

Enrolled Senate Bill 64

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CHAPTER

AN ACT

Relating to health terminology; amending ORS 131.005, 135.748, 161.295, 161.300, 161.305, 161.325, 161.327, 161.328, 161.329, 161.336, 161.341, 161.346, 161.351, 161.360, 161.365, 161.370, 163.305, 408.580, 419C.378, 419C.386, 419C.411, 419C.520, 419C.522, 419C.529, 419C.532, 419C.538, 419C.540 and 426.510.

Whereas the current Oregon Criminal Code was written in 1971 and included the defined term “mental disease or defect”; and

Whereas the term “mental disease or defect” has origins in mid-19th century English common law; and

Whereas the term “mental disease or defect” may carry a negative connotation; and

Whereas the meaning of the term “mental disease or defect” has been interpreted in multiple court decisions since enactment into law; and

Whereas the Legislative Assembly intends to replace the term “mental disease or defect” with a new term while preserving the validity of all previous court decisions interpreting or otherwise involving the term “mental disease or defect”; and

Whereas the purpose of this 2017 Act is to replace the term “mental disease or defect” with the term “qualifying mental disorder” and to retain the meaning of the replaced term, without making a substantive change to Oregon law; now, therefore,

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

SECTION 1. ORS 131.005 is amended to read:

131.005. As used in sections 1 to 311, chapter 836, Oregon Laws 1973, except as otherwise specifically provided or unless the context requires otherwise:

(1) “Accusatory instrument” means a grand jury indictment, an information or a complaint.

(2) “Bench warrant” means a process of a court in which a criminal action is pending, directing a peace officer to take into custody a defendant in the action who has previously appeared before the court upon the accusatory instrument by which the action was commenced, and to bring the defendant before the court. The function of a bench warrant is to achieve the court appearance of a defendant in a criminal action for some purpose other than the initial arraignment of the defendant in the action.

(3) “Complaint” means a written accusation, verified by the oath of a person and bearing an indorsement of acceptance by the district attorney having jurisdiction thereof, filed with a magistrate, and charging another person with the commission of an offense, other than an offense

punishable as a felony. A complaint serves both to commence an action and as a basis for prosecution thereof.

(4) "Complainant's information" means a written accusation, verified by the oath of a person and bearing an indorsement of acceptance by the district attorney having jurisdiction thereof, filed with a magistrate, and charging another person with the commission of an offense punishable as a felony. A complainant's information serves to commence an action, but not as a basis for prosecution thereof.

(5) "Correctional facility" means any place used for the confinement of persons charged with or convicted of a crime or otherwise confined under a court order. "Correctional facility" does not include a youth correction facility as defined in ORS 162.135 and applies to a state hospital only as to persons detained therein charged with or convicted of a crime, or detained therein after [*acquittal of a crime by reason of mental disease or defect*] **being found guilty except for insanity** under ORS 161.290 to 161.370.

(6) "Criminal action" means an action at law by means of which a person is accused of the commission of a violation, misdemeanor or felony.

(7) "Criminal proceeding" means any proceeding which constitutes a part of a criminal action or occurs in court in connection with a prospective, pending or completed criminal action.

(8) "District attorney," in addition to its ordinary meaning, includes a city attorney as prosecuting officer in the case of municipal ordinance offenses, a county counsel as prosecuting officer under a county charter in the case of county ordinance offenses, and the Attorney General in those criminal actions or proceedings within the jurisdiction of the Attorney General.

(9) "District attorney's information" means a written accusation by a district attorney and:

(a) If filed with a magistrate to charge a person with the commission of an offense, other than an offense punishable as a felony, serves both to commence an action and as a basis for prosecution thereof; or

(b) If filed with a magistrate to charge a person with the commission of an offense punishable as a felony, serves to commence an action, but not as a basis for prosecution thereof; or

(c) If, as is otherwise authorized by law, filed in circuit court to charge a person with the commission of an offense, serves as a basis for prosecution thereof.

(10) "Information" means a district attorney's information or a complainant's information.

(11) "Probable cause" means that there is a substantial objective basis for believing that more likely than not an offense has been committed and a person to be arrested has committed it.

(12) "Trial court" means a court which by law has jurisdiction over an offense charged in an accusatory instrument and has authority to accept a plea thereto, or try, hear or otherwise dispose of a criminal action based on the accusatory instrument.

(13) "Ultimate trial jurisdiction" means the jurisdiction of a court over a criminal action or proceeding at the highest trial level.

(14) "Warrant of arrest" means a process of a court, directing a peace officer to arrest a defendant and to bring the defendant before the court for the purpose of arraignment upon an accusatory instrument filed therewith by which a criminal action against the defendant has been commenced.

