

# D R A F T

## SUMMARY

Provides that evidence of commission of contempt of court is subject to search warrant procedures prior to or during proceeding for imposition of punitive sanction.

Creates exception to prohibition on recording communications for person who records conversation during or regarding commission of offense against person.

Creates exception to rule against hearsay for translation by qualified interpreter.

Expands venue for trial of two or more offenses involving domestic violence or abuse between same defendant and victim.

Requires defendant to give notice of intent to introduce evidence on issue of insanity at least 60 days before trial.

Modifies provisions relating to prior convictions for felony sex crimes in other jurisdictions.

Provides that, upon receipt of petition to initiate commitment proceedings of extremely dangerous person with mental illness, court shall order that person be held in custody pending evaluation and hearing.

## A BILL FOR AN ACT

Relating to legal proceedings; creating new provisions; and amending ORS 33.065, 40.450, 41.910, 131.315, 137.719, 161.309, 165.540 and 426.701.

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

**SECTION 1.** ORS 33.065 is amended to read:

33.065. (1) Except as otherwise provided in ORS 161.685, proceedings to impose punitive sanctions for contempt shall be conducted as provided in this section.

(2) The following persons may initiate the proceeding by an accusatory instrument charging a person with contempt of court and seeking a punitive

1 sanction:

2 (a) A city attorney.

3 (b) A district attorney.

4 (c) The Attorney General.

5 (3) If a city attorney, district attorney or Attorney General who regularly  
6 appears before the court declines to prosecute a contempt, and the court  
7 determines that remedial sanctions would not provide an effective alternative  
8 remedy, the court may appoint an attorney who is authorized to practice law  
9 in this state, and who is not counsel for an interested party, to prosecute the  
10 contempt. The court shall allow reasonable compensation for the appointed  
11 attorney's attendance, to be paid by:

12 (a) The Oregon Department of Administrative Services, if the attorney is  
13 appointed by the Supreme Court, the Court of Appeals or the Oregon Tax  
14 Court;

15 (b) The city where the court is located, if the attorney is appointed by a  
16 municipal court; and

17 (c) The county where the prosecution is initiated, in all other cases.

18 (4) The prosecutor may initiate proceedings on the prosecutor's own ini-  
19 tiative, on the request of a party to an action or proceeding or on the request  
20 of the court. After the prosecutor files an accusatory instrument, the court  
21 may issue any order or warrant necessary to compel the appearance of the  
22 defendant.

23 (5) Except as otherwise provided by this section, the accusatory instru-  
24 ment is subject to the same requirements and laws applicable to an  
25 accusatory instrument in a criminal proceeding, and all proceedings on the  
26 accusatory instrument shall be in the manner prescribed for criminal pro-  
27 ceedings.

28 (6) Except for the right to a jury trial, the defendant is entitled to the  
29 constitutional and statutory protections, including the right to appointed  
30 counsel, that a defendant would be entitled to in a criminal proceeding in  
31 which the fine or term of imprisonment that could be imposed is equivalent

1 to the punitive sanctions sought in the contempt proceeding. This subsection  
2 does not affect any right to a jury that may otherwise be created by statute.

3 (7) Inability to comply with an order of the court is an affirmative de-  
4 fense. If the defendant proposes to rely in any way on evidence of inability  
5 to comply with an order of the court, the defendant shall, not less than five  
6 days before the trial of the cause, file and serve upon the city attorney,  
7 district attorney or Attorney General prosecuting the contempt a written  
8 notice of intent to offer that evidence. If the defendant fails to file and serve  
9 the notice, the defendant shall not be permitted to introduce evidence of in-  
10 ability to comply with an order of the court at the trial of the cause unless  
11 the court, in its discretion, permits such evidence to be introduced where just  
12 cause for failure to file the notice, or to file the notice within the time al-  
13 lowed, is made to appear.

14 (8) The court may impose a remedial sanction in addition to or in lieu  
15 of a punitive sanction.

16 (9) In any proceeding for imposition of a punitive sanction, proof of con-  
17 tempt shall be beyond a reasonable doubt.

