

House Bill 2557

Sponsored by Representative GREENLICK, Senator GELSER; Representatives BARNHART, FREDERICK, VEGA PEDERSON, WILLIAMSON (Pre-session filed.)

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**.

Directs court, Psychiatric Security Review Board and Oregon Health Authority to consider recovery and community reintegration, in addition to protection of society, in decisions concerning persons found guilty except for insanity and certain young persons with mental illness.

A BILL FOR AN ACT

1
2 Relating to persons with mental illness; amending ORS 161.327, 161.336, 161.351, 419C.529 and
3 419C.532.

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

5 **SECTION 1.** ORS 161.327 is amended to read:

6 161.327. (1) Following the entry of a judgment pursuant to ORS 161.319, if the court finds by a
7 preponderance of the evidence that a person found guilty except for insanity of a felony is affected
8 by mental disease or defect and presents a substantial danger to others, the court shall enter an
9 order as follows:

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

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

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

17 (b) If the court finds that the person can be adequately controlled with supervision and treat-
18 ment if conditionally released and that necessary supervision and treatment are available, the court
19 shall order the person conditionally released.

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

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 lease.

2 (3) In determining whether a person should be conditionally released, the court:

3 (a) May order evaluations, examinations and compliance as provided in ORS 161.336 (3) and
4 161.346 (3);

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

8 (c) Shall have as its primary [*concern*] **concerns** the protection of society, **the recovery of the**
9 **person and the person's reintegration into the community.**

10 (4) Upon placing a person on conditional release, the court shall notify the board in writing of
11 the court's conditional release order, the supervisor appointed and all other conditions of release,
12 and the person shall be on conditional release pending hearing before the board. Upon compliance
13 with this section, the court's jurisdiction over the person is terminated.

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

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

25 (7) Following the entry of an order described in subsection (1) of this section, the court shall
26 notify the person of the right to appeal and the right to a hearing before the agency exercising ju-
27 risdiction over the person in accordance with ORS 161.336 (5) and 161.341 (3).

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

29 161.336. (1)(a) When a person is conditionally released under ORS 161.315 to 161.351, the person
30 is subject to those supervisory orders of the Psychiatric Security Review Board as are in the best
31 interests of justice, the protection of society, [*and the welfare*] **the recovery of the person and the**
32 **person's reintegration into the community.**

33 (b) An order of conditional release entered by the board or the Oregon Health Authority may
34 designate any person or state, county or local agency capable of supervising the person upon re-
35 lease, subject to the conditions described in the order of conditional release.

36 (c) Prior to the designation, the agency conducting the hearing shall notify the person or state,
37 county or local agency to whom conditional release is contemplated and provide the person or state,
38 county or local agency an opportunity to be heard.

39 (d) After receiving an order entered under this section, the person or state, county or local
40 agency designated in the order shall assume supervision of the person in accordance with the con-
41 ditions described in the order and any modifications of the conditions ordered by the board.

42 (2) Conditions of release contained in orders entered under this section may be modified from
43 time to time and conditional releases may be terminated as provided in ORS 161.351.

44 (3)(a) As a condition of release, the person may be required to report to any state or local
45 mental health facility for evaluation. Whenever medical, psychiatric or psychological treatment is

1 recommended, the order may require the person, as a condition of release, to cooperate with and
2 accept the treatment from the facility.

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

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

9 (d) Copies of all reports submitted to the board pursuant to this section shall be furnished to the
10 person and the person's counsel. The confidentiality of these reports is determined pursuant to ORS
11 192.501 to 192.505.

12 (e) The facility shall comply with the conditional release order and any modifications of the
13 conditions ordered by the board.

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

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

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

38 (5)(a) Any person conditionally released under this section may apply to the board for discharge
39 from or modification of an order of conditional release on the ground that the person is no longer
40 affected by mental disease or defect or, if still so affected, no longer presents a substantial danger
41 to others and no longer requires supervision, medication, care or treatment. Notice of the hearing
42 on an application for discharge or modification of an order of conditional release shall be made to
43 the Attorney General. The applicant, at the hearing pursuant to this subsection, must prove by a
44 preponderance of the evidence the applicant's fitness for discharge or modification of the order of
45 conditional release. Applications by the person for discharge or modification of conditional release

1 may not be filed more often than once every six months.

