

SENATE AMENDMENTS TO SENATE BILL 64

By COMMITTEE ON JUDICIARY

April 19

- 1 On page 1 of the printed bill, line 3, delete “161.385.”
- 2 In line 4, delete “161.390.”
- 3 In line 5, delete “419C.533,” and delete “, 419C.542”.
- 4 After line 5, insert:
- 5 “Whereas the current Oregon Criminal Code was written in 1971 and included the defined term
- 6 ‘mental disease or defect’; and
- 7 “Whereas the term ‘mental disease or defect’ has origins in mid-19th century English common
- 8 law; and
- 9 “Whereas the term ‘mental disease or defect’ may carry a negative connotation; and
- 10 “Whereas the meaning of the term ‘mental disease or defect’ has been interpreted in multiple
- 11 court decisions since enactment into law; and
- 12 “Whereas the Legislative Assembly intends to preserve the validity of all previous court deci-
- 13 sions interpreting or otherwise involving the term ‘mental disease or defect’; and
- 14 “Whereas the purpose of this 2017 Act is to replace the term ‘mental disease or defect’ with the
- 15 term ‘qualifying mental disorder’ and to retain the meaning of the replaced term, without making a
- 16 substantive change to Oregon law; now, therefore,”.
- 17 Delete lines 7 through 27 and delete pages 2 through 28 and insert:
- 18 “**SECTION 1.** ORS 131.005 is amended to read:
- 19 “131.005. As used in sections 1 to 311, chapter 836, Oregon Laws 1973, except as otherwise
- 20 specifically provided or unless the context requires otherwise:
- 21 “(1) ‘Accusatory instrument’ means a grand jury indictment, an information or a complaint.
- 22 “(2) ‘Bench warrant’ means a process of a court in which a criminal action is pending, directing
- 23 a peace officer to take into custody a defendant in the action who has previously appeared before
- 24 the court upon the accusatory instrument by which the action was commenced, and to bring the
- 25 defendant before the court. The function of a bench warrant is to achieve the court appearance of
- 26 a defendant in a criminal action for some purpose other than the initial arraignment of the defend-
- 27 ant in the action.
- 28 “(3) ‘Complaint’ means a written accusation, verified by the oath of a person and bearing an
- 29 indorsement of acceptance by the district attorney having jurisdiction thereof, filed with a
- 30 magistrate, and charging another person with the commission of an offense, other than an offense
- 31 punishable as a felony. A complaint serves both to commence an action and as a basis for prose-
- 32 cution thereof.
- 33 “(4) ‘Complainant’s information’ means a written accusation, verified by the oath of a person and
- 34 bearing an indorsement of acceptance by the district attorney having jurisdiction thereof, filed with
- 35 a magistrate, and charging another person with the commission of an offense punishable as a felony.

1 A complainant's information serves to commence an action, but not as a basis for prosecution
2 thereof.

3 "(5) 'Correctional facility' means any place used for the confinement of persons charged with
4 or convicted of a crime or otherwise confined under a court order. 'Correctional facility' does not
5 include a youth correction facility as defined in ORS 162.135 and applies to a state hospital only as
6 to persons detained therein charged with or convicted of a crime, or detained therein after [*acquittal*
7 *of a crime by reason of mental disease or defect*] **being found guilty except for insanity** under ORS
8 161.290 to 161.370.

9 "(6) 'Criminal action' means an action at law by means of which a person is accused of the
10 commission of a violation, misdemeanor or felony.

11 "(7) 'Criminal proceeding' means any proceeding which constitutes a part of a criminal action
12 or occurs in court in connection with a prospective, pending or completed criminal action.

13 "(8) 'District attorney,' in addition to its ordinary meaning, includes a city attorney as prose-
14 cuting officer in the case of municipal ordinance offenses, a county counsel as prosecuting officer
15 under a county charter in the case of county ordinance offenses, and the Attorney General in those
16 criminal actions or proceedings within the jurisdiction of the Attorney General.

17 "(9) 'District attorney's information' means a written accusation by a district attorney and:

18 "(a) If filed with a magistrate to charge a person with the commission of an offense, other than
19 an offense punishable as a felony, serves both to commence an action and as a basis for prosecution
20 thereof; or

21 "(b) If filed with a magistrate to charge a person with the commission of an offense punishable
22 as a felony, serves to commence an action, but not as a basis for prosecution thereof; or

23 "(c) If, as is otherwise authorized by law, filed in circuit court to charge a person with the
24 commission of an offense, serves as a basis for prosecution thereof.

25 "(10) 'Information' means a district attorney's information or a complainant's information.

26 "(11) 'Probable cause' means that there is a substantial objective basis for believing that more
27 likely than not an offense has been committed and a person to be arrested has committed it.

28 "(12) 'Trial court' means a court which by law has jurisdiction over an offense charged in an
29 accusatory instrument and has authority to accept a plea thereto, or try, hear or otherwise dispose
30 of a criminal action based on the accusatory instrument.

31 "(13) 'Ultimate trial jurisdiction' means the jurisdiction of a court over a criminal action or
32 proceeding at the highest trial level.

33 "(14) 'Warrant of arrest' means a process of a court, directing a peace officer to arrest a de-
34 fendant and to bring the defendant before the court for the purpose of arraignment upon an
35 accusatory instrument filed therewith by which a criminal action against the defendant has been
36 commenced.

37 "**SECTION 2.** ORS 135.748 is amended to read:

38 "135.748. (1) All applicable periods of elapsed time as follows are excluded from the time limits
39 described in ORS 135.746:

40 "(a) A period of time during which the defendant is:

41 "(A) Under observation or examination for fitness to proceed under ORS 161.365, beginning
42 when the issue of the defendant's possible lack of fitness to proceed has been raised by the defend-
43 ant or the defendant's counsel, until a final determination regarding the defendant's fitness to pro-
44 ceed has been made by the court;

45 "(B) Determined to be unfit to proceed by the court pursuant to ORS 161.360 and 161.370;

1 “(C) Under observation or examination after notice of the issue of the defendant’s **qualifying**
2 mental [*disease or defect*] **disorder**, partial responsibility, diminished capacity, insanity or other
3 mental defense is raised by the defendant or the defendant’s counsel, until the trial date; or

4 “(D) Unable to appear by reason of illness or physical disability.

5 “(b) A period of time following the filing of an interlocutory appeal or an appeal from the dis-
6 missal of the charge or charging instrument, or that results from a stay issued by an appellate court
7 in a mandamus or habeas proceeding, until the appellate judgment is issued or the stay is lifted by
8 the appellate court.

9 “(c) A period of time between a scheduled court appearance at which the defendant fails to ap-
10 pear and the next scheduled court appearance other than an appearance that occurs for the purpose
11 of addressing a warrant resulting from the defendant’s failure to appear.

12 “(d) A period of time during which the defendant’s location is known but the defendant’s pres-
13 ence for trial cannot be obtained, or during which the defendant is outside this state and resists
14 being returned to this state for trial.

15 “(e) A period of time during which the defendant’s location is unknown and:

16 “(A) The defendant has attempted to avoid apprehension or prosecution; or

17 “(B) The defendant’s location cannot be determined by due diligence.

18 “(f) A period of time while the defendant is on trial or engaged in court proceedings in an un-
19 related matter, whether in the same court or a different court, and was therefore physically un-
20 available for trial.

21 “(g) A period of time between a mistrial on the charging instrument and a subsequent trial on
22 the charging instrument, not to exceed three months for each mistrial. The three-month limit may
23 be extended by the court for good cause upon request from either party or upon the court’s own
24 motion.

