

Enrolled House Bill 2804

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor Tina Kotek for Psychiatric Security Review Board)

CHAPTER

AN ACT

Relating to the Psychiatric Security Review Board; creating new provisions; amending ORS 161.348, 161.385, 166.273, 181A.290, 419C.520, 419C.529, 419C.530, 419C.531, 419C.532, 419C.533, 419C.535, 419C.538, 419C.540 and 419C.542; repealing ORS 419C.544; and declaring an emergency.

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

REPEAL OF JUVENILE PANEL

SECTION 1. ORS 161.385 is amended to read:

161.385. (1) There is hereby created a Psychiatric Security Review Board consisting of [10] **the members described in subsection (2) of this section** appointed by the Governor and subject to confirmation by the Senate under section 4, Article III of the Oregon Constitution.

(2)(a) The membership of the board may not include any district attorney, deputy district attorney or public defender.

(b) The Governor shall appoint:

[(a)] (A) A psychiatrist experienced in the criminal justice system and not otherwise employed on a full-time basis by the Oregon Health Authority or a community mental health program;

[(b)] (B) A licensed psychologist experienced in the criminal justice system and not otherwise employed on a full-time basis by the authority or a community mental health program;

[(c)] (C) A member with substantial experience in the processes of parole and probation;

[(d)] (D) A lawyer with substantial experience in criminal trial practice; **and**

[(e) *A psychiatrist certified, or eligible to be certified, by the Oregon Medical Board in child psychiatry who is experienced in the juvenile justice system and not employed on a full-time basis by the authority or a community mental health program;*]

[(f) *A licensed psychologist who is experienced in child psychology and the juvenile justice system and not employed on a full-time basis by the authority or a community mental health program;*]

[(g) *A member with substantial experience in the processes of juvenile parole and probation;*]

[(h) *A lawyer with substantial experience in juvenile law practice; and*]

[(i) *Two members of the general public.*]

(E) A member of the general public.

(c) **The Governor may appoint a sixth member, to serve as an alternate member as described in subsection (6)(b) of this section, who has previously served on the board for one or more terms, has demonstrated commitment to the board’s strategic plan and is well-versed in the board’s operations, policies and procedures.**

(3) The term of office of each member is four years. The Governor at any time may remove any member for inefficiency, neglect of duty or malfeasance in office. Before the expiration of the term of a member, the Governor shall appoint a successor whose term begins on July 1 next following. A member is eligible for reappointment. If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

(4) A member of the board not otherwise employed full-time by the state shall be paid on a per diem basis an amount equal to \$289.22, adjusted according to the executive pay plan for the biennium, for each day during which the member is engaged in the performance of official duties, including necessary travel time. In addition, subject to ORS 292.220 to 292.250 regulating travel and other expenses of state officers and employees, the member shall be reimbursed for actual and necessary travel and other expenses incurred in the performance of official duties.

(5) Subject to any applicable provision of the State Personnel Relations Law, the board may hire employees to aid it in performing its duties.

(6)(a) The board consists of *[two five-member panels]* **a single panel of five members appointed under subsection (2)(b) of this section.** The *[adult]* panel is responsible for persons placed under the board's jurisdiction under ORS 161.315 to 161.351 and *[419C.544 and consists of those members appointed under subsection (2)(a) to (d) of this section and one of the public members. The juvenile panel is responsible for]* young persons placed under the board's jurisdiction under ORS 419C.529 *[and consists of those members appointed under subsection (2)(e) to (h) of this section and the other public member]*, **and for carrying out the board's duties described in ORS 163A.125, 166.273, 426.701 and 426.702.**

(b) If a member is appointed under subsection (2)(c) of this section, that member serves as an alternate member of the panel, and may participate as a voting member of the panel for board hearings described in ORS 161.315 to 161.351, 163A.125, 419C.529 to 419C.542, 426.701 and 426.702, when a member appointed under subsection (2)(b) of this section is unavailable.

(7)(a) *[Each]* **The** panel shall select one of its members as chairperson to serve for a one-year term with such duties and powers as the panel determines.