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

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

10 **SECTION 3.** ORS 161.351 is amended to read:

11 161.351. (1) Any person placed under the jurisdiction of the Psychiatric Security Review Board
 12 or the Oregon Health Authority under ORS 161.315 to 161.351 shall be discharged at such time as
 13 the agency having jurisdiction over the person, upon a hearing, finds by a preponderance of the
 14 evidence that the person is no longer affected by mental disease or defect or, if so affected, no
 15 longer presents a substantial danger to others that requires regular medical care, medication,
 16 supervision or treatment.

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

22 (3) In determining whether a person should be committed to a state hospital or secure intensive
 23 community inpatient facility, conditionally released or discharged, the board and the authority shall
 24 have as their primary [*concern*] **concerns** the protection of society, **the recovery of the person**
 25 **and the reintegration of the person into the community.**

26 **SECTION 4.** ORS 419C.529 is amended to read:

27 419C.529. (1) After the entry of a jurisdictional order under ORS 419C.411 (2), if the court finds
 28 by a preponderance of the evidence that the young person, at the time of disposition, has a serious
 29 mental condition or has a mental disease or defect other than a serious mental condition and pre-
 30 sents a substantial danger to others, requiring conditional release or commitment to a hospital or
 31 facility designated on an individual case basis by the Department of Human Services or the Oregon
 32 Health Authority as provided in subsection (6) of this section, the court shall order the young person
 33 placed under the jurisdiction of the Psychiatric Security Review Board.

34 (2) The court shall determine whether the young person should be committed to a hospital or
 35 facility designated on an individual case basis by the department or the authority, as provided in
 36 subsection (6) of this section, or conditionally released pending a hearing before the juvenile panel
 37 of the Psychiatric Security Review Board as follows:

38 (a) If the court finds that the young person is not a proper subject for conditional release, the
 39 court shall order the young person committed to a secure hospital or a secure intensive community
 40 inpatient facility designated on an individual case basis by the department or the authority, as
 41 provided in subsection (6) of this section, for custody, supervision and treatment pending a hearing
 42 before the juvenile panel in accordance with ORS 419C.532, 419C.535, 419C.538, 419C.540 and
 43 419C.542 and shall order the young person placed under the jurisdiction of the board.

44 (b) If the court finds that the young person can be adequately controlled with supervision and
 45 treatment services if conditionally released and that necessary supervision and treatment services

1 are available, the court may order the young person conditionally released, subject to those super-
2 visory orders of the court that are in the best interests of justice and the young person. The court
3 shall designate a qualified mental health or developmental disabilities treatment provider or state,
4 county or local agency to supervise the young person on release, subject to those conditions as the
5 court directs in the order for conditional release. Prior to the designation, the court shall notify the
6 qualified mental health or developmental disabilities treatment provider or agency to whom condi-
7 tional release is contemplated and provide the qualified mental health or developmental disabilities
8 treatment provider or agency an opportunity to be heard before the court. After receiving an order
9 entered under this paragraph, the qualified mental health or developmental disabilities treatment
10 provider or agency designated shall assume supervision of the young person subject to the direction
11 of the juvenile panel. The qualified mental health or developmental disabilities treatment provider
12 or agency designated as supervisor shall report in writing no less than once per month to the ju-
13 venile panel concerning the supervised young person's compliance with the conditions of release.

14 (c) For purposes of determining whether to order commitment to a hospital or facility or condi-
15 tional release, the primary *[concern]* **concerns** of the court *[is]* **are** the protection of society, **the**
16 **recovery of the young person and the reintegration of the young person into the**
17 **community.**

18 (3) In determining whether a young person should be conditionally released, the court may order
19 examinations or evaluations deemed necessary.

