

Psychiatric Security Review Board

Civil commitments for extremely dangerous persons with mental illness (EDPMI)

SUMMARY: A DA may petition the court to initiate commitment proceedings if there is reason to believe that a person is an “extremely dangerous mentally ill person” (EDMIP). This statute likely will be most utilized when a criminal defendant who committed one of a number of very serious acts is permanently unable to aid and assist in his defense. Commitment under this section is for two years, and the EDMIP is supervised by the Psychiatric Security Review Board (PSRB). The EDMIP may be recommitted indefinitely every two years if the court finds they continue to meet jurisdictional criteria.

LEGAL STANDARD: In order to commit under this section, the Court must find, by clear and convincing evidence:

- 1) The person is “extremely dangerous”
 - a. A person is extremely dangerous if he or she: (A) is at least 18 years of age; (B) is exhibiting symptoms or behaviors of a mental disorder substantially similar to those that preceded their crime; (C) because of their mental disorder, presents a serious danger to the safety of other persons by reason of an extreme risk that the person will inflict grave or potentially lethal physical injury on other persons; and (D) unless committed, will continue to represent an extreme risk to the safety of other persons in the foreseeable future.
- 2) The person suffers from a mental disorder that is resistant to treatment;
 - a. A mental disorder is “resistant to treatment” if, after the defendant receives care from a licensed psychiatrist and all reasonable psychiatric treatment options have been exhausted, or after refusing psychiatric treatment, the defendant continues to be significantly impaired in his or her ability to make competent decisions and to be aware of and control extremely dangerous behavior.
- 3) Because of the mental disorder that is resistant to treatment, the person committed one of the following acts: (A) caused the death of another person; (B) caused serious physical injury to another person by means of a dangerous weapon; (C) caused physical injury to another person by means of a firearm or explosive; (D) engaged in oral-genital contact with a child under 14 years of age; (E) forcibly compelled sexual intercourse, oral-genital contact or the penetration of another person’s anus or vagina; or (F) caused a fire or explosion that damaged the protected property of another or placed another person in danger of physical injury, and the fire or explosion was not the incidental result of normal and usual daily activities.

If the above 3 criterion are found, the person is committed to the jurisdiction of the Psychiatric Security Review Board. The court may order placement of the EDMIP either at Oregon State Hospital (if the person cannot be controlled in the community with proper care, medication, supervision and treatment on conditional release) or on conditional release to an appropriate facility if the court finds the person can be controlled in the community with proper care, medication, supervision, and treatment.

COMMITMENT HEARINGS: The commitment hearings will be similar to regular court hearings. The allegedly EDMIP has the right to appointed counsel if indigent; right to subpoena witnesses; right to cross-examine witnesses; right to examine reports and documents. The court shall appoint an examiner to evaluate the EDMIP.

WHERE EDMIP PLACED: The court can either place an EDMIP at Oregon State Hospital or on conditional release (CR), most likely at a secure residential treatment facility (SRTF). If/when an EDMIP is placed on CR by the PSRB, the PSRB shall order conditions of release that may be modified by the board from time to time. At any time during CR, treatment facility may request a Status Hearing regarding commitment. If at any time during CR it appears the EDMIP has violated the terms of release, the PSRB may order the person returned to the hospital for evaluation or treatment. If an EDMIP is returned to the hospital, the Board must have a hearing within 30 days of the return.

REVIEW INTERVALS: There will be an initial review by the PSRB six months after the initial commitment or recommitment, and further review as requested by the hospital or treatment facility to determine whether the EDMIP is eligible for conditional release or early discharge. If the hospital or treatment facility does not request further review, review hearings shall be held every two years. Notice must be provided to the DDA who initiated the commitment and who has a right to appear. If the hospital or treatment facility intends to discharge the EDMIP, and the DA does not object, no hearing is required.

TERMINATION OF THE COMMITMENT: Per the statute, the EDMIP will be discharged unless the PSRB certifies to the court in the county where the state hospital or treatment facility is located that the EDMIP is still extremely dangerous and suffers from a mental disorder that is resistant to treatment. During the initial PSRB Rules Advisory Committee meeting, it became clear that the expectation is that a hearing will be held at the end of the commitment regardless of whether the PSRB is seeking recertification, and that the appropriate DA's offices will have notice of that hearing and an opportunity to participate.