(b) A majority of the voting members of *[a]* **the** panel constitutes a quorum for the transaction of business of the panel.

(8) *[Each]* **The** panel shall meet at least twice every month, unless the chairperson determines that there is not sufficient business before the panel to warrant a meeting at the scheduled time. The panel shall also meet at other times and places specified by the call of the chairperson or of a majority of the members of the panel.

SECTION 2. ORS 419C.529 is amended to read:

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

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

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

(b) If the court finds that the young person can be adequately controlled with supervision and treatment services if conditionally released and that necessary supervision and treatment services are available, the court may order the young person conditionally released, subject to those supervisory orders of the court that are in the best interests of justice and the young person. The court shall designate a qualified mental health or developmental disabilities treatment provider or state, county or local agency to supervise the young person on release, subject to those conditions as the court directs in the order for conditional release. Prior to the designation, the court shall notify the qualified mental health or developmental disabilities treatment provider or agency to whom conditional release is contemplated and provide the qualified mental health or developmental disabilities treatment provider or agency an opportunity to be heard before the court. After receiving an order entered under this paragraph, the qualified mental health or developmental disabilities treatment provider or agency designated shall assume supervision of the young person subject to the direction of the *[juvenile panel]* **board**. The qualified mental health or developmental disabilities treatment provider or agency designated as supervisor shall report in writing no less than once per month to the *[juvenile panel]* **board** concerning the supervised young person's compliance with the conditions of release.

(c) For purposes of determining whether to order commitment to a hospital or facility or conditional release, the primary concern of the court is the protection of society.

(3) In determining whether a young person should be conditionally released, the court may order examinations or evaluations deemed necessary.

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

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

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

(A) Is able and willing to do so, the court shall order the parent or guardian to sign an irrevocable consent form in which the parent agrees to any placement decision made by the *[juvenile panel]* **board**.

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

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

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

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

(e) State on the record the qualifying mental disorder on which the young person relied for the responsible except for insanity defense.

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

SECTION 3. ORS 419C.530 is amended to read:

419C.530. The *[juvenile panel of the]* Psychiatric Security Review Board exercises continuing jurisdiction over a young person committed to, or retained in, a hospital or facility designated by the Department of Human Services or the Oregon Health Authority under ORS 419C.529. If the board determines after review that the placement of a young person in the particular hospital or facility is so inappropriate as to create a substantial danger to others, the board may direct the department or the authority to place the young person in a specific type of facility or direct specific care or supervision, but the actual placement of the young person is the responsibility of the department or the authority.

SECTION 4. ORS 419C.531 is amended to read:

419C.531. (1) If the juvenile court or *[the juvenile panel of]* the Psychiatric Security Review Board determines that a victim desires notification as described in ORS 419C.529, the *[panel] board* shall make a reasonable effort to notify the victim of *[panel] board* hearings and orders, conditional release, discharge or escape. Nothing in this subsection authorizes the *[panel] board* to disseminate information that is otherwise privileged by law.

(2) When the *[panel] board* conducts a hearing involving a young person found responsible except for insanity for an act for which there is a victim, the *[panel] board* shall afford the victim an opportunity to be heard, either orally or in writing, at the hearing.

(3)(a) If the *[panel] board* fails to make a reasonable effort to notify the victim of a *[panel] board* hearing under subsection (1) of this section or fails to afford the victim an opportunity to be heard under subsection (2) of this section, the victim may request that the *[panel] board* reconsider the order of the *[panel] board*.

(b) If the *[panel] board* determines that the *[panel] board* failed to make a reasonable effort to notify the victim or failed to afford the victim an opportunity to be heard, except as provided in paragraph (c) of this subsection, the *[panel] board* shall grant the request for reconsideration. Upon reconsideration, the *[panel] board* shall consider the statement of the victim and may consider any other information that was not available to the *[panel] board* at the previous hearing.

