

Division 92

OREGON STATE HOSPITAL REVIEW PANEL

309-092-0000

Purpose and Scope

~~Oregon Laws 2011, chapter 708, Senate Bill 420 (SB 420) went into effect on January 1, 2012. The law created two tiers of offenders who are found guilty except for insanity and are affected by a mental disease or defect presenting a substantial danger to others. Under SB 420, tier one offenders (i.e., Measure 11 offenders) remain exclusively under the jurisdiction of the Psychiatric Security Review Board (PSRB), but the Oregon Health Authority (OHA) acquires jurisdiction over tier two offenders (i.e., non-Measure 11 offenders) while they are in the Oregon State Hospital. OHA is responsible for determining when tier two offenders may be conditionally released or discharged into the community. As with the PSRB, OHA must have as its primary concern the protection of society. In order to implement SB 420, via these rules OHA establishes the Oregon State Hospital Review Panel (SHRP) and the processes applicable to the SHRP.~~

~~**Statutory/Other Authority:** ORS 413.042 & 161.341 & SB 420.~~

~~**Statutes/Other Implemented:** ORS 161.295—161.400 & SB 420~~

~~**History:**~~

~~MHS 9-2012, f. & cert. ef. 6-19-12~~

~~MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12~~

309-092-0005

Definitions

~~(1) "Administrative Hearing" means a meeting of the SHRP where a quorum is present and a conditional release plan is reviewed or reviewed and modified.~~

~~(2) "Administrative Meeting" means any meeting of the SHRP where a quorum is present for the purpose of considering matters relating to SHRP policy and administration.~~

~~(3) "Authority" means the Oregon Health Authority.~~

~~(4) "Conditional Release" means a grant by the court, PSRB or SHRP for an individual to reside outside a state hospital in the community under conditions for monitoring and treatment of mental and physical health.~~

~~(5) "Director" means the Director of the Authority.~~

~~(6) "Division" means the Addictions and Mental Health (AMH) Division of the Authority.~~

~~(7) "Hospital Pass" means any time an individual will be off hospital grounds for any length of time not accompanied by hospital staff.~~

~~(8) "Individual" means any person under the jurisdiction of the SHRP.~~

~~(9) "Insanity Defense" means the following: For offenses committed on or after January 1, 1984, an individual is guilty except for insanity if, as a result of a mental disease or defect at the time of engaging in criminal conduct, the individual lacked substantial capacity either to appreciate the criminality of the conduct or to conform the conduct to the requirements of law. The name of the insanity defense from January 1, 1978, through December 31, 1983, was "not responsible due to mental disease or defect." From January 1, 1971, through December 31, 1977, the insanity defense was known as "not guilty by reason of mental disease or defect." The name of the insanity defense prior to 1971 was "not guilty by reason of insanity."~~

~~(10) "Mental Disease" means any diagnosis of mental disorder which is a significant behavioral or psychological syndrome or pattern that is associated with distress or disability causing symptoms or impairment in at least one important area of an individual's functioning, as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM) of the American Psychiatric Association.~~

~~(11) "Mental Defect" is defined as mental retardation, brain damage or other biological dysfunction that is associated with distress or disability causing symptoms or impairment in at least one important area of an individual's functioning, as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM) of the American Psychiatric Association. "Mental disease or defect" does not include an abnormality manifested solely by repeated or criminal or otherwise antisocial conduct. For offenses committed on or after January 1, 1984, the term "mental disease or defect" does not include any abnormality constituting solely a personality disorder.~~

~~(12) "Proof of Dangerousness" means any evidence regarding whether the individual's mental disease or defect may, with reasonable medical probability, occasionally become active, and when active, render the individual a substantial danger to others.~~

~~(13) "PSRB" refers to the Psychiatric Security Review Board.~~

~~(14) "Quorum" is the presence of at least three members of the SHRP.~~

~~(15) "Review Panel" or "SHRP" refers to the Oregon State Hospital Review Panel established by the Authority.~~

~~(16) "Review Panel's Office" and "Review Panel Staff" means the office and staff of the Legal Affairs office at a state hospital.~~

~~(17) "SB 420" means OR Laws 2011, chapter 708, Senate Bill 420 that takes effect on January 1, 2012.~~

~~(18) "State Hospital" means a state institution as defined in ORS 179.010 and operated by the Authority.~~

~~(19) “Statutory Hearing” is a meeting of the SHRP where a quorum is present and an application is made for discharge, conditional release, commitment or modification filed pursuant to ORS 161.336, 161.341 or 161.351 or as otherwise required by ORS 161.337 to 161.351.~~

~~(20) “Substantial Danger to Others” means an individual is a substantial danger to others if the individual is demonstrating or previously has demonstrated intentional, knowing, reckless or criminally negligent behavior which places others at risk of physical injury.~~

~~(21) “Superintendent” means the superintendent of a state hospital.~~

~~(22) “Tier One Offender” means an individual who has been found guilty except for insanity of a tier one offense as defined in ORS 161.332 as amended by SB 420.~~

~~(23) “Tier Two Offender” means an individual who has been found guilty except or insanity only of offenses that are not tier one offenses.~~

Statutory/Other Authority: ORS 413.042 & 161.341 & SB 420.

Statutes/Other Implemented: ORS 161.295—161.400 & SB 420

History:

~~MHS 9-2012, f. & cert. ef. 6-19-12~~

~~MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12~~

309-092-0010

Membership and Terms

~~(1) The SHRP shall consist of five members appointed by the Director of the Authority. The SHRP shall be composed of a psychiatrist, a psychologist, a member with substantial experience in probation and parole, a member of the general public and a lawyer. If the Director of the Authority determines that it is necessary, the psychiatrist position of the SHRP may be filled by a psychologist.~~

~~(2) Members shall initially serve one year terms, but after January 2013 they shall serve overlapping four year terms commencing on the date of their appointment. Vacancies occurring during a member's term shall be filled immediately by appointment of the Director.~~

~~(3) Review Panel Members serve at the discretion of the Director.~~

~~(4) Review Panel Members are eligible for reappointment.~~

Statutory/Other Authority: ORS 413.042 & 161.341 & SB 420.

Statutes/Other Implemented: ORS 161.295—161.400 & SB 420

History:

~~MHS 9-2012, f. & cert. ef. 6-19-12~~

~~MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12~~

309-092-0015

Chair; Powers and Duties

~~(1) In January of each year, the SHRP shall elect—by a majority of Review Panel Members votes—one of its members as chairperson to serve for a one-year term with the possibility of reelection.~~

~~(2) The chairperson shall have the powers and duties necessary for the performance of the office. These shall include, but not be limited to:~~

~~(a) Presiding at hearings and meetings;~~

~~(b) Assigning members to panels and designating an acting chairperson when appropriate; and~~

~~(c) Making rulings on procedural matters.~~

Statutory/Other Authority: ORS 413.042 & 161.341 & SB 420.

Statutes/Other Implemented: ORS 161.295—161.400 & SB 420

History:

~~MHS 9-2012, f. & cert. ef. 6-19-12~~

~~MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12~~

309-092-0020

Responsibilities, Function and Purpose of Review Panel

~~(1) The SHRP shall monitor the mental and physical health and treatment of any individual placed under its jurisdiction as a result of a finding by a court of guilty except for insanity. The SHRP shall have as its primary concern the protection of society. In addition, the SHRP's responsibilities shall include, but not be limited to:~~

~~(a) Holding hearings as required by law to determine the appropriate status of individuals under its jurisdiction;~~

~~(b) Modifying or terminating conditional release plans while individuals under its jurisdiction are in the hospital;~~

~~(c) Maintaining and keeping current medical, social and criminal histories of all individuals under the SHRP's jurisdiction; and~~

~~(d) Observing the confidentiality of records as required by law.~~

~~(2) The SHRP shall be supported by and the SHRP process and procedures shall be administered by the Legal Affairs Director and Legal Affairs Staff at the state hospital.~~

Statutory/Other Authority: ORS 413.042 & 161.341 & SB 420.

Statutes/Other Implemented: ORS 161.295—161.400 & SB 420

History:

~~MHS 9-2012, f. & cert. ef. 6-19-12~~

~~MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12~~

309-092-0025

Jurisdiction of Individuals Under The SHRP

~~The SHRP shall have jurisdiction as set forth in ORS Chapter 161 over tier two offenders— while they are in the state hospital— who are adjudged by a court to be guilty except for insanity and presenting a substantial danger to others:~~

~~(1) The court must find that the individual would have been guilty of a tier two offense during a criminal episode in the course of which the individual caused physical injury or risk of physical injury to another.~~

~~(2) The period of jurisdiction of the SHRP, in addition to time spent under jurisdiction of the PRSB while on conditional release, shall be equal to the maximum sentence the court finds the individual could have received had the person been found guilty.~~

~~(3) The SHRP and the PSRB do not consider time spent on unauthorized leave from the custody of the Authority as part of the jurisdictional time.~~

~~(4) The SHRP has jurisdiction over all tier two individuals who used the insanity defense successfully and were placed on conditional release or committed to a state mental hospital by the court prior to January 1, 1978. The period of jurisdiction in these cases shall be equal to the maximum sentence the person could have received if found guilty and shall be measured from the date of judgment.~~

~~(5) The SHRP shall maintain jurisdiction over individuals who are legally placed under its jurisdiction by any court of the State of Oregon and who are housed in a state hospital.~~

~~(6) The Juvenile Psychiatric Security Review Board will have jurisdiction over juveniles found guilty except for insanity.~~

~~(7) Upon receipt of verified information of time spent in custody, individuals placed under the SHRP's jurisdiction shall receive credit for:~~

~~(a) Time spent in any correctional facility for the offense for which the individual was placed under the SHRP's jurisdiction; and~~

~~(b) Time spent in custody of the Authority at a state hospital for determination of the defendant's fitness to proceed or under a detainer for the criminal charges for which the individual ultimately was placed under the SHRP's jurisdiction.~~

Statutory/Other Authority: ORS 413.042, 161.327, 161.332, 161.336, 161.346, 161.351, 161.385 & SB 420.

Statutes/Other Implemented: ORS 161.295—161.400 & SB 420

History:

~~MHS 9-2012, f. & cert. ef. 6-19-12~~

~~MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12~~

309-092-0030

Scheduling Review Panel Hearings and Meetings

~~(1) The SHRP shall meet at least twice every two months unless the chairperson determines that there is not sufficient business before the SHRP to warrant a meeting at the scheduled time.~~

~~(2) The SHRP shall hold administrative meetings as necessary to consider matters relating to SHRP policy and administration.~~

~~(3) Public notice shall be given in accordance with the Public Meetings Law.~~

~~(4) The SHRP may hold administrative hearings to expedite such matters as approving modifications of conditional release orders, reviewing plans for conditional release and approving or disapproving them.~~

Statutory/Other Authority: ORS 413.042 & 161.341 & SB 420.

Statutes/Other Implemented: ORS 161.295—161.400 & SB 420

History:

~~MHS 9-2012, f. & cert. ef. 6-19-12~~

~~MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12~~

309-092-0035

Quorum and Decisions

~~(1) The presence of at least three members of the SHRP constitutes a quorum.~~

~~(2) Three concurring votes (affirmative or negative) are required to make a SHRP decision.~~

~~(3) When three members cannot agree on a decision, the hearing may be continued, for no longer than 60 days. The tape of the hearing and the exhibits shall be reviewed by the remaining member(s) and a decision by the majority of the members shall be the finding and order of the SHRP.~~

~~(4) If the attorney for an individual or a pro se individual objects to the remaining member's or members' review as set forth in section (2) of this rule, the SHRP may reschedule the matter for a hearing before the entire SHRP.~~

~~(5) If an objection for good cause is made to a specific member of the SHRP sitting on the panel considering a specific case, that member shall withdraw and, if necessary, the hearing shall be postponed and rescheduled.~~

~~(6) If an objection for good cause is made to a specific staff member of the SHRP being present during the panel's deliberations in a specific case, and if the SHRP determines that good cause exists, that staff member shall not be present during deliberations in that case.~~

~~**Statutory/Other Authority:** ORS 413.042 & 161.341 & SB 420.~~

~~**Statutes/Other Implemented:** ORS 161.295—161.400 & SB 420~~

~~**History:**~~

~~MHS 9-2012, f. & cert. ef. 6-19-12~~

~~MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12~~

~~**309-092-0040**~~

~~**Public Meetings Law**~~

~~(1) All meetings of the SHRP are open to the public in accordance with the Public Meetings Law.~~

~~(2) Deliberations of the SHRP are not open to the public.~~

~~(3) For the purposes of this rule, the term "public" does not include staff of the SHRP.~~

~~**Statutory/Other Authority:** ORS 413.042 & 161.341 & SB 420.~~

~~**Statutes/Other Implemented:** ORS 161.295—161.400 & SB 420~~

~~**History:**~~

~~MHS 9-2012, f. & cert. ef. 6-19-12~~

~~MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12~~

~~**309-092-0045**~~

~~**Records**~~

~~(1) A record shall be kept of SHRP action taken at an administrative meeting and any decision made at an administrative hearing of the SHRP.~~

~~(2) All SHRP hearings, except SHRP deliberations, shall be recorded by manual or electronic means which can be transcribed. No other record of SHRP hearings shall be made. All documents considered at hearings shall be included as exhibits and kept as part of the record.~~

~~(a) Audio recordings capable of being transcribed shall be kept by the SHRP for a minimum period of two years from the hearing date.~~

~~(b) SHRP hearings may be transcribed from the recording for appeal purposes. If transcribed, the transcript may be substituted for the original record. ORS 161.348(2) authorizes the SHRP to submit to the appellate 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.~~

~~(c) Any material to which an objection is sustained shall be removed from the record; the objection and ruling of the SHRP shall be noted on the record.~~

~~(d) The audio tape or transcript of the proceedings shall be made available at cost to a party to the proceedings upon request.~~

~~**Statutory/Other Authority:** ORS 413.042 & 161.341 & SB 420.~~

~~**Statutes/Other Implemented:** ORS 161.295—161.400 & SB 420~~

~~**History:**~~

~~MHS 9-2012, f. & cert. ef. 6-19-12~~

~~MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12~~

~~309-092-0050~~

~~**Public Records Law; Confidentiality**~~

~~The attorneys for an individual or a pro se individual shall have the right to review any records to be considered at the hearing. Applicable federal and state confidentiality laws, such as the Health Insurance Portability and Accountability Act (HIPAA) and ORS 179.505 shall be observed with respect to other requests to inspect an individual's records.~~

~~**Statutory/Other Authority:** ORS 413.042, 161.385, 161.387, 192.450, 192.500, 192.525; & 192.690 & SB 420.~~

~~**Statutes/Other Implemented:** ORS 161.295—161.400 & SB 420~~

~~**History:**~~

~~MHS 9-2012, f. & cert. ef. 6-19-12~~

~~MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12~~

~~309-092-0055~~

~~**Hearing Notices**~~

~~The SHRP shall provide written notice of SHRP hearings to the following persons or agencies within a reasonable time:~~

~~(1) The individual;~~

~~(2) The attorney representing the individual;~~

~~(3) The District Attorney;~~

~~(4) The community supervisor or case monitor;~~

~~(5) The Court or department of the county from which the individual was committed;~~

~~(6) The victim, if the court finds that the victim requests notification;~~

~~(7) The victim, if subsequent to the disposition of the criminal case, the victim asks either the PSRB or SHRP for notification;~~

~~(8) Any other interested person requesting notification ;(9) A state hospital unit in which the individual resides; and (10) The PSRB in the case of conditional release hearings;~~

Statutory/Other Authority: ORS 413.042 & 161.341 & SB 420.