25 “(h) A period of time between a continuance or a rescheduling of a trial date, granted at the
26 request of, or with the consent of, the defendant or the defendant’s counsel, and the new trial date.
27 A defendant who is proceeding without counsel may not consent to a continuance or a rescheduling
28 unless the court has advised the defendant of the defendant’s right to a speedy trial within the time
29 limit required in ORS 135.746 and the consequences of the defendant’s consent to the continuance
30 or rescheduling.

31 “(2) Any period of time excluded pursuant to subsection (1) of this section from the time limits
32 described in ORS 135.746 that applies to a defendant shall apply to all other defendants charged in
33 the charging instrument. However, if the court finds that it is clearly inappropriate to apply the time
34 exclusion to all of the other defendants, the court may order any relief that justice requires.

35 “**SECTION 3.** ORS 161.295 is amended to read:

36 “161.295. (1) A person is guilty except for insanity if, as a result of a **qualifying** mental [*disease*
37 *or defect*] **disorder** at the time of engaging in criminal conduct, the person lacks substantial capacity
38 either to appreciate the criminality of the conduct or to conform the conduct to the requirements
39 of law.

40 “(2) As used in chapter 743, Oregon Laws 1971, the [*terms ‘mental disease or defect’ do*] **term**
41 **‘qualifying mental disorder’ does** not include an abnormality manifested only by repeated criminal
42 or otherwise antisocial conduct, nor [*do they*] **does the term** include any abnormality constituting
43 solely a personality disorder.

44 “**SECTION 4.** ORS 161.300 is amended to read:

45 “161.300. Evidence that the actor suffered from a **qualifying** mental [*disease or defect*] **disorder**

1 is admissible whenever it is relevant to the issue of whether the actor did or did not have the intent
2 which is an element of the crime.

3 “**SECTION 5.** ORS 161.305 is amended to read:

4 “161.305. **Qualifying** mental [*disease or defect*] **disorder** constituting insanity under ORS 161.295
5 is an affirmative defense.

6 “**SECTION 6.** ORS 161.325 is amended to read:

7 “161.325. (1) After entry of judgment of guilty except for insanity, the court shall, on the basis
8 of the evidence given at the trial or at a separate hearing, if requested by either party, enter an
9 order as provided in ORS 161.327, 161.328 or 161.329, whichever is appropriate.

10 “(2) If the court enters an order as provided in ORS 161.327, it shall also:

11 “(a) Determine on the record the offense of which the person otherwise would have been con-
12 victed;

13 “(b) State on the record the **qualifying** mental [*disease or defect*] **disorder** on which the de-
14 fendant relied for the guilty except for insanity defense; and

15 “(c) Make specific findings on whether there is a victim of the crime for which the defendant
16 has been found guilty except for insanity and, if so, whether the victim wishes to be notified, under
17 ORS 161.326, of any hearings and orders concerning the defendant and of any conditional release,
18 discharge or escape of the defendant.

19 “(3) The court shall include any such findings in its order.

20 “(4) Except under circumstances described in ORS 137.076 (4), whenever a defendant charged
21 with any offense listed in ORS 137.076 (1) has been found guilty of that offense except for insanity,
22 the court shall, in any order entered under ORS 161.327, **161.328** or 161.329, direct the defendant to
23 submit to the obtaining of a blood or buccal sample in the manner provided in ORS 137.076.

24 “**SECTION 7.** ORS 161.327 is amended to read:

25 “161.327. (1) Following the entry of a judgment pursuant to ORS 161.319, if the court finds by
26 a preponderance of the evidence that a person found guilty except for insanity of a felony is affected
27 by a **qualifying** mental [*disease or defect*] **disorder** and presents a substantial danger to others, the
28 court shall enter an order as follows:

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

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

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

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

39 “(2) When a person is conditionally released under this section, the person is subject to those
40 supervisory orders of the court as are in the best interests of justice, the protection of society and
41 the welfare of the person. The court shall designate a person or state, county or local agency to
42 supervise the person upon release, subject to those conditions as the court directs in the order for
43 conditional release. Prior to the designation, the court shall notify the person or agency to whom
44 conditional release is contemplated and provide the person or agency an opportunity to be heard
45 before the court. After receiving an order entered under subsection (1)(b) of this section, the person

1 or agency designated shall assume supervision of the person pursuant to the direction of the Psy-
2 chiatric Security Review Board. The person or agency designated as supervisor shall be required to
3 report in writing no less than once per month to the board concerning the supervised person's
4 compliance with the conditions of release.

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

6 “(a) May order evaluations, examinations and compliance as provided in ORS 161.336 (3) and
7 161.346 (3);

8 “(b) Shall order that the person be examined by a local mental health program designated by
9 the board and a report of the examination be provided to the court if each felony for which the
10 defendant was found guilty except for insanity is a Class C felony; and

11 “(c) Shall have as its primary concern the protection of society.

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

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

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

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

30 “**SECTION 8.** ORS 161.328 is amended to read:

31 “161.328. (1) Following the entry of a judgment pursuant to ORS 161.319, the court shall order
32 a person committed to a state mental hospital or other facility designated by the Oregon Health
33 Authority if:

34 “(a) Each offense for which the person is found guilty except for insanity is a misdemeanor; and

35 “(b) The court finds that the person is affected by **a qualifying** mental [*disease or defect*] **dis-**
36 **order** and presents a substantial danger to others that requires commitment.

37 “(2) The total period of commitment under this section may not exceed the maximum sentence
38 provided by statute for the crime for which the person was found guilty except for insanity.

39 “(3) If the superintendent of the state mental hospital or the director of the facility to which the
40 person is committed determines that a person committed under this section is no longer affected by
41 **a qualifying** mental [*disease or defect*] **disorder** or, if so affected, no longer presents a substantial
42 danger to others that requires commitment, the superintendent or director shall file notice of that
43 determination with the committing court. Upon filing of the notice, the superintendent or director
44 shall discharge the person from custody.

45 “**SECTION 9.** ORS 161.329 is amended to read:

1 “161.329. Following the entry of a judgment pursuant to ORS 161.319, the court shall order that
2 the person be discharged from custody if:

3 “(1) The court finds that the person is no longer affected by a **qualifying** mental [*disease or*
4 *defect*] **disorder**, or, if so affected, no longer presents a substantial danger to others and is not in
5 need of care, supervision or treatment; or

6 “(2)(a) Each offense for which the person is found guilty except for insanity is a misdemeanor;
7 and

8 “(b) The court finds that the person does not present a substantial danger to others that re-
9 quires commitment.

10 “**SECTION 10.** ORS 161.336 is amended to read:

11 “161.336. (1)(a) When a person is conditionally released under ORS 161.315 to 161.351, the person
12 is subject to those supervisory orders of the Psychiatric Security Review Board as are in the best
13 interests of justice, the protection of society and the welfare of the person.

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

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

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

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

25 “(3)(a) As a condition of release, the person may be required to report to any state or local
26 mental health facility for evaluation. Whenever medical, psychiatric or psychological treatment is
27 recommended, the order may require the person, as a condition of release, to cooperate with and
28 accept the treatment from the facility.

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

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

35 “(d) Copies of all reports submitted to the board pursuant to this section shall be furnished to
36 the person and the person’s counsel. The confidentiality of these reports is determined pursuant to
37 ORS 192.501 to 192.505.

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

40 “(4)(a) If at any time while the person is under the jurisdiction of the board it appears to the
41 board or its chairperson that the person has violated the terms of the conditional release or that
42 the mental health of the individual has changed, the board or its chairperson may order the person
43 returned for evaluation or treatment to a state hospital or, if the person is under 18 years of age,
44 to a secure intensive community inpatient facility. A written order of the board, or its chairperson
45 on behalf of the board, is sufficient warrant for any law enforcement officer to take into custody

1 such person and transport the person accordingly. A sheriff, municipal police officer, constable,
2 parole and probation officer, prison official or other peace officer shall execute the order, and the
3 person shall be returned as soon as practicable to the state hospital or secure intensive community
4 inpatient facility designated in the order.

