

**Enrolled**  
**Senate Bill 420**

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Judiciary)

CHAPTER .....

AN ACT

Relating to mentally ill defendants; creating new provisions; amending ORS 21.010, 137.750, 151.216, 161.325, 161.326, 161.327, 161.328, 161.329, 161.332, 161.336, 161.341, 161.346, 161.351, 161.375, 161.385, 161.387, 161.390, 161.395, 161.400, 162.135, 162.155, 181.740, 183.315, 183.635, 192.690, 278.315, 430.695, 809.419 and 810.375; appropriating money; and declaring an emergency.

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

**AGENCY HEARINGS AND JURISDICTION**

**SECTION 1.** ORS 161.346 is amended to read:

161.346. (1) **When** the Psychiatric Security Review Board *[shall conduct hearings upon any application for discharge, conditional release, commitment or modification filed pursuant to ORS 161.336, 161.341 or 161.351 and as otherwise required by ORS 161.336 to 161.351 and]* **or the Oregon Health Authority conducts a hearing under ORS 161.315 to 161.351, the agency conducting the hearing shall enter an order and make findings** *[on the issues before it which may include:]* **in support of the order. If the agency finds that a person under the jurisdiction of the agency:**

(a) *[If the board finds that the person]* Is no longer affected by mental disease or defect, or, if so affected, no longer presents a substantial danger to others, the *[board]* **agency** shall order the person discharged from commitment *[or from]* **and** conditional release.

(b) *[If the board finds that the person]* Is still affected by a mental disease or defect and is a substantial danger to others, but can be controlled adequately if conditionally released with treatment as a condition of release, the *[board]* **agency** shall order the person conditionally released as provided in ORS 161.336.

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

**(2)(a) Except as otherwise provided in section 15 of this 2011 Act, the Psychiatric Security Review Board shall exercise exclusive jurisdiction over a tier one offender until the board discharges the person from the jurisdiction of the board or the maximum period of jurisdiction expires.**

(b) When the board orders a tier two offender committed to a state hospital, or a secure intensive community inpatient facility, under ORS 161.315 to 161.351, the order shall transfer jurisdiction over the person to the Oregon Health Authority.

(c) When the authority orders a tier two offender conditionally released under ORS 161.315 to 161.351, the order shall transfer jurisdiction over the person to the board.

(d) The authority shall assume jurisdiction over a tier two offender when the person is returned to a state hospital, or to a secure intensive community inpatient facility, under ORS 161.336 (4).

[(2)] (3) To assist the agency in making the determination described in subsection (1) of this section, the agency exercising jurisdiction over the person may, at any time, [*the board may*] appoint a psychiatrist or licensed psychologist to examine the person and to submit a report to the [*board. Reports filed with the board pursuant to the examination shall include, but need not be limited to,*] **agency. The report must include** an opinion as to the mental condition of the person [*and*], whether the person presents a substantial danger to others[,] and whether the person could be adequately controlled with treatment as a condition of release. [*To facilitate the examination of the person, the board may order the person placed in the temporary custody of any state hospital or other suitable facility.*]

[(3)] (4) The [*board*] **agency exercising jurisdiction over the person** may make the determination regarding discharge or conditional release based upon the written reports submitted pursuant to this section. If **the authority or** any member of the board desires further information from the examining psychiatrist or licensed psychologist who submitted the report, [*these persons shall be summoned by the board*] **the agency shall summon the person** to give testimony. The [*board*] **agency** shall consider all evidence available to it [*which*] **that** is material, relevant and reliable regarding the issues before the [*board. Such*] **agency. The** evidence may include but is not limited to the record of trial, the information supplied by the attorney representing the state or by any other interested party, including the person, and information concerning the person's mental condition and the entire psychiatric and criminal history of the person. All evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible at hearings. Testimony shall be taken upon oath or affirmation of the witness from whom received. The officer presiding at the hearing shall administer oaths or affirmations to witnesses.

[(4)] (5) The [*board*] **agency exercising jurisdiction over the person** shall furnish to the person about whom the hearing is being conducted, the attorney representing the person, the Attorney General, the district attorney and the court or department of the county from which the person was committed written notice of any hearing pending under this section within a reasonable time prior to the hearing. The notice shall include:

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

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

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

(d) A statement of all rights under subsection [(6)] (7) of this section.

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

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

(a) To appear at all proceedings held pursuant to this section, except [*board*] **for** deliberations.

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

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

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

(e) To examine all information, documents and reports [which] **that** the [board] **agency** considers. If then available to the [board] **agency**, the information, documents and reports shall be disclosed to the person so as to allow examination prior to the hearing.

[(7)] (8) A record shall be kept of all hearings [before the board, except board] **conducted under ORS 161.315 to 161.351, except for deliberations.**

[(8)] (9) Upon request of any party [before the board], or on [its own motion, the board may continue a hearing] **motion of the agency conducting the hearing, the hearing may be continued** for a reasonable period not to exceed 60 days to obtain additional information or testimony or for other good cause shown.

[(9)] (10) Within 15 days following the conclusion of the hearing, the [board] **agency** shall provide to the person, the attorney representing the person, the Attorney General or other attorney representing the state, if any, written notice of the [board's decision] **order entered by the agency.**

[(10)] (11) The burden of proof on all issues at hearings [of the board] **under ORS 161.315 to 161.351** shall be by a preponderance of the evidence.

[(11)] (12) If the [board] **agency conducting the hearing** determines that the person about whom the hearing is being held is financially eligible, the [board] **agency** shall appoint suitable counsel to represent the person. Counsel so appointed shall be an attorney who satisfies the professional qualifications established by the Public Defense Services Commission under ORS 151.216. The public defense services executive director shall determine and allow fair compensation for counsel appointed under this subsection and the reasonable expenses of the person in respect to the hearing. Compensation payable to appointed counsel shall not be less than the applicable compensation level established under ORS 151.216. The compensation and expenses so allowed shall be paid by the public defense services executive director from funds available for the purpose.

[(12)] (13) The Attorney General may represent the state at contested hearings [before the board] **under ORS 161.315 to 161.351** unless the district attorney of the county from which the person was committed elects to represent the state. The district attorney of the county from which the person was committed shall cooperate with the Attorney General in securing the material necessary for presenting a contested hearing [before the board]. If the district attorney elects to represent the state, the district attorney shall give timely written notice of such election to the Attorney General, the [board] **agency conducting the hearing** and the attorney representing the person.

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

161.336. (1)(a) [If the Psychiatric Security Review Board determines that the person presents a substantial danger to others but can be adequately controlled with supervision and treatment if conditionally released and that necessary supervision and treatment are available, the board may order the person conditionally released,] **When a person is conditionally released under ORS 161.315 to 161.351, the person is** subject to those supervisory orders of the **Psychiatric Security Review Board** as are in the best interests of justice, the protection of society and the welfare of the person.

(b) [The board] **An order of conditional release entered by the board or the Oregon Health Authority** may designate any person or state, county or local agency [the board considers] capable of supervising the person upon release, subject to [those conditions as the board directs in the order for conditional release] **the conditions described in the order of conditional release.**

(c) Prior to the designation, the [board] **agency conducting the hearing** shall notify the person or **state, county or local** agency to whom conditional release is contemplated and provide the person or **state, county or local** agency an opportunity to be heard [before the board].

(d) After receiving an order entered under this section, the person or **state, county or local** agency designated **in the order** shall assume supervision of the person [pursuant to the direction of the] **in accordance with the conditions described in the order and any modifications of the conditions ordered by the board.**

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

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

*[(4)(a)]* **(3)(a)** As a condition of release, *[the board may require]* the person **may be required** to report to any state or local mental health facility for evaluation. Whenever medical, psychiatric or psychological treatment is recommended, the *[board may]* order **may require** the person, as a condition of release, to cooperate with and accept the treatment from the facility.

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

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

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

(e) The facility shall comply with **the conditional release order and any modifications of the conditions ordered by** *[any other conditions of release prescribed by order of]* the board.

*[(5)]* **(4)(a)** If at any time while the person is under the jurisdiction of the board it appears to the board or its chairperson that the person has violated the terms of the conditional release or that the mental health of the individual has changed, the board or its chairperson may order the person returned for evaluation or treatment to a state hospital *[designated by the Oregon Health Authority if the person is at least 18 years of age,]* or, **if the person is under 18 years of age,** to a secure intensive community inpatient facility *[designated by the authority if the person is under 18 years of age]*. A written order of the board, or its chairperson on behalf of the board, is sufficient warrant for any law enforcement officer to take into custody such person and transport the person accordingly. A sheriff, municipal police officer, constable, parole and probation officer, prison official or other peace officer shall execute the order, and the person shall be returned as soon as practicable **to the state hospital or secure intensive community inpatient facility designated in the order.** *[to the custody of the authority. Within 20 days following the return of the person to the custody of the authority, the board shall conduct a hearing. Notice of the time and place of the hearing shall be given to the person, the attorney representing the person and the Attorney General. The board may continue the person on conditional release or, if it finds by a preponderance of the evidence that the person is affected by mental disease or defect and presents a substantial danger to others and cannot be adequately controlled if conditional release is continued, it may order the person committed to a state hospital designated by the authority if the person is at least 18 years of age, or to a secure intensive community inpatient facility designated by the authority if the person is under 18 years of age. The state must prove by a preponderance of the evidence the person's unfitness for conditional release. A person in custody pursuant to this subsection has the same rights as any person appearing before the board pursuant to ORS 161.346.]*

