

**Enrolled**  
**Senate Bill 63**

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CHAPTER .....

AN ACT

Relating to correspondence of agencies exercising jurisdiction over persons; amending ORS 161.346 and 419C.532.

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

**SECTION 1.** ORS 161.346 is amended to read:

161.346. (1) When the Psychiatric Security Review Board or the Oregon Health Authority conducts a hearing under ORS 161.315 to 161.351, the agency conducting the hearing shall enter an order and make findings in support of the order. If the agency finds that a person under the jurisdiction of the agency:

(a) Is no longer affected by mental disease or defect, or, if so affected, no longer presents a substantial danger to others, the agency shall order the person discharged from commitment and conditional release.

(b) Is still affected by a mental disease or defect and is a substantial danger to others, but can be controlled adequately if conditionally released with treatment as a condition of release, the agency shall order the person conditionally released as provided in ORS 161.336.

(c) Has not recovered from the mental disease or defect, is a substantial danger to others and cannot adequately be controlled if conditionally released on supervision, the agency shall order the person committed to, or retained in, a state hospital, or if the person is under 18 years of age, a secure intensive community inpatient facility, for care, custody and treatment.

(2)(a) Except as otherwise provided in ORS 161.349, the Psychiatric Security Review Board shall exercise exclusive jurisdiction over a tier one offender until the board discharges the person from the jurisdiction of the board or the maximum period of jurisdiction expires.

(b) When the board orders a tier two offender committed to a state hospital, or a secure intensive community inpatient facility, under ORS 161.315 to 161.351, the order shall transfer jurisdiction over the person to the Oregon Health Authority.

(c) When the authority orders a tier two offender conditionally released under ORS 161.315 to 161.351, the order shall transfer jurisdiction over the person to the board.

(d) The authority shall assume jurisdiction over a tier two offender when the person is returned to a state hospital, or to a secure intensive community inpatient facility, under ORS 161.336 (4).

(3) To assist the agency in making the determination described in subsection (1) of this section, the agency exercising jurisdiction over the person may, at any time, appoint a psychiatrist or licensed psychologist to examine the person and to submit a report to the agency. The report must include an opinion as to the mental condition of the person, whether the person presents a sub-

stantial danger to others and whether the person could be adequately controlled with treatment as a condition of release.

(4) The agency exercising jurisdiction over the person may make the determination regarding discharge or conditional release based upon the written reports submitted pursuant to this section. If the authority or any member of the board desires further information from the examining psychiatrist or licensed psychologist who submitted the report, the agency shall summon the person to give testimony. The agency shall consider all evidence available to it that is material, relevant and reliable regarding the issues before the agency. The evidence may include but is not limited to the record of trial, the information supplied by the attorney representing the state or by any other interested party, including the person, and information concerning the person's mental condition and the entire psychiatric and criminal history of the person. All evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible at hearings. Testimony shall be taken upon oath or affirmation of the witness from whom received. The officer presiding at the hearing shall administer oaths or affirmations to witnesses.

(5) The agency exercising jurisdiction over the person shall furnish to the person about whom the hearing is being conducted, the attorney representing the person, the Attorney General[,] **and** the district attorney [*and the court or department*] of the county from which the person was committed written notice of any hearing pending under this section within a reasonable time prior to the hearing. The notice shall include:

(a) The time, place and location of the hearing.

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

(c) A statement of the legal authority and jurisdiction under which the hearing is to be held.

(d) A statement of all rights under subsection (7) of this section.

(6) Prior to the commencement of the hearing, the agency shall serve personally or by mail a written notice to each party as provided in ORS 183.413 (2).

(7) At the hearing, the person about whom the hearing is being held shall have the right:

(a) To appear at all proceedings held pursuant to this section, except for deliberations.

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

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

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

(e) To examine all information, documents and reports that the agency considers. If then available to the agency, the information, documents and reports shall be disclosed to the person so as to allow examination prior to the hearing.

(8) A record shall be kept of all hearings conducted under ORS 161.315 to 161.351, except for deliberations.

(9) Upon request of any party, or on motion of the agency conducting the hearing, the hearing may be continued for a reasonable period not to exceed 60 days to obtain additional information or testimony or for other good cause shown.

(10) Within [15] **30** days following the conclusion of the hearing, the agency shall provide to the person, the attorney representing the person, the Attorney General or other attorney representing the state, if any, written notice of the order entered by the agency.

(11) The burden of proof on all issues at hearings under ORS 161.315 to 161.351 shall be by a preponderance of the evidence.

(12) If the agency conducting the hearing determines that the person about whom the hearing is being held is financially eligible, the agency shall appoint suitable counsel to represent the person. Counsel so appointed shall be an attorney who satisfies the professional qualifications established by the Public Defense Services Commission under ORS 151.216. The public defense services executive director shall determine and allow fair compensation for counsel appointed under this

subsection and the reasonable expenses of the person in respect to the hearing. Compensation payable to appointed counsel shall not be less than the applicable compensation level established under ORS 151.216. The compensation and expenses so allowed shall be paid by the public defense services executive director from funds available for the purpose.

(13) The Attorney General may represent the state at contested hearings under ORS 161.315 to 161.351 unless the district attorney of the county from which the person was committed elects to represent the state. The district attorney of the county from which the person was committed shall cooperate with the Attorney General in securing the material necessary for presenting a contested hearing. If the district attorney elects to represent the state, the district attorney shall give timely written notice of such election to the Attorney General, the agency conducting the hearing and the attorney representing the person.

**SECTION 2.** ORS 419C.532 is amended to read:

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

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

(a) Has a serious mental condition; or

(b) Has a mental disease or defect other than a serious mental condition and presents a substantial danger to others.

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

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

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

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

(a) The young person:

(A) Has a serious mental condition; or

(B) Has a mental disease or defect other than a serious mental condition and presents a substantial danger to others;

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

(c) Necessary supervision and treatment services are available.

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

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

(B) Has a mental disease or defect other than a serious mental condition and presents a substantial danger to others; and

(b) Cannot be adequately controlled if conditionally released.

(6) In determining whether a young person should be committed to or retained in a hospital or facility, conditionally released or discharged, the primary concern of the juvenile panel is the protection of society.

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

(8) At any time, the juvenile panel may appoint a psychiatrist certified, or eligible to be certified, by the Oregon Medical Board in child psychiatry or a licensed psychologist with expertise in child psychology to examine the young person and submit a written report to the juvenile panel.

Reports filed with the juvenile panel pursuant to the examination must include, but need not be limited to, an opinion as to whether the young person:

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

(B) Has a mental disease or defect other than a serious mental condition and presents a substantial danger to others; and

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

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

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

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

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

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

(B) The attorney representing the young person;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(16) Within [15] 30 days after the conclusion of the hearing, the juvenile panel shall provide written notice of the juvenile panel's decision to the young person, the attorney representing the young person, the young person's parents or guardians, if known, the person having legal custody of the young person, the district attorney of the county in which the young person was adjudicated and the Attorney General or other attorney representing the state, if any.

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

**Passed by Senate February 21, 2017**

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

**Passed by House May 25, 2017**

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Tina Kotek, Speaker of House

**Received by Governor:**

.....M.,....., 2017

**Approved:**

.....M.,....., 2017

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Kate Brown, Governor

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.....M.,....., 2017

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Dennis Richardson, Secretary of State