5 “(b) The community mental health program director, the director of the facility providing
6 treatment to a person on conditional release, any peace officer or any person responsible for the
7 supervision of a person on conditional release may take a person on conditional release into custody
8 or request that the person be taken into custody if there is reasonable cause to believe the person
9 is a substantial danger to others because of a **qualifying** mental [*disease or defect*] **disorder** and that
10 the person is in need of immediate care, custody or treatment. Any person taken into custody pur-
11 suant to this subsection shall be transported as soon as practicable to a state hospital or, if the
12 person is under 18 years of age, to a secure intensive community inpatient facility.

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

19 “(5)(a) Any person conditionally released under this section may apply to the board for dis-
20 charge from or modification of an order of conditional release on the ground that the person is no
21 longer affected by a **qualifying** mental [*disease or defect*] **disorder** or, if still so affected, no longer
22 presents a substantial danger to others and no longer requires supervision, medication, care or
23 treatment. Notice of the hearing on an application for discharge or modification of an order of
24 conditional release shall be made to the Attorney General. The applicant, at the hearing pursuant
25 to this subsection, must prove by a preponderance of the evidence the applicant’s fitness for dis-
26 charge or modification of the order of conditional release. Applications by the person for discharge
27 or modification of conditional release may not be filed more often than once every six months.

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

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

36 “**SECTION 11.** ORS 161.341 is amended to read:

37 “161.341. (1) If at any time after a person is committed under ORS 161.315 to 161.351 to a state
38 hospital or a secure intensive community inpatient facility, the superintendent of the hospital or the
39 director of the secure intensive community inpatient facility is of the opinion that the person is no
40 longer affected by a **qualifying** mental [*disease or defect*] **disorder**, or, if so affected, no longer pre-
41 sents a substantial danger to others or that the person continues to be affected by a **qualifying**
42 mental [*disease or defect*] **disorder** and continues to be a danger to others, but that the person can
43 be controlled with proper care, medication, supervision and treatment if conditionally released, the
44 superintendent or director shall apply to the agency having jurisdiction over the person for an order
45 of discharge or conditional release. The application shall be accompanied by a report setting forth

1 the facts supporting the opinion of the superintendent or director. If the application is for condi-
2 tional release, the application must be accompanied by a verified conditional release plan. The
3 agency shall hold a hearing on the application within 60 days of its receipt. Not less than 20 days
4 prior to the hearing before the agency, copies of the report shall be sent to the Attorney General.

5 “(2) The attorney representing the state may choose a psychiatrist or licensed psychologist to
6 examine the person prior to the initial or any later decision by the agency having jurisdiction over
7 the person on discharge or conditional release. The results of the examination shall be in writing
8 and filed with the agency, and shall include, but need not be limited to, an opinion as to the mental
9 condition of the person, whether the person presents a substantial danger to others and whether the
10 person could be adequately controlled with treatment as a condition of release.

11 “(3) Any person who has been committed to a state hospital, or to a secure intensive community
12 inpatient facility, for custody, care and treatment under ORS 161.315 to 161.351, or another person
13 acting on the person’s behalf, may apply to the agency having jurisdiction over the person for an
14 order of discharge or conditional release upon the grounds:

15 “(a) That the person is no longer affected by a **qualifying** mental [*disease or defect*] **disorder**;

16 “(b) That the person, if so affected, no longer presents a substantial danger to others; or

17 “(c) That the person continues to be affected by a **qualifying** mental [*disease or defect*] **disorder**
18 and would continue to be a danger to others without treatment, but that the person can be ade-
19 quately controlled and given proper care and treatment if placed on conditional release.

20 “(4) When application is made under subsection (3) of this section, the agency having jurisdic-
21 tion over the person shall require that a report from the superintendent of the hospital or the di-
22 rector of the secure intensive community inpatient facility be prepared and transmitted as provided
23 in subsection (1) of this section. The applicant must prove by a preponderance of the evidence the
24 applicant’s fitness for discharge or conditional release under the standards of subsection (3) of this
25 section, unless more than two years has passed since the state had the burden of proof on that issue,
26 in which case the state shall have the burden of proving by a preponderance of the evidence the
27 applicant’s lack of fitness for discharge or conditional release. Applications for discharge or con-
28 ditional release under subsection (3) of this section may not be filed more often than once every six
29 months commencing with the date of the initial agency hearing.

30 “(5) The agency having jurisdiction over the person is not required to hold a hearing on a first
31 application under subsection (3) of this section any sooner than 90 days after the initial hearing.
32 Hearings resulting from any subsequent requests shall be held within 60 days of the filing of the
33 application.

34 “(6)(a) In no case shall a person committed by the court under ORS 161.327 to a state hospital,
35 or to a secure intensive community inpatient facility, be held in the hospital or facility for more
36 than 90 days from the date of the court’s commitment order without an initial hearing before the
37 agency having jurisdiction over the person to determine whether the person should be conditionally
38 released or discharged.

39 “(b) In no case shall a person be held pursuant to this section for a period of time exceeding two
40 years without a hearing before the agency to determine whether the person should be conditionally
41 released or discharged.

42 “**SECTION 12.** ORS 161.346 is amended to read:

43 “161.346. (1) When the Psychiatric Security Review Board or the Oregon Health Authority con-
44 ducts a hearing under ORS 161.315 to 161.351, the agency conducting the hearing shall enter an
45 order and make findings in support of the order. If the agency finds that a person under the juris-

1 diction of the agency:

2 “(a) Is no longer affected by a **qualifying** mental [*disease or defect*] **disorder**, or, if so affected,
3 no longer presents a substantial danger to others, the agency shall order the person discharged from
4 commitment and conditional release.

5 “(b) Is still affected by a **qualifying** mental [*disease or defect*] **disorder** and is a substantial
6 danger to others, but can be controlled adequately if conditionally released with treatment as a
7 condition of release, the agency shall order the person conditionally released as provided in ORS
8 161.336.

9 “(c) Has not recovered from the **qualifying** mental [*disease or defect*] **disorder**, is a substantial
10 danger to others and cannot adequately be controlled if conditionally released on supervision, the
11 agency shall order the person committed to, or retained in, a state hospital, or if the person is under
12 18 years of age, a secure intensive community inpatient facility, for care, custody and treatment.

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

16 “(b) When the board orders a tier two offender committed to a state hospital, or a secure in-
17 tensive community inpatient facility, under ORS 161.315 to 161.351, the order shall transfer juris-
18 diction over the person to the Oregon Health Authority.

19 “(c) When the authority orders a tier two offender conditionally released under ORS 161.315 to
20 161.351, the order shall transfer jurisdiction over the person to the board.

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

23 “(3) To assist the agency in making the determination described in subsection (1) of this section,
24 the agency exercising jurisdiction over the person may, at any time, appoint a psychiatrist or li-
25 censed psychologist to examine the person and to submit a report to the agency. The report must
26 include an opinion as to the mental condition of the person, whether the person presents a sub-
27 stantial danger to others and whether the person could be adequately controlled with treatment as
28 a condition of release.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 “(12) If the agency conducting the hearing determines that the person about whom the hearing
30 is being held is financially eligible, the agency shall appoint suitable counsel to represent the per-
31 son. Counsel so appointed shall be an attorney who satisfies the professional qualifications estab-
32 lished by the Public Defense Services Commission under ORS 151.216. The public defense services
33 executive director shall determine and allow fair compensation for counsel appointed under this
34 subsection and the reasonable expenses of the person in respect to the hearing. Compensation
35 payable to appointed counsel shall not be less than the applicable compensation level established
36 under ORS 151.216. The compensation and expenses so allowed shall be paid by the public defense
37 services executive director from funds available for the purpose.