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

*person taken into custody under this subsection has the same rights as any person appearing before the board pursuant to ORS 161.346.]*

**(c) Within 20 days following the return of the person to a state hospital or secure intensive community inpatient facility under this subsection, the agency having jurisdiction over the person shall conduct a hearing. The agency shall provide notice of the hearing to the person, the attorney representing the person and the Attorney General. The state must prove by a preponderance of the evidence the person's unfitness for conditional release. The hearing shall be conducted in accordance with ORS 161.346.**

*[(7)(a)] (5)(a) Any person conditionally released under this section may apply to the board for discharge from or modification of an order of conditional release on the ground that the person is no longer affected by mental disease or defect or, if still so affected, no longer presents a substantial danger to others and no longer requires supervision, medication, care or treatment. Notice of the hearing on an application for discharge or modification of an order of conditional release shall be made to the Attorney General. The applicant, at the hearing pursuant to this subsection, must prove by a preponderance of the evidence the applicant's fitness for discharge or modification of the order of conditional release. Applications by the person for discharge or modification of conditional release [shall] **may** not be filed more often than once every six months.*

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

**(6) A person who has spent five years on conditional release shall be brought before the board for hearing within 30 days before the expiration of the five-year period. The board shall review the person's status and determine whether the person should be discharged from the jurisdiction of the board.**

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

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

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

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

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

*[(2)] (1) If at any time after [the commitment of a person] **a person is committed under ORS 161.315 to 161.351** to a state hospital[, or to] **or** a secure intensive community inpatient facility, [designated by the authority under this section,] the superintendent of the hospital or the director of the secure intensive community inpatient facility is of the opinion that the person is no longer affected by mental disease or defect, or, if so affected, no longer presents a substantial danger to others or that the person continues to be affected by mental disease or defect and continues to be a danger to others, but that the person can be controlled with proper care, medication, supervision and treatment if conditionally released, the superintendent or director shall apply to the [board] **agency having jurisdiction over the person** for an order of discharge or conditional release. The application shall be accompanied by a report setting forth the facts supporting the opinion of the*

superintendent or director. If the application is for conditional release, the application must *[also]* be accompanied by a verified conditional release plan. The *[board]* **agency** shall hold a hearing on the application within 60 days of its receipt. Not less than 20 days prior to the hearing before the *[board]* **agency**, copies of the report shall be sent to the Attorney General.

[(3)] (2) The attorney representing the state may choose a psychiatrist or licensed psychologist to examine the person prior to the initial or any later decision by the *[board]* **agency having jurisdiction over the person** on discharge or conditional release. The results of the examination shall be in writing and filed with the *[board]* **agency**, and shall include, but need not be limited to, an opinion as to the mental condition of the person, whether the person presents a substantial danger to others and whether the person could be adequately controlled with treatment as a condition of release.

[(4)] (3) Any person who has been committed to a state hospital, or to a secure intensive community inpatient facility, *[designated by the authority]* for custody, care and treatment **under ORS 161.315 to 161.351**, or another person acting on the person's behalf, may apply to the *[board]* **agency having jurisdiction over the person** for an order of discharge or conditional release upon the grounds:

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

(b) *[If so affected,]* That the person, **if so affected**, no longer presents a substantial danger to others; or

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

[(5)] (4) When application is made under subsection [(4)] (3) of this section, the *[board]* **agency having jurisdiction over the person** shall require that a report from the superintendent of the hospital or the director of the secure intensive community inpatient facility be prepared and transmitted as provided in subsection [(2)] (1) of this section. The applicant must prove by a preponderance of the evidence the applicant's fitness for discharge or conditional release under the standards of subsection [(4)] (3) of this section, unless more than two years has passed since the state had the burden of proof on that issue, in which case the state shall have the burden of proving by a preponderance of the evidence the applicant's lack of fitness for discharge or conditional release. Applications for discharge or conditional release under subsection [(4)] (3) of this section *[shall]* **may** not be filed more often than once every six months commencing with the date of the initial *[board]* **agency** hearing.

[(6)] (5) The *[board]* **agency having jurisdiction over the person** is not required to hold a hearing on a first application under subsection [(4)] (3) of this section any sooner than 90 days after the initial hearing. *[However,]* Hearings resulting from any subsequent requests shall be held within 60 days of the filing of the application.

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

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

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

**SECTION 4.** ORS 161.351 is amended to read:

161.351. (1) Any person placed under the jurisdiction of the Psychiatric Security Review Board [pursuant to ORS 161.336 or 161.341] **or the Oregon Health Authority under ORS 161.315 to 161.351** shall be discharged at such time as the [board] **agency having jurisdiction over the person**, upon a hearing, [shall find] **finds** by a preponderance of the evidence that the person is no longer affected by mental disease or defect or, if so affected, no longer presents a substantial danger to others [which] **that** requires regular medical care, medication, supervision or treatment.

(2) For purposes of [this section] **ORS 161.315 to 161.351**, a person affected by a mental disease or defect in a state of remission is considered to have a mental disease or defect. A person whose mental disease or defect may, with reasonable medical probability, occasionally become active and when it becomes active will render the person a danger to others[, shall] **may** not be discharged. The person shall continue under [such] supervision and treatment [as the board deems] necessary to protect the person and others.

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

**(3) In determining whether a person should be committed to a state hospital or secure intensive community inpatient facility, conditionally released or discharged, the board and the authority shall have as their primary concern the protection of society.**

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

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

(2) [Whenever] **When** the Psychiatric Security Review Board **or the authority** requires the preparation of a predischarge or preconditional release plan before a hearing or as a condition of granting discharge or conditional release for a person committed under ORS [161.327 or 161.341] **161.315 to 161.351** to a state hospital or a secure intensive community inpatient facility for custody, care and treatment, the authority is responsible for and shall prepare the plan.

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

**(4) Before the authority conducts a hearing under ORS 161.315 to 161.351, the authority shall notify the board. The board may provide the authority with conditions of release that the board determines are advisable. If the authority orders the person conditionally released, the authority shall include the conditions of release in the order.**

**(5) The board and the authority shall maintain and keep current the medical, social and criminal history of all persons committed to their respective jurisdiction. The confidentiality of records maintained by the board shall be determined pursuant to ORS 192.501 to 192.505.**

**(6) The evidentiary phase of a hearing conducted by the board or the authority under ORS 161.315 to 161.351 is not a deliberation for purposes of ORS 192.690.**

**SECTION 6.** ORS 161.326, as amended by section 6, chapter 89, Oregon Laws 2010, is amended to read:

161.326. [(1) Whenever a person already under the jurisdiction of the Psychiatric Security Review Board commits a new crime, the court or the board shall make the findings described in ORS 161.325 (2).]

[(2)] (1) If the trial court [or], the **Psychiatric Security Review Board or the Oregon Health Authority** determines that a victim desires notification as described in ORS 161.325 (2), the [board] **agency having jurisdiction over the person** shall make a reasonable effort to notify the

victim of [board] hearings and orders, conditional release, discharge or escape. Nothing in this subsection authorizes the [board] **agency** to disseminate information that is otherwise privileged by law.

[(3)] (2) When the [board] **agency** conducts a hearing involving a person found guilty except for insanity of a crime for which there is a victim, the [board] **agency** shall afford the victim an opportunity to be heard, either orally or in writing, at the hearing.

[(4)(a)] (3)(a) If the [board] **agency** fails to make a reasonable effort to notify the victim of a [board] hearing under subsection [(2)] (1) of this section or fails to afford the victim an opportunity to be heard at the hearing under subsection [(3)] (2) of this section, the victim may request that the [board] **agency** reconsider the order of the [board] **agency**.

(b) If the [board] **agency** determines that the [board] **agency** failed to make a reasonable effort to notify the victim or failed to afford the victim an opportunity to be heard, except as provided in paragraph (c) of this subsection, the [board] **agency** shall grant the request for reconsideration. Upon reconsideration, the [board] **agency** shall consider the statement of the victim and may consider any other information that was not available to the [board] **agency** at the previous hearing.

(c) The [board] **agency** may not grant a request for reconsideration that is made:

(A) After the person has been discharged from the jurisdiction of the board **and the authority**;

(B) After the board **or the authority** has held a subsequent hearing involving the person; or

(C) If the [board] **agency** failed to make a reasonable effort to notify the victim of a hearing, more than 30 days after the victim knew or reasonably should have known of the hearing.

**SECTION 7.** ORS 161.375 is amended to read:

161.375. (1) When a patient, who has been placed at [*the Oregon State Hospital*] **a state hospital** for evaluation, care, custody and treatment under [*the jurisdiction of the Psychiatric Security Review Board*] **ORS 161.315 to 161.351** or by court order under ORS 161.315, 161.365 or 161.370, has escaped or is absent without authorization from [*the Oregon State Hospital*] **the hospital** or from the custody of any person in whose charge the superintendent has placed the patient, the superintendent may order the arrest and detention of the patient.

(2) When a patient, who has been placed at a secure intensive community inpatient facility for evaluation, care, custody and treatment under [*the jurisdiction of the Psychiatric Security Review Board*] **ORS 161.315 to 161.351** or by court order under ORS 161.315, 161.365, 161.370 or 419C.527, has escaped or is absent without authorization from the facility or from the custody of any person in whose charge the director of the facility has placed the patient, the director of the facility shall notify the Director of the Oregon Health Authority. The Director of the Oregon Health Authority may order the arrest and detention of the patient.

(3) The superintendent or the Director of the Oregon Health Authority may issue an order under this section based upon a reasonable belief that grounds exist for issuing the order. When reasonable, the superintendent or the Director of the Oregon Health Authority shall investigate to ascertain whether such grounds exist.