Statutes/Other Implemented: ORS 161.295—161.400 & SB 420

History:

~~MHS 9-2012, f. & cert. ef. 6-19-12~~

~~MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12~~

309-092-0060

Information Contained in Notice

Written notice shall contain the following:

~~(1) Time, place and location of the hearing;~~

~~(2) The issues to be considered, reference to statutes and rules involved, authority and jurisdiction;~~

~~(3) A statement of individual's rights, including the following:~~

~~(4) The right to appear at all proceedings, except SHRP deliberations;~~

~~(5) The right to cross-examine all witnesses appearing to testify at the hearing;~~

~~(6) The right to subpoena witness and documents as provided in ORS 161.395;~~

~~(7) The right to legal counsel and, if indigent as defined by the indigency standard set forth by the State Court Administrator's office, to have counsel provided without cost; and~~

~~(8) The Right to examine all information, documents and reports under consideration.~~

Statutory/Other Authority: ORS 413.042 & 161.341 & SB 420.

Statutes/Other Implemented: ORS 161.295—161.400 & SB 420

History:

~~MHS 9-2012, f. & cert. ef. 6-19-12~~

~~MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12~~

309-092-0065

Time Frame of Hearings

Hearings shall be held within the following time frames:

~~(1) The initial hearing under ORS 161.341(6)(a) shall occur within 90 days following the individual's placement under the SHRP's jurisdiction and commitment to a state hospital.~~

~~(2) The revocation hearing under ORS 161.336(4)(e) shall occur within 20 days following the individual's return to OSH for violation of the individual's conditional release requirements.~~

~~(3) An individual's request for conditional release or discharge under ORS 161.341(3) shall be heard within 60 days of receipt of the request, except for initial requests for conditional release under ORS 161.341(5).~~

~~(4) An individual is eligible to request a hearing six months after last hearing, and the hearing must be held within 60 days after filing the request pursuant to ORS 161.341(4).~~

~~(5) A request for conditional release by the state hospital, under ORS 161.341(1) may be made at any time and shall be heard within 60 days of receipt of the request.~~

~~(6) A request by the outpatient supervisor under ORS 161.336(7)(b) for conditional release, modification of conditional release or discharge may be made at any time and shall be heard within 60 days of receipt of request.~~

~~(7) Two year hearings under ORS 161.341(6)(b) are mandatory for individuals committed to a state hospital when no other hearing has been held within two years.~~

~~**Statutory/Other Authority:** ORS 413.042 & 161.341 & SB 420.~~

~~**Statutes/Other Implemented:** ORS 161.336, 161.341, 161.351 & SB 420~~

~~**History:**~~

~~MHS 9-2012, f. & cert. ef. 6-19-12~~

~~MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12~~

309-092-0070

Chairperson Conducting Hearing

The chairperson or acting chairperson shall preside over hearings and shall have the authority to:

~~(1) Designate the order of presentation and questioning;~~

~~(2) Determine the scope of questioning; and~~

~~(3) Set time limits and cut off irrelevant questions and irrelevant or unresponsive answers.~~

~~**Statutory/Other Authority:** ORS 413.042 & 161 & SB 420.~~

~~**Statutes/Other Implemented:** ORS 161.385 & SB 420~~

~~**History:**~~

~~MHS 9-2012, f. & cert. ef. 6-19-12~~

~~MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12~~

309-092-0075

Patient's Right to Review Record; Exceptions

~~(1) Individuals shall receive directly, or through their attorney, written notice of the hearing and a statement of their rights in accordance with ORS 161.346.~~

~~(2) All exhibits to be considered by the SHRP shall be disclosed to the individual's attorney or the individual if proceeding pro se, as soon as they are available.~~

~~(3) Exhibits not available prior to the hearing shall be made available to the individual's attorney or the patient, if not represented, at the hearing.~~

~~(4) All material relevant and pertinent to the individual and issues before the SHRP shall be made a part of the record.~~

~~(5) Any material not made part of the record shall be separated and a statement to that effect shall be placed in the record.~~

Statutory/Other Authority: ORS 413.042 & 161.327 & SB 420

Statutes/Other Implemented: ORS 161.346 & SB 420

History:

MHS 9-2012, f. & cert. ef. 6-19-12

MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12

309-092-0080

Evidence Considered; Admissibility

~~The SHRP shall consider all evidence available to it which is material, relevant and reliable. All evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible, including but not limited to the following:~~

~~(1) The record of trial;~~

~~(2) Information supplied by the state's attorney or any interested party including the individual;~~

~~(3) Information concerning the individual's mental condition;~~

~~(4) The entire psychiatric and criminal history of the individual including motor vehicle records;~~

~~(5) Psychiatric or psychological reports ordered by the SHRP under ORS 161.346(3);~~

~~(6) Psychiatric and psychological reports under ORS 161.341(2) written by a person chosen by the state or the individual to examine the individual; and~~

~~(7) Testimony of witnesses.~~

~~Statutory/Other Authority: ORS 413.042 & 161 & SB 420~~

~~Statutes/Other Implemented: ORS 161.336, 161.341 & 161.346 & SB 420~~

~~History:~~

~~MHS 9-2012, f. & cert. ef. 6-19-12~~

~~MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12~~

~~**309-092-0085**~~

~~**Motion Practice**~~

~~Any party bringing a motion before the SHRP shall submit the motion and memorandum of law to the SHRP and the opposing party one week prior to the hearing date in which the motion will be heard.~~

~~Statutory/Other Authority: ORS 413.042 & 161.327 & SB 420~~

~~Statutes/Other Implemented: ORS 161.346 & SB 420~~

~~History:~~

~~MHS 9-2012, f. & cert. ef. 6-19-12~~

~~MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12~~

~~**309-092-0090**~~

~~**Objections to Evidence**~~

~~The chairperson or acting chairperson shall rule on questions of evidence. Hearsay evidence shall not be excluded unless the chairperson or acting chairperson determines the evidence is not material, relevant or reliable.~~

~~(1) In determining whether the evidence is material, relevant or reliable, the SHRP shall consider the following:~~

~~(a) The age and source of the documents;~~

~~(b) The ability of the witness to have observed and had personal knowledge of the incidents; and~~

~~(c) The credibility of the witness and whether the witness has bias or interest in the matter.~~

~~(2) The individual, the individual's attorney or attorney representing the state may object to any evidence. The SHRP may decide the following:~~

~~(a) To sustain the objection and deny the admission and consideration of the evidence on the grounds that it is not material, relevant or reliable;~~

~~(b) To overrule the objection and admit the evidence;~~

~~(c) In considering the weight given to that evidence, consider the reason for the objection; or~~

~~(d) To grant a continuance for a period of time, not to exceed 60 days, to allow a witness to appear or be subpoenaed to testify about the evidence under consideration.~~

~~**Statutory/Other Authority:** ORS 413.042 & 161.327 & SB 420.~~

~~**Statutes/Other Implemented:** ORS 161.346 & 161.385 & SB 420~~

~~**History:**~~

~~MHS 9-2012, f. & cert. ef. 6-19-12~~

~~MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12~~

~~309-092-0095~~

~~**Witnesses and Documents; Subpoena**~~

~~(1) Witnesses or documents may be subpoenaed as provided in ORS 161.395 upon request of any party to the hearing or on the Review Panel's own motion, upon a proper showing of the general relevance and reasonable scope of the documentary or physical evidence sought.~~

~~(2) Witnesses with a subpoena other than parties or state officers or employees shall receive fees and mileage as prescribed by law.~~

~~(3) A judge of the Circuit Court of the county in which the hearing is held may compel obedience by proceeding for contempt for failure of any person to comply with the subpoena issued.~~

~~**Statutory/Other Authority:** ORS 413.042 & 161.387; SB 420~~

~~**Statutes/Other Implemented:** ORS 161.346, ORS 161.395 & SB 420~~

~~**History:**~~

~~MHS 9-2012, f. & cert. ef. 6-19-12~~

~~MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12~~

~~309-092-0100~~

~~**Testimony Given on Oath**~~

~~The SHRP shall take testimony of a witness upon oath or affirmation of the witness administered by the chairperson or acting chairperson at the hearing.~~

~~**Statutory/Other Authority:** ORS 413.042 & 161.327 & SB 420.~~

~~**Statutes/Other Implemented:** ORS 161.346 & 161.385 & SB 420~~

~~**History:**~~

~~MHS 9-2012, f. & cert. ef. 6-19-12~~

~~MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12~~

~~309-092-0105~~

~~**Standards and Burdens of Proof**~~

~~(1) The standard of proof on all issues at hearings of the SHRP shall be the preponderance of the evidence. The burden of proof shall depend on the type of hearing:~~

~~(a) In an initial 90-day hearing under ORS 161.341(6)(a), the state has the burden to show the individual continues to be affected by a mental disease or defect and continues to be a substantial danger to others.~~

~~(b) In a revocation hearing under ORS 161.336(4)(c), the state has the burden to show the individual's unfitness for conditional release and that jurisdiction of the SHRP should continue.~~

~~(c) In an individual's request for conditional release or discharge under ORS 161.341(3), the individual has the burden of proving his or her fitness for conditional release or discharge, unless it has been more than two years since the State had the burden of proof. In that case, the burden is on the State.~~

~~(d) In a request for conditional release or discharge of the individual by the Authority under ORS 161.341(1), the state must prove the individual is not appropriate for conditional release or discharge.~~

~~(e) In a status review hearing under ORS 161.346, the state has the burden of proving that the commitment, proposed conditional release plan or other current status of the patient is appropriate.~~

~~(f) In all other cases (such as two, five, and ten-year hearings), the state bears the burden of proof.~~

~~(2) If at any hearing state hospital staff agrees with the individual on the issue of mental disease or defect, dangerousness or fitness for conditional release, but no advance notice is given to the SHRP that the hospital requests discharge or conditional release, the burden of proof remains with the individual. The testimony of state hospital staff will be considered as evidence to assist the SHRP in deciding whether the individual has met his/her burden.~~

Statutory/Other Authority: ORS 413.042 & 161.387 & SB 420

Statutes/Other Implemented: ORS 161.336, 161.341 & 161.346 & SB 420

History:

~~MHS 9-2012, f. & cert. ef. 6-19-12~~

~~MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12~~

309-092-0110

Burden of Going Forward

~~The party that has the burden of proof shall also have the burden of going forward with the evidence (calling and examining witnesses, proposing conditions of release, etc.).~~

Statutory/Other Authority: ORS 413.042 & 161.387 & SB 420

Statutes/Other Implemented: ORS 161.346 & SB 420

History:

~~MHS 9-2012, f. & cert. ef. 6-19-12~~

~~MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12~~

309-092-0115

Continuance of Hearing

~~Upon the request of any party or on its own motion, the SHRP may for good cause continue a hearing for a reasonable period of time not to exceed 60 days to obtain additional information or testimony.~~

~~**Statutory/Other Authority:** ORS 413.042 & 161.387 & SB 420~~

~~**Statutes/Other Implemented:** ORS 161.346 & SB 420~~

~~**History:**~~

~~MHS 9-2012, f. & cert. ef. 6-19-12~~

~~MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12~~

309-092-0120

Cancellation of Hearing

~~Unless an individual asks for cancellation of a hearing for good cause, in writing, and with four weeks' advance notice, the individual shall not be eligible to request a hearing for six months from the date of the scheduled hearing.~~

~~**Statutory/Other Authority:** ORS 413.042 & 161.387 & SB 420~~

~~**Statutes/Other Implemented:** ORS 161.346 & SB 420~~

~~**History:**~~

~~MHS 9-2012, f. & cert. ef. 6-19-12~~

~~MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12~~

309-092-0125

Use of Restraints

~~(1) The SHRP prefers to have individuals appear at hearings without physical restraints. If, in the judgment of the individual's physician, the individual might need restraining, the SHRP prefers to have staff attending the hearing with the individual rather than use of physical restraints. However, the final decision on use of restraints lies with the physician.~~

~~(2) Any attorney objecting to the individual appearing with restraints at the hearing may raise the issue and ask for testimony from the physician.~~

~~**Statutory/Other Authority:** ORS 413.042 & 161.387 & SB 420~~

~~**Statutes/Other Implemented:** ORS 161.346 & SB 420~~

~~**History:**~~

~~MHS 9-2012, f. & cert. ef. 6-19-12~~

~~MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12~~

309-092-0130

Decisions of The SHRP

~~(1) Within 15 days following the conclusion of a hearing, the SHRP shall provide the individual, the attorney representing the individual, the district attorney representing the state, the committing court and, where applicable, the Authority and local mental health agency or supervisor written notice of the SHRP's decision.~~

~~(2) The order of the SHRP shall be signed by a member present at the hearing.~~

~~(3) The SHRP may issue its decision orally on the record at the hearing.~~

~~(4) The formal order of the SHRP shall contain the findings of facts, conclusions of law, reasons for the decision and notice of the right to appeal under ORS 161.348.~~

~~**Statutory/Other Authority:** ORS 413.042 & 161.387 & SB 420~~

~~**Statutes/Other Implemented:** ORS 161.346 & SB 420~~

~~**History:**~~

~~MHS 9-2012, f. & cert. ef. 6-19-12~~

~~MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12~~

~~**309-092-0135**~~

~~**Notification of Right to Appeal**~~

~~At the conclusion of a Review Panel hearing, the chair or acting chair shall provide the individual and attorney with written notification advising of the right to appeal on an adverse decision. Within 60 days from the date an order is signed and the right to an attorney if indigent.~~

~~**Statutory/Other Authority:** ORS 413.042 & 161.387 & SB 420~~

~~**Statutes/Other Implemented:** ORS 161.346 & SB 420~~

~~**History:**~~

~~MHS 9-2012, f. & cert. ef. 6-19-12~~

~~MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12~~

~~**309-092-0140**~~

~~**Patient Appearing Pro Se**~~

~~When an individual waives the right to be represented by an attorney, the SHRP shall take written or oral testimony and decide whether the individual is capable of understanding the proceedings.~~

~~**Statutory/Other Authority:** ORS 413.042 & 161.387 & SB 420~~

~~**Statutes/Other Implemented:** ORS 161.346 & SB 420~~

~~**History:**~~

~~MHS 9-2012, f. & cert. ef. 6-19-12~~

~~MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12~~

~~**309-092-0145**~~

~~**Issues Before The SHRP**~~

At any hearing before the SHRP, issues considered shall be limited to those relevant to the purposes of the hearing. Notice of intent to raise new issues shall be given to the SHRP in writing prior to the hearing. If new issues are raised, the SHRP may continue the hearing to consider the issues and give the parties an opportunity to submit additional evidence.