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

45 “**SECTION 13.** ORS 161.351 is amended to read:

1 “161.351. (1) Any person placed under the jurisdiction of the Psychiatric Security Review Board
2 or the Oregon Health Authority under ORS 161.315 to 161.351 shall be discharged at such time as
3 the agency having jurisdiction over the person, upon a hearing, finds by a preponderance of the
4 evidence that the person is no longer affected by a **qualifying** mental [*disease or defect*] **disorder**
5 or, if so affected, no longer presents a substantial danger to others that requires regular medical
6 care, medication, supervision or treatment.

7 “(2) For purposes of ORS 161.315 to 161.351, a person affected by a **qualifying** mental [*disease or*
8 *or defect*] **disorder** in a state of remission is considered to have a **qualifying** mental [*disease or de-*
9 *fect*] **disorder**. A person whose **qualifying** mental [*disease or defect*] **disorder** may, with reasonable
10 medical probability, occasionally become active and when it becomes active will render the person
11 a danger to others may not be discharged. The person shall continue under supervision and treat-
12 ment necessary to protect the person and others.

13 “(3) In determining whether a person should be committed to a state hospital or secure intensive
14 community inpatient facility, conditionally released or discharged, the board and the authority shall
15 have as their primary concern the protection of society.

16 “**SECTION 14.** ORS 161.360 is amended to read:

17 “161.360. (1) If, before or during the trial in any criminal case, the court has reason to doubt
18 the defendant’s fitness to proceed by reason of incapacity, the court may order an examination in
19 the manner provided in ORS 161.365.

20 “(2) A defendant may be found incapacitated if, as a result of a **qualifying** mental [*disease or*
21 *defect*] **disorder**, the defendant is unable:

22 “(a) To understand the nature of the proceedings against the defendant; or

23 “(b) To assist and cooperate with the counsel of the defendant; or

24 “(c) To participate in the defense of the defendant.

25 “**SECTION 15.** ORS 161.365 is amended to read:

26 “161.365. (1) When the court has reason to doubt the defendant’s fitness to proceed by reason
27 of incapacity as described in ORS 161.360, the court may call any witness to its assistance in
28 reaching its decision and shall order that a community mental health program director or the
29 director’s designee consult with the defendant to determine whether services and supervision nec-
30 essary to safely restore the defendant’s fitness to proceed are available in the community. After the
31 consultation, the program director or the director’s designee shall provide to the court a copy of the
32 findings resulting from the consultation. If the court determines the assistance of a psychiatrist or
33 psychologist would be helpful, the court may:

34 “(a) Order that a psychiatric or psychological examination of the defendant be conducted by a
35 certified evaluator as defined in ORS 161.309 and a report of the examination be prepared; or

36 “(b) Order the defendant to be committed for the purpose of an examination for a period not
37 exceeding 30 days to a state mental hospital or other facility designated by the Oregon Health Au-
38 thority if the defendant is at least 18 years of age, or to a secure intensive community inpatient
39 facility designated by the authority if the defendant is under 18 years of age.

40 “(2) The report of an examination described in this section must include, but is not necessarily
41 limited to, the following:

42 “(a) A description of the nature of the examination;

43 “(b) A statement of the mental condition of the defendant;

44 “(c) If the defendant suffers from a **qualifying** mental [*disease or defect*] **disorder**, an opinion
45 as to whether the defendant is incapacitated within the description set out in ORS 161.360; and

1 “(d) If the defendant is incapacitated within the description set out in ORS 161.360, a recom-
2 mendation of treatment and services necessary to restore capacity.

3 “(3) Except when the defendant and the court both request to the contrary, the report may not
4 contain any findings or conclusions as to whether the defendant as a result of a **qualifying** mental
5 [*disease or defect*] **disorder** was subject to the provisions of ORS 161.295 or 161.300 at the time of
6 the criminal act charged.

7 “(4) If the examination by the psychiatrist or psychologist cannot be conducted by reason of the
8 unwillingness of the defendant to participate in the examination, the report shall so state and shall
9 include, if possible, an opinion as to whether the unwillingness of the defendant was the result of
10 a **qualifying** mental [*disease or defect*] **disorder** affecting capacity to proceed.

11 “(5) The report shall be filed in triplicate with the clerk of the court, who shall cause copies to
12 be delivered to the district attorney and to counsel for defendant.

13 “(6)(a) When upon motion of the court or a financially eligible defendant, the court has ordered
14 a psychiatric or psychological examination of the defendant, a county or justice court shall order
15 the county to pay, and a circuit court shall order the public defense services executive director to
16 pay from funds available for the purpose:

17 “(A) A reasonable fee if the examination of the defendant is conducted by a psychiatrist or
18 psychologist in private practice; and

19 “(B) All costs including transportation of the defendant if the examination is conducted by a
20 psychiatrist or psychologist in the employ of the Oregon Health Authority or a community mental
21 health program established under ORS 430.610 to 430.670.

22 “(b) When an examination is ordered at the request or with the acquiescence of a defendant who
23 is determined not to be financially eligible, the examination shall be performed at the defendant’s
24 expense. When an examination is ordered at the request of the prosecution, the county shall pay for
25 the expense of the examination.

26 “(7) The Oregon Health Authority shall establish by rule standards for the consultation de-
27 scribed in subsection (1) of this section.

28 “**SECTION 16.** ORS 161.370 is amended to read:

29 “161.370. (1) When the defendant’s fitness to proceed is drawn in question, the issue shall be
30 determined by the court. If neither the prosecuting attorney nor counsel for the defendant contests
31 the finding of the report filed under ORS 161.365, the court may make the determination on the basis
32 of the report. If the finding is contested, the court shall hold a hearing on the issue. If the report
33 is received in evidence in the hearing, the party who contests the finding has the right to summon
34 and to cross-examine any psychiatrist or psychologist who submitted the report and to offer evidence
35 upon the issue. Other evidence regarding the defendant’s fitness to proceed may be introduced by
36 either party.

37 “(2) If the court determines that the defendant lacks fitness to proceed, the criminal proceeding
38 against the defendant shall be suspended and:

39 “(a) If the court finds that the defendant is dangerous to self or others as a result of a **quali-**
40 **ifying** mental [*disease or defect*] **disorder**, or that, based on the findings resulting from the consul-
41 tation described in ORS 161.365 (1), the services and supervision necessary to restore the defendant’s
42 fitness to proceed are not available in the community, the court shall commit the defendant to the
43 custody of the superintendent of a state mental hospital or director of a facility, designated by the
44 Oregon Health Authority, if the defendant is at least 18 years of age, or to the custody of the di-
45 rector of a secure intensive community inpatient facility designated by the authority if the defendant

1 is under 18 years of age; or

2 “(b) If the court does not make a finding described in paragraph (a) of this subsection, or if the
3 court determines that care other than commitment for incapacity to stand trial would better serve
4 the defendant and the community, the court shall release the defendant on supervision for as long
5 as the unfitness endures.

6 “(3) When a defendant is released on supervision under subsection (2)(b) of this section, the
7 court may place conditions that the court deems appropriate on the release, including the require-
8 ment that the defendant regularly report to the authority or a community mental health program for
9 examination to determine if the defendant has gained or regained capacity to stand trial.

10 “(4) When the court, on its own motion or upon the application of the superintendent of the
11 hospital or director of the facility in which the defendant is committed, a person examining the de-
12 fendant as a condition of release on supervision, or either party, determines, after a hearing, if a
13 hearing is requested, that the defendant has gained or regained fitness to proceed, the criminal
14 proceeding shall be resumed. If, however, the court is of the view that so much time has elapsed
15 since the commitment or release of the defendant on supervision that it would be unjust to resume
16 the criminal proceeding, the court on motion of either party may dismiss the charge and may order
17 the defendant to be discharged or cause a proceeding to be commenced forthwith under ORS 426.070
18 to 426.170 or 427.235 to 427.290.