18 **(10) Notwithstanding ORS 133.535, evidence of the commission of**  
19 **contempt of court is subject to search and seizure under ORS 133.525**  
20 **to 133.703 prior to or during a proceeding for imposition of a punitive**  
21 **sanction under this section.**

22 **SECTION 2. The amendments to ORS 33.065 by section 1 of this 2019**  
23 **Act apply to contempt of court alleged to have been committed on or**  
24 **after the effective date of this 2019 Act.**

25 **SECTION 3. ORS 165.540 is amended to read:**

26 165.540. (1) Except as otherwise provided in ORS 133.724 or 133.726 or  
27 subsections (2) to (7) of this section, a person may not:

28 (a) Obtain or attempt to obtain the whole or any part of a telecommuni-  
29 cation or a radio communication to which the person is not a participant,  
30 by means of any device, contrivance, machine or apparatus, whether elec-  
31 trical, mechanical, manual or otherwise, unless consent is given by at least

1 one participant.

2 (b) Tamper with the wires, connections, boxes, fuses, circuits, lines or any  
3 other equipment or facilities of a telecommunication or radio communication  
4 company over which messages are transmitted, with the intent to obtain  
5 unlawfully the contents of a telecommunication or radio communication to  
6 which the person is not a participant.

7 (c) Obtain or attempt to obtain the whole or any part of a conversation  
8 by means of any device, contrivance, machine or apparatus, whether elec-  
9 trical, mechanical, manual or otherwise, if not all participants in the con-  
10 versation are specifically informed that their conversation is being obtained.

11 (d) Obtain the whole or any part of a conversation, telecommunication  
12 or radio communication from any person, while knowing or having good  
13 reason to believe that the conversation, telecommunication or radio commu-  
14 nication was initially obtained in a manner prohibited by this section.

15 (e) Use or attempt to use, or divulge to others, any conversation, tele-  
16 communication or radio communication obtained by any means prohibited  
17 by this section.

18 (2)(a) The prohibitions in subsection (1)(a), (b) and (c) of this section do  
19 not apply to:

20 (A) Officers, employees or agents of a telecommunication or radio com-  
21 munication company who perform the acts prohibited by subsection (1)(a), (b)  
22 and (c) of this section for the purpose of construction, maintenance or con-  
23 ducting of their telecommunication or radio communication service, facilities  
24 or equipment.

25 (B) Public officials in charge of and at jails, police premises, sheriffs' of-  
26 fices, Department of Corrections institutions and other penal or correctional  
27 institutions, except as to communications or conversations between an at-  
28 torney and the client of the attorney.

29 (b) Officers, employees or agents of a telecommunication or radio com-  
30 munication company who obtain information under paragraph (a) of this  
31 subsection may not use or attempt to use, or divulge to others, the informa-

1 tion except for the purpose of construction, maintenance, or conducting of  
2 their telecommunication or radio communication service, facilities or equip-  
3 ment.

4 (3) The prohibitions in subsection (1)(a), (b) or (c) of this section do not  
5 apply to subscribers or members of their family who perform the acts pro-  
6 hibited in subsection (1) of this section in their homes.

7 (4) The prohibitions in subsection (1)(a) of this section do not apply to the  
8 receiving or obtaining of the contents of any radio or television broadcast  
9 transmitted for the use of the general public.

10 (5) The prohibitions in subsection (1)(c) of this section do not apply to:

11 (a) A person who records a conversation during [*a felony that endangers*  
12 *human life*] **or regarding the commission of an offense against any**  
13 **person;**

14 (b) A person who records a conversation in which a law enforcement of-  
15 ficer is a participant, if:

16 (A) The recording is made while the officer is performing official duties;

17 (B) The recording is made openly and in plain view of the participants in  
18 the conversation;

19 (C) The conversation being recorded is audible to the person by normal  
20 unaided hearing; and

21 (D) The person is in a place where the person lawfully may be;

22 (c) A person who, pursuant to ORS 133.400, records an interview con-  
23 ducted by a peace officer in a law enforcement facility;

24 (d) A law enforcement officer who is in uniform and displaying a badge  
25 and who is operating:

26 (A) A vehicle-mounted video camera that records the scene in front of,  
27 within or surrounding a police vehicle, unless the officer has reasonable op-  
28 portunity to inform participants in the conversation that the conversation  
29 is being obtained; or

30 (B) A video camera worn upon the officer's person that records the  
31 officer's interactions with members of the public while the officer is on duty,

1 unless:

2 (i) The officer has an opportunity to announce at the beginning of the  
3 interaction that the conversation is being obtained; and

4 (ii) The announcement can be accomplished without causing jeopardy to  
5 the officer or any other person and without unreasonably impairing a crim-  
6 inal investigation; or

7 (e) A law enforcement officer who, acting in the officer's official capacity,  
8 deploys an Electro-Muscular Disruption Technology device that contains a  
9 built-in monitoring system capable of recording audio or video, for the du-  
10 ration of that deployment.