(c) The *[panel] board* may not grant a request for reconsideration that is made:

(A) After the young person has been discharged from the jurisdiction of the Psychiatric Security Review Board;

(B) After the *[panel] board* has held a subsequent hearing involving the young person; or

(C) If the *[panel] board* failed to make a reasonable effort to notify the victim of a hearing, more than 30 days after the victim knew or reasonably should have known of the hearing.

SECTION 5. ORS 419C.532 is amended to read:

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

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

(a) Has a serious mental condition; or

(b) Has a qualifying mental disorder other than a serious mental condition and presents a substantial danger to others.

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

(a) No longer has a qualifying mental disorder; or

(b) Has a qualifying mental disorder other than a serious mental condition but no longer presents a substantial danger to others.

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

(a) The young person:

(A) Has a serious mental condition; or

(B) Has a qualifying mental disorder other than a serious mental condition and presents a substantial danger to others;

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

(c) Necessary supervision and treatment services are available.

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

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

(B) Has a qualifying mental disorder other than a serious mental condition and presents a substantial danger to others; and

(b) Cannot be adequately controlled if conditionally released.

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

(7) In a hearing before the *[juvenile panel] board*, a young person who has a qualifying mental disorder in a state of remission is considered to have a qualifying mental disorder if the qualifying mental disorder may, with reasonable medical probability, occasionally become active.

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

[(a)(A)] (A)(i) Has a serious mental condition; or

[(B)] (ii) Has a qualifying mental disorder other than a serious mental condition and presents a substantial danger to others; and

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

(b) In preparation for a board hearing under ORS 419C.538 (4) or (6), 419C.540 (1) or (4) or 419C.542 (1), (2) or (3), if the board does not include a member who is a psychiatrist certified, or eligible to be certified, by the Oregon Medical Board in child psychiatry who is experienced in the juvenile justice system, or a licensed psychologist who is experienced in child psychology and the juvenile justice system, the board shall appoint a psychiatrist certified, or eligible to be certified, by the Oregon Medical Board in child psychiatry, or a licensed psychologist who is experienced in child psychology, to review any exhibits that have been admitted into evidence for the hearing and provide a written report to the board.

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

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

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

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

- (A) The young person about whom the hearing is being conducted;
- (B) The attorney representing the young person;
- (C) The young person's parents or guardians, if known;
- (D) The person having legal custody of the young person;
- (E) The Attorney General or other attorney representing the state, if any; and
- (F) The district attorney of the county in which the young person was adjudicated.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(17) The *[juvenile panel]* **board** shall maintain and keep current the medical, social and delinquency history of all young persons. The *[juvenile panel]* **board** shall determine the confidentiality of records maintained by the *[juvenile panel]* **board** pursuant to ORS 192.338, 192.345 and 192.355.

SECTION 6. ORS 419C.533 is amended to read:

419C.533. (1) The *[juvenile panel of the]* Psychiatric Security Review Board, by rule pursuant to ORS 183.325 to 183.410 and not inconsistent with law, may implement its policies and set out its procedure and practice requirements and may promulgate such interpretive rules as the *[panel]* **board** deems necessary or appropriate to carry out its statutory responsibilities.

(2) The *[juvenile panel of the]* Psychiatric Security Review Board shall adopt rules defining the type of dangerous behavior that requires the temporary placement of a young person with mental retardation in a secure hospital or facility.

(3) The *[juvenile panel of the]* Psychiatric Security Review Board shall consult with the Department of Human Services about proposed rules relating to developmental disabilities and the Oregon Health Authority about proposed rules relating to mental illness before issuing proposed rules for public comment and before adopting rules under this section.

SECTION 7. ORS 419C.535 is amended to read:

419C.535. (1) The *[juvenile panel of the]* Psychiatric Security Review Board shall appoint suitable counsel to represent a young person about whom a hearing under ORS 419C.532 is being held. Counsel appointed must be an attorney who satisfies the minimum standards established by the Oregon Public Defense Commission under ORS 151.216. The executive director of the commission shall determine and allow fair compensation for counsel appointed under this subsection and the reasonable expenses of the young person in respect to the hearing. Compensation payable to appointed counsel may not be less than the applicable compensation level established under ORS 151.216. The executive director shall pay compensation and expenses allowed from funds available for that purpose.