(4) Any order issued by the superintendent or the Director of the Oregon Health Authority as authorized by this section constitutes full authority for the arrest and detention of the patient and all laws applicable to warrant or arrest apply to the order. An order issued by the superintendent or the Director of the Oregon Health Authority under this section expires 72 hours after being signed by the superintendent or the Director of the Oregon Health Authority.

(5) As used in this section, “superintendent” means the superintendent of the [*Oregon State Hospital*] **state hospital to which the person was committed** or the superintendent’s authorized representative.

**SECTION 8.** ORS 161.385 is amended to read:

161.385. (1) There is hereby created a Psychiatric Security Review Board consisting of 10 members appointed by the Governor and subject to confirmation by the Senate under section 4, Article III of the Oregon Constitution.



(2) The membership of the board may not include any district attorney, deputy district attorney or public defender. The Governor shall appoint:

(a) A psychiatrist experienced in the criminal justice system and not otherwise employed on a full-time basis by the Oregon Health Authority or a community mental health program;

(b) A licensed psychologist experienced in the criminal justice system and not otherwise employed on a full-time basis by the authority or a community mental health program;

(c) A member with substantial experience in the processes of parole and probation;

(d) A lawyer with substantial experience in criminal trial practice;

(e) A psychiatrist certified, or eligible to be certified, by the Oregon Medical Board in child psychiatry who is experienced in the juvenile justice system and not employed on a full-time basis by the authority or a community mental health program;

(f) A licensed psychologist who is experienced in child psychology and the juvenile justice system and not employed on a full-time basis by the authority or a community mental health program;

(g) A member with substantial experience in the processes of juvenile parole and probation;

(h) A lawyer with substantial experience in juvenile law practice; and

(i) Two members of the general public.

(3) The term of office of each member is four years. The Governor at any time may remove any member for inefficiency, neglect of duty or malfeasance in office. Before the expiration of the term of a member, the Governor shall appoint a successor whose term begins on July 1 next following. A member is eligible for reappointment. If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

(4) A member of the board not otherwise employed full-time by the state shall be paid on a per diem basis an amount equal to \$289.22, adjusted according to the executive pay plan for the biennium, for each day during which the member is engaged in the performance of official duties, including necessary travel time. In addition, subject to ORS 292.220 to 292.250 regulating travel and other expenses of state officers and employees, the member shall be reimbursed for actual and necessary travel and other expenses incurred in the performance of official duties.

(5) Subject to any applicable provision of the State Personnel Relations Law, the board may hire employees to aid it in performing its duties.

(6) The board consists of two five-member panels. The adult panel is responsible for persons placed under the board's jurisdiction under ORS [161.327] **161.315 to 161.351** and 419C.544 and consists of those members appointed under subsection (2)(a) to (d) of this section and one of the public members. The juvenile panel is responsible for young persons placed under the board's jurisdiction under ORS 419C.529 and consists of those members appointed under subsection (2)(e) to (h) of this section and the other public member.

(7)(a) Each panel shall select one of its members as chairperson to serve for a one-year term with such duties and powers as the panel determines.

(b) A majority of the voting members of a panel constitutes a quorum for the transaction of business of the panel.

(8) Each panel shall meet at least twice every month, unless the chairperson determines that there is not sufficient business before the panel to warrant a meeting at the scheduled time. The panel shall also meet at other times and places specified by the call of the chairperson or of a majority of the members of the panel.

*[(9)(a) When a person over whom a panel of the board exercises its jurisdiction is adversely affected or aggrieved by a final order of the panel, the person is entitled to judicial review of the final order. The person is entitled on judicial review to suitable counsel possessing skills and experience commensurate with the nature and complexity of the case. If the person is financially eligible, suitable counsel shall be appointed by the reviewing court in the manner provided in ORS 138.500 (1). If the person is financially eligible, the public defense services executive director shall determine and pay, as provided in ORS 138.500, the cost of briefs, any other expenses of the person necessary to the review and compensation for counsel appointed for the person. The costs, expenses and compensation so allowed shall be paid as provided in ORS 138.500.]*

*[(b) The order and the proceedings underlying the order are subject to review by the Court of Appeals upon petition to that court filed within 60 days of the order for which review is sought. The panel shall submit to the court the record of the proceeding or, if the person agrees, a shortened record. The record may include a certified true copy of a tape recording of the proceedings at a hearing in accordance with ORS 161.346. A copy of the record transmitted shall be delivered to the person by the panel.]*

*[(c) The court may affirm, reverse or remand the order on the same basis as provided in ORS 183.482 (8).]*

*[(d) The filing of the petition does not stay the panel's order, but the panel or the Court of Appeals may order a stay upon application on such terms as are deemed proper.]*

**SECTION 9. (1) When a person over whom the Psychiatric Security Review Board or the Oregon Health Authority exercises jurisdiction under ORS 161.315 to 161.351 or 419C.544 is adversely affected or aggrieved by a final order of the board or authority, the person is entitled to judicial review of the final order. The person is entitled on judicial review to suitable counsel possessing skills and experience commensurate with the nature and complexity of the case. If the person is financially eligible, suitable counsel shall be appointed by the reviewing court in the manner provided in ORS 138.500 (1). If the person is financially eligible, the public defense services executive director shall determine and pay, as provided in ORS 138.500, the cost of briefs, any other expenses of the person necessary to the review and compensation for counsel appointed for the person. The costs, expenses and compensation so allowed shall be paid as provided in ORS 138.500.**

**(2) The order and the proceedings underlying the order are subject to review by the Court of Appeals upon petition to that court filed within 60 days of the order for which review is sought. The agency that conducted the hearing shall submit to the court the record of the proceeding or, if the person agrees, a shortened record. The record may include a certified true copy of a tape recording of the proceedings at a hearing in accordance with ORS 161.346. A copy of the record transmitted shall be delivered to the person by the agency.**

**(3) The court may affirm, reverse or remand the order on the same basis as provided in ORS 183.482 (8).**

**(4) The filing of the petition does not stay the order of the agency, but the agency or the Court of Appeals may order a stay upon application on such terms as are deemed proper.**

**SECTION 10.** ORS 161.395 is amended to read:

161.395. (1) Upon request of any party to a hearing before the **Psychiatric Security Review Board or the Oregon Health Authority under ORS 161.315 to 161.351**, the *[board or its designated representatives]* **agency conducting the hearing** shall issue, or *[the board]* on its own motion may issue, subpoenas requiring the attendance and testimony of witnesses.

(2) Upon request of any party to the hearing before the *[board]* **agency** and upon a proper showing of the general relevance and reasonable scope of the documentary or physical evidence sought, the *[board or its designated representative]* **agency** shall issue, or *[the board]* on its own motion may issue, subpoenas duces tecum.

(3) Witnesses appearing under subpoenas, other than the parties or state officers or employees, shall receive fees and mileage as prescribed by law for witnesses in ORS 44.415 (2). If the *[board or its designated representative]* **agency** certifies that the testimony of a witness was relevant and material, any person who has paid fees and mileage to that witness shall be reimbursed by the *[board]* **agency**.

(4) If any person fails to comply with a subpoena issued under subsections (1) or (2) of this section or any party or witness refuses to testify regarding any matter on which the party or witness may be lawfully interrogated, the judge of the circuit court of any county, on the application of the *[board or its designated representative]* **agency that issued the subpoena** or of the party requesting the issuance of the subpoena, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued by the court.

(5) If any person, agency or facility fails to comply with an order of the board **or authority** issued pursuant to subsection (2) of this section, the judge of a circuit court of any county, on application of the [board or its designated representative] **agency that issued the order**, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of an order issued by the court. Contempt for disobedience of an order of the board **or authority** shall be punishable by a fine of \$100.

**SECTION 11.** ORS 161.400 is amended to read:

161.400. If, at any time after the commitment of a person to a state hospital or a secure intensive community inpatient facility under ORS [161.341 (1)] **161.315 to 161.351**, the superintendent of the hospital or the director of the facility is of the opinion that a leave of absence from the hospital or facility would be therapeutic for the person and that such leave would pose no substantial danger to others, the superintendent or director may authorize such leave for up to 48 hours in accordance with rules adopted by the [Psychiatric Security Review Board] **agency having jurisdiction over the person**. However, the superintendent or director, before authorizing the leave of absence, shall first notify the [board] **agency** for the purposes of ORS 161.326 [(2)].

**SECTION 11a.** ORS 161.332 is amended to read:

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

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

(2) "**Tier one offender**" means a person who has been found guilty except for insanity of a tier one offense.

(3) "**Tier one offense**" means:

(a) **Aggravated murder as defined in ORS 163.095;**

(b) **Attempt or conspiracy to commit aggravated murder as defined in ORS 163.095;**

(c) **Murder as defined in ORS 163.115;**

(d) **Attempt or conspiracy to commit murder as defined in ORS 163.115;**

(e) **Manslaughter in the first degree as defined in ORS 163.118;**

(f) **Manslaughter in the second degree as defined in ORS 163.125;**

(g) **Assault in the first degree as defined in ORS 163.185;**

(h) **Assault in the second degree as defined in ORS 163.175;**

(i) **Kidnapping in the first degree as defined in ORS 163.235;**

(j) **Kidnapping in the second degree as defined in ORS 163.225;**

(k) **Rape in the first degree as defined ORS 163.375;**

(L) **Rape in the second degree as defined in ORS 163.365;**

(m) **Sodomy in the first degree as defined in ORS 163.405;**

(n) **Sodomy in the second degree as defined in ORS 163.395;**

(o) **Unlawful sexual penetration in the first degree as defined ORS 163.411;**

(p) **Unlawful sexual penetration in the second degree as defined ORS 163.408;**

(q) **Sexual abuse in the first degree as defined in ORS 163.427;**

(r) **Robbery in the first degree as defined in ORS 164.415;**

(s) **Robbery in the second degree as defined in ORS 164.405;**

(t) **Arson in the first degree as defined in ORS 164.325;**

(u) **Using a child in a display of sexually explicit conduct as defined in ORS 163.670;**

(v) **Compelling prostitution as defined in ORS 167.017; or**

(w) **Aggravated vehicular homicide as defined in ORS 163.149.**

(4) "**Tier two offender**" means a person who has been found guilty except for insanity only of offenses that are not tier one offenses.

