

D R A F T

SUMMARY

Authorizes court to commit person to state hospital or secure mental health facility during pendency of petition to commit person as extremely dangerous person with mental illness.

A BILL FOR AN ACT

Relating to extremely dangerous persons with mental illness; amending ORS 426.701.

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

SECTION 1. ORS 426.701 is amended to read:

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

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

(A) Is at least 18 years of age;

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

(C) Because of a mental disorder:

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

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

(b) “Mental disorder” does not include:

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

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

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

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

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

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

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

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

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

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

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

29 (D) The right to examine all reports, documents and information that the
30 court considers, including the right to examine the reports, documents and
31 information prior to the hearing, if available.

(d) **Upon receipt of the petition**, the court shall **schedule a hearing and shall** appoint an examiner as described in ORS 426.110 to evaluate the person.

(e) **The court may order that the person be committed to the custody of the superintendent of a state hospital or the director of a secure mental health facility while the petition is pending.**

(3)(a) [*Upon receipt of a petition filed under subsection (2) of this section, the court shall schedule a hearing.*] At the hearing **on the petition**, the court shall order the person committed as an extremely dangerous person with mental illness under the jurisdiction of the Psychiatric Security Review Board for a maximum of 24 months if the court finds, by clear and convincing evidence, that:

(A) The person is extremely dangerous;

(B) The person suffers from a mental disorder that is resistant to treatment; and

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

(i) Caused the death of another person;

(ii) Caused serious physical injury to another person by means of a dangerous weapon;

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

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

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

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

(b) The court shall further commit the person to a state hospital for custody, care and treatment if the court finds, by clear and convincing evi-

dence, that the person cannot be controlled in the community with proper care, medication, supervision and treatment on conditional release.

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

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

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

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

(5) A person committed under this section shall remain under the jurisdiction of the board for a maximum of 24 months unless the board conducts a hearing and makes the findings described in subsection (6)(d) of this section.

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

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

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

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

5 (D) The right to subpoena witnesses;

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

7 (F) The right to examine all reports, documents and information that the
8 board considers, including the right to examine the reports, documents and
9 information prior to the hearing if available.

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

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

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

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

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

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

(8)(a) If the board orders the conditional release of a person under subsection (6)(c) of this section, the board shall order conditions of release that may include a requirement to report to any state or local mental health facility for evaluation. The board may further require cooperation with, and acceptance of, psychiatric or psychological treatment from the facility. Conditions of release may be modified by the board from time to time.

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

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

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

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

(9)(a) If at any time while the person is conditionally released it appears

1 that the person has violated the terms of the conditional release, the board
2 may order the person returned to a state hospital for evaluation or treat-
3 ment. A written order of the board is sufficient warrant for any law
4 enforcement officer to take the person into custody. A sheriff, municipal
5 police officer, parole or probation officer or other peace officer shall execute
6 the order, and the person shall be returned to the state hospital as soon as
7 practicable.

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

14 (c) Within 30 days following the return of the person to a state hospital,
15 the board shall conduct a hearing to determine if, by a preponderance of the
16 evidence, the person is no longer fit for conditional release. The board shall
17 provide written notice of the hearing to the person, the person's legal coun-
18 sel and the office of the district attorney who filed the initial petition under
19 subsection (2) of this section within a reasonable time prior to the hearing.
20 The notice shall advise the person of the nature of the hearing, the right to
21 have the court appoint legal counsel and the right to subpoena witnesses,
22 examine documents considered by the board and cross-examine all witnesses
23 who appear at the hearing.

24 (10)(a) If the person had unadjudicated criminal charges at the time of the
25 person's initial commitment under this section and the state hospital or the
26 state or local mental health facility providing treatment to the person in-
27 tends to recommend discharge of the person at an upcoming hearing, the
28 superintendent of the state hospital or the director of the facility shall pro-
29 vide written notice to the board and the district attorney of the county
30 where the criminal charges were initiated of the discharge recommendation
31 at least 45 days before the hearing. The notice shall be accompanied by a

1 report describing the person's diagnosis and the treatment the person has
2 received.

3 (b) Upon receiving the notice described in this subsection, the district
4 attorney may request an order from the court in the county where the
5 criminal charges were initiated for an evaluation to determine if the person
6 is fit to proceed in the criminal proceeding. The court may order the state
7 hospital or the state or local mental health facility providing treatment to
8 the person to perform the evaluation. The hospital or facility shall provide
9 copies of the evaluation to the district attorney, the person and the person's
10 legal counsel, if applicable.

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

14 (11) The board shall make reasonable efforts to notify any person de-
15 scribed in subsection (3)(c) of this section of any order or hearing, condi-
16 tional release, discharge or escape of the person committed under this
17 section.

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

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