SECTION 2. ORS 135.748 is amended to read:

135.748. (1) All applicable periods of elapsed time as follows are excluded from the time limits described in ORS 135.746:

(a) A period of time during which the defendant is:

(A) Under observation or examination for fitness to proceed under ORS 161.365, beginning when the issue of the defendant's possible lack of fitness to proceed has been raised by the defendant or the defendant's counsel, until a final determination regarding the defendant's fitness to proceed has been made by the court;

(B) Determined to be unfit to proceed by the court pursuant to ORS 161.360 and 161.370;

(C) Under observation or examination after notice of the issue of the defendant's **qualifying** mental [*disease or defect*] **disorder**, partial responsibility, diminished capacity, insanity or other mental defense is raised by the defendant or the defendant's counsel, until the trial date; or

(D) Unable to appear by reason of illness or physical disability.

(b) A period of time following the filing of an interlocutory appeal or an appeal from the dismissal of the charge or charging instrument, or that results from a stay issued by an appellate court in a mandamus or habeas proceeding, until the appellate judgment is issued or the stay is lifted by the appellate court.

(c) A period of time between a scheduled court appearance at which the defendant fails to appear and the next scheduled court appearance other than an appearance that occurs for the purpose of addressing a warrant resulting from the defendant's failure to appear.

(d) A period of time during which the defendant's location is known but the defendant's presence for trial cannot be obtained, or during which the defendant is outside this state and resists being returned to this state for trial.

(e) A period of time during which the defendant's location is unknown and:

(A) The defendant has attempted to avoid apprehension or prosecution; or

(B) The defendant's location cannot be determined by due diligence.

(f) A period of time while the defendant is on trial or engaged in court proceedings in an unrelated matter, whether in the same court or a different court, and was therefore physically unavailable for trial.

(g) A period of time between a mistrial on the charging instrument and a subsequent trial on the charging instrument, not to exceed three months for each mistrial. The three-month limit may be extended by the court for good cause upon request from either party or upon the court's own motion.

(h) A period of time between a continuance or a rescheduling of a trial date, granted at the request of, or with the consent of, the defendant or the defendant's counsel, and the new trial date. A defendant who is proceeding without counsel may not consent to a continuance or a rescheduling unless the court has advised the defendant of the defendant's right to a speedy trial within the time limit required in ORS 135.746 and the consequences of the defendant's consent to the continuance or rescheduling.

(2) Any period of time excluded pursuant to subsection (1) of this section from the time limits described in ORS 135.746 that applies to a defendant shall apply to all other defendants charged in the charging instrument. However, if the court finds that it is clearly inappropriate to apply the time exclusion to all of the other defendants, the court may order any relief that justice requires.

SECTION 3. ORS 161.295 is amended to read:

161.295. (1) A person is guilty except for insanity if, as a result of a **qualifying** mental [*disease or defect*] **disorder** at the time of engaging in criminal conduct, the person lacks substantial capacity either to appreciate the criminality of the conduct or to conform the conduct to the requirements of law.

(2) As used in chapter 743, Oregon Laws 1971, the [*terms "mental disease or defect" do*] **term "qualifying mental disorder" does** not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct, nor [*do they*] **does the term** include any abnormality constituting solely a personality disorder.

SECTION 4. ORS 161.300 is amended to read:

161.300. Evidence that the actor suffered from a **qualifying** mental [*disease or defect*] **disorder** is admissible whenever it is relevant to the issue of whether the actor did or did not have the intent which is an element of the crime.

SECTION 5. ORS 161.305 is amended to read:

161.305. **Qualifying** mental [*disease or defect*] **disorder** constituting insanity under ORS 161.295 is an affirmative defense.

SECTION 6. ORS 161.325 is amended to read:

161.325. (1) After entry of judgment of guilty except for insanity, the court shall, on the basis of the evidence given at the trial or at a separate hearing, if requested by either party, enter an order as provided in ORS 161.327, 161.328 or 161.329, whichever is appropriate.

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

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

(b) State on the record the **qualifying** mental [*disease or defect*] **disorder** on which the defendant relied for the guilty except for insanity defense; and

(c) Make specific findings on whether there is a victim of the crime for which the defendant has been found guilty except for insanity and, if so, whether the victim wishes to be notified, under ORS 161.326, of any hearings and orders concerning the defendant and of any conditional release, discharge or escape of the defendant.

(3) The court shall include any such findings in its order.

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

SECTION 7. 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 a **qualifying** mental [*disease or defect*] **disorder** 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);

(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 in accordance with ORS 161.336 (5) and 161.341 (3).

SECTION 8. ORS 161.328 is amended to read:

161.328. (1) Following the entry of a judgment pursuant to ORS 161.319, the court shall order a person committed to a state mental hospital or other facility designated by the Oregon Health Authority if:

(a) Each offense for which the person is found guilty except for insanity is a misdemeanor; and

(b) The court finds that the person is affected by a **qualifying** mental [*disease or defect*] **disorder** and presents a substantial danger to others that requires commitment.