**SECTION 11b.** ORS 161.387 is amended to read:

161.387. (1) The Psychiatric Security Review Board, by rule pursuant to ORS 183.325 to 183.410 and not inconsistent with law, may implement its policies and set out its procedure and practice requirements and may promulgate such interpretive rules as the board deems necessary or appropriate to carry out its statutory responsibilities.

(2) Administrative meetings of the board [and the evidentiary phase of board hearings] are not deliberations for the purposes of ORS 192.690.

## COURT PROVISIONS

**SECTION 12.** ORS 161.327 is amended to read:

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

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

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

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

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

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

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

**(1) When a person is found guilty except for insanity of a felony, or of a misdemeanor during a criminal episode in the course of which the person caused physical injury or risk of physical injury to another, and the court finds that the person is affected by mental disease or defect and presents a substantial danger to others, the court shall enter an order as follows:**

**(a) If the court finds that the person is not a proper subject for conditional release, the court shall order the person committed to a state hospital or, if the person is under 18 years of age, to a secure intensive community inpatient facility, for custody, care and treatment. When the court orders a person committed under this paragraph, the court shall place the person under the jurisdiction of:**

**(A) The Psychiatric Security Review Board, if the person is a tier one offender.**

**(B) The Oregon Health Authority, if the person is a tier two offender.**

**(b) If the court finds that the person [presents a substantial danger to others but that the person] can be adequately controlled with supervision and treatment if conditionally released and that necessary supervision and treatment are available, the court [may] shall order the person conditionally released, subject to those supervisory orders of the court as are in the best interests of justice, the protection of society and the welfare of the person. The court shall designate a person or state, county or local agency to supervise the person upon release, subject to those conditions as the court directs in the order for conditional release. Prior to the designation, the court shall**

notify the person or agency to whom conditional release is contemplated and provide the person or agency an opportunity to be heard before the court. After receiving an order entered under this paragraph, the person or agency designated shall assume supervision of the person pursuant to the direction of the Psychiatric Security Review Board. The person or agency designated as supervisor shall be required to report in writing no less than once per month to the board concerning the supervised person's compliance with the conditions of release.

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

*[(4) (2) In determining whether a person should be conditionally released, the court may order evaluations, examinations and compliance as provided in ORS 161.336 [(4)] (3) and 161.346 [(2)] (3)].*

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

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

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

*[(8) (5) [Upon placing a person under the jurisdiction of the board] **Following entry of the order described in subsection (1) of this section,** the court shall notify the person of the right to appeal and the right to a hearing before the [board] **agency having jurisdiction over the person** in accordance with ORS 161.336 [(7)] (5) and 161.341 [(4)] (3).*

**(6) The total period of commitment or conditional release under ORS 161.315 to 161.351 may not exceed the maximum sentence provided by statute for the crime for which the person was found guilty except for insanity.**

**SECTION 13.** ORS 161.328 is amended to read:

161.328. *[Following the entry of a judgment pursuant to ORS 161.319 and the dispositional determination under ORS 161.325, if the court finds that the person would have been guilty] **When a person is found guilty except for insanity** of a misdemeanor during a criminal episode in the course of which the person did not cause physical injury or risk of physical injury to another, *[and if the court has probable cause to believe that the person is dangerous to self or others as a result of a mental disorder, the court may]* **the court shall** initiate civil commitment proceedings under ORS 426.070 to 426.130 **if the court finds that the person is affected by mental disease or defect and presents a substantial danger to others requiring care, supervision and treatment.***

**SECTION 14.** ORS 161.329 is amended to read:

161.329. *[Following the entry of a judgment pursuant to ORS 161.319 and the dispositional determination under ORS 161.325,] **When a person is found guilty except for insanity of a crime, the court shall order the person discharged from custody** if the court finds that the person is no longer affected by mental disease or defect, or, if so affected, no longer presents a substantial danger*

to others and is not in need of care, supervision or treatment[, *the court shall order the person discharged from custody*].

**SECTION 15.** (1) When a person who is committed to a state hospital or a secure intensive community inpatient facility under ORS 161.315 to 161.351 is convicted of a crime and sentenced to a term of incarceration and when the person is sentenced to a term of incarceration as a sanction for violating the conditions of probation, parole or post-prison supervision, the sentencing court shall stay execution of the sentence pending the conditional release or discharge of the person or the expiration of the period of time described in ORS 161.327 (6). When the person is conditionally released or discharged by the agency having jurisdiction over the person under ORS 161.315 to 161.351, or when the maximum period of jurisdiction described in ORS 161.327 (6) expires, the stay shall be lifted by operation of law and the person shall be delivered to the custody of the Department of Corrections or the supervisory authority to begin service of the sentence imposed.

(2) When a person described in subsection (1) of this section is delivered to the custody of the department or the supervisory authority as described in this section, the agency having jurisdiction over the person while the person was committed to a state hospital or a secure intensive community inpatient facility shall notify the department or the supervisory authority when the period of time described in ORS 161.327 (6) will expire.

(3) The department or supervisory authority shall notify the Psychiatric Security Review Board when the person has served the term of incarceration imposed by the court and the board shall resume exercising active jurisdiction over the person in accordance with ORS 161.315 to 161.351.

(4) As used in this section, “supervisory authority” has the meaning given that term in ORS 144.087.

**SECTION 16.** ORS 161.325, as amended by section 9, chapter 89, Oregon Laws 2010, is amended to read:

161.325. (1) [*After entry of judgment of guilty except for insanity*] **When a person is found guilty except for insanity of a felony, or of a misdemeanor during a criminal episode in the course of which the person caused physical injury or risk of physical injury to another, the court shall[,]**:

(a) **Order that a psychiatric or psychological evaluation of the person be performed and a report of the evaluation be provided to the court, if an evaluation was not performed or a report was not provided to the court prior to trial; and**

(b) On the basis of the **report described in paragraph (a) of this subsection and the** evidence given at the trial, or at a separate hearing[, ] if requested by either party, [*make*] **enter** an order as provided in ORS 161.327, **161.328** or 161.329, whichever is appropriate.

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

(a) Determine on the record the offense of which the person otherwise would have been convicted;

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

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

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

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

(5) **When a court orders a psychiatric or psychological evaluation under subsection (1) of this section for a financially eligible person, the court shall order the public defense ser-**

vices executive director to pay a reasonable fee for the evaluation from funds available for that purpose.

### CONFORMING PROVISIONS

**SECTION 17.** ORS 21.010 is amended to read:

21.010. (1) Except as provided in this section, the appellant in an appeal or the petitioner in a judicial review in the Supreme Court or the Court of Appeals shall pay a filing fee of \$154 in the manner prescribed by ORS 19.265. The respondent in such case and any other person appearing in the appeal, upon entering first appearance or filing first brief in the court, shall pay to the State Court Administrator the sum of \$154. The party entitled to costs and disbursements on such appeal shall recover from the opponent the amount so paid.

(2) Except as provided in this section, the appellant in an appeal or the petitioner in a judicial review in the Supreme Court or the Court of Appeals shall pay \$154 for each additional person named as an appellant or petitioner. The respondent in such case, and any other person appearing in the appeal, shall pay \$154 to the State Court Administrator for each additional person named as a respondent. The party entitled to costs and disbursements on such appeal shall recover from the opponent the amount so paid. The Chief Justice by order may provide for exemptions from the fees established by this subsection if exemptions are needed for the equitable imposition of those fees.

(3) Filing and appearance fees may not be assessed in appeals from habeas corpus proceedings under ORS 34.710, post-conviction relief proceedings under ORS 138.650, juvenile court under ORS 419A.200, [and] the involuntary commitment of persons determined to be mentally ill under ORS 426.135 or persons determined to be mentally retarded under ORS 427.295[,] **or orders of the State Board of Parole and Post-Prison Supervision** or on judicial review of orders [of] **entered under ORS 161.315 to 161.351** by the Psychiatric Security Review Board **or the Oregon Health Authority** [under ORS 161.385 (9) or orders of the State Board of Parole and Post-Prison Supervision].

(4) Filing and appearance fees shall be assessed in an appeal from an appeal to a circuit court from a justice court or municipal court in an action alleging commission of a state offense designated as a violation or an action alleging violation of a city charter or ordinance, but not in an action alleging commission of a state crime.

(5) Filing and appearance fees shall only be assessed in an appeal in a contempt proceeding seeking imposition of remedial sanctions under the provisions of ORS 33.055.

