



PSYCHIATRIC SECURITY REVIEW BOARD
2017 Attorneys' and Judges' Guide



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From the Executive Director

April 5, 2017

To: Oregon Criminal Law Judges and Attorneys
From: Juliet Britton, J.D., Executive Director
Subject: PSRB Judge/Attorney Handbook

Dear PSRB Partners,

In an effort to provide a nuts and bolts “PSRB 101” guide to you on processing PSRB criminal responsibility (Guilty Except for Insanity and Responsible Except for Insanity) and civil commitment cases, enclosed is the first edition of the PSRB Judges’/Attorneys’ Handbook. Hyperlinks containing fillable sample forms and other documents are embedded within this document. As the law changes, the PSRB will update this guide and will make it available on our website at:

<http://www.oregon.gov/prb/Pages/index.aspx>.

If your agency wishes to learn more about the PSRB and its operations, I am available to travel to any Oregon county to facilitate accurate information about PSRB operations and how our clients are safely supervised in the community or at Oregon State Hospital. A critical piece to this training is to clarify best practices in the processing of these cases in the court system before a person is ever placed under PSRB supervision.

Feel free to contact me at (503) 229-5596 or juliet.britton@oregon.gov if you have any questions or would like to arrange a continuing education session. If you have suggestions on how to improve this guide, please email psrb@oregon.gov with comments.

Sincerely,

Juliet Britton
Executive Director

PSRB Overview

Mission

The Psychiatric Security Review Board's mission is to protect the public by working with partnering agencies to ensure persons under its jurisdiction receive the necessary services and support to reduce the risk of future dangerous behavior using recognized principles of risk assessment, victims' interest and person centered care.

With public safety as its primary focus, the Board has an exceptional record of reintegrating clients into the community with a 5 year average 0.51% adult recidivism rate. In recent years, the Board's responsibilities have expanded to supervise youth and those under certain civil commitments who are placed under its supervision.

History and Functioning of the Psychiatric Security Review Board

On January 1, 1978 the Board assumed jurisdiction over all persons found "guilty except for insanity" (GEI) who posed a substantial danger to others. GEI is Oregon's insanity defense. However, the 2011 Legislature changed the dispositional phase of the GEI process such that the PSRB now has jurisdiction over Tier I (ORS 161.332(3)), (also known as Measure 11) offenders and over Tier 2, (non-Measure 11) offenders when Tier 2 patients are on conditional release. The Oregon Health Authority has jurisdiction over Tier 2 offenders who are in the state hospital. These offenders are managed by the State Hospital Review Panel (SHRP). SHRP follows the same laws around conditional release and discharge as the PSRB.

In 2007, the Legislature expanded the Board and its responsibilities to include a juvenile panel to oversee youth found "responsible except for insanity" (REI) of a crime.

The 2009 Legislature again expanded the Board's duties by giving it the added responsibility of conducting hearings for individuals previously barred from purchasing or possessing a firearm due to a mental health determination (e.g. civil commitments, aid and assist (or ".370's")) who petition to have that right restored.

In 2013, the Legislature expanded once again the Board's duties, asking the Board to take on supervision and monitoring of a new type of civil commitment. In addition, the Legislature mandated that any of the Board's patients who are both found GEI of a sex crime and must register as sex offenders also be designated with a risk rating. That year, the Legislature also required the Board to create a process by which certain of these patients could gain relief from sex offender registration. As a consequence, the Board now has several program areas, including: GEI; REI; Gun Relief; Civil Commitment; and Sex Offender Designation and Relief.

Membership of Board and Staff:

By statute, the Board is comprised by 10 members. The governor appoints the Board members, who are then confirmed by the Senate for four-year terms. The adult PSRB Panel consists of a psychiatrist and a psychologist—both experienced in the criminal justice system—an experienced parole and probation officer, an attorney experienced in criminal trial practice, and a member of the general public. Similarly, the juvenile PSRB Panel is comprised of a child psychiatrist, child psychologist, an attorney experienced in juvenile law, a juvenile parole or probation officer, and a member of the general public. A chair for each panel is elected for a one-year term.