(2) The *[juvenile panel]* **board** may not order the young person, parent or guardian of the estate to pay any part of the administrative costs of appointing counsel for the young person or to pay for the costs of legal and other services that are related to the provision of appointed counsel.

(3) The Attorney General may represent the state at contested hearings before the *[juvenile panel]* **board** unless the district attorney of the county in which the young person was adjudicated elects to represent the state. The district attorney of the county in which the young person was adjudicated shall cooperate with the Attorney General in securing the material necessary for presenting a contested hearing before the *[juvenile panel]* **board**. If the district attorney elects to represent the state, the district attorney shall give timely written notice to the Attorney General, the *[juvenile panel]* **board** and the attorney representing the young person.

SECTION 8. ORS 419C.538 is amended to read:

419C.538. (1) When the *[juvenile panel of the]* Psychiatric Security Review Board orders a young person conditionally released under ORS 419C.532 (4), the *[juvenile panel]* **board** may designate a qualified mental health or developmental disabilities treatment provider or state, county or local agency to supervise the young person on release subject to those conditions as the *[juvenile panel]* **board** directs in the order for conditional release. Prior to the designation, the *[juvenile panel]* **board** shall notify the qualified mental health or developmental disabilities treatment provider or agency to whom conditional release is contemplated and provide the qualified mental health or developmental disabilities treatment provider or agency an opportunity to be heard before the *[juvenile panel]* **board**. After receiving an order entered under ORS 419C.532 (4), the qualified mental health or developmental disabilities treatment provider or agency designated shall assume supervision of the young person pursuant to the direction of the *[juvenile panel]* **board**.

(2) Conditions of release contained in orders entered under ORS 419C.532 (4) may be modified from time to time and conditional release may be terminated by order of the *[juvenile panel]* **board** as provided in ORS 419C.532 and 419C.542.

(3)(a) As a condition of release, the *[juvenile panel]* **board** may require the young person to report to any state, county or local mental health or developmental disabilities facility for evaluation. Whenever medical, psychiatric or psychological treatment is recommended, the *[juvenile panel]* **board** may order the young person, as a condition of release, to cooperate with and accept the treatment of the facility.

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

(c) Whenever treatment is provided by the facility, the facility shall furnish reports to the *[juvenile panel]* **board** on a regular basis concerning the progress of the young person.

(d) The facility shall comply with any other conditions of release prescribed by order of the *[juvenile panel]* **board**.

(4) If at any time it appears to the *[juvenile panel]* **board** or the chairperson of the *[juvenile panel]* **panel of the board** that a young person has violated the terms of conditional release or that the mental health of the young person has changed, the *[juvenile panel]* **board** or the chairperson *[of the juvenile panel]* may order the young person returned to a hospital or facility designated by

the Department of Human Services or the Oregon Health Authority for evaluation and treatment. A written order of the [juvenile panel] **board**, or the chairperson [of the juvenile panel] on behalf of the [juvenile panel] **board**, is sufficient warrant for any peace officer to take the young person into custody and transport the young person accordingly. A peace officer shall execute the order, and the young person shall be returned as soon as practicable to a facility designated by the department or the authority. Within 20 days following the return of the young person to the facility designated by the department or the authority, the [juvenile panel] **board** shall conduct a hearing. At a hearing required by this subsection, the state has the burden of proving the young person's lack of fitness for conditional release.

(5) The community mental health program director, the community developmental disabilities program director, the director of the facility providing treatment for the young person on conditional release, a peace officer or a person responsible for the supervision of a young person on conditional release may take a young person into custody or request that the young person be taken into custody if there is reasonable cause to believe the young person presents a substantial danger to others and that the young person is in need of immediate custody, supervision and treatment. A young person taken into custody under this subsection must immediately be transported to a hospital or facility designated by the department or the authority. Within 20 days following the return of the young person to the facility designated by the department or the authority, the [juvenile panel] **board** shall conduct a hearing. At a hearing required by this subsection, the state has the burden of proving the young person's lack of fitness for conditional release.

