, as determined by the most recent risk assessment; and**

22 **(B) The conditions of release must meet the person’s treatment and support services**
23 **needs and the person’s community placement preferences.**

24 **(c) When a person is conditionally released under this section, the person is** subject to
25 those supervisory orders of the board as are in the best interests of justice, the protection of society
26 and the welfare of the person. The board may designate any person or state, county or local agency
27 the board considers capable of supervising the person upon release, subject to those conditions as
28 the board directs in the order for conditional release. Prior to the designation, the board shall notify
29 the person or agency to whom conditional release is contemplated and provide the person or agency
30 an opportunity to be heard before the board. After receiving an order entered under this section,
31 the person or agency designated shall assume supervision of the person pursuant to the direction
32 of the board.

33 (2) Conditions of release contained in orders entered under this section may be modified from
34 time to time and conditional releases may be terminated by order of the board as provided in ORS
35 161.351.

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. The person may be continued on conditional release by the board as
40 provided in this section.

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

45 (b) The facility to which the person has been referred for evaluation shall perform the evalu-

1 ation and submit a written report of its findings to the board. If the facility finds that treatment of
 2 the person is appropriate, it shall include its recommendations for treatment in the report to the
 3 board.

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

6 (d) Copies of all reports submitted to the board pursuant to this section shall be furnished to the
 7 person and the person's counsel. The confidentiality of these reports is determined pursuant to ORS
 8 192.501 to 192.505.

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

11 (5)(a) If at any time while the person is under the jurisdiction of the board it appears to the
 12 board or its chairperson that the person has violated the terms of the conditional release or that
 13 the mental health of the individual has changed, the board or its chairperson may order the person
 14 *[returned for evaluation or treatment to a state hospital designated by the Oregon Health Authority if*
 15 *the person is at least 18 years of age, or to a secure intensive community inpatient facility designated*
 16 *by the authority]* **placed in a residential facility or, if the person is under 18 years of age, placed**
 17 **in a secure intensive community inpatient facility, designated by the Oregon Health Au-**
 18 **thority.** A written order of the board, or its chairperson on behalf of the board, is sufficient warrant
 19 for any law enforcement officer to take into custody such person and transport the person accord-
 20 ingly. A sheriff, municipal police officer, constable, parole and probation officer, prison official or
 21 other peace officer shall execute the order, and the person shall be *[returned as soon as practicable*
 22 *to the custody of the authority]* **transported to the facility designated in the order as soon as**
 23 **practicable.**

24 (b) **The community mental health program director, the director of the facility providing**
 25 **treatment to a person on conditional release, any peace officer or any person responsible for**
 26 **the supervision of a person on conditional release may take a person on conditional release**
 27 **into custody or request that the person be taken into custody if there is reasonable cause**
 28 **to believe that the person is a substantial danger to others because of mental disease or**
 29 **defect and that the person is in need of immediate care, custody or treatment. Any person**
 30 **taken into custody pursuant to this paragraph shall be transported as soon as practicable**
 31 **to a residential facility or, if the person is under 18 years of age, to a secure intensive com-**
 32 **munity inpatient facility, designated by the Oregon Health Authority.**

33 (c) **When a person is placed in a residential facility or a secure intensive community in-**
 34 **patient facility under this subsection, the board shall order an evaluation of the person.**

35 (d) Within 20 days following the *[return of the person to the custody of the authority]* **placement**
 36 **of the person in a residential facility or a secure intensive community inpatient facility,** the
 37 board shall conduct a hearing. Notice of the time and place of the hearing shall be given to the
 38 person, the attorney representing the person and the Attorney General. The board *[may]* **shall** con-
 39 tinue the person on conditional release *[or, if it]* **if the evaluation ordered under paragraph (c)**
 40 **of this subsection indicates that the person does not require hospital care. If the evaluation**
 41 **ordered under paragraph (c) of this subsection indicates that the person requires hospital**
 42 **care and the board** finds by a preponderance of the evidence that the person is affected by mental
 43 disease or defect and presents a substantial danger to others and cannot be adequately controlled
 44 if conditional release is continued, *[it may]* **the board shall** order the person committed to a state
 45 hospital *[designated by the authority if the person is at least 18 years of age,]* **or, if the person is**

1 **under 18 years of age**, to a secure intensive community inpatient facility, designated by the
 2 **Oregon Health Authority** [*if the person is under 18 years of age.*] The state must prove by a pre-
 3 ponderance of the evidence the person's unfitness for conditional release. A person in custody pur-
 4 suant to this subsection has the same rights as any person appearing before the board pursuant to
 5 ORS 161.346.