**SECTION 18.** ORS 21.010, as amended by section 30, chapter 659, Oregon Laws 2009, and section 37f, chapter 885, Oregon Laws 2009, is amended to read:

21.010. (1) Except as provided in this section, the appellant in an appeal or the petitioner in a judicial review in the Supreme Court or the Court of Appeals shall pay a filing fee of \$154 in the manner prescribed by ORS 19.265. The respondent in such case and any other person appearing in the appeal, upon entering first appearance or filing first brief in the court, shall pay to the State Court Administrator the sum of \$154. The party entitled to costs and disbursements on such appeal shall recover from the opponent the amount so paid.

(2) Filing and appearance fees may not be assessed in appeals from habeas corpus proceedings under ORS 34.710, post-conviction relief proceedings under ORS 138.650, juvenile court under ORS 419A.200, [and] the involuntary commitment of persons determined to be mentally ill under ORS 426.135 or persons determined to be mentally retarded under ORS 427.295[,] **or orders of the State Board of Parole and Post-Prison Supervision** or on judicial review of orders [of] **entered under ORS 161.315 to 161.351** by the Psychiatric Security Review Board **or the Oregon Health Authority** [under ORS 161.385 (9) or orders of the State Board of Parole and Post-Prison Supervision].

(3) Filing and appearance fees shall be assessed in an appeal from an appeal to a circuit court from a justice court or municipal court in an action alleging commission of a state offense designated as a violation or an action alleging violation of a city charter or ordinance, but not in an action alleging commission of a state crime.

(4) Filing and appearance fees shall only be assessed in an appeal in a contempt proceeding seeking imposition of remedial sanctions under the provisions of ORS 33.055.

**SECTION 19.** ORS 137.750 is amended to read:

137.750. (1) When a court sentences a defendant to a term of incarceration upon conviction of a crime, the court shall order on the record in open court as part of the sentence imposed that the defendant may be considered by the executing or releasing authority for any form of temporary leave from custody, reduction in sentence, work release or program of conditional or supervised release authorized by law for which the defendant is otherwise eligible at the time of sentencing, unless the court finds on the record in open court substantial and compelling reasons to order that the defendant not be considered for such leave, release or program.

(2) The executing or releasing authority may consider the defendant for a program described in subsection (1) of this section only upon order of the sentencing court appearing in the judgment.

(3) As used in this section:

(a) "Executing or releasing authority" means the Department of Corrections, State Board of Parole and Post-Prison Supervision, Psychiatric Security Review Board, **Oregon Health Authority**, sentencing court or supervisory authority.

(b) "Supervisory authority" has the meaning that term in ORS 144.087.

**SECTION 20.** ORS 151.216 is amended to read:

151.216. (1) The Public Defense Services Commission shall:

(a) Establish and maintain a public defense system that ensures the provision of public defense services in the most cost-efficient manner consistent with the Oregon Constitution, the United States Constitution and Oregon and national standards of justice.

(b) Establish an office of public defense services and appoint a public defense services executive director who serves at the pleasure of the commission.

(c) Submit the budget of the commission and the office of public defense services to the Legislative Assembly after the budget is submitted to the commission by the director and approved by the commission. The Chief Justice of the Supreme Court and the chairperson of the commission shall present the budget to the Legislative Assembly.

(d) Review and approve any public defense services contract negotiated by the director before the contract can become effective.

(e) Adopt a compensation plan, classification system and personnel plan for the office of public defense services that are commensurate with other state agencies.

(f) Adopt policies, procedures, standards and guidelines regarding:

(A) The determination of financial eligibility of persons entitled to be represented by appointed counsel at state expense;

(B) The appointment of counsel;

(C) The fair compensation of counsel appointed to represent a person financially eligible for appointed counsel at state expense;

(D) Appointed counsel compensation disputes;

(E) Any other costs associated with the representation of a person by appointed counsel in the state courts that are required to be paid by the state under ORS 34.355, 135.055, 138.500, 138.590, 161.346, 161.365, [161.385,] 419A.211, 419B.201, 419B.208, 419B.518, 419B.908, 419C.206, 419C.209, 419C.408, 419C.535, 426.100, 426.135, 426.250, 426.307, 427.265, 427.295, 436.265 or 436.315 **or section 9 of this 2011 Act** or any other provision of law that expressly provides for payment of such compensation, costs or expenses by the commission;

(F) Professional qualifications for counsel appointed to represent public defense clients;

(G) Performance for legal representation;

(H) The contracting of public defense services;

(I) Contracting with expert witnesses to allow contracting with out-of-state expert witnesses only if in-state expert witnesses are not available or are more expensive than out-of-state expert witnesses; and

(J) Any other matters necessary to carry out the duties of the commission.



(g) Establish a peer review system for the approval of nonroutine fees and expenses incurred in cases involving aggravated murder and the crimes listed in ORS 137.700 and 137.707. The review shall be conducted by a panel of attorneys who practice in the area of criminal defense.

(h) Establish a complaint process that allows district attorneys, criminal defense counsel and the public to file complaints concerning the payment from public funds of nonroutine fees and expenses incurred in cases.

(i) Reimburse the State Court Administrator from funds deposited in the subaccount established under ORS 151.225 for the costs of personnel and other costs associated with location of eligibility verification and screening personnel pursuant to ORS 151.489 by the State Court Administrator.

(2) Policies, procedures, standards and guidelines adopted by the commission supersede any conflicting rules, policies or procedures of the Public Defender Committee, State Court Administrator, circuit courts, the Court of Appeals, the Supreme Court [and], the Psychiatric Security Review Board **and the Oregon Health Authority** related to the exercise of the commission's administrative responsibilities under this section and transferred duties, functions and powers as they occur.

(3) The commission may accept gifts, grants or contributions from any source, whether public or private. However, the commission may not accept a gift, grant or contribution if acceptance would create a conflict of interest. Moneys accepted under this subsection shall be deposited in the Public Defense Services Account created in ORS 151.225 and expended for the purposes for which given or granted.

(4) The commission may not:

(a) Make any decision regarding the handling of any individual case;

(b) Have access to any case file; or

(c) Interfere with the director or any member of the staff of the director in carrying out professional duties involving the legal representation of public defense clients.

**SECTION 21.** ORS 162.135 is amended to read:

162.135. As used in ORS 162.135 to 162.205, unless the context requires otherwise:

(1)(a) "Contraband" means:

(A) Controlled substances as defined in ORS 475.005;

(B) Drug paraphernalia as defined in ORS 475.525;

(C) Except as otherwise provided in paragraph (b) of this subsection, currency possessed by or in the control of an inmate confined in a correctional facility; or

(D) Any article or thing which a person confined in a correctional facility, youth correction facility or state hospital is prohibited by statute, rule or order from obtaining or possessing, and whose use would endanger the safety or security of such institution or any person therein.

(b) "Contraband" does not include authorized currency possessed by an inmate in a work release facility.

(2) "Correctional facility" means any place used for the confinement of persons charged with or convicted of a crime or otherwise confined under a court order and includes but is not limited to a youth correction facility. "Correctional facility" applies to a state hospital or a secure intensive community inpatient facility only as to persons detained therein charged with or convicted of a crime, or detained therein after having been found guilty except for insanity of a crime under ORS 161.290 to 161.370.

(3) "Currency" means paper money and coins that are within the correctional institution.

(4) "Custody" means the imposition of actual or constructive restraint by a peace officer pursuant to an arrest or court order, but does not include detention in a correctional facility, youth correction facility or a state hospital.

(5) "Escape" means the unlawful departure of a person from custody or a correctional facility. "Escape" includes the unauthorized departure or absence from this state or failure to return to this state by a person who is under the jurisdiction of the Psychiatric Security Review Board **or under the jurisdiction of the Oregon Health Authority under ORS 161.315 to 161.351**. "Escape" does not include failure to comply with provisions of a conditional release in ORS 135.245.

(6) "Youth correction facility" means:

- (a) A youth correction facility as defined in ORS 420.005; and
- (b) A detention facility as defined in ORS 419A.004.
- (7) "State hospital" means the Oregon State Hospital, Blue Mountain Recovery Center, Eastern Oregon Training Center and any other hospital established by law for similar purposes.

(8) "Unauthorized departure" means the unauthorized departure of a person confined by court order in a youth correction facility or a state hospital that, because of the nature of the court order, is not a correctional facility as defined in this section, or the failure to return to custody after any form of temporary release or transitional leave from a correctional facility.

**SECTION 22.** ORS 162.155 is amended to read:

162.155. (1) A person commits the crime of escape in the second degree if:

- (a) The person uses or threatens to use physical force escaping from custody; or
- (b) Having been convicted or found guilty of a felony, the person escapes from custody imposed as a result thereof; or
- (c) The person escapes from a correctional facility; or
- (d) While under the jurisdiction of the Psychiatric Security Review Board **or under the jurisdiction of the Oregon Health Authority under ORS 161.315 to 161.351**, the person departs, is absent from or fails to return to this state without authorization of the board.

(2) Escape in the second degree is a Class C felony.

**SECTION 23.** ORS 181.740 is amended to read:

181.740. (1) The Department of Human Services, the Oregon Health Authority, the Psychiatric Security Review Board and the Judicial Department shall provide the Department of State Police with the minimum information necessary to identify persons who:

- (a) Have been committed by a court to the Oregon Health Authority under ORS 426.130, based on a finding that the person is dangerous to self or others;
- (b) Are subject to a court order under ORS 426.130 prohibiting the person from purchasing or possessing a firearm;
- (c) Have been committed by a court to the Department of Human Services under ORS 427.290, based on a finding that the person is dangerous to self or others;
- (d) Have been found by a court to lack fitness to proceed under ORS 161.370;
- (e) Have been found guilty except for insanity of a crime under ORS 161.295 to 161.370;
- (f) Have been found responsible except for insanity for an act under ORS 419C.411;
- (g) Have been placed under the jurisdiction of the Psychiatric Security Review Board [*by a court*] **or the Oregon Health Authority under ORS 161.315 to 161.351**; or
- (h) Have been committed to a state hospital or facility under ORS [*161.327, 161.336*] **161.315 to 161.351** or 419C.529 to 419C.544.