11 (6) The prohibitions in subsection (1)(c) of this section do not apply to  
12 persons who intercept or attempt to intercept with an unconcealed recording  
13 device the oral communications that are part of any of the following pro-  
14 ceedings:

15 (a) Public or semipublic meetings such as hearings before governmental  
16 or quasi-governmental bodies, trials, press conferences, public speeches, ral-  
17 lies and sporting or other events;

18 (b) Regularly scheduled classes or similar educational activities in public  
19 or private institutions; or

20 (c) Private meetings or conferences if all others involved knew or rea-  
21 sonably should have known that the recording was being made.

22 (7) The prohibitions in subsection (1)(a), (c), (d) and (e) of this section do  
23 not apply to any:

24 (a) Radio communication that is transmitted by a station operating on an  
25 authorized frequency within the amateur or citizens bands; or

26 (b) Person who intercepts a radio communication that is transmitted by  
27 any governmental, law enforcement, civil defense or public safety communi-  
28 cations system, including police and fire, readily accessible to the general  
29 public provided that the interception is not for purposes of illegal activity.

30 (8) Violation of subsection (1) or (2)(b) of this section is a Class A  
31 misdemeanor.

1 (9) The exception described in subsection (5)(b) of this section does not  
2 authorize the person recording the law enforcement officer to engage in  
3 criminal trespass as described in ORS 164.243, 164.245, 164.255, 164.265 or  
4 164.278 or to interfere with a peace officer as described in ORS 162.247.

5 (10) As used in this section:

6 (a) “Electro-Muscular Disruption Technology device” means a device that  
7 uses a high-voltage, low power charge of electricity to induce involuntary  
8 muscle contractions intended to cause temporary incapacitation. “Electro-  
9 Muscular Disruption Technology device” includes devices commonly known  
10 as tasers.

11 (b) “Law enforcement officer” has the meaning given that term in ORS  
12 133.726.

13 **SECTION 4.** ORS 41.910 is amended to read:

14 41.910. Evidence of the contents of any wire or oral communication in-  
15 tercepted:

16 (1) In violation of ORS 165.540 [*shall not be*] **is not** admissible in any  
17 court of this state, except as evidence of unlawful interception or when the  
18 evidence was created by the use of a video camera worn upon a law  
19 enforcement officer’s person and the officer either substantially complied  
20 with or attempted in good faith to comply with ORS 165.540 (5)(d)(B).

21 (2) Under ORS 165.540 (2)(a) [*shall not be*] **is not** admissible in any court  
22 of this state unless:

23 **(a) The interception is otherwise permitted under ORS 165.540 (5)(a);**  
24 **or**

25 [(a)] **(b)(A)** The communication was intercepted by a public official in  
26 charge of and at a jail, police premises, sheriff’s office, Department of Cor-  
27 rections institution or other penal or correctional institution; and

28 [(b)] **(B)** The participant in the communication, against whom the evi-  
29 dence is being offered, had actual notice that the communication was being  
30 monitored or recorded.

31 **SECTION 5.** The amendments to ORS 41.910 and 165.540 by sections

1 **3 and 4 of this 2019 Act apply to offenses alleged to have been com-**  
2 **mitted on or after the effective date of this 2019 Act.**

3 **SECTION 6.** ORS 40.450 is amended to read:

4 40.450. As used in ORS 40.450 to 40.475, unless the context requires oth-  
5 erwise:

6 (1) A “statement” is:

7 (a) An oral or written assertion; or

8 (b) Nonverbal conduct of a person, if intended as an assertion.

9 (2) A “declarant” is a person who makes a statement.

10 (3) “Hearsay” is a statement, other than one made by the declarant while  
11 testifying at the trial or hearing, offered in evidence to prove the truth of  
12 the matter asserted.

13 (4) A statement is not hearsay if:

14 (a) The declarant testifies at the trial or hearing and is subject to cross-  
15 examination concerning the statement, and the statement is:

16 (A) Inconsistent with the testimony of the witness and was given under  
17 oath subject to the penalty of perjury at a trial, hearing or other proceeding,  
18 or in a deposition;

19 (B) Consistent with the testimony of the witness and is offered to rebut  
20 an inconsistent statement or an express or implied charge against the wit-  
21 ness of recent fabrication or improper influence or motive; or

22 (C) One of identification of a person made after perceiving the person.