(2) The total period of commitment under this section may not exceed the maximum sentence provided by statute for the crime for which the person was found guilty except for insanity.

(3) If the superintendent of the state mental hospital or the director of the facility to which the person is committed determines that a person committed under this section is no longer affected by a **qualifying** mental [*disease or defect*] **disorder** or, if so affected, no longer presents a substantial danger to others that requires commitment, the superintendent or director shall file notice of that determination with the committing court. Upon filing of the notice, the superintendent or director shall discharge the person from custody.

SECTION 9. ORS 161.329 is amended to read:

161.329. Following the entry of a judgment pursuant to ORS 161.319, the court shall order that the person be discharged from custody if:

(1) The court finds that the person is no longer affected by a **qualifying** mental [*disease or defect*] **disorder**, or, if so affected, no longer presents a substantial danger to others and is not in need of care, supervision or treatment; or

(2)(a) Each offense for which the person is found guilty except for insanity is a misdemeanor; and

(b) The court finds that the person does not present a substantial danger to others that requires commitment.

SECTION 10. 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 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 **a qualifying mental [disease or defect] disorder** 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 shall conduct a hearing. The agency 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 **a qualifying mental [disease or defect] disorder** 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 11. 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 a **qualifying** mental [*disease or defect*] **disorder**, or, if so affected, no longer presents a substantial danger to others or that the person continues to be affected by a **qualifying** mental [*disease or defect*] **disorder** 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 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 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, 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 on discharge or conditional release. The results of the examination shall be in writing and filed with the agency, 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 for an order of discharge or conditional release upon the grounds:

(a) That the person is no longer affected by a **qualifying** mental [*disease or defect*] **disorder**;

(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 **qualifying** mental [*disease or defect*] **disorder** 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 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 hearing.

(5) The agency having jurisdiction over the person 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 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 to determine whether the person should be conditionally released or discharged.

SECTION 12. 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 shall enter an order and make findings in support of the order. If the agency finds that a person under the jurisdiction of the agency:

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

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

(c) Has not recovered from the **qualifying** mental [*disease or defect*] **disorder**, is a substantial danger to others and cannot adequately be controlled if conditionally released on supervision, the agency 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) To assist the agency in making the determination described in subsection (1) of this section, the agency exercising jurisdiction over the person may, at any time, appoint a psychiatrist or licensed psychologist to examine the person and to submit a report to the agency. 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) The agency exercising jurisdiction over the person 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 shall summon the person to give testimony. The agency shall consider all evidence available to it that is material, relevant and reliable regarding the issues before the agency. 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) The agency exercising jurisdiction over the person 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) of this section.

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

(7) 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 considers. If then available to the agency, the information, documents and reports shall be disclosed to the person so as to allow examination prior to the hearing.

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

(9) Upon request of any party, or on motion of the agency conducting the hearing, 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) Within 15 days following the conclusion of the hearing, the agency 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.

(11) 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) If the agency conducting the hearing determines that the person about whom the hearing is being held is financially eligible, the agency 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) 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 and the attorney representing the person.

SECTION 13. 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, upon a hearing, finds by a preponderance of the evidence that the person is no longer affected by a **qualifying** mental [*disease or defect*] **disorder** 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 **qualifying** mental [*disease or defect*] **disorder** in a state of remission is considered to have a **qualifying** mental [*disease or defect*] **disorder**. A person whose **qualifying** mental [*disease or defect*] **disorder** 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 primary concern the protection of society.

SECTION 14. ORS 161.360 is amended to read:

161.360. (1) If, before or during the trial in any criminal case, the court has reason to doubt the defendant's fitness to proceed by reason of incapacity, the court may order an examination in the manner provided in ORS 161.365.

(2) A defendant may be found incapacitated if, as a result of a **qualifying** mental [*disease or defect*] **disorder**, the defendant is unable:

- (a) To understand the nature of the proceedings against the defendant; or
- (b) To assist and cooperate with the counsel of the defendant; or
- (c) To participate in the defense of the defendant.

SECTION 15. ORS 161.365 is amended to read:

161.365. (1) When the court has reason to doubt the defendant's fitness to proceed by reason of incapacity as described in ORS 161.360, the court may call any witness to its assistance in reaching its decision and shall order that a community mental health program director or the director's designee consult with the defendant to determine whether services and supervision necessary to safely restore the defendant's fitness to proceed are available in the community. After the consultation, the program director or the director's designee shall provide to the court a copy of the findings resulting from the consultation. If the court determines the assistance of a psychiatrist or psychologist would be helpful, the court may:

(a) Order that a psychiatric or psychological examination of the defendant be conducted by a certified evaluator as defined in ORS 161.309 and a report of the examination be prepared; or

(b) Order the defendant to be committed for the purpose of an examination for a period not exceeding 30 days to a state mental hospital or other facility designated by the Oregon Health Authority if the defendant is at least 18 years of age, or to a secure intensive community inpatient facility designated by the authority if the defendant is under 18 years of age.