6 [*(6) The community mental health program director, the director of the facility providing treatment*
 7 *to a person on conditional release, any peace officer or any person responsible for the supervision of*
 8 *a person on conditional release may take a person on conditional release into custody or request that*
 9 *the person be taken into custody if there is reasonable cause to believe the person is a substantial*
 10 *danger to others because of mental disease or defect and that the person is in need of immediate care,*
 11 *custody or treatment. Any person taken into custody pursuant to this subsection shall be transported*
 12 *as soon as practicable to a state hospital designated by the authority if the person is at least 18 years*
 13 *of age, or to a secure intensive community inpatient facility designated by the authority if the person*
 14 *is under 18 years of age. A person taken into custody under this subsection has the same rights as any*
 15 *person appearing before the board pursuant to ORS 161.346.*]

16 [(7)(a)] **(6)(a)** Any person conditionally released under this section may apply to the board for
 17 discharge from or modification of an order of conditional release on the ground that the person is
 18 no longer affected by mental disease or defect or, if still so affected, no longer presents a substantial
 19 danger to others and no longer requires supervision, medication, care or treatment. Notice of the
 20 hearing on an application for discharge or modification of an order of conditional release shall be
 21 made to the Attorney General. The applicant, at the hearing pursuant to this subsection, must prove
 22 by a preponderance of the evidence the applicant's fitness for discharge or modification of the order
 23 of conditional release. Applications by the person for discharge or modification of conditional re-
 24 lease shall not be filed more often than once every six months.

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

29 [(8)] **(7)** The total period of commitment and conditional release ordered pursuant to this section
 30 may not exceed the maximum sentence provided by statute for the crime for which the person was
 31 found guilty except for insanity.

32 [(9)] **(8)** The board shall maintain and keep current the medical, social and criminal history of
 33 all persons committed to its jurisdiction. The confidentiality of records maintained by the board
 34 shall be determined pursuant to ORS 192.501 to 192.505.

35 [(10)] **(9)** In determining whether a person should be committed to a state hospital or to a secure
 36 intensive community inpatient facility, conditionally released or discharged, the board shall have as
 37 its primary concern the protection of society.

38 **SECTION 3.** ORS 161.341 is amended to read:

39 161.341. (1) If the Psychiatric Security Review Board finds, upon its initial hearing, that the
 40 person presents a substantial danger to others and is not a proper subject for conditional release,
 41 the board shall order the person committed to, or retained in, a state hospital designated by the
 42 Oregon Health Authority if the person is at least 18 years of age, or to a secure intensive commu-
 43 nity inpatient facility designated by the authority if the person is under 18 years of age, for custody,
 44 care and treatment. The period of commitment ordered by the board may not exceed the maximum
 45 sentence provided by statute for the crime for which the person was found guilty except for insanity.

1 (2)(a) If at any time after the commitment of a person to a state hospital, or to a secure inten-
 2 sive community inpatient facility, designated by the authority under this section, the superintendent
 3 of the hospital or the director of the secure intensive community inpatient facility is of the opinion
 4 that the person is no longer affected by mental disease or defect, or, if so affected, no longer pre-
 5 sents a substantial danger to others [*or that the person continues to be affected by mental disease or*
 6 *defect and continues to be a danger to others, but that the person can be controlled with proper care,*
 7 *medication, supervision and treatment if conditionally released*], the superintendent or director shall
 8 apply to the board for an order of discharge [*or conditional release*]. The application shall be ac-
 9 companied by a report setting forth the facts supporting the opinion of the superintendent or di-
 10 rector.

11 **(b) If, at any time after the commitment of a person to a secure intensive community**
 12 **inpatient facility, the director of the facility is of the opinion that the person continues to**
 13 **be a danger to others, but that the person can be controlled with proper care, medication,**
 14 **supervision and treatment if conditionally released, the director shall apply to the board for**
 15 **an order of conditional release.** [*If the application is for conditional release,*] The application must
 16 [*also*] be accompanied by a report setting forth the facts supporting the opinion of the director
 17 and a verified conditional release plan.