23 (b) The statement is offered against a party and is:

24 (A) That party’s own statement, in either an individual or a represen-  
25 tative capacity;

26 (B) A statement of which the party has manifested the party’s adoption  
27 or belief in its truth;

28 (C) A statement by a person authorized by the party to make a statement  
29 concerning the subject;

30 (D) A statement by the party’s agent or servant concerning a matter  
31 within the scope of the agency or employment, made during the existence of



1 the relationship; or

2 (E) A statement by a coconspirator of a party during the course and in  
3 furtherance of the conspiracy.

4 (c) The statement is made in a deposition taken in the same proceeding  
5 pursuant to ORCP 39 I.

6 **(d) The statement is a translation by a qualified interpreter, as de-**  
7 **fin ed in ORS 45.275 or 45.285, of a statement made by or to a party or**  
8 **a witness.**

9 **SECTION 7. The amendments to ORS 40.450 by section 6 of this 2019**  
10 **Act apply to translations occurring on or after the effective date of**  
11 **this 2019 Act.**

12 **SECTION 8.** ORS 131.315 is amended to read:

13 131.315. (1) If conduct constituting elements of an offense or results con-  
14 stituting elements of an offense occur in two or more counties, trial of the  
15 offense may be held in any of the counties concerned.

16 (2) If a cause of death is inflicted on a person in one county and the  
17 person dies therefrom in another county, trial of the offense may be held in  
18 either county.

19 (3) If the commission of an offense commenced outside this state is con-  
20 summated within this state, trial of the offense shall be held in the county  
21 in which the offense is consummated or the interest protected by the crimi-  
22 nal statute in question is impaired.

23 (4) If an offense is committed on any body of water located in, or adjacent  
24 to, two or more counties or forming the boundary between two or more  
25 counties, trial of the offense may be held in any nearby county bordering on  
26 the body of water.

27 (5) If an offense is committed in or upon any railroad car, vehicle, air-  
28 craft, boat or other conveyance in transit and it cannot readily be deter-  
29 mined in which county the offense was committed, trial of the offense may  
30 be held in any county through or over which the conveyance passed.

31 (6) If an offense is committed on the boundary of two or more counties

1 or within one mile thereof, trial of the offense may be held in any of the  
2 counties concerned.

3 (7) A person who commits theft, burglary or robbery may be tried in any  
4 county in which the person exerts control over the property that is the  
5 subject of the crime.

6 (8) If the offense is an attempt or solicitation to commit a crime, trial of  
7 the offense may be held in any county in which any act that is an element  
8 of the offense is committed.

9 (9) If the offense is criminal conspiracy, trial of the offense may be held  
10 in any county in which any act or agreement that is an element of the of-  
11 fense occurs.

12 (10) A person who in one county commits an inchoate offense that results  
13 in the commission of an offense by another person in another county, or who  
14 commits the crime of hindering prosecution of the principal offense, may be  
15 tried in either county.

16 (11) A criminal nonsupport action may be tried in any county in which  
17 the dependent child is found, irrespective of the domicile of the parent,  
18 guardian or other person lawfully charged with support of the child.

19 (12) If the offense is theft, forgery or identity theft and the offense con-  
20 sists of an aggregate transaction involving more than one county, trial of the  
21 offense may be held in any county in which one of the acts of theft, forgery  
22 or identity theft was committed.

23 (13) When a prosecution is for violation of the Oregon Securities Law, the  
24 trial of the offense may be held in the county in which:

25 (a) The offer to purchase or sell securities took place or where the sale  
26 or purchase of securities took place; or

27 (b) Any act that is an element of the offense occurred.

28 (14) When a prosecution under ORS 165.692 and 165.990 or 411.675 and  
29 411.990 (2) and (3) involves Medicaid funds, the trial of the offense may be  
30 held in the county in which the claim was submitted for payment or in the  
31 county in which the claim was paid.

1 (15)(a) If the offense is stalking under ORS 163.732 and involves contacts  
2 as defined in ORS 163.730 in more than one county, trial of the offense may  
3 be held in any county in which a contact occurred.

4 (b) If the offense is violating a court's stalking protective order under  
5 ORS 163.750, trial of the offense may be held in the county in which the  
6 defendant engaged in conduct prohibited by the order or in the county in  
7 which the order was issued.