Statutory/Other Authority: ORS 413.042 & 161.387 & SB 420

Statutes/Other Implemented: ORS 161.346 & SB 420

History:

~~MHS 9-2012, f. & cert. ef. 6-19-12~~

~~MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12~~

309-092-0150

Primary Concern: Protection of Society

In determining whether an individual should be conditionally released or discharged, the SHRP shall have as its primary concern the protection of society. The SHRP shall not discharge an individual whose mental disease or defect may, with reasonable medical probability occasionally become active, and when active, render the individual a danger to others.

Statutory/Other Authority: ORS 413.042 & 161.387 & SB 420

Statutes/Other Implemented: ORS 161.336, 161.341, 161.346, 161.351 & SB 420

History:

~~MHS 9-2012, f. & cert. ef. 6-19-12~~

~~MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12~~

309-092-0155

Initial Hearing

After being placed under the jurisdiction of the SHRP and committed to a state hospital, the individual shall have an initial hearing before the SHRP to determine whether the individual should be committed, conditionally released or discharged:

(1) At an initial hearing, the SHRP shall make a finding on the issue of presence of mental disease or defect and dangerousness and may base it on the court's findings and any additional information received.

(2) If the SHRP finds at its initial hearing that the individual is affected by a mental disease or defect, presents a substantial danger to others and is not a proper subject for conditional release, the SHRP shall order the individual committed to a state hospital designated by the Authority.

(3) If the SHRP finds the individual is still affected by a mental disease or defect and is a substantial danger to others but can be adequately controlled with treatment and supervision if conditionally released, the SHRP shall find the individual appropriate for conditional release and shall follow procedures set forth in 309-092-0190.

~~(4) If the SHRP makes a finding the individual is no longer affected by a mental disease or defect or is no longer a substantial danger to others, the SHRP shall order the discharge of the individual from jurisdiction.~~

~~**Statutory/Other Authority:** ORS 413.042 & 161.387 & SB 420~~

~~**Statutes/Other Implemented:** ORS 161.336, ORS 161.341, ORS 161.346 & SB 420~~

~~**History:**~~

~~MHS 9-2012, f. & cert. ef. 6-19-12~~

~~MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12~~

~~**309-092-0160**~~

~~**Revocation Hearing**~~

~~(1) Within 20 days following the return of a tier two individual to a state hospital the SHRP shall hold a hearing and consider whether the revocation was appropriate and whether the individual can be continued on conditional release or should be committed to a state hospital.~~

~~(2) The SHRP may consider a request for discharge at a revocation hearing or make that finding after considering the evidence before the SHRP.~~

~~(3) If the SHRP finds the individual is affected by a mental disease or defect and presents a substantial danger to others and cannot be safely controlled in the community while on conditional release, the individual shall be committed to a state hospital.~~

~~(4) If the SHRP finds the individual could be controlled in the community but no conditional release plan has been approved by the SHRP, the SHRP shall order the individual committed to a state hospital but find the individual appropriate for conditional release, and shall order a conditional release plan be created.~~

~~(a) The SHRP shall specify what conditions the plan should include.~~

~~(b) The SHRP may approve the conditional release plan submitted by the staff of the hospital, by the individual or someone on the individual's behalf, at an administrative hearing.~~

~~(c) If the PSRB submits conditions of release, the SHRP must order that those conditions be followed.~~

~~(5) If the SHRP finds the individual can be controlled in the community and a verified conditional release plan is approved by the SHRP, the SHRP shall order the individual placed on conditional release.~~

~~(6) If the individual has been charged with a new crime or is serving time in the corrections system, the SHRP shall not hold a revocation hearing until such time as jurisdiction of the individual is returned to the Authority or upon an appropriate request to hold a hearing.~~

Statutory/Other Authority: ORS 413.042 & 161.387 & SB 420

Statutes/Other Implemented: ORS 161.336 & SB 420

History:

~~MHS 9-2012, f. & cert. ef. 6-19-12~~

~~MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12~~

309-092-0165

~~Patient Request for Conditional Release~~

~~In a hearing before the SHRP on an individual request for conditional release, the SHRP shall consider whether, although still affected by mental disease or defect, the individual can be adequately controlled in the community with treatment and supervision, and shall determine whether the individual is a proper subject for conditional release in accordance with procedures set forth in Division 070.~~

Statutory/Other Authority: ORS 413.042 & 161.327 & SB 420

Statutes/Other Implemented: ORS 161.341 & SB 420

History:

~~MHS 9-2012, f. & cert. ef. 6-19-12~~

~~MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12~~

309-092-0170

~~Patient Request for Discharge~~

~~In a hearing before the SHRP on an individual's request for discharge, the SHRP shall determine whether the individual continues to be affected by a mental disease or defect and is a substantial danger to others:~~

~~(1) If the SHRP finds the individual is no longer affected by mental disease or defect or if so affected, no longer presents a substantial danger to others, the individual shall be discharged.~~

~~(2) If the SHRP finds the individual is not appropriate for discharge, the SHRP may consider whether the individual is appropriate for conditional release even if not requested previously by the individual.~~

Statutory/Other Authority: ORS 413.042 & 161.327 & SB 420

Statutes/Other Implemented: ORS 161.341 & SB 420

History:

~~MHS 9-2012, f. & cert. ef. 6-19-12~~

~~MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12~~

309-092-0175

~~Hospital Request for Conditional Release~~

~~(1) At any time while an individual is committed to a state hospital the superintendent of the state hospital shall apply to the SHRP for conditional release if it is the opinion of the treating~~

physician that the individual continues to be affected by mental disease or defect and continues to be a danger to others but can be controlled in the community with proper care, medication, supervision and treatment.

(2) The application shall be accompanied by an updated report setting forth facts supporting the state hospital staff's opinion and a plan for treatment and supervision in the community which includes observations and facts which support staff recommendations.

Statutory/Other Authority: ORS 413.042 & 161.387 & SB 420

Statutes/Other Implemented: ORS 161.341 & SB 420

History:

MHS 9-2012, f. & cert. ef. 6-19-12

MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12

309-092-0178

SHRP's Procedure for Conditional Release of Tier Two Offenders

The SHRP has jurisdiction of Tier Two offenders while the individuals are in the Oregon State Hospital. The PSRB has jurisdiction of and supervision over Tier Two offenders conditionally released from the State Hospital. The SHRP is responsible for conducting the hearings for the Authority. To efficiently facilitate the issuance of conditional release orders with conditions provided by the PSRB, the following process will be utilized:

(1) When a Tier Two Offender ("the individual") is committed to the jurisdiction of SHRP, SHRP will send a copy of the commitment order to the PSRB upon receipt.

(2) Throughout the course of the conditional release planning process for Tier Two offenders in the State Hospital, SHRP shall continue to conduct the statutorily required hearings for the individual.

(3) Upon receipt of all of the following documents, SHRP shall forward all of the documents to the PSRB with notice that SHRP intends to conduct a conditional release hearing in order to allow the PSRB to conduct an administrative review as provided in OAR 859-070-0040:

(a) SHRP's order for evaluation of possible conditional release of a Tier Two offender;

(b) The Tier Two offender's current updated SHRP exhibit file;

(c) The evaluation by the proposed community provider;

(d) A summary of conditional release plan form which outlines the proposed conditions; and

(e) A Progress Note Update authored by the treating psychiatrist dated within 30 days of the signed summary of the conditional release plan form.

~~(4) The SHRP shall set the matter for either a full or administrative hearing for consideration of conditional release no sooner than 30 days after the PSRB has been provided the required documents. This will allow the time necessary for the SHRP to provide the statutorily required notice to the victims and other interested parties as well as for the PSRB to conduct its review of the proposed conditions of release.~~

~~(5) No less than 7 days prior to that hearing date, the SHRP shall provide a copy of the proposed conditions of release to the individual's attorney and the State's attorney at the Department of Justice for review and opportunity to request a full hearing regarding the proposed conditions before issuance of a final order by the SHRP.~~

~~(6) If either attorney submits a written request by fax or email for a full hearing, it must be received no less than 48 hours prior to the scheduled hearing date. If no request is received, the SHRP may proceed with an administrative hearing if it chooses.~~

~~(7) The SHRP must review the PSRB's report and recommended conditions of release. The SHRP may order the conditional release of the individual, including any applicable conditions, and the transfer of jurisdiction to the PSRB. The SHRP shall issue a final order within 15 days of its hearing.~~

~~**Statutory/Other Authority:** ORS 413.042 & 161.387 & SB 420~~

~~**Statutes/Other Implemented:** ORS 161.341 & SB 420~~

~~**History:**~~

~~MHS 9-2012, f. & cert. ef. 6-19-12~~

~~**309-092-0180**~~

~~**Hospital or Outpatient Supervisor Request for Discharge**~~

~~At any time while an individual is committed to a state hospital the superintendent of the state hospital or designee shall apply to the SHRP for discharge if, in the opinion of the hospital physician or outpatient supervisor, the individual is no longer affected by mental disease or defect or, if so affected, the person no longer presents a substantial danger to others. The application shall be accompanied by a report setting forth the facts supporting the opinion.~~

~~**Statutory/Other Authority:** ORS 413.042 & 161.387 & SB 420~~

~~**Statutes/Other Implemented:** ORS 161.341 & SB 420~~

~~**History:**~~

~~MHS 9-2012, f. & cert. ef. 6-19-12~~

~~MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12~~

~~**309-092-0185**~~

~~**Mandatory Two-Year, Five-Year Hearings**~~

~~(1) The SHRP shall have periodic mandatory hearings for all individuals.~~

~~(2) In no case shall an individual be committed and held in a state hospital under the SHRP's jurisdiction for a period of time exceeding two years without a hearing before the SHRP to determine whether the individual should be conditionally released or discharged.~~

~~(3) At mandatory two-year hearings, the SHRP shall consider:~~

~~(a) Whether the individual continues to be affected by mental disease or defect and whether the individual presents a substantial danger to others; and~~

~~(b) If the individual is affected by mental disease or defect and is a substantial danger to others, whether the individual could be adequately controlled if conditionally released.~~

~~**Statutory/Other Authority:** ORS 413.042 & 161.387; SB 420~~

~~**Statutes/Other Implemented:** ORS 161.341, ORS 161.351 & SB 420~~

~~**History:**~~

~~MHS 9-2012, f. & cert. ef. 6-19-12~~

~~MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12~~

309-092-0190

Status Hearing

The SHRP may hold a hearing at any time to review the status of the individual to determine whether a conditional release or discharge order is appropriate.

~~**Statutory/Other Authority:** ORS 413.042 & 161.327 & SB 420~~

~~**Statutes/Other Implemented:** ORS 161.336 & SB 420~~

~~**History:**~~

~~MHS 9-2012, f. & cert. ef. 6-19-12~~

~~MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12~~

309-092-0195

Review Panel Order of Conditional Release

~~(1) In determining whether an order of conditional release is appropriate, the SHRP shall have as its goals the protection of the public, the best interests of justice and the welfare of the individual. The SHRP may consider the testimony and exhibits at the hearing regarding the individual's behavior in the hospital including the individual's progress, insight and responsibility taken for his or her own behavior.~~

~~(2) If the SHRP finds the individual may be controlled in the community and a verified conditional release plan is approved by the SHRP, the SHRP may order the individual placed on conditional release.~~

~~(3) If the SHRP finds the individual could be controlled in the community but no conditional release plan has been approved by the SHRP, the SHRP may order the individual to remain in a~~

state hospital but find the individual appropriate for conditional release pending submission of a conditional release plan approved by the SHRP.

