

Senate Bill 420

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SUMMARY

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

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

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

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

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

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

A BILL FOR AN ACT

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

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

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

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

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

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

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

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

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

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

5 (e) **On the basis of the evidence given at the trial or at a separate hearing, if requested**
 6 **by either party, make an order as provided in ORS 161.327.**

7 [(3)] (2) The court shall include [*any such*] **the findings described in this section** in [*its*] **the**
 8 **court's** order.

9 [(4)] (3) Except under circumstances described in ORS 137.076 (4), whenever a defendant charged
 10 with any offense listed in ORS 137.076 (1) has been found guilty of that offense except for insanity,
 11 the court shall, in any order entered under ORS 161.327 [*or 161.329*], direct the defendant to submit
 12 to the obtaining of a blood or buccal sample in the manner provided in ORS 137.076.

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

14 161.328. [*Following the entry of a judgment pursuant to ORS 161.319 and the dispositional deter-*
 15 *mination under ORS 161.325, if the court finds that the person would have been guilty of a*
 16 *misdemeanor during a criminal episode in the course of which the person did not cause physical injury*
 17 *or risk of physical injury to another, and if the court has probable cause to believe that the person is*
 18 *dangerous to self or others as a result of a mental disorder, the court may initiate civil commitment*
 19 *proceedings under ORS 426.070 to 426.130.] **As used in ORS 161.315 to 161.351:***

20 (1) **"Presumptive jail offense" means a determination made by the court under ORS**
 21 **161.325 that the defendant was found guilty except for insanity of an offense for which the**
 22 **maximum sentence the person could have received had the person been convicted of the of-**
 23 **ense does not include a term of imprisonment of more than 12 months.**

24 (2) **"Presumptive prison offense" means a determination made by the court under ORS**
 25 **161.325 that the defendant was found guilty except for insanity of an offense for which the**
 26 **maximum sentence the person could have received had the person been convicted of the of-**
 27 **ense includes a term of imprisonment of more than 12 months.**

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

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

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

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

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

41 (B) **The court may order the person conditionally released, subject to the supervisory**
 42 **orders of the court as are in the best interest of justice, the protection of society and the**
 43 **welfare of the person. The court shall designate a person or a state, county or local agency**
 44 **to supervise the person upon release, subject to those conditions as the court directs in the**
 45 **order for conditional release. Prior to the designation, the court shall notify the person or**

1 **agency to whom conditional release is contemplated and provide the person or agency an**
 2 **opportunity to be heard before the court. After receiving an order entered under this para-**
 3 **graph, the person or agency designated shall assume supervision of the person pursuant to**
 4 **the direction of the Psychiatric Security Review Board. The person or agency designated as**
 5 **supervisor shall be required to report in writing no less than once per month to the board**
 6 **concerning the supervised person's compliance with the conditions of release. As a condition**
 7 **of release, the court may require the supervised person to report to any state or local mental**
 8 **health facility for evaluation.**

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

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

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

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

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

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

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

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

1 *heard before the court. After receiving an order entered under this paragraph, the person or agency*
 2 *designated shall assume supervision of the person pursuant to the direction of the Psychiatric Security*
 3 *Review Board. The person or agency designated as supervisor shall be required to report in writing*
 4 *no less than once per month to the board concerning the supervised person's compliance with the con-*
 5 *ditions of release.] in accordance with subsection (1)(b)(B) of this section.*

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

10 [(4)] (6) In determining whether a person should be conditionally released, the court may order
 11 evaluations, examinations and compliance as provided in ORS 161.336 (4) and 161.346 (2).

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

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

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

29 [(8)] (10) Upon placing a person under the jurisdiction of the board, the court shall notify the
 30 person of the right to appeal and the right to a hearing before the board in accordance with ORS
 31 161.336 (7) and 161.341 (4).

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

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

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

1 161.351.

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

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

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

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

17 (d) Copies of all reports submitted to the board pursuant to this section shall be furnished to the
18 person and the person's counsel. The confidentiality of these reports is determined pursuant to ORS
19 192.501 to 192.505.