8 **(16) If two or more offenses involving domestic violence, as defined**  
9 **in ORS 135.230, abuse, as defined in ORS 107.705 or 419B.005, or abuse**  
10 **of an elderly person, as described in ORS 124.050, are alleged to have**  
11 **occurred between the same defendant and victim and could be charged**  
12 **in the same charging instrument under ORS 132.560, trial of the of-**  
13 **fenses may be held in any county in which one of the acts in the**  
14 **charging instrument was committed, with the agreement of the dis-**  
15 **trict attorney of each county in which the defendant could be charged.**

16 **SECTION 9. The amendments to ORS 131.315 by section 8 of this**  
17 **2019 Act apply to offenses alleged to have been committed on or after**  
18 **the effective date of this 2019 Act.**

19 **SECTION 10. ORS 161.309 is amended to read:**

20 161.309. (1) The defendant may not introduce evidence on the issue of in-  
21 sanity under ORS 161.295, unless the defendant:

22 (a) Gives notice of intent to do so in the manner provided in subsection  
23 (3) of this section; and

24 (b) Files with the court a report of a psychiatric or psychological evalu-  
25 ation, conducted by a certified evaluator, in the manner provided in sub-  
26 section (4) of this section.

27 (2) The defendant may not introduce in the case in chief expert testimony  
28 regarding partial responsibility or diminished capacity under ORS 161.300  
29 unless the defendant gives notice of intent to do so in the manner provided  
30 in subsection (3) of this section.

31 (3)(a) A defendant who is required under subsection (1) or (2) of this

1 section to give notice shall file a written notice of purpose at the time the  
2 defendant pleads not guilty.

3 **(b) Notwithstanding paragraph (a) of this subsection, the court**  
4 **may, for good cause, permit** the defendant [*may*] **to** file the notice at any  
5 time after the plea but **at least 60 days** before trial [*when just cause for*  
6 *failure to file the notice at the time of making the plea is shown*].

7 **(c)** If the defendant fails to file notice **as provided in this subsection,**  
8 the defendant may not introduce evidence for the establishment of a defense  
9 under ORS 161.295 or 161.300 unless the court, in its discretion, permits the  
10 evidence to be introduced where just cause for failure to file the notice is  
11 shown.

12 (4) A defendant who is required under subsection (1) of this section to file  
13 a report of a psychiatric or psychological evaluation shall file the report  
14 before trial. The report must be based on an evaluation conducted after the  
15 date of the alleged offense and must address the issue of insanity under ORS  
16 161.295 and the dispositional determination described in ORS 161.325. If the  
17 defendant fails to file a complete report before trial, the defendant may not  
18 introduce evidence for the establishment of a defense under ORS 161.295  
19 unless:

20 (a) The court, in its discretion, permits the evidence to be introduced  
21 when just cause for failure to file the report is shown; and

22 (b) If the defendant is charged with a felony, the defendant is tried by a  
23 jury.

24 (5)(a) A court may not accept a plea of guilty except for insanity to a  
25 felony unless a report described in subsection (4) of this section is filed with  
26 the court. If the report has not been filed, the court may order that a psy-  
27 chiatric or psychological evaluation of the defendant be conducted by a cer-  
28 tified evaluator and a report of the evaluation be filed with the court.

29 (b) When the court orders an evaluation of a financially eligible person  
30 under this subsection, the court shall order the public defense services  
31 executive director to pay a reasonable fee for the evaluation from funds

1 available for that purpose.

2 (c) A certified evaluator performing an evaluation of a defendant on the  
3 issue of insanity under this subsection is not obligated to evaluate the de-  
4 fendant for fitness to proceed unless, during the evaluation, the certified  
5 evaluator determines that the defendant's fitness to proceed is drawn in  
6 question.

7 (6) As used in this section, "certified evaluator" means a psychiatrist or  
8 psychologist who holds a valid certification under the provisions of ORS  
9 161.392.

10 **SECTION 11. The amendments to ORS 161.309 by section 10 of this**  
11 **2019 Act apply to notices of intent to introduce evidence on the issue**  
12 **of insanity under ORS 161.295 given on or after the effective date of**  
13 **this 2019 Act.**

14 **SECTION 12.** ORS 137.719 is amended to read:

15 137.719. (1) The presumptive sentence for a sex crime that is a felony is  
16 life imprisonment without the possibility of release or parole if the defendant  
17 has been sentenced for sex crimes that are felonies at least two times prior  
18 to the current sentence.

19 (2) The court may impose a sentence other than the presumptive sentence  
20 provided by subsection (1) of this section if the court imposes a departure  
21 sentence authorized by the rules of the Oregon Criminal Justice Commission  
22 based upon findings of substantial and compelling reasons.