19 “(5) The superintendent of a state hospital or director of a facility to which the defendant is
20 committed shall cause the defendant to be evaluated within 60 days from the defendant’s delivery
21 into the superintendent’s or director’s custody, for the purpose of determining whether there is a
22 substantial probability that, in the foreseeable future, the defendant will have the capacity to stand
23 trial. In addition, the superintendent or director shall:

24 “(a) Immediately notify the committing court if the defendant, at any time, gains or regains the
25 capacity to stand trial or will never have the capacity to stand trial.

26 “(b) Within 90 days of the defendant’s delivery into the superintendent’s or director’s custody,
27 notify the committing court that:

28 “(A) The defendant has the present capacity to stand trial;

29 “(B) There is no substantial probability that, in the foreseeable future, the defendant will gain
30 or regain the capacity to stand trial; or

31 “(C) There is a substantial probability that, in the foreseeable future, the defendant will gain
32 or regain the capacity to stand trial. If the probability exists, the superintendent or director shall
33 give the court an estimate of the time in which the defendant, with appropriate treatment, is ex-
34 pected to gain or regain capacity.

35 “(6)(a) If the superintendent or director determines that there is a substantial probability that,
36 in the foreseeable future, the defendant will gain or regain the capacity to stand trial, unless the
37 court otherwise orders, the defendant shall remain in the superintendent’s or director’s custody
38 where the defendant shall receive treatment designed for the purpose of enabling the defendant to
39 gain or regain capacity. In keeping with the notice requirement under subsection (5)(b) of this sec-
40 tion, the superintendent or director shall, for the duration of the defendant’s period of commitment,
41 submit a progress report to the committing court, concerning the defendant’s capacity or incapacity,
42 at least once every 180 days as measured from the date of the defendant’s delivery into the
43 superintendent’s or director’s custody.

44 “(b) Notwithstanding paragraph (a) of this subsection, if the superintendent or director deter-
45 mines that a defendant committed under this section is no longer dangerous to self or others as a

1 result of a **qualifying** mental [*disease or defect*] **disorder**, or that the services and supervision nec-
2 essary to restore the defendant's fitness to proceed are available in the community, the superinten-
3 dent or director shall file notice of that determination with the court. Upon receipt of the notice,
4 the court shall order the person released on supervision as described in subsection (3) of this sec-
5 tion.

6 “(7)(a) A defendant who remains committed under subsection (6) of this section shall be dis-
7 charged within a period of time that is reasonable for making a determination concerning whether
8 or not, and when, the defendant may gain or regain capacity. However, regardless of the number
9 of charges with which the defendant is accused, in no event shall the defendant be committed for
10 longer than whichever of the following, measured from the defendant's initial custody date, is
11 shorter:

12 “(A) Three years; or

13 “(B) A period of time equal to the maximum sentence the court could have imposed if the de-
14 fendant had been convicted.

15 “(b) For purposes of calculating the maximum period of commitment described in paragraph (a)
16 of this subsection:

17 “(A) The initial custody date is the date on which the defendant is first committed under this
18 section on any charge alleged in the accusatory instrument; and

19 “(B) The defendant shall be given credit against each charge alleged in the accusatory instru-
20 ment for each day the defendant is committed under this section, whether the days are consecutive
21 or are interrupted by a period of time during which the defendant has gained or regained fitness to
22 proceed.

23 “(8) The superintendent or director shall notify the committing court of the defendant's im-
24 pending discharge 30 days before the date on which the superintendent or director is required to
25 discharge the defendant under subsection (7) of this section.

26 “(9) When the committing court receives a notice from the superintendent or director under
27 subsection (5) or (8) of this section concerning the defendant's progress or lack thereof, the com-
28 mitting court shall determine, after a hearing, if a hearing is requested, whether the defendant
29 presently has the capacity to stand trial.

30 “(10) If at any time the court determines that the defendant lacks the capacity to stand trial,
31 the court shall further determine whether there is a substantial probability that the defendant, in
32 the foreseeable future, will gain or regain the capacity to stand trial and whether the defendant is
33 entitled to discharge under subsection (7) of this section. If the court determines that there is no
34 substantial probability that the defendant, in the foreseeable future, will gain or regain the capacity
35 to stand trial or that the defendant is entitled to discharge under subsection (7) of this section, the
36 court shall dismiss, without prejudice, all charges against the defendant and:

37 “(a) Order that the defendant be discharged; or

38 “(b) Initiate commitment proceedings under ORS 426.070 or 427.235 to 427.290.

39 “(11) All notices required under this section shall be filed with the clerk of the court and de-
40 livered to both the district attorney and the counsel for the defendant.

41 “(12) If the defendant gains or regains fitness to proceed, the term of any sentence received by
42 the defendant for conviction of the crime charged shall be reduced by the amount of time the de-
43 fendant was committed under this section to the custody of a state mental hospital, or to the custody
44 of a secure intensive community inpatient facility, designated by the Oregon Health Authority.

45 “(13) Notwithstanding the suspension of the criminal proceeding under subsection (2) of this

1 section, the fact that the defendant is unfit to proceed does not preclude any objection through
2 counsel and without the personal participation of the defendant on the grounds that the indictment
3 is insufficient, that the statute of limitations has run, that double jeopardy principles apply or upon
4 any other ground at the discretion of the court which the court deems susceptible of fair determi-
5 nation prior to trial.

6 “**SECTION 17.** ORS 163.305 is amended to read:

7 “163.305. As used in chapter 743, Oregon Laws 1971, unless the context requires otherwise:

8 “(1) ‘Deviate sexual intercourse’ means sexual conduct between persons consisting of contact
9 between the sex organs of one person and the mouth or anus of another.

10 “(2) ‘Forcible compulsion’ means to compel by:

11 “(a) Physical force; or

12 “(b) A threat, express or implied, that places a person in fear of immediate or future death or
13 physical injury to self or another person, or in fear that the person or another person will imme-
14 diately or in the future be kidnapped.

15 “(3) ‘Mentally defective’ means that a person suffers from a **qualifying** mental [*disease or*
16 *defect*] **disorder** that renders the person incapable of appraising the nature of the conduct of the
17 person.

18 “(4) ‘Mentally incapacitated’ means that a person is rendered incapable of appraising or con-
19 trolling the conduct of the person at the time of the alleged offense.

20 “(5) ‘Physically helpless’ means that a person is unconscious or for any other reason is phys-
21 ically unable to communicate unwillingness to an act.

22 “(6) ‘Sexual contact’ means any touching of the sexual or other intimate parts of a person or
23 causing such person to touch the sexual or other intimate parts of the actor for the purpose of
24 arousing or gratifying the sexual desire of either party.

25 “(7) ‘Sexual intercourse’ has its ordinary meaning and occurs upon any penetration, however
26 slight; emission is not required.

27 “**SECTION 18.** ORS 408.580 is amended to read:

28 “408.580. Upon receipt of a certificate of eligibility and available facilities, the Oregon Health
29 Authority may cause to be transferred any veteran from any facility to which the veteran has been
30 assigned to a United States veterans facility. No veteran under sentence by any court, or committed
31 by any court after having been charged with any crime and [*acquitted on the ground of mental dis-*
32 *ease or defect*] **found guilty except for insanity**, may be transferred without an order of such court
33 authorizing the transfer. Whenever any veteran, not a convict, has been committed by order of a
34 court and is transferred as provided in this section, the order of commitment shall be held to apply
35 to the facility to which the veteran is transferred as to any other facility to which the veteran could
36 be assigned or transferred under ORS 426.060.