The Board's staff consists of an Executive Director, three paralegals, three administrative assistants, an operations and policy analyst, a research analyst, an administrative assistant and an executive secretary. The Executive Director oversees the day-to-day operations of the staff, including the monitoring of PSRB patients on conditional release, preparing orders resulting from Board hearings and affidavits and orders for revocation of conditional release. Preparation and presentation of the budget and legislative matters are performed by the director, who also serves as agency spokesperson, maintaining a professional dialogue with persons in the mental health and legal systems, and responding to media inquiries as necessary.

National Acclaim

The Psychiatric Security Review Board has been the focus of international attention and study. An NBC white paper on "Crime and Insanity," shown on television on April 25, 1983, focused on Oregon as a model system. In addition, a December 1983 American Psychiatric Association statement on the insanity defense recommends the model system presently in operation in the State of Oregon under the aegis of the Psychiatric Security Review Board. The APA was impressed that:

Confinement and release decisions for acquittals are made by an experienced body that is not naive about the nature of violent behavior committed by mental patients and that allows a quasi-criminal approach for managing such persons. Psychiatrists participate in the work of the Oregon Board, but they do not have primary responsibility. The Association believes that this is as it should be since the decision to confine and release persons who have done violence to society involves more than psychiatric considerations. The interest of society, the interest of the criminal justice system and the interest of those who have been or might be victimized by violence must also be addressed in confinement and release decisions.

A report of the National Commission on the Insanity Defense issued in March 1983 and entitled "Myths and Realities", sponsored by the National Mental Health Association, recommends the adoption of a special statute to address the disposition of the acquitted after a finding of not responsible by reason of insanity of a violent crime. In that report,

the National Commission also discusses the Oregon code that created the Psychiatric Security Review Board.

In 1989 the National Alliance for the Mentally Ill set goals and priorities, including the passing of statutes which provide improved systems for insanity acquittees, citing the Oregon Psychiatric Security Review Board as a model for such a statute.

In 1994, the Psychiatric Security Review Board was named the APA's Hospital and Community Psychiatry's Gold Achievement Award winner. The award recognized the program's commitment to improved integration of mental health services within the criminal justice system and its responsibility to individual, community, and societal values.

Oregon remains one of the states currently at the forefront of legal process in this area. Connecticut and Arizona adopted the Oregon model years ago. Most recently, in 2010, Washington State created and enacted a version of this model. Other states, including Florida, Kentucky, Michigan, New Hampshire, and South Carolina have also expressed an interest in this successful approach.

The insanity defense population will continue to be a part of our society. In 1978, Oregon chose a unique approach, creating the Psychiatric Security Review Board, whose process offers a multidisciplinary method of decision-making. By statute, the Board's primary concern is the protection of society. The system works well because of the Board's ability to respond quickly to community emergencies and because the system balances the public's concern for safety, the treatment of persons in the community, and patient rights.

Processing a GEI/REI Case

Step 1: Defense gives reasonable notices that defendant will be relying on the GEI/REI defense (ORS 161.309(1)(a); ORS 419C.524(1)(a))

Step 2: Resolve all "aid and assist" issues (ORS 161.360 through ORS 161.370; 419C.378).

In order to plead GEI/REI, defendant must be competent to stand trial. Not all GEI/REI defendants need competency restoration or evaluations or need to go directly to OSH.

Step 3: Complete a Criminal Responsibility Evaluation (Psychiatric or Psychological Evaluation) (ORS 161.309)

- A judge may not accept a GEI/REI plea unless a report of a psychiatric or psychological evaluation is performed by a certified evaluator (ORS 161.309(5)(a); 419C.524(1)(b)). Click [here](#) for the Oregon Health Authority's Forensic Evaluator Certification page, which contains a current list of Oregon certified evaluators.