23 (3) For purposes of this section:

24 (a) Sentences for two or more convictions that are imposed in the same  
25 sentencing proceeding are considered to be one sentence; and

26 (b) A prior sentence includes:

27 (A) Sentences imposed before, on or after July 31, 2001; and

28 (B) Sentences imposed by any other state or federal court [*for comparable*  
29 *offenses*] **that are felony sex crimes in that jurisdiction.**

30 (4) As used in this section, "sex crime" has the meaning given that term  
31 in ORS 163A.005.

1       **SECTION 13. The amendments to ORS 137.719 by section 12 of this**  
2 **2019 Act apply to crimes with sentences eligible for sentencing under**  
3 **ORS 137.719 alleged to have been committed on or after the effective**  
4 **date of this 2019 Act.**

5       **SECTION 14.** ORS 426.701 is amended to read:

6       426.701. (1) For the purposes of this section and ORS 426.702:

7       (a) A person is “extremely dangerous” if the person:

8       (A) Is at least 18 years of age;

9       (B) Is exhibiting symptoms or behaviors of a mental disorder substantially  
10 similar to those that preceded the act described in subsection (3)(a)(C) of this  
11 section; and

12       (C) Because of a mental disorder:

13       (i) Presents a serious danger to the safety of other persons by reason of  
14 an extreme risk that the person will inflict grave or potentially lethal  
15 physical injury on other persons; and

16       (ii) Unless committed, will continue to represent an extreme risk to the  
17 safety of other persons in the foreseeable future.

18       (b) “Mental disorder” does not include:

19       (A) A disorder manifested solely by repeated criminal or otherwise anti-  
20 social conduct; or

21       (B) A disorder constituting solely a personality disorder.

22       (c) A mental disorder is “resistant to treatment” if, after receiving care  
23 from a licensed psychiatrist and exhausting all reasonable psychiatric treat-  
24 ment, or after refusing psychiatric treatment, the person continues to be  
25 significantly impaired in the person’s ability to make competent decisions  
26 and to be aware of and control extremely dangerous behavior.

27       (2)(a) A district attorney may petition the court to initiate commitment  
28 proceedings described in this section if there is reason to believe a person  
29 is an extremely dangerous person with mental illness. The petition shall  
30 immediately be served upon the person.

31       (b) The person shall be advised in writing of:

1 (A) The allegation that the person is an extremely dangerous person with  
2 mental illness and may be committed to the jurisdiction of the Psychiatric  
3 Security Review Board for a maximum period of 24 months; and

4 (B) The right to a hearing to determine whether the person is an ex-  
5 tremely dangerous person with mental illness, unless the person consents to  
6 the commitment by waiving the right to a hearing in writing after consul-  
7 tation with legal counsel.

8 (c) A person against whom a petition described in this subsection is filed  
9 shall have the following:

10 (A) The right to obtain suitable legal counsel possessing skills and expe-  
11 rience commensurate with the nature of the allegations and complexity of  
12 the case and, if the person is without funds to retain legal counsel, the right  
13 to have the court appoint legal counsel;

14 (B) The right to subpoena witnesses and to offer evidence on behalf of the  
15 person at the hearing;

16 (C) The right to cross-examine any witnesses who appear at the hearing;  
17 and

18 (D) The right to examine all reports, documents and information that the  
19 court considers, including the right to examine the reports, documents and  
20 information prior to the hearing, if available.

21 (d) The court shall appoint an examiner as described in ORS 426.110 to  
22 evaluate the person.

23 (3)(a) Upon receipt of a petition filed under subsection (2) of this section,  
24 the court shall schedule a hearing. **The court shall order that the person**  
25 **be held in custody pending evaluation by the examiner appointed un-**  
26 **der ORS 426.110 and the hearing.** At the hearing, the court shall order the  
27 person committed as an extremely dangerous person with mental illness un-  
28 der the jurisdiction of the Psychiatric Security Review Board for a maximum  
29 of 24 months if the court finds, by clear and convincing evidence, that:

30 (A) The person is extremely dangerous;

31 (B) The person suffers from a mental disorder that is resistant to treat-

1 ment; and

2 (C) Because of the mental disorder that is resistant to treatment, the  
3 person committed one of the following acts:

4 (i) Caused the death of another person;

5 (ii) Caused serious physical injury to another person by means of a dan-  
6 gerous weapon;

7 (iii) Caused physical injury to another person by means of a firearm as  
8 defined in ORS 166.210 or an explosive as defined in ORS 164.055;

9 (iv) Engaged in oral-genital contact with a child under 14 years of age;

10 (v) Forcibly compelled sexual intercourse, oral-genital contact or the  
11 penetration of another person's anus or vagina; or

12 (vi) Caused a fire or explosion that damaged the protected property of  
13 another, as those terms are defined in ORS 164.305, or placed another person  
14 in danger of physical injury, and the fire or explosion was not the incidental  
15 result of normal and usual daily activities.

