

Senate Bill 594

Sponsored by Senator ATKINSON

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**.

Authorizes county sheriff or municipal police chief to make community notification when person found guilty except for insanity of homicide or felony sex offense is conditionally released from state hospital.

Requires Psychiatric Security Review Board to notify law enforcement officials having jurisdiction over location where person will reside, if conditionally released, at least 60 days prior to conditional release hearing. Allows officials to provide board report or testimony describing public safety concerns.

A BILL FOR AN ACT

1
2 Relating to persons found guilty except for insanity; creating new provisions; and amending ORS
3 161.336 and 161.346.

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

5 **SECTION 1. When a person is conditionally released by the Psychiatric Security Review**
6 **Board under the provisions of ORS 161.336 to 161.351, the county sheriff or, if the municipal**
7 **police department has jurisdiction over the location where the person will reside, the mu-**
8 **nicipal chief of police may notify the community in which the person will reside that the**
9 **person has been conditionally released if:**

10 (1) **The person has been found guilty except for insanity of a felony sex crime as defined**
11 **in ORS 181.594 or of criminal homicide as defined in ORS 163.005; and**

12 (2) **Community notification is in the interests of public safety.**

13 **SECTION 2. ORS 161.346 is amended to read:**

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

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

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

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

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 community inpatient facility designated by the authority if the person is under 18 years of age, for
2 care, custody and treatment.

3 (2) At any time, the board may appoint a psychiatrist or licensed psychologist to examine the
4 person and to submit a report to the board. Reports filed with the board pursuant to the examination
5 shall include, but need not be limited to, an opinion as to the mental condition of the person and
6 whether the person presents a substantial danger to others, and whether the person could be ade-
7 quately controlled with treatment as a condition of release. To facilitate the examination of the
8 person, the board may order the person placed in the temporary custody of any state hospital or
9 other suitable facility.

10 (3) The board may make the determination regarding discharge or conditional release based
11 upon the written reports submitted pursuant to this section. If any member of the board desires
12 further information from the examining psychiatrist or licensed psychologist who submitted the re-
13 port, these persons shall be summoned by the board to give testimony. The board shall consider all
14 evidence available to it which is material, relevant and reliable regarding the issues before the
15 board. Such evidence may include but is not limited to the record of trial, the information supplied
16 by the attorney representing the state or by any other interested party, including the person, and
17 information concerning the person's mental condition and the entire psychiatric and criminal history
18 of the person. All evidence of a type commonly relied upon by reasonably prudent persons in the
19 conduct of their serious affairs shall be admissible at hearings. Testimony shall be taken upon oath
20 or affirmation of the witness from whom received. The officer presiding at the hearing shall admin-
21 ister oaths or affirmations to witnesses.

22 [(4)] (4)(a) The board shall furnish to the person about whom the hearing is being conducted,
23 the attorney representing the person, the Attorney General, the district attorney and the court or
24 department of the county from which the person was committed written notice of any hearing
25 pending under this section [*within a reasonable time prior to the hearing*] **no later than 60 days**
26 **before the hearing is conducted.** The notice shall include:

27 [(a)] (A) The time, place and location of the hearing.

28 [(b)] (B) The nature of the hearing and the specific action for which a hearing has been re-
29 quested, the issues to be considered at the hearing and a reference to the particular sections of the
30 statutes and rules involved.

31 [(c)] (C) A statement of the authority and jurisdiction under which the hearing is to be held.

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

33 **(b) If the hearing is held upon an application for conditional release or modification of**
34 **the conditions of release, the board shall furnish written notice of the hearing, no later than**
35 **60 days before the hearing is conducted, to:**

36 **(A) The district attorney and county sheriff of the county in which the person will reside**
37 **if conditionally released; and**

38 **(B) If the person will reside within the jurisdiction of a municipal police department while**
39 **conditionally released, the municipal chief of police.**

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

42 [(6)] (6)(a) At the hearing, the person about whom the hearing is being held shall have the right:

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

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

45 [(c)] (C) To subpoena witnesses and documents as provided in ORS 161.395.

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

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

7 **(b) If the hearing is held upon application for conditional release or modification of the**
8 **conditions of release, the officials described in subsection (4)(b) of this section may submit**
9 **a report or provide testimony describing any public safety concerns relevant to the applica-**
10 **tion.**

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

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

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

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

20 (11) If the board determines that the person about whom the hearing is being held is financially
21 eligible, the board shall appoint suitable counsel to represent the person. Counsel so appointed shall
22 be an attorney who satisfies the professional qualifications established by the Public Defense Ser-
23 vices Commission under ORS 151.216. The public defense services executive director shall determine
24 and allow fair compensation for counsel appointed under this subsection and the reasonable ex-
25 penses of the person in respect to the hearing. Compensation payable to appointed counsel shall not
26 be less than the applicable compensation level established under ORS 151.216. The compensation and
27 expenses so allowed shall be paid by the public defense services executive director from funds
28 available for the purpose.

29 (12) The Attorney General may represent the state at contested hearings before the board unless
30 the district attorney of the county from which the person was committed elects to represent the
31 state. The district attorney of the county from which the person was committed shall cooperate with
32 the Attorney General in securing the material necessary for presenting a contested hearing before
33 the board. If the district attorney elects to represent the state, the district attorney shall give timely
34 written notice of such election to the Attorney General, the board and the attorney representing the
35 person.

36 **SECTION 3.** ORS 161.336 is amended to read:

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

1 board. After receiving an order entered under this section, the person or agency designated shall
2 assume supervision of the person pursuant to the direction of the board.

3 (2) Conditions of release contained in orders entered under this section may be modified from
4 time to time and conditional releases may be terminated by order of the board as provided in ORS
5 161.351.

6 (3) For purposes of this section, a person affected by a mental disease or defect in a state of
7 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. The person may be continued on conditional release by the board as
10 provided in this section.

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

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

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

21 (d) Copies of all reports submitted to the board pursuant to this section shall be furnished to the
22 person and the person's counsel. The confidentiality of these reports is determined pursuant to ORS
23 192.501 to 192.505.

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

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

1 pursuant to ORS 161.346.

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

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

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

25 **(8) When a person is conditionally released under this section, the board shall ensure**
 26 **that the following information is entered into the Law Enforcement Data System:**

27 **(a) A physical description of the person;**

28 **(b) The terms and conditions of the person's release;**

29 **(c) A list of any medications prescribed to the person;**

30 **(d) The street address where the person will reside on conditional release; and**

31 **(e) Contact information for the person or agency, designated under subsection (1) of this**
 32 **section, that is responsible for supervising the conditionally released person.**

33 [(8)] **(9)** The total period of commitment and conditional release ordered pursuant to this section
 34 may not exceed the maximum sentence provided by statute for the crime for which the person was
 35 found guilty except for insanity.

36 [(9)] **(10)** The board shall maintain and keep current the medical, social and criminal history of
 37 all persons committed to its jurisdiction. The confidentiality of records maintained by the board
 38 shall be determined pursuant to ORS 192.501 to 192.505.

39 [(10)] **(11)** In determining whether a person should be committed to a state hospital or to a se-
 40 cure intensive community inpatient facility, conditionally released or discharged, the board shall
 41 have as its primary concern the protection of society.

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