37 “**SECTION 19.** ORS 419C.378 is amended to read:

38 “419C.378. (1) A court may find that a youth is unfit to proceed in a proceeding initiated by a
39 petition alleging jurisdiction under ORS 419C.005 if, as a result of a **qualifying** mental [*disease or*
40 *defect*] **disorder** or another condition, the youth is unable:

41 “(a) To understand the nature of the proceedings against the youth;

42 “(b) To assist and cooperate with the counsel for the youth; or

43 “(c) To participate in the defense of the youth.

44 “(2) A court may not find that a youth is unfit to proceed in a proceeding solely because:

45 “(a) Of the age of the youth;

1 “(b) Of the current inability of the youth to remember the acts alleged in the petition; or
2 “(c) Evidence exists that the youth committed the acts alleged in the petition while the youth
3 was under the influence of intoxicants or medication.

4 “(3) The issue of fitness to proceed must be raised by written motion filed by a party to the
5 proceeding or by the court on its own motion. The motion may be made at any time after the filing
6 of the petition. The court shall stay the proceedings on the petition after the motion is made and
7 may order the youth to participate in an evaluation under ORS 419C.380 to determine the youth’s
8 fitness to proceed if the court determines that:

9 “(a) There is reason to doubt the youth’s fitness to proceed; and
10 “(b) There is probable cause to believe that the factual allegations contained in the petition are
11 true.

12 “(4) The fact that the youth is unfit to proceed does not preclude any objection through counsel
13 and without the personal participation of the youth on the grounds that the petition is insufficient,
14 that the statute of limitations has run, that double jeopardy principles apply or upon any other
15 ground at the discretion of the court that the court deems susceptible of fair determination prior to
16 trial.

17 “**SECTION 20.** ORS 419C.386 is amended to read:

18 “419C.386. (1)(a) If a party to a proceeding under ORS 419C.378 raises the issue of fitness to
19 proceed, the party shall file the original report on the evaluation conducted under ORS 419C.380
20 with the clerk of the court and deliver copies of the report to all parties to the proceeding.

21 “(b) If the court raises the issue of fitness to proceed under ORS 419C.378, the person conduct-
22 ing the evaluation under ORS 419C.380 shall file with the clerk of the court the original report on
23 the evaluation and two copies of the report. The clerk of the court shall deliver the copies to the
24 district attorney and to counsel for the youth.

25 “(c) The report must be filed with the clerk of the court within 30 days after the order for
26 evaluation is issued, unless the deadline is extended by written court order for good cause. An ex-
27 tension under this paragraph may not exceed 30 days.

28 “(2) A report filed under this section must include:

29 “(a) A description of the evaluation;
30 “(b) A list of information that the evaluator reviewed as part of the evaluation;
31 “(c) The evaluator’s opinion as to whether the youth is unfit to proceed as described in ORS
32 419C.378, including the evaluator’s opinion as to whether the youth suffers from a **qualifying** mental
33 [*disease or defect*] **disorder** or another condition; and
34 “(d) If the evaluator is of the opinion that the youth is unfit to proceed, the evaluator’s opinion
35 regarding whether there is a substantial probability that the youth will gain or regain fitness to
36 proceed and, if there is a substantial probability that the youth will gain or regain fitness to pro-
37 ceed, the specific restorative services under ORS 419C.396 that are needed and the anticipated du-
38 ration of those services.

39 “(3) A report filed under this section may not include statements made by the youth about the
40 acts alleged in the petition alleging jurisdiction under ORS 419C.005.

41 “(4) Statements made to an evaluator by a youth during an evaluation, or made to persons in-
42 volved in the evaluation, about the acts alleged in the petition are not admissible against the youth
43 in any proceeding relating to the petition.

44 “(5) Notwithstanding ORS 419A.255, the clerk of the court shall provide the Oregon Health
45 Authority with copies of the petition and the report on the evaluation upon request of the authority.

1 “**SECTION 21.** ORS 419C.411 is amended to read:

2 “419C.411. (1) At the termination of the hearing or hearings in the proceeding or after entry of

3 an order under ORS 419C.067, the court shall enter an appropriate order directing the disposition

4 to be made of the case.

5 “(2) The court shall find a youth responsible except for insanity if:

6 “(a) The youth asserted **qualifying** mental [*disease or defect*] **disorder** as a defense as provided

7 in ORS 419C.524; and

8 “(b) The court determined by a preponderance of the evidence that, as a result of **a qualifying**

9 mental [*disease or defect*] **disorder** at the time the youth committed the act alleged in the petition,

10 the youth lacked substantial capacity either to appreciate the nature and quality of the act or to

11 conform the youth’s conduct to the requirements of law.

12 “(3) Except as otherwise provided in subsections (6) and (7) of this section, in determining the

13 disposition of the case, the court shall consider each of the following:

14 “(a) The gravity of the loss, damage or injury caused or attempted during, or as part of, the

15 conduct that is the basis for jurisdiction under ORS 419C.005;

16 “(b) Whether the manner in which the youth offender engaged in the conduct was aggressive,

17 violent, premeditated or willful;

18 “(c) Whether the youth offender was held in detention under ORS 419C.145 and, if so, the rea-

19 sons for the detention;

20 “(d) The immediate and future protection required by the victim, the victim’s family and the

21 community; and

22 “(e) The youth offender’s juvenile court record and response to the requirements and conditions

23 imposed by previous juvenile court orders.

24 “(4) In addition to the factors listed in subsection (3) of this section, the court may consider the

25 following:

26 “(a) Whether the youth offender has made any efforts toward reform or rehabilitation or making

27 restitution;

28 “(b) The youth offender’s educational status and school attendance record;

29 “(c) The youth offender’s past and present employment;

30 “(d) The disposition proposed by the youth offender;

31 “(e) The recommendations of the district attorney and the juvenile court counselor and the

32 statements of the victim and the victim’s family;

33 “(f) The youth offender’s mental, emotional and physical health and the results of the mental

34 health or substance abuse treatment; and

35 “(g) Any other relevant factors or circumstances raised by the parties.

36 “(5) The court’s consideration of matters under this section may be addressed on appeal only if

37 raised by a party at a dispositional hearing or by a motion to modify or set aside under ORS

38 419C.610.

39 “(6) When a youth is found responsible except for insanity, the court shall order a disposition

40 under ORS 419C.529 if the court finds by a preponderance of the evidence that, at the time of dis-

41 position, the youth:

42 “(a) Has a serious mental condition; or

43 “(b) Has a **qualifying** mental [*disease or defect*] **disorder** other than a serious mental condition

44 and presents a substantial danger to others.

45 “(7) When a youth is found responsible except for insanity and the court does not make a finding

1 described in subsection (6) of this section, the court may:

2 “(a) Enter an order finding the youth to be within the court’s jurisdiction under ORS 419B.100
3 and make any disposition authorized by ORS chapter 419B;

4 “(b) Initiate civil commitment proceedings; or

5 “(c) Enter an order of discharge.

6 “**SECTION 22.** ORS 419C.520 is amended to read:

7 “419C.520. As used in ORS 419C.411, 419C.522 to 419C.527 and 419C.529 to 419C.544:

8 “(1) ‘Conditional release’ includes but is not limited to the monitoring of mental and physical
9 health treatment.

10 “(2) ‘**Qualifying** mental [*disease or defect*] **disorder**’ does not include an abnormality:

11 “(a) Manifested only by repeated criminal or otherwise antisocial conduct;

12 “(b) Constituting solely a personality disorder; or

13 “(c) Constituting solely a conduct disorder.

14 “(3) ‘Serious mental condition’ means a condition that requires supervision and treatment ser-
15 vices for the safety of others and is:

16 “(a) A mental illness of major depression;

17 “(b) A mental illness of bipolar disorder; or

18 “(c) A mental illness of psychotic disorder.