(2) Upon receipt of the information described in this section, the Department of State Police shall access and maintain the information and transmit the information to the federal government as required under federal law.

(3) The Department of Human Services, the Oregon Health Authority, the Psychiatric Security Review Board and the Judicial Department shall enter into agreements with the Department of State Police describing the access to information provided under this section.

(4) The Department of State Police shall adopt rules:

- (a) After consulting with the Department of Human Services, the Oregon Health Authority, the Psychiatric Security Review Board and the Judicial Department, describing the type of information provided to the Department of State Police under this section; and
- (b) Describing the method and manner of maintaining the information described in this section and transmitting the information to the federal government.

(5) As used in this section, "minimum information necessary" means data elements or nominal information that is necessary or required under federal law to accurately identify a person described in this section and includes the person's name, date of birth, gender and reference information that identifies the originating agency or court and enables the originating agency or court to locate an underlying record or file of a person described in this section. "Minimum information necessary"

does not include any medical, psychiatric or psychological information, case histories or files of a person described in this section or any record or file of an originating agency or court.

**SECTION 24.** ORS 183.315 is amended to read:

183.315. (1) The provisions of ORS 183.410, 183.415, 183.417, 183.425, 183.440, 183.450, 183.452, 183.458, 183.460, 183.470 and 183.480 do not apply to local government boundary commissions created pursuant to ORS 199.430, the Department of Revenue, State Accident Insurance Fund Corporation, Department of Consumer and Business Services with respect to its functions under ORS chapters 654 and 656, **State Board of Parole and Post-Prison Supervision**, Psychiatric Security Review Board or [*State Board of Parole and Post-Prison Supervision*] **Oregon Health Authority with respect to its functions under ORS 161.315 to 161.351.**

(2) This chapter does not apply with respect to actions of the Governor authorized under ORS chapter 240 and ORS 396.125 or actions of the Adjutant General authorized under ORS 396.160 (14).

(3) The provisions of ORS 183.410, 183.415, 183.417, 183.425, 183.440, 183.450, 183.452, 183.458 and 183.460 do not apply to the Employment Appeals Board or the Employment Department.

(4) The Employment Department shall be exempt from the provisions of this chapter to the extent that a formal finding of the United States Secretary of Labor is made that such provision conflicts with the terms of the federal law, acceptance of which by the state is a condition precedent to continued certification by the United States Secretary of Labor of the state's law.

(5) The provisions of ORS 183.415 to 183.430, 183.440 to 183.460, 183.470 to 183.485 and 183.490 to 183.500 do not apply to orders issued to persons who:

(a) Have been committed pursuant to ORS 137.124 to the custody of the Department of Corrections or are otherwise confined in a Department of Corrections facility; or

(b) Seek to visit an inmate confined in a Department of Corrections facility.

(6) ORS 183.410, 183.415, 183.417, 183.425, 183.440, 183.450, 183.460, 183.470 and 183.482 (3) do not apply to the Public Utility Commission. Notwithstanding ORS 183.480 and except as provided in ORS 757.495 and 759.390, only a party to a hearing before the Public Utility Commission is entitled to seek judicial review of an order of the commission.

(7) The provisions of this chapter do not apply to the suspension, cancellation or termination of an apprenticeship or training agreement under ORS 660.060.

(8) The provisions of ORS 183.413 to 183.497 do not apply to administrative proceedings conducted under rules adopted by the Secretary of State under ORS 246.190.

**SECTION 25.** ORS 183.635 is amended to read:

183.635. (1) Except as provided in this section, all agencies must use administrative law judges assigned from the Office of Administrative Hearings established under ORS 183.605 to conduct contested case hearings, without regard to whether those hearings are subject to the procedural requirements for contested case hearings.

(2) The following agencies need not use administrative law judges assigned from the office:

(a) Attorney General.

(b) Boards of stewards appointed by the Oregon Racing Commission.

(c) Bureau of Labor and Industries and the Commissioner of the Bureau of Labor and Industries.

(d) Department of Corrections.

(e) Department of Education, State Board of Education and Superintendent of Public Instruction.

(f) Department of Human Services for vocational rehabilitation services cases under 29 U.S.C. 722(c) and disability determination cases under 42 U.S.C. 405.

(g) Department of Revenue.

(h) Department of State Police.

(i) Employment Appeals Board.

(j) Employment Relations Board.

(k) Energy Facility Siting Council.

(L) Fair Dismissal Appeals Board.

(m) Governor.

(n) Land Conservation and Development Commission.

- (o) Land Use Board of Appeals.
- (p) Local government boundary commissions created pursuant to ORS 199.430.
- (q) Oregon University System and institutions of higher education listed in ORS 352.002.
- (r) Oregon Youth Authority.
- (s) Psychiatric Security Review Board.
- (t) The Oregon Health Authority for hearings conducted under ORS 161.315 to 161.351.**
- [(t)] **(u)** Public Utility Commission.
- [(u)] **(v)** State Accident Insurance Fund Corporation.
- [(v)] **(w)** State Apprenticeship and Training Council.
- [(w)] **(x)** State Board of Parole and Post-Prison Supervision.
- [(x)] **(y)** State Land Board.
- [(y)] **(z)** State Treasurer.
- [(z)] **(aa)** Wage and Hour Commission.

(3) The Workers' Compensation Board is exempt from using administrative law judges assigned from the office for any hearing conducted by the board under ORS chapters 147, 654 and 656. Except as specifically provided in this subsection, the Department of Consumer and Business Services must use administrative law judges assigned from the office only for contested cases arising out of the department's powers and duties under:

- (a) ORS 86A.095 to 86A.198, 86A.990 and 86A.992 and ORS chapter 59;
- (b) ORS chapter 455;
- (c) ORS chapter 674;
- (d) ORS chapters 706 to 716;
- (e) ORS chapter 717;
- (f) ORS chapters 723, 725 and 726; and
- (g) ORS chapters 731, 732, 733, 734, 735, 737, 742, 743, 743A, 744, 746, 748 and 750.

(4) Notwithstanding any other provision of law, in any proceeding in which an agency is required to use an administrative law judge assigned from the office, an officer or employee of the agency may not conduct the hearing on behalf of the agency.

(5) Notwithstanding any other provision of ORS 183.605 to 183.690, an agency is not required to use an administrative law judge assigned from the office if:

- (a) Federal law requires that a different administrative law judge or hearing officer be used; or
- (b) Use of an administrative law judge from the office could result in a loss of federal funds.

(6) Notwithstanding any other provision of this section, the Department of Environmental Quality must use administrative law judges assigned from the office only for contested case hearings conducted under the provisions of ORS 183.413 to 183.470.

**SECTION 26.** ORS 192.690 is amended to read:

192.690. (1) ORS 192.610 to 192.690 do not apply to the deliberations of [*the State Board of Parole and Post-Prison Supervision,*] **the Oregon Health Authority conducted under ORS 161.315 to 161.351, the Psychiatric Security Review Board, the State Board of Parole and Post-Prison Supervision,** state agencies conducting hearings on contested cases in accordance with the provisions of ORS chapter 183, the review by the Workers' Compensation Board or the Employment Appeals Board of similar hearings on contested cases, meetings of the state lawyers assistance committee operating under the provisions of ORS 9.568, meetings of the personal and practice management assistance committees operating under the provisions of ORS 9.568, the county multidisciplinary child abuse teams required to review child abuse cases in accordance with the provisions of ORS 418.747, the child fatality review teams required to review child fatalities in accordance with the provisions of ORS 418.785, the peer review committees in accordance with the provisions of ORS 441.055, mediation conducted under ORS 36.250 to 36.270, any judicial proceeding, meetings of the Oregon Health and Science University Board of Directors or its designated committee regarding candidates for the position of president of the university or regarding sensitive business, financial or commercial matters of the university not customarily provided to competitors related to financings, mergers, acquisitions or joint ventures or related to the sale or other disposition of, or

substantial change in use of, significant real or personal property, or related to health system strategies, or to Oregon Health and Science University faculty or staff committee meetings.

(2) Because of the grave risk to public health and safety that would be posed by misappropriation or misapplication of information considered during such review and approval, ORS 192.610 to 192.690 shall not apply to review and approval of security programs by the Energy Facility Siting Council pursuant to ORS 469.530.

**SECTION 27.** ORS 278.315 is amended to read:

278.315. (1) The Oregon Health Authority may provide tort liability coverage through the Oregon Department of Administrative Services to any county or private community care provider that has contracted with the authority to provide supervision, care, treatment or training of persons under the jurisdiction of the Psychiatric Security Review Board **or the authority under ORS 161.315 to 161.351**. Counties or private community care providers, and the officers and employees of those counties and providers acting within the scope of their employment, may be covered to the extent that any tort claim arises out of the provision of supervision, care, treatment or training of persons pursuant to the terms of the contract. Tort liability coverage under this section must be in writing, and may be part of the contract between the authority and the county or private community care provider. The coverage provided under this section shall be self-insurance by the State of Oregon to the limits contained in ORS 30.260 to 30.300.