- Typically, the defense hires a private certified evaluator to conduct a criminal responsibility evaluation. The State has a right to its own evaluation. Often, Oregon State Hospital Forensic Evaluation Services conducts a certified evaluation as well. For sample court orders directing OSH to conduct the evaluation, (See [OSH Forensic Services' sample templates](#)).
- An “Aid and Assist/Competency” evaluation (current mental state) is very different from a “Criminal Responsibility/GEI” evaluation (mental state at time of crime). You cannot use an “Aid and Assist” Evaluation in place of a Criminal Responsibility Evaluation.
- **Not everyone with a mental illness automatically meets the Oregon insanity standard (Model Penal Code).** Non-qualifying diagnoses include personality disorder (ORS 161.295(2); 419C.520(2)(b)), substance-related psychosis (e.g. meth, alcohol, etc.) and sexual conduct disorders. See “[PSRB case law](#),” here. See OAR 859-010-0005(11)(d)(A) (“An abnormality manifested solely by repeated criminal or otherwise antisocial conduct”) for the Board’s Administrative Rule on Qualifying Mental Disorders.

Step 4: Adjudication (either Stipulation or Contested Trial) (ORS 161.325; ORS 161.327; ORS 161.328)

- If the charges are **solely misdemeanor**, see ORS 161.328. Misdemeanant GEIs cannot be placed on conditional release or under PSRB or SHRP supervision. The defendant is either discharged (no supervision) or—if he or she meets the “danger” criterion—committed to Oregon State Hospital. The defendant will be released at the discretion of Oregon State Hospital or when he/she has been at the hospital for the maximum length of time to which he/she would have been sentenced had he/she been convicted of the crime. There is no community release supervision of GEI misdemeanants.

Step 5: Court Orders an Order of Conditional Release (CR) Evaluation, if appropriate (ORS 161.327(3)(a); ORS 419C.529(3))

- Conditional Release (CR) is for those patients who are stable enough to live and be supervised in the community. In Oregon, the local community mental health agency does the supervision and monitoring; therefore, it needs to weigh in on whether the person is appropriate for CR and its ability to accept the person for placement. A judge can order the community mental health agency to evaluate the defendant for CR on any case (ORS 161.327(3)(a)). Further in this guide, you can read about the varying residential resources that are available in the community, from locked, secure facilities to supported housing.
- **Do not wait** until the Adjudication/Disposition Hearing to order this evaluation. See this [page](#) for a sample Court Order of Evaluation (under “Conditional

Release Resources”). See [PSRB Conditional Release Guide](#) for a by-county contact /summary of county services available. **PSRB staff can assist the court or attorneys in identifying an appropriate program from which to order an evaluation. You are not limited by resources in your county.**

- For Adults only, if the charges are solely Class C Felonies, see ORS 161.327(3)(b). The Court **must** order the local community mental health agency to evaluate the defendant for possible court conditional release (bypassing Oregon State Hospital completely). This does not mean the defendant must be placed on Conditional Release, just that an evaluation must be done prior to the Disposition Hearing.

Step 6: Conduct the Adjudication/Disposition Hearing (ORS 419C.400)

Step 7: Court issues the GEI/REI Order (ORS 161.325 through ORS 161.327; ORS 419C.411)

- The Board has [templates](#) for both Commitment (Tier 1 or Tier 2: defendant goes to Oregon State Hospital) and Court Conditional Release (defendant lives in the community). We also have templates for those rare cases where the defendant has a concurrent Department of Corrections term.
- The Court must make a finding on the record of whether the victim wants to be notified of all PSRB hearings, escape of the patient and **whether a victim has requested that there be no contact between him/her and the patient**. PSRB has published a [“best practices” memorandum](#) for use when “no contact” is requested by the victim.
- Don’t forget a Length of Supervision provision. Individuals found GEI can be placed under the jurisdiction of the Board up to the maximum sentence they could have received if found guilty of the crime. For youth adjudicated REI, length of supervision is the maximum sentence or age 25, whichever is less. Note that sentencing guidelines do not apply.
- Immediately send a copy to the PSRB at psrb@oregon.gov so we know that we have a new person under PSRB supervision.