18 (c) The board shall hold a hearing on [*the*] **an application described in this subsection** within
 19 60 days of its receipt. Not less than 20 days prior to the hearing before the board, copies of the
 20 report shall be sent to the Attorney General.

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

27 (4) Any person who has been committed to a state hospital, or to a secure intensive community
 28 inpatient facility, designated by the authority for custody, care and treatment or another person
 29 acting on the person's behalf may apply to the board for an order of discharge or conditional release
 30 upon the grounds:

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

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

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

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

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

4 (7)(a) In no case shall any person committed by the court under ORS 161.327 to a state hospital,
5 or to a secure intensive community inpatient facility, designated by the authority be held in the
6 hospital or facility for more than 90 days from the date of the court's commitment order without an
7 initial hearing before the board to determine whether the person should be conditionally released
8 or discharged.

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

12 **SECTION 4.** ORS 161.346 is amended to read:

13 161.346. (1) The Psychiatric Security Review Board shall conduct hearings upon any application
14 for discharge, conditional release, commitment or modification filed pursuant to ORS 161.336, 161.341
15 or 161.351 and as otherwise required by ORS 161.336 to 161.351 and shall make findings on the is-
16 sues before [*it which may include*] **the board. Except as otherwise provided in ORS 161.336 and**
17 **subsection (2) of this section:**

18 (a) If the board finds that the person is no longer affected by mental disease or defect, or, if so
19 affected, no longer presents a substantial danger to others, the board shall order the person dis-
20 charged from commitment or from conditional release.

21 (b) If the board finds that the person is still affected by a mental disease or defect and is a
22 substantial danger to others, but can be controlled adequately if conditionally released with treat-
23 ment as a condition of release, the board shall order the person conditionally released as provided
24 in ORS 161.336.

25 (c) If the board finds that the person has not recovered from the mental disease or defect and
26 is a substantial danger to others and cannot adequately be controlled if conditionally released on
27 supervision, the board shall order the person committed to, or retained in, a state hospital desig-
28 nated by the Oregon Health Authority if the person is at least 18 years of age, or a secure intensive
29 community inpatient facility designated by the authority if the person is under 18 years of age, for
30 care, custody and treatment.

31 (2) At any time, the board may appoint a psychiatrist or licensed psychologist to examine the
32 person and to submit a report to the board. Reports filed with the board pursuant to the examination
33 shall include, but need not be limited to, an opinion as to the mental condition of the person and
34 whether the person presents a substantial danger to others, and whether the person could be ade-
35 quately controlled with treatment as a condition of release. To facilitate the examination of the
36 person, the board may order the person placed in the temporary custody of [*any state hospital or*
37 *other suitable facility.*] **a residential facility or a secure intensive community inpatient facility.**
38 **When the board places a person in the temporary custody of a facility under this subsection,**
39 **the board may not order the person committed to a state hospital, or if the person is under**
40 **18 years of age, to a secure intensive community inpatient facility, unless the examination**
41 **indicates that the person requires hospital care.**

42 (3) The board may make the determination regarding discharge or conditional release based
43 upon the written reports submitted pursuant to this section. If any member of the board desires
44 further information from the examining psychiatrist or licensed psychologist who submitted the re-
45 port, these persons shall be summoned by the board to give testimony. The board shall consider all

1 evidence available to it which is material, relevant and reliable regarding the issues before the
2 board. Such evidence may include but is not limited to the record of trial, the information supplied
3 by the attorney representing the state or by any other interested party, including the person, and
4 information concerning the person's mental condition and the entire psychiatric and criminal history
5 of the person. All evidence of a type commonly relied upon by reasonably prudent persons in the
6 conduct of their serious affairs shall be admissible at hearings. Testimony shall be taken upon oath
7 or affirmation of the witness from whom received. The officer presiding at the hearing shall admin-
8 ister oaths or affirmations to witnesses.

9 (4) The board shall furnish to the person about whom the hearing is being conducted, the at-
10 torney representing the person, the Attorney General, the district attorney and the court or de-
11 partment of the county from which the person was committed written notice of any hearing pending
12 under this section within a reasonable time prior to the hearing. The notice shall include:

13 (a) The time, place and location of the hearing.

14 (b) The nature of the hearing and the specific action for which a hearing has been requested,
15 the issues to be considered at the hearing and a reference to the particular sections of the statutes
16 and rules involved.

17 (c) A statement of the authority and jurisdiction under which the hearing is to be held.