~~(a) The SHRP shall specify what conditions the plan should include and may approve the conditional release plan submitted by the staff of the state hospital, by the individual or someone on the individual's behalf at an administrative hearing.~~

~~(b) Following the procedures set forth in OAR 309-092-0178, the PSRB may provide the SHRP with conditions of release that the PSRB determines are advisable. If the SHRP orders the individual conditionally released, the SHRP shall include the conditions of release in the order.~~

~~(4) If a verified conditional release plan has not been approved and the conditions need further examination and approval by the SHRP, the SHRP may commit the individual, find the individual appropriate for conditional release or continue the hearing.~~

Statutory/Other Authority: ORS 413.042 & 161.387 & SB 420

Statutes/Other Implemented: ORS 161.336 & SB 420

History:

MHS 9-2012, f. & cert. ef. 6-19-12

MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12

309-092-0200

Elements of Conditional Release Order

~~(1) The SHRP may consider any or all of the following elements of a conditional release plan and determine which are appropriate and necessary to insure the safety of the public. Following the procedures set forth in OAR 309-092-0178, the PSRB may provide the SHRP with conditions of release that the PSRB determines are advisable. If the SHRP orders the individual conditionally released, the SHRP shall include the conditions of release in the order~~

~~(a) Housing must be available for the individual. The SHRP may require 24-hour supervised housing, a supervised group home, foster care, housing with relatives or independent housing.~~

~~(b) Mental health treatment must be available in the community. The SHRP-approved provider of the treatment must have had an opportunity to evaluate the patient and the proposed conditional release plan and to be heard before the SHRP.~~

~~(A) The provider must have agreed to provide the necessary mental health treatment to the individual.~~

~~(B) The treatment may include individual counseling, group counseling, home visits, prescription of medication or any other treatment recommended by the provider(s) and approved by the SHRP.~~

~~(C) Reporting responsibility: An individual must be available to be designated by the PSRB as having primary reporting responsibility.~~

~~(2) Special conditions may be imposed, including but not limited to, the following: no consumption of alcohol, taking of antabuse, observation by designated individual of each ingestion of medication; submitting to drug screen tests; no driving; vocational activities; day treatment; attending school; working; or sex offender assessment and treatment.~~

~~(3) Parole and probation supervision may be ordered.~~

~~**Statutory/Other Authority:** ORS 413.042 & 161.387 & SB 420~~

~~**Statutes/Other Implemented:** ORS 161.336 & SB 420~~

~~**History:**~~

~~MHS 9-2012, f. & cert. ef. 6-19-12~~

~~MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12~~

~~**309-092-0205**~~

~~**The Authority's Responsibility to Prepare Plan**~~

~~(1) When a state hospital determines an individual may be ready for conditional release, the state hospital staff may request that the SHRP order an evaluation for community placement.~~

~~(2) The Division is responsible for and shall prepare the conditional release plan. In order to carry out the conditional release plan, the Division may contract with a community mental health program, other public agency, or Private Corporation or an individual to provide evaluations for community placement, supervision and treatment.~~

~~**Statutory/Other Authority:** ORS 413.042 & 161.387 & SB 420~~

~~**Statutes/Other Implemented:** ORS 161.336 & SB 420~~

~~**History:**~~

~~MHS 9-2012, f. & cert. ef. 6-19-12~~

~~MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12~~

~~**309-092-0210**~~

~~**Out-of-State Conditional Release Order**~~

~~The SHRP may consider and approve a conditional release plan to have the individual reside out of state.~~

~~**Statutory/Other Authority:** ORS 413.042 & 161 & SB 420.~~

~~**Statutes/Other Implemented:** ORS 161.336 & SB 420~~

~~**History:**~~

~~MHS 9-2012, f. & cert. ef. 6-19-12~~

~~MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12~~

~~**309-092-0215**~~

~~**Reconsideration**~~

~~(1) A party to the hearing may request reconsideration of a Review Panel finding in writing. Also, on its own motion, the SHRP may reconsider the finding.~~

~~(2) If an issue is appropriately raised, the matter shall be remanded to the SHRP for hearing on that issue. Reconsideration may be upheld if:~~

~~(a) The written findings are found to be inaccurate or do not support the action taken by the SHRP;~~

~~(b) Substantial information material to the issues which was not known or which could not have been known at the time of the hearing is received;~~

~~(c) A material misrepresentation of facts or concealment of facts occurred; or~~

~~(d) The SHRP decision is contrary to the rules or statutes governing the SHRP.~~

~~(3) If the issues are not appropriately raised, the individual shall receive written notification of the reasons for denial of reconsideration.~~

~~(4) If good cause exists, a party to the hearing may request reconsideration by the Director. Subject to the Director's discretion and determination of good cause, the Director may reconsider the SHRP's findings by listening to the audio of the hearing and reviewing the exhibits from the hearing. The Director may overrule or sustain the SHRP's findings. The Director may also remand the matter to the SHRP for further consideration.~~

Statutory/Other Authority: ORS 413.042 & 161.327 & SB 420

Statutes/Other Implemented: ORS 161.346 & SB 420

History:

~~MHS 9 2012, f. & cert. ef. 6-19-12~~

~~MHS 13 2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12~~

309-092-0220

Judicial Review

~~(1) The Legislature has provided that a final Review Panel order shall be subject to review by the Court of Appeals upon petition to the court within 60 days of the issuance of the order in accordance with ORS 161.385(8).~~

~~(2) The SHRP shall provide the attorney for the individual and the court with the record of proceedings.~~

Statutory/Other Authority: ORS 413.042 & 161.387 & SB 420

Statutes/Other Implemented: ORS 161.385 & SB 420

History:

~~MHS 9 2012, f. & cert. ef. 6-19-12~~

~~MHS 13 2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12~~

309-092-0225

Enforcement of Review Panel Orders

~~The SHRP may apply to the circuit court of the appropriate county for contempt proceedings under ORS 161.395 when its directive to an agency or person is not followed.~~

~~**Statutory/Other Authority:** ORS 413.042 & 161.327 & SB 420~~

~~**Statutes/Other Implemented:** ORS 161.395 & SB 420~~

~~**History:**~~

~~MHS 9-2012, f. & cert. ef. 6-19-12~~

~~MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12~~

309-092-0230

Compliance

~~State or local community mental health programs shall comply with any order of the SHRP.~~

~~**Statutory/Other Authority:** ORS 413.042, 137.540, 161, 327, 192.620, 430.630 & SB 420~~

~~**Statutes/Other Implemented:** ORS 161.336, 161.346 & SB 420~~

~~**History:**~~

~~MHS 9-2012, f. & cert. ef. 6-19-12~~

~~MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12~~

309-092-0235

Custody of An Individual Who is a Substantial Danger to Others

~~The Legislature has provided that the community mental health program director, the director of the facility providing treatment to an individual on conditional release, any peace officer or any individual responsible for the supervision of the individual on conditional release may take or request that an individual on conditional release be taken into custody if there is reasonable cause to believe the individual is a substantial danger to others because of mental disease or defect and the person is in need of immediate care, custody or treatment. The individual shall be transferred to a state hospital designated by the Authority.~~

~~**Statutory/Other Authority:** ORS 413.042 & 161.387 & SB 420~~

~~**Statutes/Other Implemented:** ORS 161.346 & SB 420~~

~~**History:**~~

~~MHS 9-2012, f. & cert. ef. 6-19-12~~

~~MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12~~

309-092-0240

Leaves and Passes

~~(1) Any overnight or out-of-town leave of absence or pass request for SHRP individuals in a state hospital shall be signed by a physician and submitted to the hospital Risk Review Committee for initial consideration. A leave of absence or pass may be requested when the~~

~~physician is of the opinion that a leave of absence or pass from the hospital would pose no substantial danger to others and would be therapeutic for the individual.~~

~~(2) If the hospital's Risk Review Committee approves the request, the request and recommendation of the Risk Review Committee shall be presented to the SHRP for the purposes of ORS 161.326 (Notice to victim).~~

~~**Statutory/Other Authority:** ORS 413.042, 137.540, 161.315, 161.327, 161.332, 161.341, 161.346, 161.351, 161.365, 161.370, 161.390, 161.400, 192.690, 428.210 & SB 420~~

~~**Statutes/Other Implemented:** ORS 161.400 & SB 420~~

~~**History:**~~

~~MHS 9-2012, f. & cert. ef. 6-19-12~~

~~MHS 13-2011(Temp), f. 12-21-11, cert. ef. 1-1-12 thru 6-27-12~~

Enrolled
Senate Bill 65

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor Kate Brown for Psychiatric Security Review Board)

CHAPTER

AN ACT

Relating to the Psychiatric Security Review Board; creating new provisions; amending ORS 21.010, 90.630, 137.223, 137.750, 144.641, 151.216, 161.326, 161.327, 161.332, 161.336, 161.341, 161.346, 161.348, 161.349, 161.351, 161.390, 161.395, 161.400, 162.135, 162.155, 163.476, 163.479, 163A.105, 163A.210, 163A.215, 181A.290, 183.315, 183.635, 192.690, 278.315, 430.695, 809.419 and 810.375 and section 7, chapter 708, Oregon Laws 2013; and declaring an emergency.

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

SECTION 1. (1)(a) The Psychiatric Security Review Board may develop a restorative justice program to assist the recovery of crime victims when a person is found guilty except for insanity of a crime or responsible except for insanity for an act.

(b) The board may enter into a contract with a nonprofit educational institution or other nonprofit organization that provides for the administration of the restorative justice program by the institution or organization.

(2) Any documents or oral communications created, submitted or provided for use in the restorative justice program are confidential, exempt from public disclosure and:

(a) May not be disclosed to or used by board members.

(b) May not be used or disclosed by restorative justice program staff, volunteers or participants for any purpose unrelated to the program.

(c) Are not admissible as evidence in any subsequent administrative or judicial proceeding, including board proceedings and deliberations.

(3) The board may adopt rules to carry out the provisions of this section.

SECTION 2. ORS 161.346 is amended to read:

161.346. (1) When the Psychiatric Security Review Board [or the Oregon Health Authority] conducts a hearing under ORS 161.315 to 161.351, the [agency conducting the hearing] board shall enter an order and make findings in support of the order. If the [agency] board finds that a person under the jurisdiction of the [agency] board:

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

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

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

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

[(b) When the board orders a tier two offender committed to a state hospital, or a secure intensive community inpatient facility, under ORS 161.315 to 161.351, the order shall transfer jurisdiction over the person to the Oregon Health Authority.]

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

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

[(3)] (2) To assist the [agency] board in making the determination described in subsection (1) of this section, the [agency exercising jurisdiction over the person] board may, at any time, appoint a psychiatrist or licensed psychologist to examine the person and to submit a report to the [agency] board. The report must include an opinion as to the mental condition of the person, whether the person presents a substantial danger to others and whether the person could be adequately controlled with treatment as a condition of release.

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

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

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

(b) The nature of the hearing and the specific action for which a 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 legal authority and jurisdiction under which the hearing is to be held.

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

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

[(7)] (6) At the hearing, the person about whom the hearing is being held shall have the right:

(a) To appear at all proceedings held pursuant to this section, except for 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 [agency] board considers. If then available to the [agency] board, the information, documents and reports shall be disclosed to the person so as to allow examination prior to the hearing.

[(8)] (7) A record shall be kept of all hearings conducted under ORS 161.315 to 161.351, except for deliberations.

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

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

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

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

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

SECTION 3. ORS 161.336 is amended to read:

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

(b) An order of conditional release entered by the board [or the Oregon Health Authority] may designate any person or state, county or local agency capable of supervising the person upon release, subject to the conditions described in the order of conditional release.

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

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

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

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

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

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

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

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

(4)(a) If at any time while the person is under the jurisdiction of the board it appears to the board or its chairperson that the person has violated the terms of the conditional release or that the mental health of the individual has changed, the board or its chairperson may order the person returned for evaluation or treatment to a state hospital or, if the person is under 18 years of age, to a secure intensive community inpatient facility. A written order of the board, or its chairperson on behalf of the board, is sufficient warrant for any law enforcement officer to take into custody such person and transport the person accordingly. A sheriff, municipal police officer, constable, parole and probation officer, prison official or other peace officer shall execute the order, and the person shall be returned as soon as practicable to the state hospital or secure intensive community inpatient facility designated in the order.

(b) The community mental health program director, the director of the facility providing treatment to a person on conditional release, any peace officer or any person responsible for the supervision of a person on conditional release may take a person on conditional release into custody or request that the person be taken into custody if there is reasonable cause to believe the person is a substantial danger to others because of mental disease or defect and that the person is in need of immediate care, custody or treatment. Any person taken into custody pursuant to this subsection shall be transported as soon as practicable to a state hospital or, if the person is under 18 years of age, to a secure intensive community inpatient facility.

(c) Within 20 days following the return of the person to a state hospital or secure intensive community inpatient facility under this subsection, the [agency having jurisdiction over the person] board shall conduct a hearing. The [agency] board shall provide notice of the hearing to the person, the attorney representing the person and the Attorney General. The state must prove by a preponderance of the evidence the person's unfitness for conditional release. The hearing shall be conducted in accordance with ORS 161.346.

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

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

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

SECTION 4. ORS 161.341 is amended to read:

161.341. (1) If at any time after a person is committed under ORS 161.315 to 161.351 to a state hospital or a secure intensive community inpatient facility, the superintendent of the hospital or the director of the secure intensive community inpatient facility is of the opinion that the person is no longer affected by mental disease or defect, or, if so affected, no longer presents a substantial danger to others or that the person continues to be affected by mental disease or defect and continues to be a danger to others, but that the person can be controlled with proper care, medication, supervision and treatment if conditionally released, the superintendent or director shall apply to the [agency having jurisdiction over the person] Psychiatric Security Review Board for an order of discharge or conditional release. The application shall be accompanied by a report setting forth the facts supporting the opinion of the superintendent or director. If the application is for conditional release, the application must be accompanied by a verified conditional release plan. The [agency] board shall hold a hearing on the application within 60 days of its receipt. Not less than 20 days prior to the hearing before the [agency] board, copies of the report shall be sent to the Attorney General.

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

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

- (a) That the person is no longer affected by mental disease or defect;
- (b) That the person, if so affected, no longer presents a substantial danger to others; or
- (c) That the person continues to be affected by a mental disease or defect and would continue to be a danger to others without treatment, but that the person can be adequately controlled and given proper care and treatment if placed on conditional release.

(4) When application is made under subsection (3) of this section, the [agency having jurisdiction over the person] board shall require that a report from the superintendent of the hospital or the director of the secure intensive community inpatient facility be prepared and transmitted as provided in subsection (1) of this section. The applicant must prove by a preponderance of the evidence the applicant's fitness for discharge or conditional release under the standards of subsection (3) of this section, unless more than two years has passed since the state had the burden of proof on that issue, in which case the state shall have the burden of proving by a preponderance of the evidence the applicant's lack of fitness for discharge or conditional release. Applications for discharge or conditional release under subsection (3) of this section may not be filed more often than once every six months commencing with the date of the initial [agency] board hearing.

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

(6)(a) In no case shall a person committed by the court under ORS 161.327 to a state hospital, or to a secure intensive community inpatient facility, 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 [agency having jurisdiction over the person] board to determine whether the person should be conditionally released or discharged.

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

SECTION 5. ORS 161.351 is amended to read:

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

(2) For purposes of ORS 161.315 to 161.351, a person affected by a mental disease or defect in a state of remission is considered to have a mental disease or defect. A person whose mental disease or defect may, with reasonable medical probability, occasionally become active and when it becomes active will render the person a danger to others may not be discharged. The person shall continue under supervision and treatment necessary to protect the person and others.

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

SECTION 6. ORS 161.390 is amended to read:

161.390. (1) The Oregon Health Authority shall adopt rules for the assignment of persons to state mental hospitals or secure intensive community inpatient facilities under ORS [161.315 to 161.351,] 161.365 and 161.370 and for establishing standards for evaluation and treatment of persons committed to a state hospital or a secure intensive community inpatient facility or ordered to a community mental health program under ORS 161.315 to 161.351.

(2) When the Psychiatric Security Review Board [or the authority] requires the preparation of a pre-discharge or preconditional release plan before a hearing or as a condition of granting discharge or conditional release for a person committed under ORS 161.315 to 161.351 to a state hospital or a secure intensive community inpatient facility for custody, care and treatment, the authority is responsible for and shall prepare the plan.