(2) The report of an examination described in this section must include, but is not necessarily limited to, the following:

- (a) A description of the nature of the examination;
- (b) A statement of the mental condition of the defendant;
- (c) If the defendant suffers from a **qualifying** mental [*disease or defect*] **disorder**, an opinion as to whether the defendant is incapacitated within the description set out in ORS 161.360; and
- (d) If the defendant is incapacitated within the description set out in ORS 161.360, a recommendation of treatment and services necessary to restore capacity.

(3) Except when the defendant and the court both request to the contrary, the report may not contain any findings or conclusions as to whether the defendant as a result of a **qualifying** mental [*disease or defect*] **disorder** was subject to the provisions of ORS 161.295 or 161.300 at the time of the criminal act charged.

(4) If the examination by the psychiatrist or psychologist cannot be conducted by reason of the unwillingness of the defendant to participate in the examination, the report shall so state and shall include, if possible, an opinion as to whether the unwillingness of the defendant was the result of **a qualifying mental [disease or defect] disorder** affecting capacity to proceed.

(5) The report shall be filed in triplicate with the clerk of the court, who shall cause copies to be delivered to the district attorney and to counsel for defendant.

(6)(a) When upon motion of the court or a financially eligible defendant, the court has ordered a psychiatric or psychological examination of the defendant, a county or justice court shall order the county to pay, and a circuit court shall order the public defense services executive director to pay from funds available for the purpose:

(A) A reasonable fee if the examination of the defendant is conducted by a psychiatrist or psychologist in private practice; and

(B) All costs including transportation of the defendant if the examination is conducted by a psychiatrist or psychologist in the employ of the Oregon Health Authority or a community mental health program established under ORS 430.610 to 430.670.

(b) When an examination is ordered at the request or with the acquiescence of a defendant who is determined not to be financially eligible, the examination shall be performed at the defendant's expense. When an examination is ordered at the request of the prosecution, the county shall pay for the expense of the examination.

(7) The Oregon Health Authority shall establish by rule standards for the consultation described in subsection (1) of this section.

SECTION 16. ORS 161.370 is amended to read:

161.370. (1) When the defendant's fitness to proceed is drawn in question, the issue shall be determined by the court. If neither the prosecuting attorney nor counsel for the defendant contests the finding of the report filed under ORS 161.365, the court may make the determination on the basis of the report. If the finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence in the hearing, the party who contests the finding has the right to summon and to cross-examine any psychiatrist or psychologist who submitted the report and to offer evidence upon the issue. Other evidence regarding the defendant's fitness to proceed may be introduced by either party.

(2) If the court determines that the defendant lacks fitness to proceed, the criminal proceeding against the defendant shall be suspended and:

(a) If the court finds that the defendant is dangerous to self or others as a result of **a qualifying mental [disease or defect] disorder**, or that, based on the findings resulting from the consultation described in ORS 161.365 (1), the services and supervision necessary to restore the defendant's fitness to proceed are not available in the community, the court shall commit the defendant to the custody of the superintendent of a state mental hospital or director of a facility, designated by the Oregon Health Authority, if the defendant is at least 18 years of age, or to the custody of the director of a secure intensive community inpatient facility designated by the authority if the defendant is under 18 years of age; or

(b) If the court does not make a finding described in paragraph (a) of this subsection, or if the court determines that care other than commitment for incapacity to stand trial would better serve the defendant and the community, the court shall release the defendant on supervision for as long as the unfitness endures.

(3) When a defendant is released on supervision under subsection (2)(b) of this section, the court may place conditions that the court deems appropriate on the release, including the requirement that the defendant regularly report to the authority or a community mental health program for examination to determine if the defendant has gained or regained capacity to stand trial.

(4) When the court, on its own motion or upon the application of the superintendent of the hospital or director of the facility in which the defendant is committed, a person examining the defendant as a condition of release on supervision, or either party, determines, after a hearing, if a hearing is requested, that the defendant has gained or regained fitness to proceed, the criminal

proceeding shall be resumed. If, however, the court is of the view that so much time has elapsed since the commitment or release of the defendant on supervision that it would be unjust to resume the criminal proceeding, the court on motion of either party may dismiss the charge and may order the defendant to be discharged or cause a proceeding to be commenced forthwith under ORS 426.070 to 426.170 or 427.235 to 427.290.