Final Document Checklist

1. **Forensic “Criminal Responsibility” Evaluation** has been completed by a forensic evaluator.
2. **GEI/REI Judgment Order using PSRB Templates**. Click [here](#) for templates (Tier 1 and Tier 2) Sample Court Commit Orders
3. **Conditional Release Evaluation**, if one was completed (required or voluntary)

4. For Youth, a **JPSRB Relinquishment of Parental Rights Form** (found [here](#), under “REI Orders (Juvenile)”).

Post-Court Adjudication

PSRB Operations

The Board carries out its functions by conducting hearings and monitoring patients on conditional release through its extensive network of community mental health agencies. In making decisions, the Board's primary concern is the protection of the public.

While under the Board's jurisdiction, an adult can be committed to the Oregon State Hospital or conditionally released to a lower level of care, ranging from secure residential treatment facilities (locked doors) to independent living. Note that there is no set time a defendant must stay at Oregon State Hospital. **Attorneys and judges should never promise victims that a defendant will be at OSH for a certain amount of time. Virtually all PSRB clients eventually get conditionally released. See this [link](#) for the conditional release guide, which contains some facts about Conditional Release.**

The Board determines what type of facility is appropriate based on both a clinical and risk assessment, including the level of treatment, care and supervision the patient requires. The Board grants conditional release to a patient once it determines that he or she can be adequately controlled in the community with supervision and treatment and that the necessary supervision and treatment are available. As mentioned earlier in this guide, the court may also conditionally release a defendant at the time of the GEI adjudication so long as the PSRB county mental health liaison has evaluated and accepted the defendant for placement.

The Board assesses readiness for conditional release planning by:

- Reviewing the exhibit files, which contain reports and evaluations by the patient's providers of various disciplines;
- Listening to the testimony of all witnesses;
- Cross examining witnesses to obtain additional information; and
- Considering the risk to society that the patient may pose if returned to the community, using:
 - Clinical judgment of professional staff;
 - Results of psychological testing and risk assessments performed on the patient;
 - Recommendations of the Oregon State Hospital's Risk Review; and

- The availability of resources in the community to compensate for any residual risk.

When release is appropriate and the Board approves a verified plan, the patient is ordered released from the state hospital subject to the Board's specific conditions. These conditions include:

- An appropriate housing situation;
- Mental health treatment and supervision;
- The designation of a person who agrees; to report to the Board on a monthly basis concerning the released person's progress; and to notify the Board's director immediately of any violations of the patient's release conditions; and
- Any other special conditions deemed appropriate and/or necessary such as abstaining from alcohol and drugs or submitting to random drug screen tests.

A change in mental status that causes a patient to pose a risk of substantial danger to others or a violation of the terms of conditional release may result in immediate revocation of conditional release and return to Oregon State Hospital pending a hearing. Staff typically intervenes before the patient becomes a serious risk to the community.

Grounds for revocation include:

- Violation of the terms of the conditional release plan
- A change in mental health status
- Absconding from supervision
- Loss of the availability of appropriate community resources

The efficacy of the Board's decision-making and the ability of those treated and supervised persons to succeed on conditional release are evidenced by the fact that in 2016, more than 99% remained in the community on a monthly basis.

Juvenile Patients

While under the Board's jurisdiction, youth can be committed to the Secure Adolescent Intensive Program (SAIP) for those with a mental illness (Children's Farm Home in Corvallis) or Secure Children's In-patient Treatment Program (ITP) for those with developmental disabilities (Albertina-Kerr in Portland). When a young person has both a mental health and developmental disability, it is best to request that both SAIP and ITP evaluate the youth to determine where he/she should be placed. When juvenile patients turn 18 years old, they are transferred from SAIP/ITP to the Oregon State Hospital for

care and treatment if the Board determines they need hospital level of care. Individuals can also be conditionally released and placed at a variety of lower levels of care, ranging from residential treatment facilities to independent living. The Board determines what type of facility is appropriate based on both a clinical and risk assessment, including the level of treatment, care and supervision the patient requires. Conditional release is conferred on a patient once the Board determines that he or she can be adequately controlled with supervision and treatment in the community and that the necessary supervision and treatment are available.