18 (d) A statement of all rights under subsection (6) of this section.

19 (5) Prior to the commencement of a hearing, the board or presiding officer shall serve personally
20 or by mail a written notice to each party as provided in ORS 183.413 (2).

21 (6) At the hearing, the person about whom the hearing is being held shall have the right:

22 (a) To appear at all proceedings held pursuant to this section, except board deliberations.

23 (b) To cross-examine all witnesses appearing to testify at the hearing.

24 (c) To subpoena witnesses and documents as provided in ORS 161.395.

25 (d) To be represented by suitable legal counsel possessing skills and experience commensurate
26 with the nature and complexity of the case, to consult with counsel prior to the hearing and, if fi-
27 nancially eligible, to have suitable counsel appointed at state expense.

28 (e) To examine all information, documents and reports which the board considers. If then avail-
29 able to the board, the information, documents and reports shall be disclosed to the person so as to
30 allow examination prior to the hearing.

31 (7) A record shall be kept of all hearings before the board, except board deliberations.

32 (8) Upon request of any party before the board, or on its own motion, the board may continue
33 a hearing for a reasonable period not to exceed 60 days to obtain additional information or testi-
34 mony or for other good cause shown.

35 (9) Within 15 days following the conclusion of the hearing, the board shall provide to the person,
36 the attorney representing the person, the Attorney General or other attorney representing the state,
37 if any, written notice of the board's decision.

38 (10) The burden of proof on all issues at hearings of the board shall be by a preponderance of
39 the evidence.

40 (11) If the board determines that the person about whom the hearing is being held is financially
41 eligible, the board shall appoint suitable counsel to represent the person. Counsel so appointed shall
42 be an attorney who satisfies the professional qualifications established by the Public Defense Ser-
43 vices Commission under ORS 151.216. The public defense services executive director shall determine
44 and allow fair compensation for counsel appointed under this subsection and the reasonable ex-
45 penses of the person in respect to the hearing. Compensation payable to appointed counsel shall not

1 be less than the applicable compensation level established under ORS 151.216. The compensation and
 2 expenses so allowed shall be paid by the public defense services executive director from funds
 3 available for the purpose.

4 (12) The Attorney General may represent the state at contested hearings before the board unless
 5 the district attorney of the county from which the person was committed elects to represent the
 6 state. The district attorney of the county from which the person was committed shall cooperate with
 7 the Attorney General in securing the material necessary for presenting a contested hearing before
 8 the board. If the district attorney elects to represent the state, the district attorney shall give timely
 9 written notice of such election to the Attorney General, the board and the attorney representing the
 10 person.

11 **SECTION 5.** ORS 161.390 is amended to read:

12 161.390. (1) The Oregon Health Authority shall promulgate rules for the assignment of persons
 13 to state mental hospitals [*or*], secure intensive community inpatient facilities **or residential facili-**
 14 **ties** under ORS [*161.341*] **161.315 to 161.351**, 161.365 and 161.370 and for establishing standards for
 15 evaluation and treatment of persons committed to a state hospital or a secure intensive community
 16 inpatient facility, designated by the authority, or ordered to a community mental health program
 17 under ORS 161.315 to 161.351.

18 (2) Whenever the Psychiatric Security Review Board requires the preparation of a predischarge
 19 or preconditional release plan before a hearing or as a condition of granting discharge or condi-
 20 tional release for a person committed under ORS 161.327 or 161.341 to a state hospital or a secure
 21 intensive community inpatient facility for custody, care and treatment, the authority is responsible
 22 for and shall prepare the plan.

23 (3) In carrying out a conditional release plan prepared under subsection (2) of this section, the
 24 authority may contract with a community mental health program, other public agency or private
 25 corporation or an individual to provide supervision and treatment for the conditionally released
 26 person.