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

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

SECTION 9. ORS 419C.540 is amended to read:

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

- (a) No longer has a qualifying mental disorder;
- (b) Has a qualifying mental disorder other than a serious mental condition but no longer presents a substantial danger to others; or
- (c) Can be controlled with proper supervision and treatment services if conditionally released.

(2) The director shall include in an application under subsection (1) of this section a report setting forth the facts that support the opinion of the director. If the application is for conditional release, the director shall also include a verified conditional release plan. The [juvenile panel] **board** shall hold a hearing on an application under subsection (1) of this section within 30 days of its receipt. Not less than 10 days prior to the hearing before the [juvenile panel] **board**, copies of the report must be sent to the Attorney General or other attorney representing the state, if any, the district attorney of the county in which the young person was adjudicated, the young person, the

young person's attorney, the young person's parents or guardians, if known, and the person having legal custody of the young person.

(3) The attorney representing the state may choose a psychiatrist certified, or eligible to be certified, by the Oregon Medical Board in child psychiatry or a licensed psychologist with expertise in child psychology to examine the young person prior to any decision of the *[juvenile panel] board* on discharge or conditional release. The results of the examination must be in writing and filed with the *[juvenile panel] board* and must include, but need not be limited to, an opinion as to whether the young person:

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

(B) Has a qualifying mental disorder other than a serious mental condition and presents a substantial danger to others; and

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

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

(a) No longer has a qualifying mental disorder;

(b) Has a qualifying mental disorder other than a serious mental condition but no longer presents a substantial danger to others; or

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

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

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

(a) The applicant has the burden of proving the young person's fitness for discharge or conditional release; or

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

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

(a) Sooner than 90 days after the initial *[juvenile panel] board* hearing concerning the young person.

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

(8) The *[juvenile panel] board* shall hold a hearing on an application under subsection (4) of this section within 30 days after the application is filed.

(9)(a) The *[juvenile panel] board* and the director of a hospital or facility to which a young person was committed under ORS 419C.532 (5) may not assess any fees or costs against the young person or the young person's parent or guardian, including but not limited to court-appointed attorney fees, examination fees and costs and supervision expenses. This paragraph does not apply to expenses associated with the young person's treatment.

(b) Notwithstanding paragraph (a) of this subsection, if the young person is committed to the Oregon State Hospital, the young person's ability to pay and cost of care are determined under ORS 179.640 and 179.701.

SECTION 10. ORS 419C.542 is amended to read:

419C.542. (1) A young person committed by the court under ORS 419C.529 to a hospital or facility designated by the Department of Human Services or the Oregon Health Authority may not be held in the hospital or facility for more than 90 days from the date of the court's commitment order without an initial hearing before the *[juvenile panel of the]* Psychiatric Security Review Board to determine whether the young person should be discharged or conditionally released.

(2) A young person may not be held pursuant to an order under ORS 419C.532 (5) for a period of time exceeding one year without a hearing before the [juvenile panel] board to determine whether the young person should be discharged or conditionally released.

(3) When a young person has spent three years on conditional release, the [juvenile panel] board shall bring the young person before the [juvenile panel] board no later than 30 days after the expiration of the three-year period. The [juvenile panel] board shall review the young person's status and determine whether the young person should be discharged from the jurisdiction of the board.

(4) Notwithstanding the fact that a young person who is brought before the [juvenile panel] board under subsection (3) of this section continues to have a serious mental condition, the [juvenile panel] board may discharge the young person if the young person did not exhibit behaviors that presented a substantial danger to others during the period of conditional release and no longer requires supervision by the [juvenile panel] board.

SECTION 11. ORS 419C.544 is repealed.