PSRB Hearings

Both the District Attorney and victim (if he/she elects to receive notice) will be notified of all PSRB hearings about a month prior to the full hearing. As a matter of practice, the DA's do not represent that State at PSRB hearings even though they may request to do so (See ORS 161.346(13); 419C.535(5))An Oregon Assistant Attorney General is at every hearing representing the State and victims. AAGs regularly communicate with DAs who have an interest in a particular case. DAs should notify both the PSRB and the AGs office if they want continuing involvement in a particular case.

Approximately one week prior to the hearing, PSRB's Hearings Coordinator will have a tentative order of hearings for the next hearing day so inform the PSRB Hearings Coordinator if you plan on participating. It is important to remember that Board staff cannot predict precisely how long hearings will take, so maximum flexibility by the participants is greatly appreciated. Staff will work closely with participants to attempt to accommodate scheduling conflicts.

The Board conducts full hearings and administrative hearings.

Full Hearings: At full hearings, the patient, his or her attorney, the State (represented by the Department of Justice or the District Attorney, and the Board are present. The Board conducts two-year, five-year, revocation, and conditional release hearings for adult patients through full hearings.

Administrative Hearings: At an administrative hearing, the Board conducts deliberations in private, so the patient, case manager and attorneys do not attend. Most modifications of conditional release are handled via an administrative hearing. If a DDA has concerns about a proposed modification to the conditional release, he or she should contact the DOJ's Trial Division to request that the hearing be changed to a full hearing.

Hearings FAQ:

When Does PSRB have hearings?

Oregon Law requires that PSRB patients be allowed hearings with certain frequency.

Initial Hearings

If the patient is in the hospital or in a secure intensive inpatient facility, initial hearings must occur within 90 days after the patient's commitment by court order to PSRB. (See ORS 161.341(6)(a)). When the court places an adult patient on conditional release, there is no statutory requirement for that patient's initial hearing to occur within a specified time. Nevertheless, the Board's policy is to set those patients' hearings within 90 days to mirror the experience of hospital patients.

2-Year/1-Year Hearings

Adult patients residing at OSH have hearings at least once every two years. Individuals who are committed to a hospital under the JPSRB will have a hearing at least once every year.

Hospital Request for Conditional Release (CR) or Discharge

Adults

When a person is committed to a state hospital or secure intensive community inpatient facility and the superintendent of the hospital or director of the facility believes that the person no longer meets jurisdictional criteria or no longer needs a hospital level of care, the superintendent or director is statutorily required to apply for an order of discharge or conditional release. The application must be accompanied by a report setting forth the facts supporting the opinion. The PSRB is required to hold a hearing on the application within 60 days (30 days if the person is a juvenile) of its receipt. Not fewer than 20 days (10 days in the case of a juvenile) prior to the hearing, the report is supposed to be sent to the Attorney General.

Jurisdictional discharge occurs when the Board decides that the patient either no longer has a qualifying mental illness or is no longer a danger to the community. When the Board believes the patient meets jurisdictional criteria, but does not believe the patient requires a hospital level of care, it places the patient on conditional release.

Juveniles

When a young person is committed to a hospital or facility and the director of the hospital or facility believes that the young person no longer meets jurisdictional criteria (i.e. no longer has a mental disorder; or has a mental disorder (other than a serious mental condition), but no longer presents a substantial danger to others), the director is statutorily required to apply for an order of discharge. The application must be accompanied by a report setting forth the facts supporting the director's opinion. The JPSRB is required to hold a hearing on the application within 30 days of its receipt. Not fewer than 10 days prior to the hearing, the report is supposed to be sent to the Attorney General. When the Board believes the patient meets jurisdictional criteria, but does not believe he or she requires a hospital level of care, it places the patient on conditional release.

5-Year/3-Year Hearings

When an individual is placed on conditional release, the Board will hold a hearing at the five year mark (three years, if the patient is a youth) to consider the patient's progress.

Patient/Outpatient Requested Hearing

Each patient may request a hearing every six months. At these times, the request may be for a conditional release evaluation, conditional release, a conditional release modification, or an early discharge from jurisdiction.