20 (4) Upon placing a young person on conditional release and ordering the young person placed
21 under the jurisdiction of the board, the court shall notify the juvenile panel in writing of the court's
22 conditional release order, the supervisor designated and all other conditions of release pending a
23 hearing before the juvenile panel in accordance with ORS 419C.532, 419C.535, 419C.538, 419C.540
24 and 419C.542.

25 (5) When making an order under this section, the court shall:

26 (a) Determine whether the parent or guardian of the young person is able and willing to assist
27 the young person in obtaining necessary mental health or developmental disabilities services and is
28 willing to acquiesce in the decisions of the juvenile panel. If the court finds that the parent or
29 guardian:

30 (A) Is able and willing to do so, the court shall order the parent or guardian to sign an irrev-
31 ocable consent form in which the parent agrees to any placement decision made by the juvenile
32 panel.

33 (B) Is unable or unwilling to do so, the court shall order that the young person be placed in the
34 legal custody of the Department of Human Services for the purpose of obtaining necessary devel-
35 opmental disabilities services or mental health services.

36 (b) Make specific findings on whether there is a victim and, if so, whether the victim wishes to
37 be notified of any board hearings and orders concerning the young person and of any conditional
38 release, discharge or escape of the young person.

39 (c) Include in the order a list of the persons who wish to be notified of any board hearing con-
40 cerning the young person.

41 (d) Determine on the record the act committed by the young person for which the young person
42 was found responsible except for insanity.

43 (e) State on the record the mental disease or defect on which the young person relied for the
44 responsible except for insanity defense.

45 (6) When the department designates a facility for the commitment of a young person with a de-

1 velopmental disability under this section, or the authority designates a hospital or facility for com-
 2 mitment of a young person with mental illness under this section, the department and the authority
 3 shall take into account the care and treatment needs of the young person, the resources available
 4 to the department or the authority and the safety of the public.

5 **SECTION 5.** ORS 419C.532 is amended to read:

6 419C.532. (1) The juvenile panel of the Psychiatric Security Review Board shall conduct hearings
 7 on an application for discharge, conditional release, commitment or modification filed under or re-
 8 quired by ORS 419C.538, 419C.540 and 419C.542, and shall make findings on the issues before the
 9 juvenile panel.

10 (2) In every hearing before the juvenile panel, the juvenile panel shall determine whether the
 11 young person:

12 (a) Has a serious mental condition; or

13 (b) Has a mental disease or defect other than a serious mental condition and presents a sub-
 14 stantial danger to others.

15 (3) The juvenile panel shall order a young person discharged from commitment or conditional
 16 release if the juvenile panel finds that the young person:

17 (a) No longer has a mental disease or defect; or

18 (b) Has a mental disease or defect other than a serious mental condition but no longer presents
 19 a substantial danger to others.

20 (4) The juvenile panel shall order a young person conditionally released subject to ORS 419C.538
 21 if the juvenile panel finds that:

22 (a) The young person:

23 (A) Has a serious mental condition; or

24 (B) Has a mental disease or defect other than a serious mental condition and presents a sub-
 25 stantial danger to others;

26 (b) The young person can be adequately controlled with treatment services as a condition of
 27 release; and

28 (c) Necessary supervision and treatment services are available.

29 (5) The juvenile panel shall order a young person committed to, or retained in, a hospital or
 30 facility designated by the Department of Human Services or the Oregon Health Authority for cus-
 31 tody, supervision and treatment subject to ORS 419C.540 if the juvenile panel finds that the young
 32 person:

33 (a)(A) Has a serious mental condition; or

34 (B) Has a mental disease or defect other than a serious mental condition and presents a sub-
 35 stantial danger to others; and

36 (b) Cannot be adequately controlled if conditionally released.

37 (6) In determining whether a young person should be committed to or retained in a hospital or
 38 facility, conditionally released or discharged, the primary [*concern*] **concerns** of the juvenile panel
 39 [*is*] **are** the protection of society, **the recovery of the young person and the reintegration of the**
 40 **young person into the community.**

41 (7) In a hearing before the juvenile panel, a young person who has a mental disease or defect
 42 in a state of remission is considered to have a mental disease or defect if the mental disease or
 43 defect may, with reasonable medical probability, occasionally become active.