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

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

44 (6) The community mental health program director, the director of the facility providing treat-
45 ment to a person on conditional release, any peace officer or any person responsible for the super-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 released or discharged.

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

4 161.326. (1) Whenever a person already under the jurisdiction of the Psychiatric Security Review
5 Board commits a new crime, the court or the board shall make the findings described in ORS 161.325
6 [(2)].

7 (2) If the trial court or the board determines that a victim desires notification as described in
8 ORS 161.325 [(2)], the board shall make a reasonable effort to notify the victim of board hearings
9 and orders, conditional release, discharge or escape. Nothing in this subsection authorizes the
10 board to disseminate information that is otherwise privileged by law.

11 (3) When the board conducts a hearing involving a person found guilty except for insanity of a
12 crime for which there is a victim, the board shall afford the victim an opportunity to be heard, ei-
13 ther orally or in writing, at the hearing.

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

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

23 (c) The board may not grant a request for reconsideration that is made:

24 (A) After the person has been discharged from the jurisdiction of the board;

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

26 (C) If the board failed to make a reasonable effort to notify the victim of a hearing, more than
27 30 days after the victim knew or reasonably should have known of the hearing.

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

29 161.351. (1) Any person placed under the jurisdiction of the Psychiatric Security Review Board
30 pursuant to ORS 161.336 or 161.341 shall be discharged at such time as the board, upon a hearing,
31 shall find by a preponderance of the evidence that the person is no longer affected by mental disease
32 or defect or, if so affected, no longer presents a substantial danger to others which requires regular
33 medical care, medication, supervision or treatment.

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

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

43 **(4) When a person is discharged from the jurisdiction of the board as a result of the ex-**
44 **piration of the maximum period of jurisdiction, the board may request that the committing**
45 **court initiate civil commitment proceedings under ORS 426.070 to 426.130 if the board has**

1 **probable cause to believe that the person is dangerous to self or others as a result of a**
 2 **mental disorder.**

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

4 161.390. (1) The Oregon Health Authority shall:

5 **(a) Designate the appropriate state hospital or secure intensive community inpatient fa-**
 6 **ility when ORS 161.315 to 161.351 requires that a person be committed to a state hospital**
 7 **or secure intensive community inpatient facility or when a person is committed under ORS**
 8 **161.365 or 161.370.**

9 **(b)** Promulgate rules for the assignment of persons to state mental hospitals or secure intensive
 10 community inpatient facilities under ORS 161.341, 161.365 and 161.370 and for establishing standards
 11 for evaluation and treatment of persons committed to a state hospital or a secure intensive com-
 12 munity inpatient facility[, *designated by the authority,*] or ordered to a community mental health
 13 program under ORS 161.315 to 161.351.

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

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

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

24 161.360. [(1) *If, before or during the trial in any criminal case, the court has reason to doubt the*
 25 *defendant's fitness to proceed by reason of incapacity, the court may order an examination in the*
 26 *manner provided in ORS 161.365.]*

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

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

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

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

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

33 161.365. (1) [*Whenever the court has reason to doubt the defendant's fitness to proceed by reason*
 34 *of incapacity as defined in ORS 161.360,*] **If, before or during the trial in any criminal case, the**
 35 **court has reason to doubt the defendant's fitness to proceed by reason of incapacity as de-**
 36 **scribed in ORS 161.360, the court may order an examination in accordance with this section.**

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

39 [(2)] (3) **If the defendant is charged with a presumptive prison offense as defined in ORS**
 40 **161.370 and** the court determines the assistance of a psychiatrist or psychologist would be helpful,
 41 the court may order the defendant to be committed for the purpose of an examination for a period
 42 not exceeding 30 days to a state mental hospital [*designated by the Oregon Health Authority if the*
 43 *defendant is at least 18 years of age,*] or, **if the person is under 18 years of age,** to a secure in-
 44 tensive community inpatient facility [*designated by the authority if the defendant is under 18 years*
 45 *of age*].