16 (b) The court shall further commit the person to a state hospital for  
17 custody, care and treatment if the court finds, by clear and convincing evi-  
18 dence, that the person cannot be controlled in the community with proper  
19 care, medication, supervision and treatment on conditional release.

20 (c) The court shall specify in the order whether any person who would  
21 be considered a victim as defined in ORS 131.007 of the act described in  
22 paragraph (a)(C) of this subsection, if the act had been criminally prosecuted,  
23 requests notification of any order or hearing, conditional release, discharge  
24 or escape of the person committed under this section.

25 (d) The court shall be fully advised of all drugs and other treatment  
26 known to have been administered to the alleged extremely dangerous person  
27 with mental illness that may substantially affect the ability of the person to  
28 prepare for, or to function effectively at, the hearing.

29 (e) The provisions of ORS 40.230, 40.235, 40.240, 40.250 and 179.505 do not  
30 apply to the use of the examiner's report and the court may consider the  
31 report as evidence.



1 (4) The findings of the court that a person committed an act described in  
2 subsection (3)(a)(C) of this section may not be admitted in a criminal prose-  
3 cution.

4 (5) A person committed under this section shall remain under the juris-  
5 diction of the board for a maximum of 24 months unless the board conducts  
6 a hearing and makes the findings described in subsection (6)(d) of this sec-  
7 tion.

8 (6)(a) The board shall hold a hearing six months after the initial com-  
9 mitment described in subsection (3) of this section, and thereafter six months  
10 after a further commitment described in ORS 426.702, to determine the  
11 placement of the person and whether the person is eligible for conditional  
12 release or early discharge. The board shall provide written notice of the  
13 hearing to the person, the person's legal counsel and the office of the district  
14 attorney who filed the initial petition under subsection (2) of this section  
15 within a reasonable time prior to the hearing. The board shall further notify  
16 the person of the following:

17 (A) The nature of the hearing and possible outcomes;

18 (B) The right to appear at the hearing and present evidence;

19 (C) The right to be represented by legal counsel and, if the person is  
20 without funds to retain legal counsel, the right to have the court appoint  
21 legal counsel;

22 (D) The right to subpoena witnesses;

23 (E) The right to cross-examine witnesses who appear at the hearing; and

24 (F) The right to examine all reports, documents and information that the  
25 board considers, including the right to examine the reports, documents and  
26 information prior to the hearing if available.

27 (b) If the board determines at the hearing that the person still suffers  
28 from a mental disorder that is resistant to treatment and continues to be  
29 extremely dangerous, and that the person cannot be controlled in the com-  
30 munity with proper care, medication, supervision and treatment if condi-  
31 tionally released, the person shall remain committed to a state hospital.

1 (c) If the board determines at the hearing that the person still suffers  
2 from a mental disorder that is resistant to treatment and continues to be  
3 extremely dangerous, but finds that the person can be controlled in the  
4 community with proper care, medication, supervision and treatment if con-  
5 ditionally released, the board shall conditionally release the person.

6 (d) If the board determines at the hearing that the person no longer suf-  
7 fers from a mental disorder that is resistant to treatment or is no longer  
8 extremely dangerous, the board shall discharge the person. The discharge of  
9 a person committed under this section does not preclude commitment of the  
10 person pursuant to ORS 426.005 to 426.390.

11 (7)(a) At any time during the commitment to a state hospital, the super-  
12 intendent of the state hospital may request a hearing to determine the status  
13 of the person's commitment under the jurisdiction of the board. The request  
14 shall be accompanied by a report setting forth the facts supporting the re-  
15 quest. If the request is for conditional release, the request shall be accom-  
16 panied by a verified conditional release plan. The hearing shall be conducted  
17 as described in subsection (6) of this section.

18 (b) The board may make the findings described in subsection (6)(c) of this  
19 section and conditionally release the person without a hearing if the office  
20 of the district attorney who filed the initial petition under subsection (2) of  
21 this section does not object to the conditional release.

22 (c) At any time during conditional release, a state or local mental health  
23 facility providing treatment to the person may request a hearing to deter-  
24 mine the status of the person's commitment under the jurisdiction of the  
25 board. The hearing shall be conducted as described in subsection (6) of this  
26 section.