44 (8) At any time, the juvenile panel may appoint a psychiatrist certified, or eligible to be certi-
 45 fied, by the Oregon Medical Board in child psychiatry or a licensed psychologist with expertise in

1 child psychology to examine the young person and submit a written report to the juvenile panel.
 2 Reports filed with the juvenile panel pursuant to the examination must include, but need not be
 3 limited to, an opinion as to whether the young person:

4 (a)(A) Has a serious mental condition; or

5 (B) Has a mental disease or defect other than a serious mental condition and presents a sub-
 6 stantial danger to others; and

7 (b) Could be adequately controlled with treatment services as a condition of release.

8 (9) The juvenile panel may make a determination regarding discharge or conditional release
 9 based upon the written report submitted under subsection (8) of this section or ORS 419C.540 (3).
 10 If a member of the juvenile panel desires further information from the examining psychiatrist or li-
 11 censed psychologist who submitted the report, the juvenile panel shall summon the psychiatrist or
 12 psychologist to give testimony.

13 (10) The juvenile panel shall consider all available evidence that is material, relevant and reli-
 14 able regarding the issues before the juvenile panel. Evidence may include, but is not limited to, the
 15 record of the juvenile court adjudication, information supplied by the attorney representing the state
 16 or by any other interested person, including the young person, information concerning the young
 17 person's mental condition and the entire psychiatric and juvenile court history of the young person.
 18 All evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their
 19 serious affairs is admissible at the hearings. Testimony must be taken upon oath or affirmation of
 20 the witness from whom received. The officer presiding at the hearing shall administer oaths and
 21 affirmations to witnesses.

22 (11) The standard of proof on all issues at a hearing of the juvenile panel is by a preponderance
 23 of the evidence.

24 (12)(a) The juvenile panel shall furnish written notice of any hearing pending under this section
 25 within a reasonable time prior to the hearing to:

26 (A) The young person about whom the hearing is being conducted;

27 (B) The attorney representing the young person;

28 (C) The young person's parents or guardians, if known;

29 (D) The person having legal custody of the young person;

30 (E) The Attorney General or other attorney representing the state, if any; and

31 (F) The district attorney and the court or juvenile department of the county in which the young
 32 person was adjudicated.

33 (b) The juvenile panel shall include in the notice required by paragraph (a) of this subsection:

34 (A) The time, place and location of the hearing;

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

38 (C) A statement of the authority and jurisdiction under which the hearing is to be held; and

39 (D) A statement of all rights under subsection (13) of this section.

40 (13) A young person about whom a hearing is being held has the right:

41 (a) To appear at all proceedings held under this section, except juvenile panel deliberations.

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

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

44 (d) To be represented by suitable legal counsel possessing skills and experience commensurate
 45 with the nature and complexity of the case, to consult with counsel prior to the hearing and, if fi-

1 nancially eligible, to have suitable counsel appointed at state expense.

2 (e) To examine all information, documents and reports that the juvenile panel considers and, if
3 the information, documents and reports are available to the juvenile panel before the hearing, to
4 examine them prior to the hearing.

5 (14) Except for deliberations of the juvenile panel, the juvenile panel shall keep a record of all
6 hearings before the juvenile panel.

7 (15) Upon request of a person listed in subsection (12)(a) of this section or on its own motion,
8 the juvenile panel may continue a hearing for a reasonable period not to exceed 60 days to obtain
9 additional information or testimony or for other good cause shown.

10 (16) Within 15 days after the conclusion of the hearing, the juvenile panel shall provide written
11 notice of the juvenile panel's decision to the young person, the attorney representing the young
12 person, the young person's parents or guardians, if known, the person having legal custody of the
13 young person, the district attorney of the county in which the young person was adjudicated and
14 the Attorney General or other attorney representing the state, if any.

15 (17) The juvenile panel shall maintain and keep current the medical, social and delinquency
16 history of all young persons. The juvenile panel shall determine the confidentiality of records
17 maintained by the juvenile panel pursuant to ORS 192.501 to 192.505.

18