CONFORMING AMENDMENTS

SECTION 12. ORS 161.348 is amended to read:

161.348. (1) When a person over whom the Psychiatric Security Review Board exercises jurisdiction under ORS 161.315 to 161.351 [or 419C.544] is adversely affected or aggrieved by a final order of the board, the person is entitled to judicial review of the final order. The person is entitled on judicial review to suitable counsel possessing skills and experience commensurate with the nature and complexity of the case. If the person is financially eligible, suitable counsel shall be appointed by the reviewing court in the manner provided in ORS 138.500 (1). If the person is financially eligible, the executive director of the Oregon Public Defense Commission shall determine and pay, as provided in ORS 138.500, the cost of briefs, any other expenses of the person necessary to the review and compensation for counsel appointed for the person. The costs, expenses and compensation so allowed shall be paid as provided in ORS 138.500.

(2) The order and the proceedings underlying the order are subject to review by the Court of Appeals upon petition to that court filed within 60 days of the order for which review is sought. The board shall submit to the court the record of the proceeding or, if the person agrees, a shortened record. The record may include a certified true copy of a tape recording of the proceedings at a hearing in accordance with ORS 161.346. A copy of the record transmitted shall be delivered to the person by the board.

(3) The court may affirm, reverse or remand the order on the same basis as provided in ORS 183.482 (8).

(4) The filing of the petition does not stay the order of the board, but the board or the Court of Appeals may order a stay upon application on such terms as are deemed proper.

SECTION 13. ORS 166.273 is amended to read:

166.273. (1) A person barred from transporting, shipping, possessing or receiving a firearm may file a petition with the Psychiatric Security Review Board for relief from the bar if:

(a) The person is barred from possessing a firearm under ORS 166.250 (1)(c)(D) or (E);

(b) The person is barred from receiving a firearm under ORS 166.470 (1)(e) or (f) or, if the person has been found guilty except for insanity of a misdemeanor involving violence, ORS 166.470 (1)(g); or

(c) The person is barred from possessing, receiving, shipping or transporting a firearm under 18 U.S.C. 922(d)(4) or (g)(4) as the result of a state mental health determination.

(2) The petitioner shall serve a copy of the petition on:

(a) The Department of Human Services and the Oregon Health Authority; and

(b) The district attorney in each county in which:

(A) The person was committed by a court to the Oregon Health Authority, or adjudicated by a court as a person with mental illness, under ORS 426.130;

(B) The person was committed by a court to the Department of Human Services, or adjudicated by a court as in need of commitment for residential care, treatment and training, under ORS 427.290;

(C) The person was found guilty except for insanity under ORS 161.295;

(D) The person was found responsible except for insanity under ORS 419C.411; or

(E) The person was found by a court to lack fitness to proceed under ORS 161.370.

(3) Following receipt of the petition, the board shall conduct a contested case hearing, make written findings of fact and conclusions of law on the issues before the board and issue a final order. *[Board members from the adult panel, the juvenile panel or a combination of both panels of the board may conduct the hearings described in this section.]*

(4) The state and any person or entity described in subsection (2) of this section may appear and object to and present evidence relevant to the relief sought by the petitioner.

(5) The board shall grant the relief requested in the petition if the petitioner demonstrates, based on the petitioner's reputation, the petitioner's record, the circumstances surrounding the firearm disability and any other evidence in the record, that the petitioner will not be likely to act in a manner that is dangerous to public safety and that granting the relief would not be contrary to the public interest.

(6) If the board grants the relief requested in the petition, the board shall provide to the Department of State Police the minimum information necessary, as defined in ORS 181A.290, to enable the department to:

(a) Maintain the information and transmit the information to the federal government as required under federal law; and

(b) Maintain a record of the person's relief from the disqualification to possess or receive a firearm under ORS 166.250 (1)(c)(D) or (E) or 166.470 (1)(e), (f) or (g).

(7) The petitioner may petition for judicial review of a final order of the board. The petition shall be filed in the circuit court of a county described in subsection (2)(b) of this section. The review shall be conducted de novo and without a jury.

(8) A petitioner may take an appeal from the circuit court to the Court of Appeals. Review by the Court of Appeals shall be conducted in accordance with ORS 183.500.

(9) A person may file a petition for relief under this section no more than once every two years.

(10) The board shall adopt procedural rules to carry out the provisions of this section.