(2) Counties or private community care providers that have contracted with the authority to provide supervision, care, treatment or training of persons under the jurisdiction of the Psychiatric Security Review Board **or the authority under ORS 161.315 to 161.351**, and the officers and employees of those counties and providers, are not agents of the authority for the purposes of ORS 30.260 to 30.300.

**SECTION 28.** ORS 430.695 is amended to read:

430.695. (1) Any program fees, third-party reimbursements, contributions or funds from any source, except client resources applied toward the cost of care in group homes for persons with mental retardation or mental illness and client resources and third-party payments for community psychiatric inpatient care, received by a community mental health program are not an offset to the costs of the services and may not be applied to reduce the program's eligibility for state funds, providing the funds are expended for mental health services approved by the Oregon Health Authority.

(2) Within the limits of available funds, the authority may contract for specialized, statewide and regional services including but not limited to group homes for persons with mental retardation or mental or emotional disturbances, day and residential treatment programs for children and adolescents with mental or emotional disturbances and community services for clients of the Psychiatric Security Review Board **or the authority under ORS 161.315 to 161.351**.

(3) Fees and third-party reimbursements, including all amounts paid pursuant to Title XIX of the Social Security Act by the Department of Human Services or the Oregon Health Authority, for mental health services or developmental disabilities services and interest earned on those fees and reimbursements shall be retained by the community mental health program or community developmental disabilities program and expended for any service that meets the standards of ORS 430.630.

**SECTION 29.** ORS 809.419 is amended to read:

809.419. (1)(a) The Department of Transportation shall suspend the driving privileges of a person if the department requests the person to submit to examination under ORS 807.340 and the person fails to appear within a reasonable length of time after being notified to do so or fails to satisfactorily complete the required examination. A suspension under this subsection shall continue until the examination required by the department is successfully completed.

(b) Upon suspension under this subsection, the department may issue an identification card to the person for identification purposes as described under ORS 807.400.

(2) The department shall suspend the driving privileges of a person if the department requests the person to obtain medical clearance under ORS 807.070 or 807.090 and the person fails to do so.

The suspension under this subsection shall continue until the required medical clearance is received by the department.

(3)(a) The department may suspend the driving privileges of a person who is incompetent to drive a motor vehicle because of a mental or physical condition or impairment that affects the person's ability to safely operate a motor vehicle upon the highways.

(b) A suspension under this subsection shall continue for a period determined by the department and shall be subject to any conditions the department determines to be necessary.

(c) The department may impose an immediate suspension of driving privileges of any person described in paragraph (a) of this subsection without hearing and without receiving a record of the conviction of the person of a crime if the department has reason to believe that the person may endanger people or property if the person's driving privileges are not immediately suspended. A suspension under this paragraph is subject to a post-imposition hearing under ORS 809.440. A person who is denied eligibility under ORS 807.090 is entitled to a hearing under ORS 809.440.

(4)(a) Whenever the department has reason to believe an individual with a motorcycle endorsement under ORS 807.170 is incompetent to operate a motorcycle, the department may revoke the endorsement.

(b) Upon revocation under this subsection, the endorsed license shall be surrendered to the department.

(c) Upon surrender of the endorsed license, the department may issue a license without endorsement for the unexpired period of the license.

(5) Upon notification by the superintendent of a hospital under ORS 807.700 that a person should not drive, the department shall immediately suspend the driving privileges of the released person. A suspension under this subsection is subject to administrative review under ORS 809.440 and shall continue until such time as the person produces a judicial judgment of competency or a certificate from the superintendent of the hospital that the person is competent, or establishes eligibility under ORS 807.090.

(6) Upon notification by a court under ORS 810.375 that a person charged with a traffic offense has been found guilty except for insanity and committed to the jurisdiction of the Psychiatric Security Review Board **or the Oregon Health Authority under ORS 161.315 to 161.351**, the department shall immediately suspend the driving privileges of the person. A suspension under this subsection is subject to administrative review under ORS 809.440 and shall continue until such time as the person establishes eligibility under ORS 807.090.

**SECTION 30.** ORS 810.375 is amended to read:

810.375. (1) The judge or clerk of every court of this state having jurisdiction of any traffic offense, including all local and municipal judicial officers in this state:

(a) Shall keep a full record of every case in which a person is charged with any such offense.

(b) Shall send the Department of Transportation an abstract of conviction for any person who is convicted.

(c) Shall send the department a copy of any final judgment of conviction of any person which results in mandatory suspension or revocation of driving privileges or commercial driver license under ORS 809.404, 809.407, 809.409, 809.411, 809.413, 813.400 or 813.403.

(d) Shall send the department a copy of any final judgment finding a person charged with a traffic offense guilty except for insanity and committed to the jurisdiction of the Psychiatric Security Review Board **or the Oregon Health Authority under ORS 161.315 to 161.351**.

(2) The department shall keep such records in its office, and they shall be open to the inspection of any person during reasonable business hours.

(3) To comply with this section, a judge or clerk must comply with the following:

(a) Any information required by this section to be sent to the department must be sent within the time provided under ORS 810.370 and must include information required by ORS 810.370.

(b) Information shall not be sent to the department under this section concerning convictions excluded from ORS 810.370.

## MISCELLANEOUS PROVISIONS

**SECTION 31.** The unit captions used in this 2011 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2011 Act.

**SECTION 32.** Sections 9 and 15 of this 2011 Act and ORS 161.327 are added to and made a part of ORS 161.315 to 161.351.

**SECTION 33.** (1) Sections 9 and 15 of this 2011 Act and the amendments to ORS 21.010, 137.750, 151.216, 161.325, 161.326, 161.327, 161.328, 161.329, 161.332, 161.336, 161.341, 161.346, 161.351, 161.375, 161.385, 161.387, 161.390, 161.395, 161.400, 162.135, 162.155, 181.740, 183.315, 183.635, 192.690, 278.315, 430.695, 809.419 and 810.375 by sections 1 to 8, 10 to 14 and 16 to 30 of this 2011 Act become operative on January 1, 2012.

(2) The Psychiatric Security Review Board and the Oregon Health Authority may adopt rules or take any other action before the operative date specified in subsection (1) of this section that is necessary to enable the board or authority to exercise, on or after the operative date specified in subsection (1) of this section, all the duties, functions and powers conferred on the board or authority by sections 9 and 15 of this 2011 Act and the amendments to ORS 21.010, 137.750, 151.216, 161.325, 161.326, 161.327, 161.328, 161.329, 161.332, 161.336, 161.341, 161.346, 161.351, 161.375, 161.385, 161.387, 161.390, 161.395, 161.400, 162.135, 162.155, 181.740, 183.315, 183.635, 192.690, 278.315, 430.695, 809.419 and 810.375 by sections 1 to 8, 10 to 14 and 16 to 30 of this 2011 Act.

(3) On the operative date specified in subsection (1) of this section, the Oregon Health Authority shall exercise jurisdiction over tier two offenders, as defined in ORS 161.332, committed to a state hospital or secure intensive community inpatient facility under ORS 161.315 to 161.351 in accordance with sections 9 and 15 of this 2011 Act and the amendments to ORS 21.010, 137.750, 151.216, 161.325, 161.326, 161.327, 161.328, 161.329, 161.332, 161.336, 161.341, 161.346, 161.351, 161.375, 161.385, 161.387, 161.390, 161.395, 161.400, 162.135, 162.155, 181.740, 183.315, 183.635, 192.690, 278.315, 430.695, 809.419 and 810.375 by sections 1 to 8, 10 to 14 and 16 to 30 of this 2011 Act.

**SECTION 34.** The Oregon Health Authority and the Psychiatric Security Review Board shall each submit a report to the Legislative Assembly, in the manner provided in ORS 192.245, that describes the implementation and effects of this 2011 Act. The authority and the board shall submit a report under this section no later than:

(1) March 1 of each year; and

(2) November 1 of each year.

**SECTION 35.** Section 34 of this 2011 Act is repealed on January 1, 2016.

**SECTION 35a.** Notwithstanding any other provision of law, the General Fund appropriation made to the Department of Justice by section 1, chapter \_\_\_\_\_, Oregon Laws 2011 (Enrolled Senate Bill 5518), for the biennium beginning July 1, 2011, is increased by \$800,800.

**SECTION 35b.** Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 2, chapter \_\_\_\_\_, Oregon Laws 2011 (Enrolled Senate Bill 5518), for the biennium beginning July 1, 2011, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts, but excluding lottery funds and federal funds, collected or received by the Department of Justice, is increased by \$771,501.

**SECTION 35c.** Notwithstanding any other provision of law, the General Fund appropriation made to the Oregon Health Authority by section 1 (1), chapter \_\_\_\_\_, Oregon Laws 2011 (Enrolled Senate Bill 5529), for the biennium beginning July 1, 2011, is increased by \$595,041.

**SECTION 35d.** Notwithstanding any other provision of law, the General Fund appropriation made to the Psychiatric Security Review Board by section 1, chapter \_\_\_\_\_, Oregon

Laws 2011 (Enrolled Senate Bill 5539), for the biennium beginning July 1, 2011, is increased by \$382,222.