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

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

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

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

7 [(3)] (5) Except when the defendant and the court both request to the contrary, the report may
8 not contain any findings or conclusions as to whether the defendant as a result of mental disease
9 or defect was subject to the provisions of ORS 161.295 or 161.300 at the time of the criminal act
10 charged.

11 [(4)] (6) If the examination by the psychiatrist or psychologist cannot be conducted by reason
12 of the unwillingness of the defendant to participate therein, the report shall so state and shall in-
13 clude, if possible, an opinion as to whether such unwillingness of the defendant was the result of
14 mental disease or defect affecting capacity to proceed.

15 [(5)] (7) The report of the examination shall be filed in triplicate with the clerk of the court,
16 who shall cause copies to be delivered to the district attorney and to counsel for defendant.

17 [(6)] (8) When upon motion of the court or a financially eligible defendant, the court has ordered
18 a psychiatric or psychological examination of the defendant, a county or justice court shall order
19 the county to pay, and a circuit court shall order the public defense services executive director to
20 pay from funds available for the purpose:

21 (a) A reasonable fee if the examination of the defendant is conducted by a psychiatrist or psy-
22 chologist in private practice; and

23 (b) All costs including transportation of the defendant if the examination is conducted by a
24 psychiatrist or psychologist in the employ of the Oregon Health Authority or a community mental
25 health program established under ORS 430.610 to 430.670.

26 [(7)] (9) When such an examination is ordered at the request or with the acquiescence of a de-
27 fendant who is determined not to be financially eligible, the examination shall be performed at the
28 defendant's expense. When such an examination is ordered at the request of the prosecution, the
29 county shall pay for the expense of the examination.

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

31 161.370. (1) When the defendant's fitness to proceed is drawn in question, the issue shall be de-
32 termined by the court. If neither the prosecuting attorney nor counsel for the defendant contests the
33 finding of the report filed by a psychiatrist or psychologist under ORS 161.365, the court may make
34 the determination on the basis of [*such*] **the** report. If the finding is contested, the court shall hold
35 a hearing on the issue. If the report is received in evidence [*upon such*] **in a contested** hearing, the
36 party who contests the finding [*thereof shall have*] **has** the right to summon and to cross-examine
37 any psychiatrist or psychologist who submitted the report and to offer evidence upon the issue.
38 Other evidence regarding the defendant's fitness to proceed may be introduced by either party.

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

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

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

45 (A) Commit the defendant to the custody of the superintendent of a state mental hospital [*des-*

1 *ignated by the Oregon Health Authority if the defendant is at least 18 years of age,] or, if the de-*
 2 **fendant is under 18 years of age**, to the custody of the director of a secure intensive community
 3 inpatient facility *[designated by the authority if the defendant is under 18 years of age, or shall]; or*

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

9 **(3) When the court releases a defendant on supervision under this section, the court** *[It]*
 10 may place conditions *[which it]* **that the court** deems appropriate on the release, including the re-
 11 quirement that the defendant regularly report to the authority or a community mental health pro-
 12 gram for examination to determine if the defendant has regained capacity to stand trial.

13 **(4)** When the court, on its own motion or upon the application of the superintendent of the
 14 hospital or director of the secure intensive community inpatient facility in which the defendant is
 15 committed, a person examining the defendant as a condition of release on supervision, or either
 16 party, determines, after a hearing, if a hearing is requested, that the defendant has regained fitness
 17 to proceed, the proceeding shall be resumed. If, however, the court is of the view that so much time
 18 has elapsed since the commitment or release of the defendant on supervision that it would be unjust
 19 to resume the criminal proceeding, the court on motion of either party may dismiss the charge and
 20 may order the defendant to be discharged or cause a proceeding to be commenced forthwith under
 21 ORS 426.070 to 426.170 or 427.235 to 427.290.