Supervisor Request for Outpatient Hearing

Case manager supports a modification to the conditional release or an early discharge from jurisdiction.

Revocation Hearings

Within 20 days (10 days, if patient is a youth) after patient is admitted to the hospital on a revocation order.

What Can I expect at a PSRB Hearing?

Hearings are run like miniature trials. As such, the Board expects courtroom decorum. The Board typically conducts hearings all day. Bring water, lunch, snacks as you likely will not have time to take a lunch break.

How far in advance are Hearings scheduled by the PSRB?

Typically, full hearings are scheduled up to three months in advance, however notices go out about one month prior to the hearing, with some timing variations depending on the circumstances. For example, revocation hearings are scheduled 2-3 weeks in advance. Occasionally hearings are scheduled at the last minute due to bed availability and anticipated patient moves or because the patient experienced a serious mental health decompensation. In these cases the hearing must be postponed, but it will be held sooner rather than later.

If a Patient is granted Conditional Release at a hearing, how soon will he/she be released from the Hospital?

The patient's release date from the Hospital depends on when the bed is available at the placement where the patient will be residing, but typically the hospital processes these requests as quickly as staff is able, most often within a few days of CR being ordered, but that cannot be guaranteed.

Does the PSRB allow attorneys, witnesses, victims, patients and other hearing participants to appear via phone or video-teleconferencing?

Yes. Notify the Board of any special requests and we will facilitate attendance through these alternative means. For details regarding attendance at hearings via phone or video-teleconferencing, please see OAR 859-050-0100.

Continuing Jurisdiction/Early Release from Supervision

Patients are placed under the PSRB's jurisdiction for a certain period when they plead, or are found, GEI. The PSRB gives credit for time served and hospitalization that occurred while the GEI charges were pending. However, patients may be discharged early under certain circumstances after a full hearing. In some cases, the Board is required under the law to release the person from supervision.

The two ways a patient can receive an early discharge are:

- **Patient no longer has a diagnosis of a qualifying mental disease or defect (MD/D); or**
- **Patient no longer is a substantial danger to others if that MD/D were to become active.**

No Mental Disease: Typically, these hearings are requested by the patient's treatment team, which is working with a patient either in OSH or on conditional release. The Board is required to discharge someone from its supervision if that person does not have a qualifying mental illness (See OAR 859-060-0015(4)). Sometimes malingering (faking symptoms), personality disorder and substance addiction are the sole cause of psychosis. In these cases, the law requires the Board release individuals with no supervision whatsoever **even if the person is very dangerous**. It is critical that judges and attorneys at the pre-GEI adjudication phase have the defendant evaluated thoroughly by certified evaluators. Ordering a second evaluation is a best practice to minimize the risk that PSRB releases a patient early for not having a qualifying mental illness.

No Danger: Typically, these hearings are requested by a community mental health agency which has worked with a client who has been on conditional release for many years, has never been revoked, is compliant with the Board's conditions of release and has great insight and little criminal history. In recent years, as the population ages, the Board has seen an influx of early discharge requests as patients physically deteriorate (and as such are unable to harm anyone).

Victims

Victim Information

Under Oregon law, when a person is found guilty except for insanity (GEI) or responsible except for insanity (REI), the judge is required to ask the victim whether he or she wishes to be notified of future hearings or releases relating to the defendant and if so, to include victim contact information in the court order placing the defendant under PSRB jurisdiction. The Board is then required to provide notice in advance of any hearing regarding that patient. Generally, this notice is done via U.S. Mail when a hearing is scheduled.

In 2009, the Oregon Legislature expanded victims' rights to include post-conviction proceedings. This legislation explicitly put into law the right for victims or representatives to have the opportunity to be heard and to make a victim impact statement at the end of a PSRB hearing. It is helpful if anyone wishing to make a statement coordinates this with the [Oregon Department of Justice's Victim Advocate](#).

Additionally, a victim can assert or decline victim rights at any time.