27 **(4)(a) The Oregon Health Authority shall, after consulting with the Oregon State Hospital**
 28 **Advisory Board, adopt rules prescribing:**

29 **(A) The contents of the clinical assessments, risk assessments and treatment plans**
 30 **conducted or prepared under section 1 of this 2011 Act.**

31 **(B) The period of time within which the initial clinical assessment and initial risk as-**
 32 **essment described in section 1 (1)(a) of this 2011 Act must be completed following the**
 33 **commitment of a person to a state hospital under ORS 161.315 to 161.351.**

34 **(C) The period of time within which the treatment plan must be prepared, following the**
 35 **completion of the initial clinical assessment and initial risk assessment.**

36 **(D) The frequency of the subsequent clinical assessments and risks assessments de-**
 37 **scribed in section 1 (1)(b) of this 2011 Act.**

38 **(b) The rules adopted under this subsection must represent appropriate practices for**
 39 **psychiatric hospital settings and must meet or exceed the assessment and treatment stan-**
 40 **dards of a psychiatric hospital accrediting organization approved by the authority.**

41 **(c) The superintendent of each state hospital shall regularly report to the Oregon State**
 42 **Hospital Advisory Board on the hospital's compliance with the rules adopted under this sec-**
 43 **tion.**

44 **SECTION 6.** ORS 161.332 is amended to read:

45 161.332. As used in ORS 161.315 to 161.351 and 161.385 to 161.395[,]:

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

3 (2) **"Residential facility" has the meaning given that term in ORS 443.400.**

4 **SECTION 7.** ORS 161.370 is amended to read:

5 161.370. (1) When the defendant's fitness to proceed is drawn in question, the issue shall be de-
6 termined by the court. If neither the prosecuting attorney nor counsel for the defendant contests the
7 finding of the report filed by a psychiatrist or psychologist under ORS 161.365, the court may make
8 the determination on the basis of such report. If the finding is contested, the court shall hold a
9 hearing on the issue. If the report is received in evidence upon such hearing, the party who contests
10 the finding thereof shall have the right to summon and to cross-examine any psychiatrist or psy-
11 chologist who submitted the report and to offer evidence upon the issue. Other evidence regarding
12 the defendant's fitness to proceed may be introduced by either party.

13 (2) If the court determines that the defendant lacks fitness to proceed, the proceeding against
14 the defendant shall be suspended, except as provided in subsection (12) of this section, and the court
15 shall commit the defendant to the custody of the superintendent of a state [*mental*] hospital desig-
16 nated by the Oregon Health Authority if the defendant is at least 18 years of age, or to the custody
17 of the director of a secure intensive community inpatient facility designated by the authority if the
18 defendant is under 18 years of age, or shall release the defendant on supervision for as long as such
19 unfitness shall endure. The court may release the defendant on supervision if it determines that care
20 other than commitment for incapacity to stand trial would better serve the defendant and the com-
21 munity. It may place conditions which it deems appropriate on the release, including the require-
22 ment that the defendant regularly report to the authority or a community mental health program for
23 examination to determine if the defendant has regained capacity to stand trial. When the court, on
24 its own motion or upon the application of the superintendent of the hospital or director of the secure
25 intensive community inpatient facility in which the defendant is committed, a person examining the
26 defendant as a condition of release on supervision, or either party, determines, after a hearing, if a
27 hearing is requested, that the defendant has regained fitness to proceed, the proceeding shall be
28 resumed. If, however, the court is of the view that so much time has elapsed since the commitment
29 or release of the defendant on supervision that it would be unjust to resume the criminal proceeding,
30 the court on motion of either party may dismiss the charge and may order the defendant to be dis-
31 charged or cause a proceeding to be commenced forthwith under ORS 426.070 to 426.170 or 427.235
32 to 427.290.

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

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

39 (a) Immediately notify the committing court if the defendant, at any time, gains or regains the
40 capacity to stand trial or will never have the capacity to stand trial.

41 (b) Within 90 days of the defendant's delivery into the superintendent's or director's custody,
42 notify the committing court that:

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

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

1 (C) There is a substantial probability that, in the foreseeable future, the defendant will gain or
 2 regain the capacity to stand trial. If such a probability exists, the superintendent or director shall
 3 give the court an estimate of the time in which the defendant, with appropriate treatment, is ex-
 4 pected to gain or regain capacity.

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

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

20 [(a)] (A) Three years; or

21 [(b)] (B) A period of time equal to the maximum sentence the court could have imposed if the
 22 defendant had been convicted.