(5) The superintendent of a state hospital or director of a facility to which the defendant is committed shall cause the defendant to be evaluated within 60 days from the defendant's delivery into the superintendent's or director's custody, for the purpose of determining whether there is a substantial probability that, in the foreseeable future, the defendant will have the capacity to stand trial. In addition, the superintendent or director shall:

(a) Immediately notify the committing court if the defendant, at any time, gains or regains the capacity to stand trial or will never have the capacity to stand trial.

(b) Within 90 days of the defendant's delivery into the superintendent's or director's custody, notify the committing court that:

(A) The defendant has the present capacity to stand trial;

(B) There is no substantial probability that, in the foreseeable future, the defendant will gain or regain the capacity to stand trial; or

(C) There is a substantial probability that, in the foreseeable future, the defendant will gain or regain the capacity to stand trial. If the probability exists, the superintendent or director shall give the court an estimate of the time in which the defendant, with appropriate treatment, is expected to gain or regain capacity.

(6)(a) If the superintendent or director determines that there is a substantial probability that, in the foreseeable future, the defendant will gain or regain the capacity to stand trial, unless the court otherwise orders, the defendant shall remain in the superintendent's or director's custody where the defendant shall receive treatment designed for the purpose of enabling the defendant to gain or regain capacity. In keeping with the notice requirement under subsection (5)(b) of this section, the superintendent or director shall, for the duration of the defendant's period of commitment, submit a progress report to the committing court, concerning the defendant's capacity or incapacity, at least once every 180 days as measured from the date of the defendant's delivery into the superintendent's or director's custody.

(b) Notwithstanding paragraph (a) of this subsection, if the superintendent or director determines that a defendant committed under this section is no longer dangerous to self or others as a result of a **qualifying** mental [*disease or defect*] **disorder**, or that the services and supervision necessary to restore the defendant's fitness to proceed are available in the community, the superintendent or director shall file notice of that determination with the court. Upon receipt of the notice, the court shall order the person released on supervision as described in subsection (3) of this section.

(7)(a) A defendant who remains committed under subsection (6) of this section shall be discharged within a period of time that is reasonable for making a determination concerning whether or not, and when, the defendant may gain or regain capacity. However, regardless of the number of charges with which the defendant is accused, in no event shall the defendant be committed for longer than whichever of the following, measured from the defendant's initial custody date, is shorter:

(A) Three years; or

(B) A period of time equal to the maximum sentence the court could have imposed if the defendant had been convicted.

(b) For purposes of calculating the maximum period of commitment described in paragraph (a) of this subsection:

(A) The initial custody date is the date on which the defendant is first committed under this section on any charge alleged in the accusatory instrument; and

(B) The defendant shall be given credit against each charge alleged in the accusatory instrument for each day the defendant is committed under this section, whether the days are consecutive or are

interrupted by a period of time during which the defendant has gained or regained fitness to proceed.

(8) The superintendent or director shall notify the committing court of the defendant's impending discharge 30 days before the date on which the superintendent or director is required to discharge the defendant under subsection (7) of this section.

(9) When the committing court receives a notice from the superintendent or director under subsection (5) or (8) of this section concerning the defendant's progress or lack thereof, the committing court shall determine, after a hearing, if a hearing is requested, whether the defendant presently has the capacity to stand trial.

(10) If at any time the court determines that the defendant lacks the capacity to stand trial, the court shall further determine whether there is a substantial probability that the defendant, in the foreseeable future, will gain or regain the capacity to stand trial and whether the defendant is entitled to discharge under subsection (7) of this section. If the court determines that there is no substantial probability that the defendant, in the foreseeable future, will gain or regain the capacity to stand trial or that the defendant is entitled to discharge under subsection (7) of this section, the court shall dismiss, without prejudice, all charges against the defendant and:

(a) Order that the defendant be discharged; or

(b) Initiate commitment proceedings under ORS 426.070 or 427.235 to 427.290.

(11) All notices required under this section shall be filed with the clerk of the court and delivered to both the district attorney and the counsel for the defendant.

(12) If the defendant gains or regains fitness to proceed, the term of any sentence received by the defendant for conviction of the crime charged shall be reduced by the amount of time the defendant was committed under this section to the custody of a state mental hospital, or to the custody of a secure intensive community inpatient facility, designated by the Oregon Health Authority.

(13) Notwithstanding the suspension of the criminal proceeding under subsection (2) of this section, the fact that the defendant is unfit to proceed does not preclude any objection through counsel and without the personal participation of the defendant on the grounds that the indictment is insufficient, that the statute of limitations has run, that double jeopardy principles apply or upon any other ground at the discretion of the court which the court deems susceptible of fair determination prior to trial.