(3) In carrying out a conditional release plan prepared under subsection (2) of this section, the authority may contract with a community mental health program, other public agency or private corporation or an individual to provide supervision and treatment for the conditionally released person.

[4) Before the authority conducts a hearing under ORS 161.315 to 161.351, the authority shall notify the board. The board may provide the authority with conditions of release that the board determines are advisable. If the authority orders the person conditionally released, the authority shall include the conditions of release in the order.]

[5) (4) The board [and the authority] shall maintain and keep current the medical, social and criminal history of all persons committed to [their respective] its jurisdiction. The confidentiality of records maintained by the board shall be determined pursuant to ORS 192.501 to 192.505.

[6) (5) The evidentiary phase of a hearing conducted by the board [or the authority] under ORS 161.315 to 161.351 is not a deliberation for purposes of ORS 192.690.

SECTION 7. ORS 161.326 is amended to read:

161.326. (1) If the trial court[,] or the Psychiatric Security Review Board [or the Oregon Health Authority] determines that a victim desires notification as described in ORS 161.325 (2), the [agency having jurisdiction over the person] board shall make a reasonable effort to notify the victim of hearings and orders, conditional release, discharge or escape. Nothing in this subsection authorizes the [agency] board to disseminate information that is otherwise privileged by law.

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

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

(b) If the [agency] board determines that the [agency] 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 [agency] board shall grant the request for reconsideration. Upon reconsideration, the [agency] board shall consider the statement of the victim and may consider any other information that was not available to the [agency] board at the previous hearing.

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

(A) After the person has been discharged from the jurisdiction of the board [and the authority];

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

(C) If the [agency] 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 8. ORS 161.348 is amended to read:

161.348. (1) When a person over whom the Psychiatric Security Review Board [or the Oregon Health Authority] exercises jurisdiction under ORS 161.315 to 161.351 or 419C.544 is adversely affected or aggrieved by a final order of the board [or authority], 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 public defense services executive director 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 [agency that conducted the hearing] 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 [agency] 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 [agency] board, but the [agency] board or the Court of Appeals may order a stay upon application on such terms as are deemed proper.

SECTION 9. ORS 161.395 is amended to read:

161.395. (1) Upon request of any party to a hearing before the Psychiatric Security Review Board [or the Oregon Health Authority] under ORS 161.315 to 161.351, the [agency conducting the hearing] board shall issue, or on its own motion may issue, subpoenas requiring the attendance and testimony of witnesses.

(2) Upon request of any party to the hearing before the [agency] board and upon a proper showing of the general relevance and reasonable scope of the documentary or physical evidence sought, the [agency] board shall issue, or on its own motion may issue, subpoenas duces tecum.

(3) Witnesses appearing under subpoenas, other than the parties or state officers or employees, shall receive fees and mileage as prescribed by law for witnesses in ORS 44.415 (2). If the [agency] board certifies that the testimony of a witness was relevant and material, any person who has paid fees and mileage to that witness shall be reimbursed by the [agency] board.

(4) If any person fails to comply with a subpoena issued under subsections (1) or (2) of this section or any party or witness refuses to testify regarding any matter on which the party or witness may be lawfully interrogated, the judge of the circuit court of any county, on the application of the [agency that issued the subpoena] board or of the party requesting the issuance of the subpoena, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued by the court.

(5) If any person, agency or facility fails to comply with an order of the board [or authority] issued pursuant to subsection (2) of this section, the judge of a circuit court of any county, on appli-

cation of the [agency that issued the order] board, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of an order issued by the court. Contempt for disobedience of an order of the board [or authority] shall be punishable by a fine of \$100.

SECTION 10. ORS 161.400 is amended to read:

161.400. If, at any time after the commitment of a person to a state hospital or a secure intensive community inpatient facility under ORS 161.315 to 161.351, the superintendent of the hospital or the director of the facility is of the opinion that a leave of absence from the hospital or facility would be therapeutic for the person and that such leave would pose no substantial danger to others, the superintendent or director may authorize such leave for up to 48 hours in accordance with rules adopted by the [agency having jurisdiction over the person] Psychiatric Security Review Board. However, the superintendent or director, before authorizing the leave of absence, shall first notify the [agency] board for the purposes of ORS 161.326.

SECTION 11. ORS 161.332 is amended to read:

161.332. As used in ORS 161.315 to 161.351 and 161.385 to 161.395[:],

(1) Conditional release means, but is not limited to, the monitoring of mental and physical health treatment.

(2) Tier one offender means a person who has been found guilty except for insanity of a tier one offense.]

(3) Tier one offense means:]

(a) Aggravated murder as defined in ORS 163.095;]

(b) Attempt or conspiracy to commit aggravated murder as defined in ORS 163.095;]

(c) Murder as defined in ORS 163.115;]

(d) Attempt or conspiracy to commit murder as defined in ORS 163.115;]

(e) Manslaughter in the first degree as defined in ORS 163.118;]

(f) Manslaughter in the second degree as defined in ORS 163.125;]

(g) Assault in the first degree as defined in ORS 163.185;]

(h) Assault in the second degree as defined in ORS 163.175;]

(i) Kidnapping in the first degree as defined in ORS 163.235;]

(j) Kidnapping in the second degree as defined in ORS 163.225;]

(k) Rape in the first degree as defined ORS 163.375;]

(L) Rape in the second degree as defined in ORS 163.365;]

(m) Sodomy in the first degree as defined in ORS 163.405;]

(n) Sodomy in the second degree as defined in ORS 163.395;]

(o) Unlawful sexual penetration in the first degree as defined ORS 163.411;]

(p) Unlawful sexual penetration in the second degree as defined ORS 163.408;]

(q) Sexual abuse in the first degree as defined in ORS 163.427;]

(r) Robbery in the first degree as defined in ORS 164.415;]

(s) Robbery in the second degree as defined in ORS 164.405;]

(t) Arson in the first degree as defined in ORS 164.325;]

(u) Using a child in a display of sexually explicit conduct as defined in ORS 163.670;]

(v) Compelling prostitution as defined in ORS 167.017; or]

(w) Aggravated vehicular homicide as defined in ORS 163.149.]

(4) Tier two offender means a person who has been found guilty except for insanity only of offenses that are not tier one offenses.]

SECTION 12. ORS 161.327 is amended to read:

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

(a) If the court finds that the person is not a proper subject for conditional release, the court shall order the person committed to a state hospital or, if the person is under 18 years of age, to a secure intensive community inpatient facility for custody, care and treatment. When the court

orders a person committed under this paragraph, the court shall place the person under the jurisdiction of[:]

[(A) the Psychiatric Security Review Board[, if the person is a tier one offender.]

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

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

(2) When a person is conditionally released under this section, the person is subject to those supervisory orders of the court as are in the best interests of justice, the protection of society and the welfare of the person. The court shall designate a person or state, county or local agency to supervise the person upon release, subject to those conditions as the court directs in the order for conditional release. Prior to the designation, the court shall notify the person or agency to whom conditional release is contemplated and provide the person or agency an opportunity to be heard before the court. After receiving an order entered under subsection (1)(b) of this section, the person or agency designated shall assume supervision of the person pursuant to the direction of the Psychiatric Security Review Board. The person or agency designated as supervisor shall be required to report in writing no less than once per month to the board concerning the supervised person's compliance with the conditions of release.

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

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

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

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

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

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

(6) An order of the court under this section is a final order appealable by the person found guilty except for insanity in accordance with ORS 19.205 (5). Notwithstanding ORS 19.255, notice of an appeal under this section shall be served and filed within 90 days after the order appealed from is entered in the register. The person shall be entitled on appeal 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 in the manner provided in ORS 138.500 (1), and the compensation for counsel and costs and expenses of the person necessary to the appeal shall be determined and paid as provided in ORS 138.500.

(7) Following the entry of an order described in subsection (1) of this section, the court shall notify the person of the right to appeal and the right to a hearing before the [agency exercising jurisdiction over the person] board in accordance with ORS 161.336 (5) and 161.341 (3).

SECTION 13. ORS 161.349 is amended to read:

161.349. (1) When a person who is committed to a state hospital or a secure intensive community inpatient facility under ORS 161.315 to 161.351 is convicted of a crime and sentenced to a term of incarceration and when the person is sentenced to a term of incarceration as a sanction for violating the conditions of probation, parole or post-prison supervision, the sentencing court shall stay execution of the sentence pending the conditional release or discharge of the person or the expiration of the period of time described in ORS 161.327 (5). When the person is conditionally released or discharged by the [agency having jurisdiction over the person] Psychiatric Security Review Board under ORS 161.315 to 161.351, or when the maximum period of jurisdiction described in ORS

161.327 (5) expires, the stay shall be lifted by operation of law and the person shall be delivered to the custody of the Department of Corrections or the supervisory authority to begin service of the sentence imposed.

(2) When a person described in subsection (1) of this section is delivered to the custody of the department or the supervisory authority as described in this section, the [agency having jurisdiction over the person while the person was committed to a state hospital or a secure intensive community inpatient facility] board shall notify the department or the supervisory authority when the period of time described in ORS 161.327 (5) will expire.

(3) The department or supervisory authority shall notify the [Psychiatric Security Review] board when the person has served the term of incarceration imposed by the court and the board shall resume exercising active jurisdiction over the person in accordance with ORS 161.315 to 161.351.

(4) As used in this section, [supervisory authority] has the meaning given that term in ORS 144.087.

SECTION 14. ORS 21.010 is amended to read:

21.010. (1) Except as provided in this section, the appellant in an appeal or the petitioner in a judicial review in the Supreme Court or the Court of Appeals shall pay a filing fee of \$373 in the manner prescribed by ORS 19.265. The respondent in such case and any other person appearing in the appeal, upon entering first appearance or filing first brief in the court, shall pay to the State Court Administrator a filing fee of \$373. The party entitled to costs and disbursements on such appeal shall recover from the opponent the amount so paid.

(2) Filing and appearance fees may not be assessed in appeals from habeas corpus proceedings under ORS 34.710, post-conviction relief proceedings under ORS 138.650, juvenile court under ORS 419A.200, the involuntary commitment of persons determined to be persons with mental illness under ORS 426.135 or persons determined to have an intellectual disability under ORS 427.295 or orders of the State Board of Parole and Post-Prison Supervision or on judicial review of orders entered under ORS 161.315 to 161.351 by the Psychiatric Security Review Board [or the Oregon Health Authority].

(3) Filing and appearance fees shall be assessed in an appeal from an appeal to a circuit court from a justice court or municipal court in an action alleging commission of a state offense designated as a violation or an action alleging violation of a city charter or ordinance, but not in an action alleging commission of a state crime.

(4) Filing and appearance fees shall only be assessed in an appeal in a contempt proceeding seeking imposition of remedial sanctions under the provisions of ORS 33.055.

(5) The filing and appearance fees established by this section apply to cases of original jurisdiction in the Supreme Court.

SECTION 15. ORS 90.630 is amended to read:

90.630. (1) Except as provided in subsection (4) of this section, the landlord may terminate a rental agreement that is a month-to-month or fixed term tenancy for space for a manufactured dwelling or floating home by giving to the tenant not less than 30 days' notice in writing before the date designated in the notice for termination if the tenant:

(a) Violates a law or ordinance related to the tenant's conduct as a tenant, including but not limited to a material noncompliance with ORS 90.740;

(b) Violates a rule or rental agreement provision related to the tenant's conduct as a tenant and imposed as a condition of occupancy, including but not limited to a material noncompliance with a rental agreement regarding a program of recovery in drug and alcohol free housing;

(c) Is classified as a level three sex offender under ORS 163A.100 (3);

(d) Is an unclassified adult sex offender designated as predatory prior to January 1, 2014, or a person whom the State Board of Parole and Post-Prison Supervision[,] or the Psychiatric Security Review Board [or the Oregon Health Authority] has classified as a level three sex offender under section 7 (2)(b), chapter 708, Oregon Laws 2013; or

(e) Fails to pay a:

(A) Late charge pursuant to ORS 90.260;

(B) Fee pursuant to ORS 90.302; or

(C) Utility or service charge pursuant to ORS 90.534 or 90.536.

(2) A violation making a tenant subject to termination under subsection (1) of this section includes a tenant's failure to maintain the space as required by law, ordinance, rental agreement or rule, but does not include the physical condition of the dwelling or home. Termination of a rental agreement based upon the physical condition of a dwelling or home shall only be as provided in ORS 90.632.

(3) The notice required by subsection (1) of this section shall state facts sufficient to notify the tenant of the reasons for termination of the tenancy and state that the tenant may avoid termination by correcting the violation as provided in subsection (4) of this section.

(4) The tenant may avoid termination of the tenancy by correcting the violation within the 30-day period specified in subsection (1) of this section. However, if substantially the same act or omission that constituted a prior violation of which notice was given recurs within six months after the date of the notice, the landlord may terminate the tenancy upon at least 20 days' written notice specifying the violation and the date of termination of the tenancy.

(5) Notwithstanding subsection (3) or (4) of this section, a tenant who is given a notice of termination under subsection (1)(c) of this section does not have a right to correct the violation. A notice given to a tenant under subsection (1)(c) of this section must state that the tenant does not have a right to avoid the termination.

(6) This section does not limit a landlord's right to terminate a tenancy for nonpayment of rent under ORS 90.394 or for other cause under ORS 90.380 (5)(b), 90.396, 90.398 or 90.632 by complying with ORS 105.105 to 105.168.

(7) A tenancy terminates on the date designated in the notice and without regard to the expiration of the period for which, by the terms of the rental agreement, rents are to be paid. Unless otherwise agreed, rent is uniformly apportionable from day to day.

(8) Notwithstanding any other provision of this section or ORS 90.394, 90.396 or 90.398, the landlord may terminate the rental agreement for space for a manufactured dwelling or floating home because of repeated late payment of rent by giving the tenant not less than 30 days' notice in writing before the date designated in that notice for termination and may take possession as provided in ORS 105.105 to 105.168 if:

(a) The tenant has not paid the monthly rent prior to the eighth day of the rental period as described in ORS 90.394 (2)(a) or the fifth day of the rental period as described in ORS 90.394 (2)(b) in at least three of the preceding 12 months and the landlord has given the tenant a nonpayment of rent termination notice pursuant to ORS 90.394 (2) during each of those three instances of nonpayment;

(b) The landlord warns the tenant of the risk of a 30-day notice for termination with no right to correct the cause, upon the occurrence of a third nonpayment of rent termination notice within a 12-month period. The warning must be contained in at least two nonpayment of rent termination notices that precede the third notice within a 12-month period or in separate written notices that are given concurrent with, or a reasonable time after, each of the two nonpayment of rent termination notices; and

(c) The 30-day notice of termination states facts sufficient to notify the tenant of the cause for termination of the tenancy and is given to the tenant concurrent with or after the third or a subsequent nonpayment of rent termination notice.

