

D R A F T

SUMMARY

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.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1

2 Relating to legal proceedings; creating new provisions; amending ORS 40.450,
3 41.910, 131.315, 137.719, 161.309, 165.540 and 426.701; and declaring an
4 emergency.

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

6 **SECTION 1.** ORS 165.540 is amended to read:

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

9 (a) Obtain or attempt to obtain the whole or any part of a telecommuni-
10 cation or a radio communication to which the person is not a participant,
11 by means of any device, contrivance, machine or apparatus, whether elec-
12 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 2.** 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 3.** The amendments to ORS 41.910 and 165.540 by sections

1 **1 and 2 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 4.** 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 5. The amendments to ORS 40.450 by section 4 of this 2019**
10 **Act apply to translations occurring on or after the effective date of**
11 **this 2019 Act.**

12 **SECTION 6.** 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 7. The amendments to ORS 131.315 by section 6 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 8. 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 9. The amendments to ORS 161.309 by section 8 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 10.** 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 11. The amendments to ORS 137.719 by section 10 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 12.** 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 13. The amendments to ORS 426.701 by section 12 of this**
10 **2019 Act apply to petitions to initiate commitment proceedings filed**
11 **on or after the effective date of this 2019 Act.**

12 **SECTION 14. This 2019 Act being necessary for the immediate**
13 **preservation of the public peace, health and safety, an emergency is**
14 **declared to exist, and this 2019 Act takes effect on its passage.**

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