22 *[(3)]* **(5)** The superintendent of a state hospital or director of a secure intensive community in-
 23 patient facility shall cause the defendant to be evaluated within 60 days from the defendant's deliv-
 24 ery into the superintendent's or director's custody, for the purpose of determining whether there is
 25 a substantial probability that, in the foreseeable future, the defendant will have the capacity to
 26 stand trial.

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

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

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

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

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

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

39 *[(5)]* **(6)(a)** If the superintendent or director determines that *[there is a substantial probability*
 40 *that, in the foreseeable future,]* the defendant *[will]* **could reasonably be expected to** gain or regain
 41 the capacity to stand trial **within the time estimated under subsection (5)(b)(C) of this**
 42 **section**, unless the court otherwise orders, the defendant shall remain in the superintendent's or
 43 director's custody where the defendant shall receive treatment designed for the purpose of enabling
 44 the defendant to gain or regain capacity.

45 **(b)** In keeping with the notice requirement under subsection *[(4)(b)]* **(5)(b)** of this section, the

1 superintendent or director shall, for the duration of the defendant's period of commitment, submit
 2 a progress report to the committing court, concerning the defendant's capacity or incapacity, at
 3 least once every 180 days as measured from the date of the defendant's delivery into the
 4 superintendent's or director's custody.

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

11 [(a) *Three years; or*] **In no event may a defendant charged with:**

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

15 **(B) A presumptive prison offense other than an offense described in subparagraph (A)**
 16 **of this paragraph, be committed for longer than 18 months or the maximum commitment**
 17 **term, whichever is shorter, less credit for time served.**

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

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

26 [(7)] (8) The superintendent or director shall notify the committing court of the defendant's im-
 27 pending discharge 30 days before the date on which the superintendent or director is required to
 28 discharge the defendant under subsection [(6)] (7) of this section.

29 [(8)] (9) When the committing court receives a notice from the superintendent or director under
 30 either subsection [(4) or (7)] (5) or (8) of this section concerning the defendant's progress or lack
 31 thereof, the committing court shall determine after a hearing, if a hearing is requested, whether the
 32 defendant presently has the capacity to stand trial.

33 [(9)] (10) If under subsection [(8)] (9) of this section the court determines that the defendant
 34 lacks the capacity to stand trial, the court shall further determine whether there is a substantial
 35 probability that the defendant, in the foreseeable future, will gain or regain the capacity to stand
 36 trial and whether the defendant is entitled to discharge under subsection [(6)] (7) of this section. If
 37 the court determines that there is no substantial probability that the defendant, in the foreseeable
 38 future, will gain or regain the capacity to stand trial or that the defendant is entitled to discharge
 39 under subsection [(6)] (7) of this section, the court shall dismiss, without prejudice, all charges
 40 against the defendant and:

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

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

43 [(10)] (11) All notices required under this section shall be filed with the clerk of the court and
 44 delivered to both the district attorney and the counsel for the defendant.

45 [(11)] (12) If the defendant regains fitness to proceed, the term of any sentence received by the

1 defendant for conviction of the crime charged shall be reduced by the amount of time the defendant
 2 was committed under this section to the custody of a state mental hospital[,] or to the custody of
 3 a secure intensive community inpatient facility[, *designated by the Oregon Health Authority*].

4 [(12)] (13) The fact that the defendant is unfit to proceed does not preclude any objection
 5 through counsel and without the personal participation of the defendant on the grounds that the
 6 indictment is insufficient, that the statute of limitations has run, that double jeopardy principles
 7 apply or upon any other ground at the discretion of the court which the court deems susceptible
 8 of fair determination prior to trial.