(9) Notwithstanding subsection (4) of this section, a tenant who receives a 30-day notice of termination pursuant to subsection (8) of this section does not have a right to correct the cause for the notice.

(10) The landlord may give a copy of the notice required by subsection (8) of this section to any lienholder of the manufactured dwelling or floating home by first class mail with certificate of mailing or by any other method allowed by ORS 90.150 (2) and (3). A landlord is not liable to a tenant for any damages incurred by the tenant as a result of the landlord giving a copy of the notice

in good faith to a lienholder. A lienholder's rights and obligations regarding an abandoned manufactured dwelling or floating home shall be as provided under ORS 90.675.

SECTION 16. ORS 137.223 is amended to read:

137.223. (1) A person who has been found guilty except for insanity of an offense for which, if convicted, the person could apply for entry of an order setting aside the conviction pursuant to ORS 137.225, may by motion apply to the court for entry of an order setting aside the judgment finding the person guilty except for insanity of the offense.

(2) A person described in subsection (1) of this section may file the motion to set aside a judgment of guilty except for insanity any time after three years from the date of entry of the judgment of guilty except for insanity, provided that:

(a) The person is no longer under the jurisdiction of the Psychiatric Security Review Board [or the Oregon Health Authority]; and

(b) The person has no other findings of guilty except for insanity within the 10 years prior to filing the motion and no convictions for offenses other than motor vehicle violations within the 10 years prior to filing the motion.

(3)(a) A copy of the motion and a full set of the defendant's fingerprints shall be served upon the office of the prosecuting attorney who prosecuted the offense and opportunity shall be given to contest the motion. The fingerprint card with the notation "Motion for setting aside judgment of guilty except for insanity" shall be forwarded to the Department of State Police. Information resulting from the fingerprint search along with the fingerprint card shall be returned to the prosecuting attorney.

(b) When a prosecuting attorney is served with a copy of a motion to set aside a judgment of guilty except for insanity under this section, the prosecuting attorney shall provide a copy of the motion and notice of the hearing date to the victim, if any, of the offense by mailing a copy of the motion and notice to the victim's last-known address.

(c) When a person files a motion under this section, the person must pay a fee of \$80 to the Department of State Police. The person shall attach a certified check payable to the Department of State Police in the amount of \$80 to the fingerprint card that is served upon the prosecuting attorney. The office of the prosecuting attorney shall forward the check with the fingerprint card to the Department of State Police.

(d) In addition to the fee established under paragraph (c) of this subsection, the person must pay the filing fee established under ORS 21.135.

(4)(a) Upon hearing the motion, the court may require the filing of such affidavits and may require the taking of such proofs as the court deems proper. The court shall allow the victim, if any, to make a statement at the hearing.

(b) Except as otherwise provided in paragraph (c) of this subsection, if the court determines that the circumstances and behavior of the person from the date of the judgment of guilty except for insanity to the date of the hearing on the motion warrant the court granting the motion, the court shall enter an order setting aside the judgment of guilty except for insanity.

(c) Unless the court makes written findings by clear and convincing evidence that granting the motion would not be in the best interests of justice, the court shall grant the motion and enter an order as provided in paragraph (b) of this subsection if the defendant was found guilty except for insanity of an offense described in ORS 137.225 (12) and is otherwise eligible for relief under this section.

(d) An order entered under this subsection shall state the original arrest charge and the charge for which the person was found guilty except for insanity. The order shall further state that positive identification has been established by the Department of State Police and further identified as to Department of State Police number or submitting agency number.

(5)(a) Upon the entry of an order under subsection (4) of this section:

(A) The person, for purposes of the law, shall be deemed not to have been previously found guilty except for insanity, and the court shall issue an order sealing the records of the case, including the records of arrest, whether or not the arrest resulted in a further criminal proceeding.

(B) The court shall inform the person that the person's right to possess, purchase or otherwise acquire a firearm remains prohibited under federal law.

(b) For purposes of this subsection, records of the case do not include medical records that are in the possession of the Psychiatric Security Review Board [or the Oregon Health Authority], including medical evaluations and reports submitted from other agencies concerning the status or compliance of the person.

(6) The clerk of the court shall forward a certified copy of the order entered under subsection (5) of this section to such agencies as directed by the court. A certified copy shall be sent to the Psychiatric Security Review Board [or the Oregon Health Authority, as appropriate]. Upon entry of the order, the judgment of guilty except for insanity shall be deemed not to have been entered, and the person may answer accordingly any questions relating to its occurrence.

(7) For purposes of any civil action in which truth is an element of a claim for relief or affirmative defense, the provisions of subsection (6) of this section providing that the judgment of guilty except for insanity be deemed not to have been entered do not apply and a party may apply to the court for an order requiring disclosure of the official records in the case as may be necessary in the interests of justice.

(8) Upon motion of any prosecutor or defendant in a case involving records sealed under this section, supported by affidavit showing good cause, the court with jurisdiction may order the reopening and disclosure of any records sealed under this section for the limited purpose of assisting the investigation of the movant. However, such an order has no other effect on the orders setting aside the judgment of guilty except for insanity.

SECTION 17. ORS 137.750 is amended to read:

137.750. (1) When a court sentences a defendant to a term of incarceration upon conviction of a crime, the court shall order on the record in open court as part of the sentence imposed that the defendant may be considered by the executing or releasing authority for any form of temporary leave from custody, reduction in sentence, work release or program of conditional or supervised release authorized by law for which the defendant is otherwise eligible at the time of sentencing, unless the court finds on the record in open court substantial and compelling reasons to order that the defendant not be considered for such leave, release or program.

(2) The executing or releasing authority may consider the defendant for a program described in subsection (1) of this section only upon order of the sentencing court appearing in the judgment.

(3) As used in this section:

(a) **E**xecuting or releasing authority means the Department of Corrections, State Board of Parole and Post-Prison Supervision, Oregon Youth Authority, Psychiatric Security Review Board, [Oregon Health Authority,] sentencing court or supervisory authority.

(b) **S**upervisory authority has the meaning given that term in ORS 144.087.

SECTION 18. ORS 144.641 is amended to read:

144.641. As used in this section and ORS 144.642, 144.644 and 144.646:

(1) **D**welling has the meaning given that term in ORS 469B.100.

(2) **D**welling does not include a residential treatment facility or a halfway house.

(3) **H**alfway house means a publicly or privately operated profit or nonprofit residential facility that provides rehabilitative care and treatment for sex offenders.

(4) **L**ocations where children are the primary occupants or users includes, but is not limited to, public and private elementary and secondary schools and licensed child care centers.

(5) **S**ex offender means:

(a) A sexually violent dangerous offender as defined in ORS 137.765;

(b) A level three sex offender under ORS 163A.100 (3); or

(c) An unclassified adult sex offender designated as predatory prior to January 1, 2014, or a person whom the State Board of Parole and Post-Prison Supervision[,] or the Psychiatric Security Review Board [or the Oregon Health Authority] has classified as a level three sex offender under section 7 (2)(b), chapter 708, Oregon Laws 2013.

(6) Transitional housing means housing intended to be occupied by a sex offender for 45 days or less immediately after release from incarceration.

SECTION 19. ORS 151.216 is amended to read:

151.216. (1) The Public Defense Services Commission shall:

(a) Establish and maintain a public defense system that ensures the provision of public defense services in the most cost-efficient manner consistent with the Oregon Constitution, the United States Constitution and Oregon and national standards of justice.

(b) Establish an office of public defense services and appoint a public defense services executive director who serves at the pleasure of the commission.

(c) Submit the budget of the commission and the office of public defense services to the Legislative Assembly after the budget is submitted to the commission by the director and approved by the commission. The Chief Justice of the Supreme Court and the chairperson of the commission shall present the budget to the Legislative Assembly.

(d) Review and approve any public defense services contract negotiated by the director before the contract can become effective.

(e) Adopt a compensation plan, classification system and personnel plan for the office of public defense services that are commensurate with other state agencies.

(f) Adopt policies, procedures, standards and guidelines regarding:

(A) The determination of financial eligibility of persons entitled to be represented by appointed counsel at state expense;

(B) The appointment of counsel;

(C) The fair compensation of counsel appointed to represent a person financially eligible for appointed counsel at state expense;

(D) Appointed counsel compensation disputes;

(E) Any other costs associated with the representation of a person by appointed counsel in the state courts that are required to be paid by the state under ORS 34.355, 135.055, 138.500, 138.590, 161.346, 161.348, 161.365, 419A.211, 419B.201, 419B.208, 419B.518, 419B.908, 419C.206, 419C.209, 419C.408, 419C.535, 426.100, 426.135, 426.250, 426.307, 427.265, 427.295, 436.265 or 436.315 or any other provision of law that expressly provides for payment of such compensation, costs or expenses by the commission;

(F) Professional qualifications for counsel appointed to represent public defense clients;

(G) Performance for legal representation;

(H) The contracting of public defense services;

(I) Contracting with expert witnesses to allow contracting with out-of-state expert witnesses only if in-state expert witnesses are not available or are more expensive than out-of-state expert witnesses; and

(J) Any other matters necessary to carry out the duties of the commission.

(g) Establish a peer review system for the approval of nonroutine fees and expenses incurred in cases involving aggravated murder and the crimes listed in ORS 137.700 and 137.707. The review shall be conducted by a panel of attorneys who practice in the area of criminal defense.

(h) Establish a complaint process that allows district attorneys, criminal defense counsel and the public to file complaints concerning the payment from public funds of nonroutine fees and expenses incurred in cases.

(i) Reimburse the State Court Administrator from funds deposited in the Public Defense Services Account established by ORS 151.225 for the costs of personnel and other costs associated with location of eligibility verification and screening personnel pursuant to ORS 151.489 by the State Court Administrator.

(2) Policies, procedures, standards and guidelines adopted by the commission supersede any conflicting rules, policies or procedures of the Public Defender Committee, State Court Administrator, circuit courts, the Court of Appeals, the Supreme Court[,] and the Psychiatric Security Review Board [and the Oregon Health Authority] related to the exercise of the commission's administrative responsibilities under this section and transferred duties, functions and powers as they occur.

(3) The commission may accept gifts, grants or contributions from any source, whether public or private. However, the commission may not accept a gift, grant or contribution if acceptance would create a conflict of interest. Moneys accepted under this subsection shall be deposited in the Public Defense Services Account established by ORS 151.225 and expended for the purposes for which given or granted.

(4) The commission may not:

(a) Make any decision regarding the handling of any individual case;

(b) Have access to any case file; or

(c) Interfere with the director or any member of the staff of the director in carrying out professional duties involving the legal representation of public defense clients.

SECTION 20. ORS 162.135 is amended to read:

162.135. As used in ORS 162.135 to 162.205, unless the context requires otherwise:

(1)(a) **C**ontraband **m**means:

(A) Controlled substances as defined in ORS 475.005;

(B) Drug paraphernalia as defined in ORS 475.525;

(C) Except as otherwise provided in paragraph (b) of this subsection, currency possessed by or in the control of an inmate confined in a correctional facility; or

(D) Any article or thing which a person confined in a correctional facility, youth correction facility or state hospital is prohibited by statute, rule or order from obtaining or possessing, and whose use would endanger the safety or security of such institution or any person therein.

(b) **C**ontraband **d**oes not include authorized currency possessed by an inmate in a work release facility.

(2) **C**orrectional facility **m**means any place used for the confinement of persons charged with or convicted of a crime or otherwise confined under a court order and includes but is not limited to a youth correction facility. **C**orrectional facility **a**ppplies to a state hospital or a secure intensive community inpatient facility only as to persons detained therein charged with or convicted of a crime, or detained therein after having been found guilty except for insanity of a crime under ORS 161.290 to 161.370.

(3) **C**urrency **m**means paper money and coins that are within the correctional institution.

(4) **C**ustody **m**means the imposition of actual or constructive restraint by a peace officer pursuant to an arrest or court order, but does not include detention in a correctional facility, youth correction facility or a state hospital.

(5) **E**scape **m**means the unlawful departure of a person from custody or a correctional facility. **E**scape **i**ncludes the unauthorized departure or absence from this state or failure to return to this state by a person who is under the jurisdiction of the Psychiatric Security Review Board [or under the jurisdiction of the Oregon Health Authority] under ORS 161.315 to 161.351. **E**scape **d**oes not include failure to comply with provisions of a conditional release in ORS 135.245.

(6) **Y**outh correction facility **m**means:

(a) A youth correction facility as defined in ORS 420.005; and

(b) A detention facility as defined in ORS 419A.004.

(7) **S**tate hospital **m**means the Oregon State Hospital and any other hospital established by law for similar purposes.

(8) **U**nauthorized departure **m**means the unauthorized departure of a person confined by court order in a youth correction facility or a state hospital that, because of the nature of the court order, is not a correctional facility as defined in this section, or the failure to return to custody after any form of temporary release or transitional leave from a correctional facility.

SECTION 21. ORS 162.155 is amended to read:

162.155. (1) A person commits the crime of escape in the second degree if:

(a) The person uses or threatens to use physical force escaping from custody; or

(b) Having been convicted or found guilty of a felony, the person escapes from custody imposed as a result thereof; or

(c) The person escapes from a correctional facility; or

(d) While under the jurisdiction of the Psychiatric Security Review Board [or under the jurisdiction of the Oregon Health Authority] under ORS 161.315 to 161.351, the person departs, is absent from or fails to return to this state without authorization of the board.

(2) Escape in the second degree is a Class C felony.

SECTION 22. 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 161.295 to 161.370;

(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 [or the Oregon Health Authority] 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.

(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 23. ORS 183.315 is amended to read:

183.315. (1) The provisions of ORS 183.410, 183.415, 183.417, 183.425, 183.440, 183.450, 183.452, 183.458, 183.460, 183.470 and 183.480 do not apply to local government boundary commissions created pursuant to ORS 199.430, the Department of Revenue, State Accident Insurance Fund Corporation, Department of Consumer and Business Services with respect to its functions under ORS chapters 654 and 656, State Board of Parole and Post-Prison Supervision[,] or Psychiatric Security Review Board [or Oregon Health Authority] with respect to its functions under ORS 161.315 to 161.351.

(2) This chapter does not apply with respect to actions of the Governor authorized under ORS chapter 240 and ORS 396.125 or actions of the Adjutant General authorized under ORS 396.160 (14).