19 “**SECTION 23.** ORS 419C.522 is amended to read:

20 “419C.522. **Qualifying** mental [*disease or defect*] **disorder** constituting insanity under ORS
21 419C.411 (2) is an affirmative defense.

22 “**SECTION 24.** ORS 419C.529 is amended to read:

23 “419C.529. (1) After the entry of a jurisdictional order under ORS 419C.411 (2), if the court finds
24 by a preponderance of the evidence that the young person, at the time of disposition, has a serious
25 mental condition or has a **qualifying** mental [*disease or defect*] **disorder** other than a serious mental
26 condition and presents a substantial danger to others, requiring conditional release or commitment
27 to a hospital or facility designated on an individual case basis by the Department of Human Services
28 or the Oregon Health Authority as provided in subsection (6) of this section, the court shall order
29 the young person placed under the jurisdiction of the Psychiatric Security Review Board.

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

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

40 “(b) If the court finds that the young person can be adequately controlled with supervision and
41 treatment services if conditionally released and that necessary supervision and treatment services
42 are available, the court may order the young person conditionally released, subject to those super-
43 visory orders of the court that are in the best interests of justice and the young person. The court
44 shall designate a qualified mental health or developmental disabilities treatment provider or state,
45 county or local agency to supervise the young person on release, subject to those conditions as the

1 court directs in the order for conditional release. Prior to the designation, the court shall notify the
2 qualified mental health or developmental disabilities treatment provider or agency to whom condi-
3 tional release is contemplated and provide the qualified mental health or developmental disabilities
4 treatment provider or agency an opportunity to be heard before the court. After receiving an order
5 entered under this paragraph, the qualified mental health or developmental disabilities treatment
6 provider or agency designated shall assume supervision of the young person subject to the direction
7 of the juvenile panel. The qualified mental health or developmental disabilities treatment provider
8 or agency designated as supervisor shall report in writing no less than once per month to the ju-
9 venile panel concerning the supervised young person's compliance with the conditions of release.

10 "(c) For purposes of determining whether to order commitment to a hospital or facility or con-
11 ditional release, the primary concern of the court is the protection of society.

12 "(3) In determining whether a young person should be conditionally released, the court may or-
13 der examinations or evaluations deemed necessary.

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

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

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

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

27 "(B) Is unable or unwilling to do so, the court shall order that the young person be placed in
28 the legal custody of the Department of Human Services for the purpose of obtaining necessary de-
29 velopmental disabilities services or mental health services.

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

33 "(c) Include in the order a list of the persons who wish to be notified of any board hearing
34 concerning the young person.

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

37 "(e) State on the record the **qualifying** mental [*disease or defect*] **disorder** on which the young
38 person relied for the responsible except for insanity defense.

39 "(6) When the department designates a facility for the commitment of a young person with a
40 developmental disability under this section, or the authority designates a hospital or facility for
41 commitment of a young person with mental illness under this section, the department and the au-
42 thority shall take into account the care and treatment needs of the young person, the resources
43 available to the department or the authority and the safety of the public.

44 "**SECTION 25.** ORS 419C.532 is amended to read:

45 "419C.532. (1) The juvenile panel of the Psychiatric Security Review Board shall conduct

1 hearings on an application for discharge, conditional release, commitment or modification filed under
2 or required by ORS 419C.538, 419C.540 and 419C.542, and shall make findings on the issues before
3 the juvenile panel.

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

6 “(a) Has a serious mental condition; or

7 “(b) Has a **qualifying** mental [*disease or defect*] **disorder** other than a serious mental condition
8 and presents a substantial danger to others.

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

11 “(a) No longer has a **qualifying** mental [*disease or defect*] **disorder**; or

12 “(b) Has a **qualifying** mental [*disease or defect*] **disorder** other than a serious mental condition
13 but no longer presents a substantial danger to others.

14 “(4) The juvenile panel shall order a young person conditionally released subject to ORS
15 419C.538 if the juvenile panel finds that:

16 “(a) The young person:

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

18 “(B) Has a **qualifying** mental [*disease or defect*] **disorder** other than a serious mental condition
19 and presents a substantial danger to others;

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

22 “(c) Necessary supervision and treatment services are available.

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

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

28 “(B) Has a **qualifying** mental [*disease or defect*] **disorder** other than a serious mental condition
29 and presents a substantial danger to others; and

30 “(b) Cannot be adequately controlled if conditionally released.

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

34 “(7) In a hearing before the juvenile panel, a young person who has a **qualifying** mental [*disease*
35 *or defect*] **disorder** in a state of remission is considered to have a **qualifying** mental [*disease or de-*
36 *fect*] **disorder** if the **qualifying** mental [*disease or defect*] **disorder** may, with reasonable medical
37 probability, occasionally become active.

38 “(8) At any time, the juvenile panel may appoint a psychiatrist certified, or eligible to be certi-
39 fied, by the Oregon Medical Board in child psychiatry or a licensed psychologist with expertise in
40 child psychology to examine the young person and submit a written report to the juvenile panel.
41 Reports filed with the juvenile panel pursuant to the examination must include, but need not be
42 limited to, an opinion as to whether the young person:

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

44 “(B) Has a **qualifying** mental [*disease or defect*] **disorder** other than a serious mental condition
45 and presents a substantial danger to others; and

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

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

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

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

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

20 “(A) The young person about whom the hearing is being conducted;
21 “(B) The attorney representing the young person;
22 “(C) The young person’s parents or guardians, if known;
23 “(D) The person having legal custody of the young person;
24 “(E) The Attorney General or other attorney representing the state, if any; and
25 “(F) The district attorney and the court or juvenile department of the county in which the young
26 person was adjudicated.

27 “(b) The juvenile panel shall include in the notice required by paragraph (a) of this subsection:
28 “(A) The time, place and location of the hearing;
29 “(B) The nature of the hearing, the specific action for which the hearing has been requested, the
30 issues to be considered at the hearing and a reference to the particular sections of the statutes and
31 rules involved;
32 “(C) A statement of the authority and jurisdiction under which the hearing is to be held; and
33 “(D) A statement of all rights under subsection (13) of this section.

34 “(13) A young person about whom a hearing is being held has the right:
35 “(a) To appear at all proceedings held under this section, except juvenile panel deliberations.
36 “(b) To cross-examine all witnesses appearing to testify at the hearing.
37 “(c) To subpoena witnesses and documents as provided in ORS 161.395.
38 “(d) To be represented by suitable legal counsel possessing skills and experience commensurate
39 with the nature and complexity of the case, to consult with counsel prior to the hearing and, if fi-
40 nancially eligible, to have suitable counsel appointed at state expense.
41 “(e) To examine all information, documents and reports that the juvenile panel considers and,
42 if the information, documents and reports are available to the juvenile panel before the hearing, to
43 examine them prior to the hearing.

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

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

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

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

12 “**SECTION 26.** ORS 419C.538 is amended to read:

13 “419C.538. (1) When the juvenile panel of the Psychiatric Security Review Board orders a young
14 person conditionally released under ORS 419C.532 (4), the juvenile panel may designate a qualified
15 mental health or developmental disabilities treatment provider or state, county or local agency to
16 supervise the young person on release subject to those conditions as the juvenile panel directs in
17 the order for conditional release. Prior to the designation, the juvenile panel shall notify the quali-
18 fied mental health or developmental disabilities treatment provider or agency to whom conditional
19 release is contemplated and provide the qualified mental health or developmental disabilities treat-
20 ment provider or agency an opportunity to be heard before the juvenile panel. After receiving an
21 order entered under ORS 419C.532 (4), the qualified mental health or developmental disabilities
22 treatment provider or agency designated shall assume supervision of the young person pursuant to
23 the direction of the juvenile panel.