SECTION 17. ORS 163.305 is amended to read:

163.305. As used in chapter 743, Oregon Laws 1971, unless the context requires otherwise:

(1) "Deviate sexual intercourse" means sexual conduct between persons consisting of contact between the sex organs of one person and the mouth or anus of another.

(2) "Forcible compulsion" means to compel by:

(a) Physical force; or

(b) A threat, express or implied, that places a person in fear of immediate or future death or physical injury to self or another person, or in fear that the person or another person will immediately or in the future be kidnapped.

(3) "Mentally defective" means that a person suffers from a **qualifying** mental [*disease or defect*] **disorder** that renders the person incapable of appraising the nature of the conduct of the person.

(4) "Mentally incapacitated" means that a person is rendered incapable of appraising or controlling the conduct of the person at the time of the alleged offense.

(5) "Physically helpless" means that a person is unconscious or for any other reason is physically unable to communicate unwillingness to an act.

(6) "Sexual contact" means any touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party.

(7) "Sexual intercourse" has its ordinary meaning and occurs upon any penetration, however slight; emission is not required.

SECTION 18. ORS 408.580 is amended to read:

408.580. Upon receipt of a certificate of eligibility and available facilities, the Oregon Health Authority may cause to be transferred any veteran from any facility to which the veteran has been assigned to a United States veterans facility. No veteran under sentence by any court, or committed by any court after having been charged with any crime and [*acquitted on the ground of mental disease or defect*] **found guilty except for insanity**, may be transferred without an order of such court authorizing the transfer. Whenever any veteran, not a convict, has been committed by order of a court and is transferred as provided in this section, the order of commitment shall be held to apply to the facility to which the veteran is transferred as to any other facility to which the veteran could be assigned or transferred under ORS 426.060.

SECTION 19. ORS 419C.378 is amended to read:

419C.378. (1) A court may find that a youth is unfit to proceed in a proceeding initiated by a petition alleging jurisdiction under ORS 419C.005 if, as a result of a **qualifying** mental [*disease or defect*] **disorder** or another condition, the youth is unable:

- (a) To understand the nature of the proceedings against the youth;
- (b) To assist and cooperate with the counsel for the youth; or
- (c) To participate in the defense of the youth.

(2) A court may not find that a youth is unfit to proceed in a proceeding solely because:

- (a) Of the age of the youth;
- (b) Of the current inability of the youth to remember the acts alleged in the petition; or
- (c) Evidence exists that the youth committed the acts alleged in the petition while the youth was under the influence of intoxicants or medication.

(3) The issue of fitness to proceed must be raised by written motion filed by a party to the proceeding or by the court on its own motion. The motion may be made at any time after the filing of the petition. The court shall stay the proceedings on the petition after the motion is made and may order the youth to participate in an evaluation under ORS 419C.380 to determine the youth's fitness to proceed if the court determines that:

- (a) There is reason to doubt the youth's fitness to proceed; and

(b) There is probable cause to believe that the factual allegations contained in the petition are true.

(4) The fact that the youth is unfit to proceed does not preclude any objection through counsel and without the personal participation of the youth on the grounds that the petition is insufficient, that the statute of limitations has run, that double jeopardy principles apply or upon any other ground at the discretion of the court that the court deems susceptible of fair determination prior to trial.

SECTION 20. ORS 419C.386 is amended to read:

419C.386. (1)(a) If a party to a proceeding under ORS 419C.378 raises the issue of fitness to proceed, the party shall file the original report on the evaluation conducted under ORS 419C.380 with the clerk of the court and deliver copies of the report to all parties to the proceeding.

(b) If the court raises the issue of fitness to proceed under ORS 419C.378, the person conducting the evaluation under ORS 419C.380 shall file with the clerk of the court the original report on the evaluation and two copies of the report. The clerk of the court shall deliver the copies to the district attorney and to counsel for the youth.

(c) The report must be filed with the clerk of the court within 30 days after the order for evaluation is issued, unless the deadline is extended by written court order for good cause. An extension under this paragraph may not exceed 30 days.

(2) A report filed under this section must include:

- (a) A description of the evaluation;
- (b) A list of information that the evaluator reviewed as part of the evaluation;

(c) The evaluator's opinion as to whether the youth is unfit to proceed as described in ORS 419C.378, including the evaluator's opinion as to whether the youth suffers from a **qualifying** mental [*disease or defect*] **disorder** or another condition; and

(d) If the evaluator is of the opinion that the youth is unfit to proceed, the evaluator's opinion regarding whether there is a substantial probability that the youth will gain or regain fitness to proceed and, if there is a substantial probability that the youth will gain or regain fitness to proceed, the specific restorative services under ORS 419C.396 that are needed and the anticipated duration of those services.

(3) A report filed under this section may not include statements made by the youth about the acts alleged in the petition alleging jurisdiction under ORS 419C.005.

