

SB 206-2  
(LC 1672)  
3/30/21 (JLM/ps)

Requested by SENATE COMMITTEE ON JUDICIARY AND BALLOT MEASURE 110 IMPLEMENTATION

**PROPOSED AMENDMENTS TO  
SENATE BILL 206**

1 On page 1 of the printed bill, delete lines 4 through 30 and delete pages  
2 2 through 4 and insert:

3 **“SECTION 1.** ORS 161.327 is amended to read:

4 “161.327. (1) After the defendant is found guilty except for insanity pur-  
5 suant to ORS 161.319, if the court finds by a preponderance of the evidence  
6 that a person found guilty except for insanity of a felony is affected by a  
7 qualifying mental disorder and presents a substantial danger to others, the  
8 court shall order as follows:

9 “(a) If the court finds that the person is not a proper subject for condi-  
10 tional release, the court shall order the person committed to a state hospital  
11 or, if the person is under 18 years of age, to a secure intensive community  
12 inpatient facility for custody, care and treatment. When the court orders a  
13 person committed under this paragraph, the court shall place the person  
14 under the jurisdiction of the Psychiatric Security Review Board.

15 “(b) If the court finds that the person can be adequately controlled with  
16 supervision and treatment if conditionally released and that necessary  
17 supervision and treatment are available, the court shall order the person  
18 conditionally released.

19 **“(2)(a) If a party intends to request conditional release under this**  
20 **section, the party shall, as soon as practicable, notify the opposing**  
21 **party, the court and the board of the request. The party requesting**

1 conditional release shall make every effort to provide the notification  
2 in a manner that allows sufficient time to carry out the provisions  
3 described in this subsection before the court determination on condi-  
4 tional release.

5 “(b) Upon receipt of a request for conditional release under this  
6 section:

7 “(A) If the most serious offense in the charging instrument is a  
8 Class C felony, the court shall order that a local mental health pro-  
9 gram designated by the board consult with the person to determine  
10 whether the necessary supervision and treatment for the person are  
11 available in the community and appropriate for the person and shall  
12 order the release of any records to the program director that are  
13 necessary to complete the consultation.

14 “(B) If the most serious offense in the charging instrument is a  
15 Class A or Class B felony, the court may order that a local mental  
16 health program designated by the board consult with the person to  
17 determine whether the necessary supervision and treatment for the  
18 person are available in the community and appropriate for the person.  
19 If the court orders the consultation, the court shall further order the  
20 release of any records to the program director that are necessary to  
21 complete the consultation.

22 “(3)(a) If the outcome of a consultation described in subsection  
23 (2)(b) of this section indicates that the necessary supervision and  
24 treatment are available in the community and appropriate for the  
25 person, the local mental health program shall evaluate the person to  
26 determine whether the person can be adequately controlled with  
27 supervision and treatment if conditionally released, and the program  
28 director shall provide to the court and to the board a report of the  
29 findings resulting from the consultation, a report of the findings re-  
30 sulting from the evaluation and recommendations for treatment.

1       **“(b) If the outcome of a consultation described in subsection (2)(b)**  
2 **of this section indicates that the necessary supervision and treatment**  
3 **for the person are not available in the community or not appropriate**  
4 **for the person, the program director shall submit to the court and to**  
5 **the board a report of the findings resulting from the consultation and**  
6 **may include any recommendations for treatment.**

7       **“(4) In determining whether a person should be conditionally re-**  
8 **leased, the court:**

9       **“(a) May order evaluations and examinations as provided in ORS**  
10 **161.336 (3) and 161.346 (2) or as otherwise needed by the court;**

11       **“(b) Shall act in conformance with subsection (2)(b) of this section**  
12 **concerning an order for a local mental health program designated by**  
13 **the board to consult with the person;**

14       **“(c) Shall have as its primary concern the protection of society; and**

15       **“(d) May not order conditional release without a report from the**  
16 **consultation described in subsection (2)(b) of this section and the**  
17 **evaluation described in (3)(b) of this section.**