24 “(2) Conditions of release contained in orders entered under ORS 419C.532 (4) may be modified
25 from time to time and conditional release may be terminated by order of the juvenile panel as pro-
26 vided in ORS 419C.532 and 419C.542.

27 “(3)(a) As a condition of release, the juvenile panel may require the young person to report to
28 any state, county or local mental health or developmental disabilities facility for evaluation. When-
29 ever medical, psychiatric or psychological treatment is recommended, the juvenile panel may order
30 the young person, as a condition of release, to cooperate with and accept the treatment of the fa-
31 cility.

32 “(b) The facility to which the young person has been referred for evaluation shall perform the
33 evaluation and submit a written report of its findings to the juvenile panel. If the facility finds that
34 treatment of the young person is appropriate, the facility shall include its recommendations for
35 treatment in the report to the juvenile panel.

36 “(c) Whenever treatment is provided by the facility, the facility shall furnish reports to the ju-
37 venile panel on a regular basis concerning the progress of the young person.

38 “(d) The facility shall comply with any other conditions of release prescribed by order of the
39 juvenile panel.

40 “(4) If at any time it appears to the juvenile panel or the chairperson of the juvenile panel that
41 a young person has violated the terms of conditional release or that the mental health of the young
42 person has changed, the juvenile panel or the chairperson of the juvenile panel may order the young
43 person returned to a hospital or facility designated by the Department of Human Services or the
44 Oregon Health Authority for evaluation and treatment. A written order of the juvenile panel, or the
45 chairperson of the juvenile panel on behalf of the juvenile panel, is sufficient warrant for any peace

1 officer to take the young person into custody and transport the young person accordingly. A peace
2 officer shall execute the order, and the young person shall be returned as soon as practicable to a
3 facility designated by the department or the authority. Within 20 days following the return of the
4 young person to the facility designated by the department or the authority, the juvenile panel shall
5 conduct a hearing. At a hearing required by this subsection, the state has the burden of proving the
6 young person's lack of fitness for conditional release.

7 “(5) The community mental health program director, the community developmental disabilities
8 program director, the director of the facility providing treatment for the young person on condi-
9 tional release, a peace officer or a person responsible for the supervision of a young person on
10 conditional release may take a young person into custody or request that the young person be taken
11 into custody if there is reasonable cause to believe the young person presents a substantial danger
12 to others and that the young person is in need of immediate custody, supervision and treatment. A
13 young person taken into custody under this subsection must immediately be transported to a hospi-
14 tal or facility designated by the department or the authority. Within 20 days following the return
15 of the young person to the facility designated by the department or the authority, the juvenile panel
16 shall conduct a hearing. At a hearing required by this subsection, the state has the burden of
17 proving the young person's lack of fitness for conditional release.

18 “(6)(a) A young person conditionally released under ORS 419C.532 (4) may apply to the juvenile
19 panel for discharge from or modification of an order of conditional release on the ground that the
20 young person no longer has a **qualifying** mental [*disease or defect*] **disorder** or, if affected by a
21 **qualifying** mental [*disease or defect*] **disorder** other than a serious mental condition, no longer pre-
22 sents a substantial danger to others and no longer requires supervision or treatment services.
23 Within 60 days after receiving an application under this paragraph, the juvenile panel shall conduct
24 a hearing. At a hearing required by this paragraph, the young person has the burden of proving the
25 young person's fitness for discharge or modification of the order of conditional release. A young
26 person may not apply for discharge or modification of conditional release more often than once ev-
27 ery six months.

28 “(b) Upon application by any qualified mental health or developmental disabilities treatment
29 provider or state, county or local agency responsible for supervision or treatment services pursuant
30 to an order of conditional release, the juvenile panel shall conduct a hearing to determine if the
31 conditions of release should be continued, modified or terminated. The application must be accom-
32 panied by a report setting forth the facts supporting the application. At a hearing required by this
33 paragraph, the state has the burden of proving the young person's lack of fitness for discharge or
34 modification of the order of conditional release.

35 “**SECTION 27.** ORS 419C.540 is amended to read:

36 “419C.540. (1) The director of a hospital or facility to which a young person was committed
37 under ORS 419C.532 (5) shall apply to the juvenile panel of the Psychiatric Security Review Board
38 for an order of discharge or conditional release of the young person if, at any time after the com-
39 mitment, the director is of the opinion that the young person:

40 “(a) No longer has a **qualifying** mental [*disease or defect*] **disorder**;

41 “(b) Has a **qualifying** mental [*disease or defect*] **disorder** other than a serious mental condition
42 but no longer presents a substantial danger to others; or

43 “(c) Can be controlled with proper supervision and treatment services if conditionally released.

44 “(2) The director shall include in an application under subsection (1) of this section a report
45 setting forth the facts that support the opinion of the director. If the application is for conditional

1 release, the director shall also include a verified conditional release plan. The juvenile panel shall
2 hold a hearing on an application under subsection (1) of this section within 30 days of its receipt.
3 Not less than 10 days prior to the hearing before the juvenile panel, copies of the report must be
4 sent to the Attorney General or other attorney representing the state, if any, the district attorney
5 of the county in which the young person was adjudicated, the young person, the young person's at-
6 torney, the young person's parents or guardians, if known, and the person having legal custody of
7 the young person.

8 “(3) The attorney representing the state may choose a psychiatrist certified, or eligible to be
9 certified, by the Oregon Medical Board in child psychiatry or a licensed psychologist with expertise
10 in child psychology to examine the young person prior to any decision of the juvenile panel on dis-
11 charge or conditional release. The results of the examination must be in writing and filed with the
12 juvenile panel and must include, but need not be limited to, an opinion as to whether the young
13 person:

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

15 “(B) Has a **qualifying** mental [*disease or defect*] **disorder** other than a serious mental condition
16 and presents a substantial danger to others; and

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

18 “(4) A young person who has been committed to a hospital or facility under ORS 419C.532 (5)
19 or the young person's parents or guardians acting on the young person's behalf may apply to the
20 juvenile panel for an order of discharge or conditional release upon the grounds that the young
21 person:

22 “(a) No longer has a **qualifying** mental [*disease or defect*] **disorder**;

23 “(b) Has a **qualifying** mental [*disease or defect*] **disorder** other than a serious mental condition
24 but no longer presents a substantial danger to others; or

25 “(c) Can be controlled with proper supervision and treatment services if conditionally released.

26 “(5) When an application is made under subsection (4) of this section, the juvenile panel shall
27 require a report from the director of the hospital or facility. The director shall prepare and transmit
28 the report as provided in subsection (2) of this section.

29 “(6) At a hearing on an application under subsection (4) of this section:

30 “(a) The applicant has the burden of proving the young person's fitness for discharge or condi-
31 tional release; or

32 “(b) If more than two years have passed since the state had the burden of proving the young
33 person's lack of fitness for discharge or conditional release, the state has the burden of proving the
34 young person's lack of fitness for discharge or conditional release.

35 “(7) A person may not file an application for discharge or conditional release under subsection
36 (4) of this section:

37 “(a) Sooner than 90 days after the initial juvenile panel hearing concerning the young person.

38 “(b) If another application for discharge or conditional release of the young person was filed
39 during the immediately preceding 90 days.

40 “(8) The juvenile panel shall hold a hearing on an application under subsection (4) of this section
41 within 30 days after the application is filed.

42 “**SECTION 28.** ORS 426.510 is amended to read:

43 “426.510. As used in ORS 426.510 to 426.680, unless the context otherwise requires, ‘sexually
44 dangerous person’ means a person who because of repeated or compulsive acts of misconduct in
45 sexual matters, or because of a **qualifying** mental [*disease or defect*] **disorder**, is deemed likely to

1 continue to perform such acts and be a danger to other persons.”

2 _____