(4) Statements made to an evaluator by a youth during an evaluation, or made to persons involved in the evaluation, about the acts alleged in the petition are not admissible against the youth in any proceeding relating to the petition.

(5) Notwithstanding ORS 419A.255, the clerk of the court shall provide the Oregon Health Authority with copies of the petition and the report on the evaluation upon request of the authority.

SECTION 21. ORS 419C.411 is amended to read:

419C.411. (1) At the termination of the hearing or hearings in the proceeding or after entry of an order under ORS 419C.067, the court shall enter an appropriate order directing the disposition to be made of the case.

(2) The court shall find a youth responsible except for insanity if:

(a) The youth asserted **qualifying** mental [*disease or defect*] **disorder** as a defense as provided in ORS 419C.524; and

(b) The court determined by a preponderance of the evidence that, as a result of **a qualifying** mental [*disease or defect*] **disorder** at the time the youth committed the act alleged in the petition, the youth lacked substantial capacity either to appreciate the nature and quality of the act or to conform the youth's conduct to the requirements of law.

(3) Except as otherwise provided in subsections (6) and (7) of this section, in determining the disposition of the case, the court shall consider each of the following:

(a) The gravity of the loss, damage or injury caused or attempted during, or as part of, the conduct that is the basis for jurisdiction under ORS 419C.005;

(b) Whether the manner in which the youth offender engaged in the conduct was aggressive, violent, premeditated or willful;

(c) Whether the youth offender was held in detention under ORS 419C.145 and, if so, the reasons for the detention;

(d) The immediate and future protection required by the victim, the victim's family and the community; and

(e) The youth offender's juvenile court record and response to the requirements and conditions imposed by previous juvenile court orders.

(4) In addition to the factors listed in subsection (3) of this section, the court may consider the following:

(a) Whether the youth offender has made any efforts toward reform or rehabilitation or making restitution;

(b) The youth offender's educational status and school attendance record;

(c) The youth offender's past and present employment;

(d) The disposition proposed by the youth offender;

(e) The recommendations of the district attorney and the juvenile court counselor and the statements of the victim and the victim's family;

(f) The youth offender's mental, emotional and physical health and the results of the mental health or substance abuse treatment; and

(g) Any other relevant factors or circumstances raised by the parties.

(5) The court's consideration of matters under this section may be addressed on appeal only if raised by a party at a dispositional hearing or by a motion to modify or set aside under ORS 419C.610.

(6) When a youth is found responsible except for insanity, the court shall order a disposition under ORS 419C.529 if the court finds by a preponderance of the evidence that, at the time of disposition, the youth:

- (a) Has a serious mental condition; or
- (b) Has a **qualifying** mental [*disease or defect*] **disorder** other than a serious mental condition and presents a substantial danger to others.

(7) When a youth is found responsible except for insanity and the court does not make a finding described in subsection (6) of this section, the court may:

- (a) Enter an order finding the youth to be within the court's jurisdiction under ORS 419B.100 and make any disposition authorized by ORS chapter 419B;
- (b) Initiate civil commitment proceedings; or
- (c) Enter an order of discharge.

SECTION 22. ORS 419C.520 is amended to read:

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

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

(2) "**Qualifying** mental [*disease or defect*] **disorder**" does not include an abnormality:

- (a) Manifested only by repeated criminal or otherwise antisocial conduct;
 - (b) Constituting solely a personality disorder; or
 - (c) Constituting solely a conduct disorder.
- (3) "Serious mental condition" means a condition that requires supervision and treatment services for the safety of others and is:

- (a) A mental illness of major depression;
- (b) A mental illness of bipolar disorder; or
- (c) A mental illness of psychotic disorder.

SECTION 23. ORS 419C.522 is amended to read:

419C.522. **Qualifying** mental [*disease or defect*] **disorder** constituting insanity under ORS 419C.411 (2) is an affirmative defense.

SECTION 24. ORS 419C.529 is amended to read:

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

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

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

(b) If the court finds that the young person can be adequately controlled with supervision and treatment services if conditionally released and that necessary supervision and treatment services are available, the court may order the young person conditionally released, subject to those supervisory orders of the court that are in the best interests of justice and the young person. The court shall designate a qualified mental health or developmental disabilities treatment provider or state, county or local agency to supervise the young person on release, subject to those conditions as the

court directs in the order for conditional release. Prior to the designation, the court shall notify the qualified mental health or developmental disabilities treatment provider or agency to whom conditional release is contemplated and provide the qualified mental health or developmental disabilities treatment provider or agency an opportunity to be heard before the court. After receiving an order entered under this paragraph, the qualified mental health or developmental disabilities treatment provider or agency designated shall assume supervision of the young person subject to the direction of the juvenile panel. The qualified mental health or developmental disabilities treatment provider or agency designated as supervisor shall report in writing no less than once per month to the juvenile panel concerning the supervised young person's compliance with the conditions of release.