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

10 (a) **“Credit for time served” means the total period of time in the criminal action that**
 11 **the defendant has been incarcerated in a correctional facility or committed to a state hos-**
 12 **pital or secure intensive community inpatient facility.**

13 (b) **“Maximum commitment term” means the longest term of imprisonment that could**
 14 **be imposed for any single offense with which the defendant is charged.**

15 (c) **“Presumptive prison offense” means an offense for which the maximum commitment**
 16 **term is greater than 12 months.**

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

18 181.595. (1)(a) Except as otherwise provided in paragraph (b) of this subsection, the agency to
 19 which a person reports under subsection (3) of this section shall complete a sex offender registration
 20 form concerning the person when the person reports under subsection (3) of this section.

21 (b) When a person who is under supervision reports to the agency supervising the person, the
 22 supervising agency may require the person to report instead to the Department of State Police, a
 23 city police department or a county sheriff’s office and provide the supervising agency with proof of
 24 the completed registration.

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

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

29 (A) Conviction of a sex crime;

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

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

33 (b) Is paroled to this state under ORS 144.610 after being convicted in another United States
 34 court of a crime that would constitute a sex crime if committed in this state;

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

38 (d) Is discharged or placed on conditional release by the juvenile panel of the Psychiatric Se-
 39 curity Review Board after having been found to be responsible except for insanity under ORS
 40 419C.411 for an act that would constitute a sex crime if committed by an adult; or

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

43 (3)(a) A person described in subsection (2) of this section shall report, in person, to the Depart-
 44 ment of State Police, a city police department or a county sheriff’s office or, if the person is under
 45 supervision, to the supervising agency:

1 (A) Within 10 days following discharge, release on parole, post-prison supervision or other
 2 supervised or conditional release;

3 (B) Within 10 days of a change of residence;

4 (C) Once each year within 10 days of the person's birth date, regardless of whether the person
 5 changed residence;

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

8 (E) Within 10 days of a change in work, vocation or attendance status at an institution of higher
 9 education.

10 (b) If the person required to report under this subsection is a youth offender or young person,
 11 as defined in ORS 419A.004, who is under supervision, the person shall report to the agency super-
 12 vising the person.

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

15 (4) As part of the registration and reporting requirements of this section:

16 (a) The person required to report shall:

17 (A) Provide the information necessary to complete the sex offender registration form and sign
 18 the form as required; and

19 (B) Submit to the requirements described in paragraph (b) of this subsection.

20 (b) The Department of State Police, the city police department, the county sheriff's office or the
 21 supervising agency:

22 (A) Shall photograph the person when the person initially reports under this section and each
 23 time the person reports annually under this section;

24 (B) May photograph the person or any identifying scars, marks or tattoos located on the person
 25 when the person reports under any of the circumstances described in this section; and

26 (C) Shall fingerprint the person if the person's fingerprints are not included in the record file
 27 of the Department of State Police bureau of criminal identification.

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

29 419C.473. (1) Whenever a youth offender has been found to be within the jurisdiction of the court
 30 under ORS 419C.005 for having committed an act that if done by an adult would constitute a felony
 31 listed in subsection (2) of this section, the court shall order the youth offender to submit to the ob-
 32 taining of a blood or buccal sample in the manner provided by ORS 137.076. The court shall further
 33 order that as soon as practicable after the entry of the dispositional order, the law enforcement
 34 agency attending upon the court shall cause a blood or buccal sample to be obtained and transmit-
 35 ted in accordance with ORS 137.076. The court may also order the youth offender to reimburse the
 36 appropriate agency for the cost of obtaining and transmitting the blood or buccal sample.

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

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

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

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

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

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

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

3 (g) Murder or aggravated murder.

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

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

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

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

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

17 **SECTION 15. Section 16 of this 2011 Act and ORS 161.326 and 161.327 are added to and
18 made a part of ORS 161.315 to 161.351**

19 **SECTION 16. The amendments to ORS 161.325, 161.326, 161.327, 161.328, 161.336, 161.341,
20 161.351, 161.360, 161.365, 161.370, 161.390, 181.595 and 419C.473 by sections 1 to 13 of this 2011
21 Act and the repeal of ORS 161.329 by section 14 of this 2011 Act apply to persons charged
22 with an offense committed on or after the effective date of this 2011 Act.**

23