Victims' Participation in the PSRB Process

Victims may be heard at all full hearings. Victims may elect to listen to the hearing via teleconference without making a verbal statement and/or submit a written victim impact statement. Victims may also give a verbal, unsworn statement to the Board. A victim of a crime committed by a patient, but one which did not result in him or her being placed under the Board's jurisdiction will not be permitted to give a victim impact statement. However, either party may call such a victim as a witness, if the testimony is deemed relevant by the Board Chairperson. If victims provide advance notice, the Board will attempt to accommodate special requests such as seating arrangements, additional security, etc.

The PSRB will consider requests from victims wishing to request restorative justice services. Participation is contingent upon the patient's ability to participate and other requirements as allowed in statute and/or adopted by the PSRB by administrative rule.

Restricting PSRB Clients While at OSH

OSH must follow hospital licensing rules, meaning all patients must have access to phone and mail. The hospital can only restrict patient correspondence under a valid court order. If desired, the Court should include a protective order or language in the GEI order directly prohibiting contact in the packet sent to the PSRB so the Board can request that OSH follow the court order.

Additional resources:

Oregon Department of Justice – Crime Victims' Services Division:
Crime Victims' Services Division/Post-Conviction Victim Advocacy Program
Oregon Department of Justice
Phone 503-378-4284 (available 24/7)
Email: CrimeVictimsServices@doj.state.or.us

Civil Commitments

A district attorney may petition the court to initiate commitment proceedings if there is reason to believe that a person is an "extremely dangerous person with a mental illness" (EDPMI). This statute likely will be used most when a criminal defendant who committed one of a number of very serious acts is never able to aid and assist in his or her defense and cannot move forward in the criminal justice system. Commitment under this section is for two years, and the EDPMI is supervised by the Psychiatric Security Review Board

(PSRB). The EDPMI may be recommitted indefinitely every two years if the court where the person currently resides finds he or she continues to meet jurisdictional criteria. For purposes of the commitment hearing, the court will appoint a certified evaluator. A list of qualified service providers may be found [here](#). Conditional Release is permitted. See [this link](#) for a fact sheet on this program. Only a handful of those subject to civil commitment have been placed under PSRB supervision under this relatively new law. See [this link](#) for sample orders. This law does not apply to those who are solely diagnosed with a developmental and intellectual disability.

Gun Relief Program

Program Background

The Gun Relief Program was established as a direct result of the investigation arising from the Virginia Tech tragedy. It revealed that a majority of states, including Oregon, were not sending the names of people barred from purchasing a firearm to the federal (NICS) database. All federally licensed firearm dealers and law enforcement agencies use NICS to conduct background checks when individuals apply to purchase firearms.

Congress passed legislation requiring states to provide those names for inclusion in the federal database or risk losing some federal criminal justice grant funding. To address various concerns, Congress included a provision requiring states to establish "relief" programs whereby individuals previously barred from purchasing or possessing a firearm could petition to have that right restored and their name removed from the NICS database.

As a result of the federal gun relief requirement, the 2009 Oregon Legislature enacted HB 2853, which in part directed the Oregon State Police to submit the names of firearm-disqualified individuals to the NICS database. HB 2853 also directed the Psychiatric Security Review Board to conduct relief hearings, given the mental health expertise of its Board members. The Board will only hear relief requests from individuals who are barred from possessing a firearm due to an Oregon mental health determination, including civil commits, persons found guilty except for insanity (GEI) and persons who were found unable to aid and assist in a criminal proceeding. Persons who have received one of these mental health determinations are barred from purchasing or possessing firearms.

Persons who previously received judicial relief under ORS 166.274 remain barred from possessing a firearm under federal law. The PSRB's relief program is certified by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and is recognized under federal law as having the authority to lift a federal mental health prohibitor.

Gun Relief Hearings (See ORS 166.273)

A petitioner may request relief no more than once every two years. The petitioner has the burden to prove by clear and convincing evidence that he/she will not be likely to act

in a manner that is dangerous to public safety and that granting relief will not be contrary to the public interest. The PSRB considers the petitioner's reputation, records, the circumstances surrounding the firearm disability, and any other evidence presented at the hearing.