(3) The provisions of ORS 183.410, 183.415, 183.417, 183.425, 183.440, 183.450, 183.452, 183.458 and 183.460 do not apply to the Employment Appeals Board or the Employment Department.

(4) The Employment Department shall be exempt from the provisions of this chapter to the extent that a formal finding of the United States Secretary of Labor is made that such provision conflicts with the terms of the federal law, acceptance of which by the state is a condition precedent to continued certification by the United States Secretary of Labor of the state's law.

(5) The provisions of ORS 183.415 to 183.430, 183.440 to 183.460, 183.470 to 183.485 and 183.490 to 183.500 do not apply to orders issued to persons who:

(a) Have been committed pursuant to ORS 137.124 to the custody of the Department of Corrections or are otherwise confined in a Department of Corrections facility; or

(b) Seek to visit an inmate confined in a Department of Corrections facility.

(6) ORS 183.410, 183.415, 183.417, 183.425, 183.440, 183.450, 183.460, 183.470 and 183.482 (3) do not apply to the Public Utility Commission. Notwithstanding ORS 183.480 and except as provided in ORS 757.495 and 759.390, only a party to a hearing before the Public Utility Commission is entitled to seek judicial review of an order of the commission.

(7) The provisions of this chapter do not apply to the suspension, cancellation or termination of an apprenticeship or training agreement under ORS 660.060.

(8) The provisions of ORS 183.413 to 183.497 do not apply to administrative proceedings conducted under rules adopted by the Secretary of State under ORS 246.190.

SECTION 24. ORS 183.635 is amended to read:

183.635. (1) Except as provided in this section, all agencies must use administrative law judges assigned from the Office of Administrative Hearings established under ORS 183.605 to conduct contested case hearings, without regard to whether those hearings are subject to the procedural requirements for contested case hearings.

(2) The following agencies need not use administrative law judges assigned from the office:

(a) Attorney General.

(b) Boards of stewards appointed by the Oregon Racing Commission.

(c) Bureau of Labor and Industries and the Commissioner of the Bureau of Labor and Industries.

(d) Department of Corrections.

(e) Department of Education, State Board of Education and Superintendent of Public Instruction.

(f) Department of Human Services for vocational rehabilitation services cases under 29 U.S.C. 722(c) and disability determination cases under 42 U.S.C. 405.

(g) Department of Revenue.

(h) Department of State Police.

(i) Employment Appeals Board.

(j) Employment Relations Board.

(k) Energy Facility Siting Council.

(L) Fair Dismissal Appeals Board.

(m) Governor.

(n) Land Conservation and Development Commission.

(o) Land Use Board of Appeals.

(p) Local government boundary commissions created pursuant to ORS 199.430.

(q) Public universities listed in ORS 352.002.

(r) Oregon Youth Authority.

(s) Psychiatric Security Review Board.

[(t) The Oregon Health Authority for hearings conducted under ORS 161.315 to 161.351.]

[(u)] (t) Public Utility Commission.

[(v)] (u) State Accident Insurance Fund Corporation.

[(w)] (v) State Apprenticeship and Training Council.

[(x)] (w) State Board of Parole and Post-Prison Supervision.

[(y)] (x) State Land Board.

[(z)] (y) State Treasurer.

(3) The Workers' Compensation Board is exempt from using administrative law judges assigned from the office for any hearing conducted by the board under ORS chapters 147, 654 and 656. Except

as specifically provided in this subsection, the Department of Consumer and Business Services must use administrative law judges assigned from the office only for contested cases arising out of the department's powers and duties under:

- (a) ORS 86A.095 to 86A.198, 86A.990 and 86A.992 and ORS chapter 59;
- (b) ORS chapter 455;
- (c) ORS chapter 674;
- (d) ORS chapters 706 to 716;
- (e) ORS chapter 717;
- (f) ORS chapters 723, 725 and 726; and
- (g) ORS chapters 731, 732, 733, 734, 735, 737, 742, 743, 743A, 743B, 744, 746, 748 and 750.

(4) Notwithstanding any other provision of law, in any proceeding in which an agency is required to use an administrative law judge assigned from the office, an officer or employee of the agency may not conduct the hearing on behalf of the agency.

(5) Notwithstanding any other provision of ORS 183.605 to 183.690, an agency is not required to use an administrative law judge assigned from the office if:

- (a) Federal law requires that a different administrative law judge or hearing officer be used; or
- (b) Use of an administrative law judge from the office could result in a loss of federal funds.

(6) Notwithstanding any other provision of this section, the Department of Environmental Quality must use administrative law judges assigned from the office only for contested case hearings conducted under the provisions of ORS 183.413 to 183.470.

SECTION 25. ORS 192.690 is amended to read:

192.690. (1) ORS 192.610 to 192.690 do not apply to the deliberations of [the Oregon Health Authority conducted under ORS 161.315 to 161.351,] the Psychiatric Security Review Board, the State Board of Parole and Post-Prison Supervision, state agencies conducting hearings on contested cases in accordance with the provisions of ORS chapter 183, the review by the Workers' Compensation Board or the Employment Appeals Board of similar hearings on contested cases, meetings of the state lawyers assistance committee operating under the provisions of ORS 9.568, meetings of the personal and practice management assistance committees operating under the provisions of ORS 9.568, the county multidisciplinary child abuse teams required to review child abuse cases in accordance with the provisions of ORS 418.747, the child fatality review teams required to review child fatalities in accordance with the provisions of ORS 418.785, the peer review committees in accordance with the provisions of ORS 441.055, mediation conducted under ORS 36.252 to 36.268, any judicial proceeding, meetings of the Oregon Health and Science University Board of Directors or its designated committee regarding candidates for the position of president of the university or regarding sensitive business, financial or commercial matters of the university not customarily provided to competitors related to financings, mergers, acquisitions or joint ventures or related to the sale or other disposition of, or substantial change in use of, significant real or personal property, or related to health system strategies, or to Oregon Health and Science University faculty or staff committee meetings.

(2) Because of the grave risk to public health and safety that would be posed by misappropriation or misapplication of information considered during such review and approval, ORS 192.610 to 192.690 shall not apply to review and approval of security programs by the Energy Facility Siting Council pursuant to ORS 469.530.

SECTION 26. ORS 278.315 is amended to read:

278.315. (1) The Oregon Health Authority may provide tort liability coverage through the Oregon Department of Administrative Services to any county or private community care provider that has contracted with the authority to provide supervision, care, treatment or training of persons under the jurisdiction of the Psychiatric Security Review Board [or the authority] under ORS 161.315 to 161.351. Counties or private community care providers, and the officers and employees of those counties and providers acting within the scope of their employment, may be covered to the extent that any tort claim arises out of the provision of supervision, care, treatment or training of persons pursuant to the terms of the contract. Tort liability coverage under this section must be in writing,

and may be part of the contract between the authority and the county or private community care provider. The coverage provided under this section shall be self-insurance by the State of Oregon to the limits contained in ORS 30.260 to 30.300.

(2) Counties or private community care providers that have contracted with the authority to provide supervision, care, treatment or training of persons under the jurisdiction of the Psychiatric Security Review Board [or the authority] under ORS 161.315 to 161.351, and the officers and employees of those counties and providers, are not agents of the authority for the purposes of ORS 30.260 to 30.300.

SECTION 27. ORS 430.695 is amended to read:

430.695. (1) Any program fees, third-party reimbursements, contributions or funds from any source, except client resources applied toward the cost of care in group homes for persons with developmental disabilities or mental illness and client resources and third-party payments for community psychiatric inpatient care, received by a community mental health program or a community developmental disabilities program are not an offset to the costs of the services and may not be applied to reduce the program's eligibility for state funds, providing the funds are expended for mental health or developmental disabilities services approved by the Oregon Health Authority or the Department of Human Services.

(2) Within the limits of available funds, the authority and the department may contract for specialized, statewide and regional services including but not limited to group homes for persons with developmental disabilities or mental or emotional disturbances, day and residential treatment programs for children and adolescents with mental or emotional disturbances and community services for clients of the Psychiatric Security Review Board [or the authority] under ORS 161.315 to 161.351.

(3) Fees and third-party reimbursements, including all amounts paid pursuant to Title XIX of the Social Security Act by the Department of Human Services or the Oregon Health Authority, for mental health services or developmental disabilities services and interest earned on those fees and reimbursements shall be retained by the community mental health program or community developmental disabilities program and expended for any service that meets the standards of ORS 430.630 or 430.664.

SECTION 28. ORS 809.419 is amended to read:

809.419. (1)(a) The Department of Transportation shall suspend the driving privileges of a person if the department requests the person to submit to examination under ORS 807.340 and the person fails to appear within a reasonable length of time after being notified to do so or fails to satisfactorily complete the required examination. A suspension under this subsection shall continue until the examination required by the department is successfully completed or until the person voluntarily surrenders the person's driving privileges to the department based upon the person's recognition that the person is no longer competent to drive.

(b) Upon suspension under this subsection, the department may issue an identification card to the person for identification purposes as described under ORS 807.400.

(2) The department shall suspend the driving privileges of a person if the department requests the person to obtain medical clearance under ORS 807.070 or 807.090 and the person fails to do so. The suspension under this subsection shall continue until the required medical clearance is received by the department or until the person voluntarily surrenders the person's driving privileges to the department based upon the person's recognition that the person is no longer competent to drive.

(3)(a) The department may suspend the driving privileges of a person who is incompetent to drive a motor vehicle because of a mental or physical condition or impairment that affects the person's ability to safely operate a motor vehicle upon the highways.

(b) A suspension under this subsection shall be subject to any conditions the department determines to be necessary and shall continue for a period determined by the department or until the person voluntarily surrenders the person's driving privileges to the department based upon the person's recognition that the person is no longer competent to drive.

(c) The department may impose an immediate suspension of driving privileges of any person described in paragraph (a) of this subsection without hearing and without receiving a record of the

conviction of the person of a crime if the department has reason to believe that the person may endanger people or property if the person's driving privileges are not immediately suspended. A suspension under this paragraph is subject to a post-imposition hearing under ORS 809.440. A person who is denied eligibility under ORS 807.090 is entitled to a hearing under ORS 809.440.

(4)(a) Whenever the department has reason to believe an individual with a motorcycle endorsement under ORS 807.170 is incompetent to operate a motorcycle, the department may revoke the endorsement.

(b) Upon revocation under this subsection, the endorsed license shall be surrendered to the department.

(c) Upon surrender of the endorsed license, the department may issue a license without endorsement for the unexpired period of the license.

(5) Upon notification by the superintendent of a hospital under ORS 807.700 that a person should not drive, the department shall immediately suspend the driving privileges of the released person. A suspension under this subsection is subject to administrative review under ORS 809.440 and shall continue until such time as the person produces a judicial judgment of competency or a certificate from the superintendent of the hospital that the person is competent, or establishes eligibility under ORS 807.090.

(6) Upon notification by a court under ORS 810.375 that a person charged with a traffic offense has been found guilty except for insanity and committed to the jurisdiction of the Psychiatric Security Review Board [or the Oregon Health Authority] under ORS 161.315 to 161.351, the department shall immediately suspend the driving privileges of the person. A suspension under this subsection is subject to administrative review under ORS 809.440 and shall continue until such time as the person establishes eligibility under ORS 807.090.

SECTION 29. ORS 810.375 is amended to read:

810.375. (1) The judge or clerk of every court of this state having jurisdiction of any traffic offense, including all local and municipal judicial officers in this state:

(a) Shall keep a full record of every case in which a person is charged with any such offense.

(b) Shall send the Department of Transportation an abstract of conviction for any person who is convicted.

(c) Shall send the department a copy of any final judgment of conviction of any person that results in mandatory suspension or revocation of driving privileges or commercial driving privileges under ORS 809.409, 809.411, 809.510 to 809.545 or 813.400.

(d) Shall send the department a copy of any final judgment finding a person charged with a traffic offense guilty except for insanity and committed to the jurisdiction of the Psychiatric Security Review Board [or the Oregon Health Authority] under ORS 161.315 to 161.351.

(2) The department shall keep such records in its office, and they shall be open to the inspection of any person during reasonable business hours.

(3) To comply with this section, a judge or clerk must comply with the following:

(a) Any information required by this section to be sent to the department must be sent within the time provided under ORS 810.370 and must include information required by ORS 810.370.

(b) Information may not be sent to the department under this section concerning convictions excluded from ORS 810.370.

SECTION 30. ORS 163A.105 is amended to read:

163A.105. (1) When a person convicted of a crime described in ORS 163.355 to 163.427 is sentenced to a term of imprisonment in a Department of Corrections institution for that crime, the State Board of Parole and Post-Prison Supervision shall assess the person utilizing the risk assessment methodology described in ORS 163A.100. The board shall apply the results of the assessment to place the person in one of the levels described in ORS 163A.100 before the person is released from custody.

(2) When a person convicted of a sex crime is sentenced to a term of incarceration in a jail, or is discharged, released or placed on probation by the court, the supervisory authority as defined in ORS 144.087 shall assess the person utilizing the risk assessment methodology described in ORS

163A.100 and apply the results of the assessment to place the person in one of the levels described in ORS 163A.100 no later than 60 days after the person is released from jail or discharged, released or placed on probation by the court.

(3)(a) When a person is found guilty except for insanity of a sex crime, the Psychiatric Security Review Board [or the Oregon Health Authority] shall assess the person utilizing the risk assessment methodology described in ORS 163A.100 and apply the results of the assessment to place the person in one of the levels described in ORS 163A.100 no later than 60 days after the person is:

(A) Placed on conditional release by the Psychiatric Security Review Board [or the Oregon Health Authority];

(B) Discharged from the jurisdiction of the Psychiatric Security Review Board [or the Oregon Health Authority];

(C) Placed on conditional release by the court pursuant to ORS 161.327; or

(D) Discharged by the court pursuant to ORS 161.329.

(b) If the State Board of Parole and Post-Prison Supervision previously completed a risk assessment and assigned a classification level described in ORS 163A.100 for a person described in paragraph (a) of this subsection, the Psychiatric Security Review Board [or the Oregon Health Authority] need not complete a reassessment for an initial classification.

(c) The court shall notify the Psychiatric Security Review Board when the court conditionally releases or discharges a person described in paragraph (a) of this subsection.

(d) The Psychiatric Security Review Board [or the Oregon Health Authority] shall notify the State Board of Parole and Post-Prison Supervision no later than seven days after the Psychiatric Security Review Board [or the authority] conditionally releases or discharges a person who has a prior sex crime conviction that obligates the person to report as a sex offender, unless the person has also been found guilty except for insanity of a sex crime that obligates the person to report as a sex offender.