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

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

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

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

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

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

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

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

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

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

(e) State on the record the **qualifying** mental [*disease or defect*] **disorder** on which the young person relied for the responsible except for insanity defense.

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

SECTION 25. ORS 419C.532 is amended to read:

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

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

(a) Has a serious mental condition; or

(b) Has a **qualifying** mental [*disease or defect*] **disorder** other than a serious mental condition and presents a substantial danger to others.

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

(a) No longer has a **qualifying** mental [*disease or defect*] **disorder**; or

(b) Has a **qualifying** mental [*disease or defect*] **disorder** other than a serious mental condition but no longer presents a substantial danger to others.

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

(a) The young person:

(A) Has a serious mental condition; or

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

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

(c) Necessary supervision and treatment services are available.

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

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

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

(b) Cannot be adequately controlled if conditionally released.

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

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

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

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

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

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

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

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

the witness from whom received. The officer presiding at the hearing shall administer oaths and affirmations to witnesses.

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

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

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

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

- (A) The time, place and location of the hearing;
- (B) The nature of the hearing, the specific action for which the hearing has been requested, the issues to be considered at the hearing and a reference to the particular sections of the statutes and rules involved;
- (C) A statement of the authority and jurisdiction under which the hearing is to be held; and
- (D) A statement of all rights under subsection (13) of this section.

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

- (a) To appear at all proceedings held under this section, except juvenile panel deliberations.
- (b) To cross-examine all witnesses appearing to testify at the hearing.
- (c) To subpoena witnesses and documents as provided in ORS 161.395.
- (d) To be represented by suitable legal counsel possessing skills and experience commensurate with the nature and complexity of the case, to consult with counsel prior to the hearing and, if financially eligible, to have suitable counsel appointed at state expense.
- (e) To examine all information, documents and reports that the juvenile panel considers and, if the information, documents and reports are available to the juvenile panel before the hearing, to examine them prior to the hearing.

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

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

(16) Within 15 days after the conclusion of the hearing, the juvenile panel shall provide written notice of the juvenile panel's decision to the young person, the attorney representing the young person, the young person's parents or guardians, if known, the person having legal custody of the young person, the district attorney of the county in which the young person was adjudicated and the Attorney General or other attorney representing the state, if any.

(17) The juvenile panel shall maintain and keep current the medical, social and delinquency history of all young persons. The juvenile panel shall determine the confidentiality of records maintained by the juvenile panel pursuant to ORS 192.501 to 192.505.

SECTION 26. ORS 419C.538 is amended to read:

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

order entered under ORS 419C.532 (4), the qualified mental health or developmental disabilities treatment provider or agency designated shall assume supervision of the young person pursuant to the direction of the juvenile panel.

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

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

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

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

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

(4) If at any time it appears to the juvenile panel or the chairperson of the juvenile panel that a young person has violated the terms of conditional release or that the mental health of the young person has changed, the juvenile panel or the chairperson of the juvenile panel may order the young person returned to a hospital or facility designated by the Department of Human Services or the Oregon Health Authority for evaluation and treatment. A written order of the juvenile panel, or the chairperson of the juvenile panel on behalf of the juvenile panel, is sufficient warrant for any peace officer to take the young person into custody and transport the young person accordingly. A peace officer shall execute the order, and the young person shall be returned as soon as practicable to a facility designated by the department or the authority. Within 20 days following the return of the young person to the facility designated by the department or the authority, the juvenile panel shall conduct a hearing. At a hearing required by this subsection, the state has the burden of proving the young person's lack of fitness for conditional release.

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

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

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

SECTION 27. ORS 419C.540 is amended to read:

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

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

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

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

- (a)(A) Has a serious mental condition; or
- (B) Has a **qualifying** mental [*disease or defect*] **disorder** other than a serious mental condition and presents a substantial danger to others; and
- (b) Could be adequately controlled with treatment services as a condition of release.

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

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

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

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

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

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

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

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

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

SECTION 28. ORS 426.510 is amended to read:

426.510. As used in ORS 426.510 to 426.680, unless the context otherwise requires, "sexually dangerous person" means a person who because of repeated or compulsive acts of misconduct in sexual matters, or because of a **qualifying** mental [*disease or defect*] **disorder**, is deemed likely to continue to perform such acts and be a danger to other persons.

Passed by Senate April 24, 2017

Received by Governor:

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

Approved:

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Lori L. Brocker, Secretary of Senate

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

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Peter Courtney, President of Senate

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Kate Brown, Governor

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Tina Kotek, Speaker of House

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Dennis Richardson, Secretary of State