The District Attorney and Law Enforcement Agencies in the county of the patient's current residence and where the mental health determination was made are notified of the hearing. The District Attorney in the county of the mental health determination may choose to represent that State at the hearing.

You can find Oregon Administrative Rules 859-300-0001 to 859-300-0230, pertaining to Gun Relief hearings at [the Secretary of State's page](#).

Sex Offender Program

Program Background

For a fact sheet concerning notification, please click [here](#).

By December of 2018, PSRB is required by law (chapter 163A) to classify all adults who have successfully asserted the Guilty Except for Insanity defense (GEI) and who are required to register as sex offenders based on their level of risk to the public. Each registrant will be assigned a risk level of 1, 2, or 3, with level 3 representing those at the highest re-offense risk.

Once Board staff arrives at a risk level for an individual registrant, it mails the registrant his/her assessment score, so the individual has an opportunity to submit written objections to a score he/she believes is incorrect. For this reason, attorneys should ensure that any clients who are also registrants keep their addresses updated through the Oregon State Police Sex Offender Registry. Failure to do so exposes the person to the risk of not receiving the classification paperwork, and therefore, deprives the person of the opportunity to submit objections. In addition, if the PSRB cannot gather risk mitigation information from a registrant, the Board cannot complete his/her assessment, the result of which could be that the registrant is classified at a higher risk than he or she would have been otherwise.

Depending on the registrant's risk level, information about him or her may be available to law enforcement and the general public. This could include the registrant's name being posted on a public website, notification to family members residing with the registrant, or notification of neighbors, schools, churches or establishments where persons are at risk of being victimized.

Sex Offender Registration

Many individuals found GEI of sex offenses are required by Oregon Statute to report (or "register") as sex offenders with the Oregon State Police Department. Upon conditional release, PSRB patients must register as sex offenders after being discharged or placed on any form of supervised or conditional release after having been found GEI of a sex crime in Oregon. The registrant must update his or her registration:

- If the person changes residence

- When the person has a birthday (registration must take place within 10 days on either side of the birthday)
- Within 10 days of the registrant's first day of work—or a change in work—at a traditional job, in vocational training, or after matriculation at an institution of higher education

Enabling Legislation: [ORS 163A](#) and [OARs 859-400-0001 through 859-400-0045](#)

Relief and Reclassification of Sex Offenders

ORS 163A also designated the PSRB as the relief authority for those GEI sex offenders who would like to request relief from their sex offender registration obligation or to request that they be reclassified to a lower risk level. Registrants will be able to apply for relief or reclassification through the PSRB beginning in **January 2019**. Please check back in 2018 for a link to any rulemaking action for this program.

Juvenile Sex Offender Registration

Youth found responsible except for insanity (REI), must be classified with different evaluation tools than those used for adults. Effective April 2016, if a youth is convicted or found Responsible Except for Insanity (REI) of a sex crime, he or she will **not** register as a sex offender while under PSRB or OYA supervision. Six months prior to a PSRB youth's End of Jurisdiction (EOJ), the PSRB will notify the juvenile court that jurisdiction will end in six months; or, in the case of an early discharge, the Board will notify the court no later than three days after the early discharge hearing. At that point, it is the court's responsibility to appoint defense counsel, set a "sex offender relief from registration" hearing, and make the appropriate notifications. Once it receives the hearing notice, PSRB will notify the Assistant Attorney General representing the State at PSRB hearings, PSRB defense counsel, and the youth's mental health provider of the hearing. In addition, PSRB staff will upload the entire PSRB exhibit file to the court at least 45 days prior to the scheduled relief hearing. Victims should be notified of the hearing by the county's District Attorney. At this hearing, the court will consider the evidence presented by the youth and by the State to determine whether to require sex offender registration or whether to grant relief from registration to the youth. PSRB anticipates and expects that community mental health services and those for developmentally delayed individuals, as appropriate, will provide documentation about the juvenile's compliance while under the Board's supervision.

This new law came about under [2015 HB 2320](#) and [2016 HB 4074](#), section 2. Both bills were authorized by [ORS 163A.030](#).