## CONFLICT AMENDMENTS

**SECTION 36.** If House Bill 3100 becomes law, section 12 of this 2011 Act (amending ORS 161.327) is repealed and ORS 161.327, as amended by section 3, chapter \_\_, Oregon Laws 2011 (Enrolled House Bill 3100), is amended to read:

161.327. [(1) Following the entry of a judgment pursuant to ORS 161.319, the court shall order that a person be placed under the jurisdiction of the Psychiatric Security Review Board for care and treatment if:]

[*(a) The person was found guilty except for insanity of a felony; and]*

[*(b) The court finds by a preponderance of the evidence that the person is affected by mental disease or defect and presents a substantial danger to others that requires commitment or conditional release.*]

[(2) The court shall determine whether the person should be committed or conditionally released pending any hearing before the board as follows:]

**(1) Following the entry of a judgment pursuant to ORS 161.319, if the court finds by a preponderance of the evidence that a person found guilty except for insanity of a felony is affected by mental disease or defect and presents a substantial danger to others, the court shall enter an order as follows:**

(a) If the court finds that the person [*presents a substantial danger to others and*] is not a proper subject for conditional release, the court shall order the person committed to a state hospital [*designated by the Oregon Health Authority if the person is at least 18 years of age,*] or, **if the person is under 18 years of age**, to a secure intensive community inpatient facility [*designated by the authority or the Department of Human Services if the person is under 18 years of age,*] for custody, care and treatment [*pending hearing before the board in accordance with ORS 161.341 to 161.351*]. **When the court orders a person committed under this paragraph, the court shall place the person under the jurisdiction of:**

**(A) The Psychiatric Security Review Board, if the person is a tier one offender.**

**(B) The Oregon Health Authority, if the person is a tier two offender.**

(b) If the court finds that the person [*presents a substantial danger to others but that the person*] can be adequately controlled with supervision and treatment if conditionally released and that necessary supervision and treatment are available, the court [*may*] **shall** order the person conditionally released.

[(3)] **(2)** When a person is conditionally released under this section, the person is subject to those supervisory orders of the court as are in the best interests of justice, the protection of society and the welfare of the person. The court shall designate a person or state, county or local agency to supervise the person upon release, subject to those conditions as the court directs in the order for conditional release. Prior to the designation, the court shall notify the person or agency to whom conditional release is contemplated and provide the person or agency an opportunity to be heard before the court. After receiving an order entered under subsection [(2)(b)] **(1)(b)** of this section, the person or agency designated shall assume supervision of the person pursuant to the direction of the Psychiatric Security Review Board. The person or agency designated as supervisor shall be required to report in writing no less than once per month to the board concerning the supervised person's compliance with the conditions of release.

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

[(5)] **(3)** In determining whether a person should be conditionally released, the court:



(a) May order evaluations, examinations and compliance as provided in ORS 161.336 (4) and 161.346 (2); *and*

(b) Shall order that the person be examined by a local mental health program designated by the board and a report of the examination be provided to the court if each felony for which the defendant was found guilty except for insanity is a Class C felony.; **and**

[(6)] (c) [*In determining whether a person should be committed to a state hospital or to a secure intensive community inpatient facility or conditionally released, the court*] Shall have as its primary concern the protection of society.

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

[(8)] (5) The **total** period of [*jurisdiction of the board is equal to*] **commitment or conditional release under ORS 161.315 to 161.351 may not exceed** the maximum sentence provided by statute for the crime for which the person was found guilty except for insanity.

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

[(10)] (7) [*Upon placing a person under the jurisdiction of the board*] **Following the entry of an order described in subsection (1) of this section**, the court shall notify the person of the right to appeal and the right to a hearing before the [*board*] **agency exercising jurisdiction over the person** in accordance with ORS 161.336 [(7)] (5) and 161.341 [(4)] (3).

**SECTION 37. If House Bill 3100 becomes law, section 13 of this 2011 Act (amending ORS 161.328) is repealed and ORS 161.328, as amended by section 4, chapter \_\_, Oregon Laws 2011 (Enrolled House Bill 3100), is amended to read:**

161.328. (1) Following the entry of a judgment pursuant to ORS 161.319, the court [*may*] **shall** order a person committed to a state mental hospital or other facility designated by the Oregon Health Authority if:

(a) Each offense for which the person is found guilty except for insanity is a misdemeanor; and

(b) The court finds that the person is affected by mental disease or defect and presents a substantial danger to others that requires commitment.

(2) The total period of commitment under this section may not exceed the maximum sentence provided by statute for the crime for which the person was found guilty except for insanity.

(3) If the superintendent of the state mental hospital or the director of the facility to which the person is committed determines that a person committed under this section is no longer affected by mental disease or defect or, if so affected, no longer presents a substantial danger to others that requires commitment, the superintendent or director shall file notice of that determination with the committing court. Upon filing of the notice, the superintendent or director shall discharge the person from custody.

**SECTION 38. If House Bill 3100 becomes law, section 14 of this 2011 Act (amending ORS 161.329) is repealed.**

**SECTION 39.** If House Bill 3100 becomes law, section 15 of this 2011 Act is amended to read:

**Sec. 15.** (1) When a person who is committed to a state hospital or a secure intensive community inpatient facility under ORS 161.315 to 161.351 is convicted of a crime and sentenced to a term of incarceration and when the person is sentenced to a term of incarceration as a sanction for violating the conditions of probation, parole or post-prison supervision, the sentencing court shall stay

execution of the sentence pending the conditional release or discharge of the person or the expiration of the period of time described in ORS 161.327 [(6)] (5). When the person is conditionally released or discharged by the agency having jurisdiction over the person under ORS 161.315 to 161.351, or when the maximum period of jurisdiction described in ORS 161.327 [(6)] (5) expires, the stay shall be lifted by operation of law and the person shall be delivered to the custody of the Department of Corrections or the supervisory authority to begin service of the sentence imposed.

(2) When a person described in subsection (1) of this section is delivered to the custody of the department or the supervisory authority as described in this section, the agency having jurisdiction over the person while the person was committed to a state hospital or a secure intensive community inpatient facility shall notify the department or the supervisory authority when the period of time described in ORS 161.327 [(6)] (5) will expire.

(3) The department or supervisory authority shall notify the Psychiatric Security Review Board when the person has served the term of incarceration imposed by the court and the board shall resume exercising active jurisdiction over the person in accordance with ORS 161.315 to 161.351.

(4) As used in this section, "supervisory authority" has the meaning given that term in ORS 144.087.

**SECTION 40. If House Bill 3100 becomes law, section 16 of this 2011 Act (amending ORS 161.325) is repealed and ORS 161.325, as amended by section 9, chapter 89, Oregon Laws 2010, and section 2, chapter \_\_, Oregon Laws 2011 (Enrolled House Bill 3100), is amended to read:**

161.325. (1) After entry of judgment of guilty except for insanity, the court shall, on the basis of the evidence given at the trial or at a separate hearing, if requested by either party, [make] enter an order as provided in ORS 161.327, 161.328 or 161.329, whichever is appropriate.

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

(a) Determine on the record the offense of which the person otherwise would have been convicted;

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

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

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

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

**SECTION 41. If House Bill 3100 becomes law, section 33 of this 2011 Act is amended to read:**

**Sec. 33.** (1) Sections 9 and 15 of this 2011 Act and the amendments to ORS 21.010, 137.750, 151.216, 161.325, 161.326, 161.327, 161.328, [161.329,] 161.332, 161.336, 161.341, 161.346, 161.351, 161.375, 161.385, 161.387, 161.390, 161.395, 161.400, 162.135, 162.155, 181.740, 183.315, 183.635, 192.690, 278.315, 430.695, 809.419 and 810.375 by sections 1 to 8, 10 to [14 and 16] **11b, 17 to 30, 36, 37 and 40** of this 2011 Act become operative on January 1, 2012.

(2) The Psychiatric Security Review Board and the Oregon Health Authority may adopt rules or take any other action before the operative date specified in subsection (1) of this section that is necessary to enable the board or authority to exercise, on or after the operative date specified in subsection (1) of this section, all the duties, functions and powers conferred on the board or authority by sections 9 and 15 of this 2011 Act and the amendments to ORS 21.010, 137.750, 151.216, 161.325, 161.326, 161.327, 161.328, [161.329,] 161.332, 161.336, 161.341, 161.346, 161.351, 161.375, 161.385, 161.387, 161.390, 161.395, 161.400, 162.135, 162.155, 181.740, 183.315, 183.635, 192.690, 278.315, 430.695, 809.419 and 810.375 by sections 1 to 8, 10 to [14 and 16] **11b, 17 to 30, 36, 37 and 40** of this 2011 Act.

(3) On the operative date specified in subsection (1) of this section, the Oregon Health Authority shall exercise jurisdiction over tier two offenders, as defined in ORS 161.332, committed to a state hospital or secure intensive community inpatient facility under ORS 161.315 to 161.351 in accordance with sections 9 and 15 of this 2011 Act and the amendments to ORS 21.010, 137.750, 151.216, 161.325, 161.326, 161.327, 161.328, [161.329,] 161.332, 161.336, 161.341, 161.346, 161.351, 161.375, 161.385, 161.387, 161.390, 161.395, 161.400, 162.135, 162.155, 181.740, 183.315, 183.635, 192.690, 278.315, 430.695, 809.419 and 810.375 by sections 1 to 8, 10 to [14 and 16] **11b, 17 to 30, 36, 37 and 40** of this 2011 Act.

**EMERGENCY CLAUSE**

**SECTION 42.** This 2011 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect on its passage.

**Passed by Senate June 28, 2011**

.....  
Robert Taylor, Secretary of Senate

.....  
Peter Courtney, President of Senate

**Passed by House June 28, 2011**

.....  
Bruce Hanna, Speaker of House

.....  
Arnie Roblan, Speaker of House

**Received by Governor:**

.....M.,....., 2011

**Approved:**

.....M.,....., 2011

.....  
John Kitzhaber, Governor

**Filed in Office of Secretary of State:**

.....M.,....., 2011

.....  
Kate Brown, Secretary of State