(4) Within 60 days after the event triggering the obligation to make an initial report, the State Board of Parole and Post-Prison Supervision shall assess a person utilizing the risk assessment methodology described in ORS 163A.100 and apply the results of the assessment to place the person in one of the levels described in ORS 163A.100 if the person:

(a) Has been convicted in another United States court of a crime:

(A) That would constitute a sex crime if committed in this state; or

(B) For which the person would have to register as a sex offender in that court's jurisdiction, or as required under federal law, regardless of whether the crime would constitute a sex crime in this state; or

(b) Has been convicted of a sex crime and was sentenced to a term of imprisonment in a Department of Corrections institution for that sex crime, but was not subjected to a risk assessment utilizing the risk assessment methodology described in ORS 163A.100 before release under subsection (1) of this section.

(5) When the State Board of Parole and Post-Prison Supervision, the Psychiatric Security Review Board[, the Oregon Health Authority] or a supervisory authority applies the results of a risk assessment to place a person in one of the levels described in ORS 163A.100, the agency shall notify the Department of State Police of the results of the risk assessment within three business days after the agency's classification. Upon receipt, the Department of State Police shall enter the results of the risk assessment into the Law Enforcement Data System.

SECTION 31. Section 7, chapter 708, Oregon Laws 2013, as amended by section 27, chapter 820, Oregon Laws 2015, is amended to read:

Sec. 7. (1) As used in this section and [sections 19 to 21 of this 2015 Act] ORS 163A.200 to 163A.210:

(a) Event triggering the obligation to make an initial report has the meaning given that term in ORS [181.802] 163A.110.

(b) Existing registrant means a person for whom the event triggering the obligation to make an initial report under ORS [181.806 (3)(a)(A), 181.807 (4)(a)(A) or 181.808 (1)(a)(A), (2)(a)(A) or

(3)(a)(A) 163A.010 (3)(a)(A), 163A.015 (4)(a)(A) or 163A.020 (1)(a)(A), (2)(a)(A) or (3)(a)(A) occurs before January 1, 2014.

(2)(a) No later than December 1, 2018, the State Board of Parole and Post-Prison Supervision shall classify existing registrants in one of the levels described in ORS [181.800] 163A.100. No later than February 1, 2019, the Department of State Police shall enter the results of the classifications described in this section into the Law Enforcement Data System.

(b) The board shall classify an existing registrant as a level three sex offender under ORS [181.800] 163A.100 (3), if:

(A) The person was previously designated a predatory sex offender and the designation was made after the person was afforded notice and an opportunity to be heard as to all factual questions at a meaningful time and in a meaningful manner; or

(B) The person is a sexually violent dangerous offender under ORS 137.765.

(c) The Psychiatric Security Review Board may complete the risk assessment of an existing registrant who is under the jurisdiction of the Psychiatric Security Review Board [or the Oregon Health Authority], regardless of whether the person has been found guilty except for insanity of a sex crime or was previously convicted of a sex crime, if the State Board of Parole and Post-Prison Supervision and the Psychiatric Security Review Board mutually agree that the Psychiatric Security Review Board has adequate resources to perform the assessment and that the performance of the assessment by the Psychiatric Security Review Board would assist in classifying the existing registrant in a more timely manner.

(3) As soon as practicable following the classification of an existing registrant under this section, the classifying board shall notify the person of the classification by mail.

(4)(a) An existing registrant who seeks review of a classification made under this section may petition the classifying board for review. The petition may be filed no later than 60 days after the board provides the notice described in subsection (3) of this section.

(b) Upon receipt of a petition described in this subsection, the classifying board shall afford the person an opportunity to be heard as to all factual questions related to the classification.

(c) After providing the person with notice and an opportunity to be heard in accordance with this subsection, the board shall classify the person in accordance with the classifications described in ORS [181.800] 163A.100, based on all of the information available to the classifying board.

(5) The boards shall adopt rules to carry out the provisions of this section.

(6) An existing registrant may not petition for reclassification or relief from the obligation to report as a sex offender as provided in ORS [181.821] 163A.125 until either all existing registrants have been classified in one of the levels described in ORS [181.800] 163A.100 or December 1, 2018, whichever occurs first.

(7) Notwithstanding ORS [181.837] 163A.225 or any other provision of law, the Department of State Police may until December 1, 2018, continue to use the Internet to make information available to the public concerning any adult sex offender designated as predatory as authorized by the law in effect on December 31, 2013.

(8) If the State Board of Parole and Post-Prison Supervision or the Psychiatric Security Review Board does not classify an existing registrant under ORS [181.800] 163A.100 because the person has failed or refused to participate in a sex offender risk assessment as directed by the State Board of Parole and Post-Prison Supervision or the Psychiatric Security Review Board, the person is, by operation of law, classified as a level three sex offender under ORS [181.800] 163A.100 (3) as of January 1, 2019.

SECTION 32. ORS 163A.210 is amended to read:

163A.210. Notwithstanding ORS 419A.257 or any other provision of law, the Oregon Youth Authority and the juvenile department may disclose and provide copies of reports and other materials relating to a child, ward, youth or youth offender's history and prognosis to the Psychiatric Security Review Board[, the Oregon Health Authority] or the State Board of Parole and Post-Prison Supervision in order to determine whether to reclassify the person as a level one or a level two sex offender or relieve the person from the obligation to report as a sex offender, as described in ORS

163A.125, or whether to classify a person who is an existing registrant into one of the three levels described in ORS 163A.100, as required by section 7, chapter 708, Oregon Laws 2013.

SECTION 33. ORS 163A.215 is amended to read:

163A.215. (1)(a) A notifying agency or a supervising agency shall release, upon request, any information that may be necessary to protect the public concerning sex offenders who reside in a specific area or concerning a specific sex offender.

(b) A notifying agency or a supervising agency may release sex offender information to a law enforcement agency if the notifying agency or supervising agency determines that the release of information is in the public interest.

(c) In addition to the release of information described in this subsection and ORS 137.540, 144.260 and 441.373, a notifying agency or a supervising agency may release sex offender information to the public in accordance with subsections (2) to (4) of this section.

(2) If the sex offender is classified as a level three sex offender under ORS 163A.100 (3):

(a) The Department of State Police shall release sex offender information on a website maintained by the department; and

(b) The supervising agency or a notifying agency may release sex offender information to:

(A) A person that resides with the sex offender;

(B) A person with whom the sex offender has a significant relationship;

(C) Residential neighbors and churches, community parks, schools and child care centers, convenience stores, businesses and other places that children or other potential victims may frequent;

(D) A long term care facility, as defined in ORS 442.015, or a residential care facility, as defined in ORS 443.400, if the agency knows that the sex offender is seeking admission to the facility; and

(E) Local or regional media sources.

(3) Notwithstanding subsection (2)(a) of this section, the Department of State Police may not use the Internet to make available to the public information concerning a sex offender classified as a level three sex offender under ORS 163A.100 (3) while the person is under the supervision of the Psychiatric Security Review Board [or the Oregon Health Authority], unless the department is authorized to do so by a request of the supervising agency.

(4) If the sex offender is classified as a level two sex offender under ORS 163A.100 (2), the supervising agency or a notifying agency may release sex offender information to the persons or entities described in subsection (2)(b)(A) to (D) of this section.

(5) If the sex offender is classified as a level one sex offender under ORS 163A.100 (1), the supervising agency or a notifying agency may release sex offender information to a person described in subsection (2)(b)(A) of this section.

(6) As used in this section:

(a) **Notifying agency** means the Department of State Police, a city police department, a county sheriff's office or a police department established by a university under ORS 352.121.

(b) **Sex offender information** means information that the Department of State Police determines by rule is appropriate for release to the public.

(c) **Supervising agency** means a governmental entity responsible for supervising a person required to report as a sex offender under ORS 163A.010 or 163A.015.

SECTION 34. ORS 163.476 is amended to read:

163.476. (1) A person commits the crime of unlawfully being in a location where children regularly congregate if the person:

(a)(A) Has been designated a sexually violent dangerous offender under ORS 137.765;

(B) Has been classified as a level three sex offender under ORS 163A.100 (3), is an unclassified adult sex offender designated as predatory prior to January 1, 2014, or is a person whom the State Board of Parole and Post-Prison Supervision[,] or the Psychiatric Security Review Board [or the Oregon Health Authority] has classified as a level three sex offender under section 7 (2)(b), chapter 708, Oregon Laws 2013, and does not have written approval from the State Board of Parole and Post-Prison Supervision or the person's supervisory authority or supervising officer to be in or upon the specific premises;

(C) Has been sentenced as a dangerous offender under ORS 161.725 upon conviction of a sex crime; or

(D) Has been given a similar designation or been sentenced under a similar law of another jurisdiction; and

(b) Knowingly enters or remains in or upon premises where persons under 18 years of age regularly congregate.

(2) As used in this section:

(a) **Premises where persons under 18 years of age regularly congregate** means schools, child care centers, playgrounds, other places intended for use primarily by persons under 18 years of age and places where persons under 18 years of age gather for regularly scheduled educational and recreational programs.

(b) **Sex crime** has the meaning given that term in ORS 163A.005.

(3) Unlawfully being in a location where children regularly congregate is a Class A misdemeanor.

SECTION 35. ORS 163.479 is amended to read:

163.479. (1) A person commits the crime of unlawful contact with a child if the person:

(a)(A) Has been designated a sexually violent dangerous offender under ORS 137.765;

(B) Has been classified as a level three sex offender under ORS 163A.100 (3);

(C) Is an unclassified adult sex offender designated as predatory prior to January 1, 2014, or a person whom the State Board of Parole and Post-Prison Supervision[,] or the Psychiatric Security Review Board [or the Oregon Health Authority] has classified as a level three sex offender under section 7 (2)(b), chapter 708, Oregon Laws 2013;

(D) Has been sentenced as a dangerous offender under ORS 161.725 upon conviction of a sex crime; or

(E) Has been given a similar designation or been sentenced under a similar law of another jurisdiction; and

(b) Knowingly contacts a child with the intent to commit a crime or for the purpose of arousing or satisfying the sexual desires of the person or another person.

(2) As used in this section:

(a) **Child** means a person under 18 years of age.

(b) **Contact** means to communicate in any manner.

(c) **Sex crime** has the meaning given that term in ORS 163A.005.

(3) Unlawful contact with a child is a Class C felony.

SECTION 36. (1) The amendments to ORS 21.010, 90.630, 137.223, 137.750, 144.641, 151.216, 161.326, 161.327, 161.332, 161.336, 161.341, 161.346, 161.348, 161.349, 161.351, 161.390, 161.395, 161.400, 162.135, 162.155, 163.476, 163.479, 163A.105, 163A.210, 163A.215, 181A.290, 183.315, 183.635, 192.690, 278.315, 430.695, 809.419 and 810.375 and section 7, chapter 708, Oregon Laws 2013, by sections 2 to 35 of this 2017 Act become operative on July 1, 2018.

(2) The Psychiatric Security Review Board and the Oregon Health Authority may take any action before the operative date specified in subsection (1) of this section to enable the board and the authority to exercise, on and after the operative date specified in subsection (1) of this section, the duties, functions and powers conferred on the board and authority by the amendments to ORS 21.010, 90.630, 137.223, 137.750, 144.641, 151.216, 161.326, 161.327, 161.332, 161.336, 161.341, 161.346, 161.348, 161.349, 161.351, 161.390, 161.395, 161.400, 162.135, 162.155, 163.476, 163.479, 163A.105, 163A.210, 163A.215, 181A.290, 183.315, 183.635, 192.690, 278.315, 430.695, 809.419 and 810.375 and section 7, chapter 708, Oregon Laws 2013, by sections 2 to 35 of this 2017 Act.

(3) On the operative date specified in subsection (1) of this section, the Psychiatric Security Review Board shall exercise jurisdiction over all offenders committed to a state hospital or secure intensive community inpatient facility under ORS 161.315 to 161.351.

SECTION 37. This 2017 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect on its passage.

Passed by Senate May 24, 2017

.....
Lori L. Brocker, Secretary of Senate

.....
Peter Courtney, President of Senate

Passed by House June 12, 2017

.....
Tina Kotek, Speaker of House

Received by Governor:

.....M.,....., 2017

Approved:

.....M.,....., 2017

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2017

.....
Dennis Richardson, Secretary of State

SENATE BILL 65 – WHAT YOU NEED TO KNOW

What?

SB 65 eliminates the Oregon Health Authority (OHA) State Hospital Review Panel (SHRP) in July 2018 and transfers its duties to the Psychiatric Security Review Board (PSRB).

When?

SB 65 has been signed by the Governor and takes effect on July 1, 2018.

How?

After July 1, 2018, all people who have been found guilty except for insanity (GEI) who have been under SHRP jurisdiction will be placed under the jurisdiction of the PSRB. The references to Oregon Health Authority (OHA) jurisdiction in the GEI statutes will be eliminated.

Why?

SHRP was created by the 2011 Legislature to help reduce the hospital's GEI population. By increasing the number of hearings for people with GEI commitments, the intent was to facilitate their conditional release from OSH. With that in mind, the Legislature created two tiers of patients and gave jurisdiction of Tier 2 – people with less-serious (non-Measure 11) offenses – to SHRP during their hospitalization at OSH. Since SHRP began holding hearings on January 1, 2012, the GEI population at OSH has decreased by 43%.

Now that the GEI population at OSH is more manageable, the Legislature is eliminating SHRP as of July 1, 2018. By transferring the jurisdiction of all people with GEI commitments to the PSRB, the Legislature hopes to save costs and increase efficiency.

How will the elimination of SHRP affect OSH patients?

Because SHRP operates under the same statutes and under similar rules as the PSRB, patients should not be affected by the change. The only difference is that patients who currently appear before SHRP will appear before the PSRB after July 1, 2018. The Legislature expects the rate of GEI commitments to OSH and releases to the community to remain the same.

How will patients find out about the change of jurisdiction?

Shortly before July 1, 2018, SHRP will send out notices informing patients under its jurisdiction (and other necessary parties) about the transfer to the PSRB. OSH treatment teams and patients' attorneys will discuss this change with patients before the transfer to assure them that the process will be the same.

SENATE BILL 65 – WHAT YOU NEED TO KNOW

How will SB 65 affect patients under “.370” orders?

The GEI process will remain the same, except that there will no longer be Tier 1 or Tier 2. People who are considering pleading GEI in their criminal cases may need help understanding that – even if they are initially under the jurisdiction of SHRP – they will soon be under the jurisdiction of the PSRB.

Questions?

If you have any questions, please contact OSH Legal Affairs at 503-947-2937.