27 (8)(a) If the board orders the conditional release of a person under sub-  
28 section (6)(c) of this section, the board shall order conditions of release that  
29 may include a requirement to report to any state or local mental health fa-  
30 cility for evaluation. The board may further require cooperation with, and  
31 acceptance of, psychiatric or psychological treatment from the facility. Con-

1 ditions of release may be modified by the board from time to time.

2 (b) When a person is referred to a state or local mental health facility for  
3 an evaluation under this subsection, the facility shall perform the evaluation  
4 and submit a written report of its findings to the board. If the facility finds  
5 that treatment of the person is appropriate, the facility shall include its  
6 recommendations for treatment in the report to the board.

7 (c) Whenever treatment is provided to the person by a state or local  
8 mental health facility under this subsection, the facility shall furnish reports  
9 to the board on a regular basis concerning the progress of the person.

10 (d) Copies of all reports submitted to the board pursuant to this sub-  
11 section shall be furnished to the person and to the person's legal counsel, if  
12 applicable. The confidentiality of these reports is determined pursuant to  
13 ORS 192.338, 192.345 and 192.355.

14 (e) The state or local mental health facility providing treatment to the  
15 person under this subsection shall comply with the conditional release order  
16 and any modifications of the conditions ordered by the board.

17 (9)(a) If at any time while the person is conditionally released it appears  
18 that the person has violated the terms of the conditional release, the board  
19 may order the person returned to a state hospital for evaluation or treat-  
20 ment. A written order of the board is sufficient warrant for any law  
21 enforcement officer to take the person into custody. A sheriff, municipal  
22 police officer, parole or probation officer or other peace officer shall execute  
23 the order, and the person shall be returned to the state hospital as soon as  
24 practicable.

25 (b) The director of a state or local mental health facility providing  
26 treatment to a person under subsection (8) of this section may request that  
27 the board issue a written order for a person on conditional release to be  
28 taken into custody if there is reason to believe that the person can no longer  
29 be controlled in the community with proper care, medication, supervision and  
30 treatment.

31 (c) Within 30 days following the return of the person to a state hospital,

1 the board shall conduct a hearing to determine if, by a preponderance of the  
2 evidence, the person is no longer fit for conditional release. The board shall  
3 provide written notice of the hearing to the person, the person's legal coun-  
4 sel and the office of the district attorney who filed the initial petition under  
5 subsection (2) of this section within a reasonable time prior to the hearing.  
6 The notice shall advise the person of the nature of the hearing, the right to  
7 have the court appoint legal counsel and the right to subpoena witnesses,  
8 examine documents considered by the board and cross-examine all witnesses  
9 who appear at the hearing.

10 (10)(a) If the person had unadjudicated criminal charges at the time of the  
11 person's initial commitment under this section and the state hospital or the  
12 state or local mental health facility providing treatment to the person in-  
13 tends to recommend discharge of the person at an upcoming hearing, the  
14 superintendent of the state hospital or the director of the facility shall pro-  
15 vide written notice to the board and the district attorney of the county  
16 where the criminal charges were initiated of the discharge recommendation  
17 at least 45 days before the hearing. The notice shall be accompanied by a  
18 report describing the person's diagnosis and the treatment the person has  
19 received.

20 (b) Upon receiving the notice described in this subsection, the district  
21 attorney may request an order from the court in the county where the  
22 criminal charges were initiated for an evaluation to determine if the person  
23 is fit to proceed in the criminal proceeding. The court may order the state  
24 hospital or the state or local mental health facility providing treatment to  
25 the person to perform the evaluation. The hospital or facility shall provide  
26 copies of the evaluation to the district attorney, the person and the person's  
27 legal counsel, if applicable.

28 (c) The person committed under this section may not waive an evaluation  
29 ordered by the court to determine if the person is fit to proceed with the  
30 criminal proceeding as described in this subsection.

31 (11) The board shall make reasonable efforts to notify any person de-

1 scribed in subsection (3)(c) of this section of any order or hearing, condi-  
2 tional release, discharge or escape of the person committed under this  
3 section.

4 (12) The board shall adopt rules to carry out the provisions of this section  
5 and ORS 426.702.

6 (13) Any time limitation described in ORS 131.125 to 131.155 does not run  
7 during a commitment described in this section or a further commitment de-  
8 scribed in ORS 426.702.

9 **SECTION 15. The amendments to ORS 426.701 by section 14 of this**  
10 **2019 Act apply to petitions to initiate commitment proceedings filed**  
11 **on or after the effective date of this 2019 Act.**

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