18       **“[(2)] (5) When a person is conditionally released under this section, the**  
19 **person is subject to those supervisory orders of the court as are in the best**  
20 **interests of justice, the protection of society and the welfare of the person.**  
21 **The court shall designate a person or state, county or local agency to su-**  
22 **pervise the person upon release, subject to those conditions as the court di-**  
23 **rects in the order for conditional release. Prior to the designation, the court**  
24 **shall notify the person or agency to whom conditional release is contem-**  
25 **plated and provide the person or agency an opportunity to be heard before**  
26 **the court. After receiving an order entered under subsection (1)(b) of this**  
27 **section, the person or agency designated shall assume supervision of the**  
28 **person pursuant to the direction of the [*Psychiatric Security Review*] board.**  
29 **The person or agency designated as supervisor shall be required to report in**  
30 **writing no less than once per month to the board concerning the supervised**

1 person's compliance with the conditions of release.

2 “[*(3) In determining whether a person should be conditionally released, the*  
3 *court:*]

4 “[*(a) May order evaluations, examinations and compliance as provided in*  
5 *ORS 161.336 (3) and 161.346 (2);*]

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

10 “[*(c) Shall have as its primary concern the protection of society.*]

11 “[*(4)*] **(6)** Upon placing a person on conditional release, the court shall  
12 **within one judicial day provide to the board an electronic copy of the**  
13 **conditional release order. The court shall additionally** notify the board  
14 in writing of [*the court's conditional release order,*] the supervisor appointed  
15 and all other conditions of release, and the person shall be on conditional  
16 release pending hearing before the board. Upon compliance with this section,  
17 the court's jurisdiction over the person is terminated.

18 “[*(5)*] **(7)** The total period of commitment or conditional release under  
19 ORS 161.315 to 161.351 may not exceed the maximum sentence provided by  
20 statute for the crime for which the person was found guilty except for in-  
21 sanity.

22 “[*(6)*] **(8)** An order of the court under this section is a final order  
23 appealable by the person found guilty except for insanity in accordance with  
24 ORS 19.205 (5). Notwithstanding ORS 19.255, notice of an appeal under this  
25 section shall be served and filed within 90 days after the order appealed from  
26 is entered in the register. The person shall be entitled on appeal to suitable  
27 counsel possessing skills and experience commensurate with the nature and  
28 complexity of the case. If the person is financially eligible, suitable counsel  
29 shall be appointed in the manner provided in ORS 138.500 (1), and the com-  
30 pensation for counsel and costs and expenses of the person necessary to the

1 appeal shall be determined and paid as provided in ORS 138.500.

2 “[7] (9) Following the order described in subsection (1) of this section,  
3 the court shall notify the person of the right to appeal and the right to a  
4 hearing before the board in accordance with ORS 161.336 (5) and 161.341 (3).

5 **“(10) The board shall hold a review hearing within 90 days for a  
6 person conditionally released under this section.**

7 **“(11) The board shall establish by rule standards for the consulta-  
8 tions described in subsection (2)(b) of this section and the evaluations  
9 described in (3)(a) of this section.**

10 **“SECTION 2.** ORS 161.309 is amended to read:

11 “161.309. (1) The defendant may not introduce evidence on the issue of  
12 insanity under ORS 161.295, unless the defendant:

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

15 “(b) Files with the court a report of a psychiatric or psychological eval-  
16 uation, conducted by a certified evaluator, in the manner provided in sub-  
17 section (4) of this section.

18 “(2) The defendant may not introduce in the case in chief expert testi-  
19 mony regarding partial responsibility or diminished capacity under ORS  
20 161.300 unless the defendant gives notice of intent to do so in the manner  
21 provided in subsection (3) of this section.

22 “(3)(a) A defendant who is required under subsection (1) or (2) of this  
23 section to give notice shall file a written notice of purpose at least 45 days  
24 before trial.

25 “(b) Notwithstanding paragraph (a) of this subsection, the court may, for  
26 good cause, permit the defendant to file the notice within 45 days before  
27 trial.

28 “(c) If the defendant fails to file notice under this subsection, the de-  
29 fendant may not introduce evidence for the establishment of a defense under  
30 ORS 161.295 or 161.300 unless the court, in its discretion, permits the evi-

1 dence to be introduced where just cause for failure to file the notice is  
2 shown.