(11) As used in this section, "state mental health determination" means:

(a) A finding by a court that a person lacks fitness to proceed under ORS 161.370;

(b) A finding that a person is guilty except for insanity of a crime under ORS 161.295 or responsible except for insanity of an act under ORS 419C.411 or any determination by the Psychiatric Security Review Board thereafter;

(c) A commitment by a court to the Oregon Health Authority, or an adjudication by a court that a person is a person with mental illness, under ORS 426.130; or

(d) A commitment by a court to the Department of Human Services, or an adjudication by a court that a person is in need of commitment for residential care, treatment and training, under ORS 427.290.

SECTION 14. ORS 181A.290 is amended to read:

181A.290. (1) The Department of Human Services, the Oregon Health Authority, the Psychiatric Security Review Board and the Judicial Department shall provide the Department of State Police with the minimum information necessary to identify persons who:

(a) Have been committed by a court to the Oregon Health Authority under ORS 426.130, based on a finding that the person is dangerous to self or others;

(b) Are subject to a court order under ORS 426.130 or 426.133 prohibiting the person from purchasing or possessing a firearm;

(c) Have been committed by a court to the Department of Human Services under ORS 427.290, based on a finding that the person is dangerous to self or others;

(d) Have been found by a court to lack fitness to proceed under ORS 161.370;

(e) Have been found guilty except for insanity of a crime under ORS 161.290 to 161.373;

(f) Have been found responsible except for insanity for an act under ORS 419C.411;
(g) Have been placed under the jurisdiction of the Psychiatric Security Review Board under ORS 161.315 to 161.351; or

(h) Have been committed to a state hospital or facility under ORS 161.315 to 161.351 or 419C.529 to [419C.544] **419C.542**.

(2) Upon receipt of the information described in this section, the Department of State Police shall access and maintain the information and transmit the information to the federal government as required under federal law.

(3) The Department of Human Services, the Oregon Health Authority, the Psychiatric Security Review Board and the Judicial Department shall enter into agreements with the Department of State Police describing the access to information provided under this section.

(4) The Department of State Police shall adopt rules:

(a) After consulting with the Department of Human Services, the Oregon Health Authority, the Psychiatric Security Review Board and the Judicial Department, describing the type of information provided to the Department of State Police under this section; and

(b) Describing the method and manner of maintaining the information described in this section and transmitting the information to the federal government.

(5) As used in this section, “minimum information necessary” means data elements or nominal information that is necessary or required under federal law to accurately identify a person described in this section and includes the person’s name, date of birth, gender and reference information that identifies the originating agency or court and enables the originating agency or court to locate an underlying record or file of a person described in this section. “Minimum information necessary” does not include any medical, psychiatric or psychological information, case histories or files of a person described in this section or any record or file of an originating agency or court.

SECTION 15. ORS 419C.520 is amended to read:

419C.520. As used in ORS 419C.411, 419C.522 to 419C.527 and 419C.529 to [419C.544] **419C.542**:

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

(2) “Qualifying mental disorder” does not include an abnormality:

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

(b) Constituting solely a personality disorder; or

(c) Constituting solely a conduct disorder.

(3) “Serious mental condition” means a condition that requires supervision and treatment services for the safety of others and is:

(a) A mental illness of major depression;

(b) A mental illness of bipolar disorder; or

(c) A mental illness of psychotic disorder.

TRANSFER OF DUTIES

SECTION 16. On the effective date of this 2025 Act, all cases of the juvenile panel of the Psychiatric Security Review Board are transferred to the single panel of the board described in ORS 161.385 (6), as amended by section 1 of this 2025 Act.

CAPTIONS

SECTION 17. The unit captions used in this 2025 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2025 Act.

EMERGENCY CLAUSE

SECTION 18. This 2025 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2025 Act takes effect on its passage.

Passed by House March 31, 2025

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Timothy G. Sekerak, Chief Clerk of House

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Julie Fahey, Speaker of House

Passed by Senate May 1, 2025

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Rob Wagner, President of Senate

Received by Governor:

.....M,....., 2025

Approved:

.....M,....., 2025

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Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M,....., 2025

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Tobias Read, Secretary of State