23 **(b) For purposes of calculating the maximum period of commitment described in para-**
 24 **graph (a) of this subsection:**

25 **(A) The initial custody date is the date on which the defendant is first committed under**
 26 **this section as a result of any charge alleged in the accusatory instrument; and**

27 **(B) The defendant shall be given credit against each charge alleged in the accusatory**
 28 **instrument for each day the defendant is committed under this section, whether the days**
 29 **are consecutive or are interrupted by a period of time during which the defendant has re-**
 30 **gained fitness to proceed.**

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

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

38 (9) If under subsection (8) of this section the court determines that the defendant lacks the ca-
 39 pacity to stand trial, the court shall further determine whether there is a substantial probability
 40 that the defendant, in the foreseeable future, will gain or regain the capacity to stand trial and
 41 whether the defendant is entitled to discharge under subsection (6) of this section. If the court de-
 42 termines that there is no substantial probability that the defendant, in the foreseeable future, will
 43 gain or regain the capacity to stand trial or that the defendant is entitled to discharge under sub-
 44 section (6) of this section, the court shall dismiss, without prejudice, all charges against the de-
 45 fendant and:

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

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

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

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

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

14 **SECTION 8.** ORS 161.327 is amended to read:

15 161.327. (1)(a) Following the entry of a judgment pursuant to ORS 161.319 and the dispositional
16 determination under ORS 161.325, if the court finds that the person would have been guilty of a
17 felony, or of a misdemeanor during a criminal episode in the course of which the person caused
18 physical injury or risk of physical injury to another, the court shall order that a psychiatric or
19 psychological evaluation be performed and a report of the evaluation be provided to the court if an
20 evaluation was not performed or a report was not provided to the court prior to trial. Upon receipt
21 of the evaluation, the court shall order that the person be placed under the jurisdiction of the Psy-
22 chiatric Security Review Board for care and treatment if the court finds by a preponderance of the
23 evidence that the person is affected by mental disease or defect and presents a substantial danger
24 to others requiring commitment to:

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

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

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

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

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

37 (a) If the court finds that the person presents a substantial danger to others and is not a proper
38 subject for conditional release, the court shall order the person committed to a state hospital des-
39 ignated by the authority if the person is at least 18 years of age, or to a secure intensive community
40 inpatient facility designated by the authority if the person is under 18 years of age, for custody, care
41 and treatment pending hearing before the board in accordance with ORS [*161.341*] **161.315** to 161.351.

42 (b) If the court finds that the person presents a substantial danger to others but that the person
43 can be adequately controlled with supervision and treatment if conditionally released and that nec-
44 essary supervision and treatment are available, the court may order the person conditionally re-
45 leased, subject to those supervisory orders of the court as are in the best interests of justice, the

1 protection of society and the welfare of the person. The court shall designate a person or state,
 2 county or local agency to supervise the person upon release, subject to those conditions as the court
 3 directs in the order for conditional release. Prior to the designation, the court shall notify the per-
 4 son or agency to whom conditional release is contemplated and provide the person or agency an
 5 opportunity to be heard before the court. After receiving an order entered under this paragraph, the
 6 person or agency designated shall assume supervision of the person pursuant to the direction of the
 7 Psychiatric Security Review Board. The person or agency designated as supervisor shall be required
 8 to report in writing no less than once per month to the board concerning the supervised person's
 9 compliance with the conditions of release.

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

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

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

19 (6) Upon placing a person on conditional release, the court shall notify the board in writing of
 20 the court's conditional release order, the supervisor appointed, and all other conditions of release,
 21 and the person shall be on conditional release pending hearing before the board in accordance with
 22 ORS 161.336 to 161.351. Upon compliance with this subsection and subsections (1) and (2) of this
 23 section, the court's jurisdiction over the person is terminated and the board assumes jurisdiction
 24 over the person.

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

33 (8) Upon placing a person under the jurisdiction of the board, the court shall notify the person
 34 of the right to appeal and the right to a hearing before the board in accordance with ORS 161.336
 35 [(7)] (6) and 161.341 (4).

36 **SECTION 9. Section 1 of this 2011 Act and ORS 161.327 are added to and made a part of**
 37 **ORS 161.315 to 161.351.**

38 **SECTION 10. (1) The amendments to ORS 161.327, 161.332, 161.336, 161.341, 161.346 and**
 39 **161.390 by sections 2 to 6 and 8 of this 2011 Act apply to persons found guilty except for in-**
 40 **sanity of a crime before, on or after the effective date of this 2011 Act.**

41 **(2) The amendments to ORS 161.370 by section 7 of this 2011 Act apply to persons com-**
 42 **mitted by the court under ORS 161.370 before, on or after the effective date of this 2011 Act.**

43 **SECTION 11. This 2011 Act being necessary for the immediate preservation of the public**
 44 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
 45 **on its passage.**