3 “(4) A defendant who is required under subsection (1) of this section to  
4 file a report of a psychiatric or psychological evaluation shall file the report  
5 before trial. The report must be based on an evaluation conducted after the  
6 date of the alleged offense and must address the issue of insanity under ORS  
7 161.295 and the dispositional determination described in ORS 161.325. If the  
8 defendant fails to file a complete report before trial, the defendant may not  
9 introduce evidence for the establishment of a defense under ORS 161.295  
10 unless:

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

13 “(b) If the defendant is charged with a felony, the defendant is tried by  
14 a jury.

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

20 “(b) When the court orders an evaluation of a financially eligible person  
21 under this subsection, the court shall order the public defense services  
22 executive director to pay a reasonable fee for the evaluation from funds  
23 available for that purpose.

24 “(c) A certified evaluator performing an evaluation of a defendant on the  
25 issue of insanity under this subsection is not obligated to evaluate the de-  
26 fendant for fitness to proceed unless, during the evaluation, the certified  
27 evaluator determines that the defendant’s fitness to proceed is drawn in  
28 question.

29 “(6) Prior to accepting a plea of guilty except for insanity to a felony, the  
30 court shall inform the defendant of the possibility that the court may order

1 commitment or conditional discharge after entry of judgment, and of the  
2 maximum total period of commitment or conditional discharge under ORS  
3 161.327 [(5)] (7).

4 “(7) As used in this section, ‘certified evaluator’ means a psychiatrist or  
5 psychologist who holds a valid certification under the provisions of ORS  
6 161.392.

7 **“SECTION 3.** ORS 161.325 is amended to read:

8 “161.325. (1) After the defendant is found guilty except for insanity, the  
9 court shall, on the basis of the evidence given at the trial or at a separate  
10 hearing, if requested by either party, order a disposition as provided in ORS  
11 161.327, 161.328 or 161.329, whichever is appropriate.

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

13 “(a) Determine on the record the offense of which the person otherwise  
14 would have been convicted;

15 “(b) State on the record the qualifying mental disorder on which the de-  
16 fendant relied for the guilty except for insanity defense;

17 “(c) State on the record the maximum total period of commitment or  
18 conditional discharge under ORS 161.327 [(5)] (7); and

19 “(d) Make specific findings on whether there is a victim of the crime for  
20 which the defendant has been found guilty except for insanity and, if so,  
21 whether the victim wishes to be notified, under ORS 161.326, of any hearings  
22 and orders concerning the defendant and of any conditional release, dis-  
23 charge or escape of the defendant.

24 “(3) The court shall include in its order the information described in  
25 subsection (2) of this section.

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

1 137.076.

2 **“SECTION 4.** ORS 161.349 is amended to read:

3 “161.349. (1) When a person who is committed to a state hospital or a  
4 secure intensive community inpatient facility under ORS 161.315 to 161.351  
5 is convicted of a crime and sentenced to a term of incarceration and when  
6 the person is sentenced to a term of incarceration as a sanction for violating  
7 the conditions of probation, parole or post-prison supervision, the sentencing  
8 court shall stay execution of the sentence pending the conditional release  
9 or discharge of the person or the expiration of the period of time described  
10 in ORS 161.327 [(5)] (7). When the person is conditionally released or dis-  
11 charged by the Psychiatric Security Review Board under ORS 161.315 to  
12 161.351, or when the maximum period of jurisdiction described in ORS 161.327  
13 [(5)] (7) expires, the stay shall be lifted by operation of law and the person  
14 shall be delivered to the custody of the Department of Corrections or the  
15 supervisory authority to begin service of the sentence imposed.

16 “(2) When a person described in subsection (1) of this section is delivered  
17 to the custody of the department or the supervisory authority as described  
18 in this section, the board shall notify the department or the supervisory au-  
19 thority when the period of time described in ORS 161.327 [(5)] (7) will expire.

20 “(3) The department or supervisory authority shall notify the board when  
21 the person has served the term of incarceration imposed by the court and the  
22 board shall resume exercising active jurisdiction over the person in accord-  
23 ance with ORS 161.315 to 161.351.

24 “(4) As used in this section, ‘supervisory authority’ has the meaning given  
25 that term in ORS 144.087.”.

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