Senate Bill 377

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SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced.**

Provides that evidence of commission of contempt of court is subject to search warrant procedures prior to or during proceeding for imposition of punitive sanction.

Creates exception to prohibition on recording communications for person who records conversation during or regarding commission of offense against person.

Creates exception to rule against hearsay for translation by qualified interpreter.

Expands venue for trial of two or more offenses involving domestic violence or abuse between same defendant and victim.

Requires defendant to give notice of intent to introduce evidence on issue of insanity at least 60 days before trial.

Modifies provisions relating to prior convictions for felony sex crimes in other jurisdictions.

Provides that, upon receipt of petition to initiate commitment proceedings of extremely dangerous person with mental illness, court shall order that person be held in custody pending evaluation and hearing.

A BILL FOR AN ACT

Relating to legal proceedings; creating new provisions; and amending ORS 33.065, 40.450, 41.910, 131.315, 137.719, 161.309, 165.540 and 426.701.

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

SECTION 1. ORS 33.065 is amended to read:

33.065. (1) Except as otherwise provided in ORS 161.685, proceedings to impose punitive sanctions for contempt shall be conducted as provided in this section.

(2) The following persons may initiate the proceeding by an accusatory instrument charging a person with contempt of court and seeking a punitive sanction:

(a) A city attorney.

(b) A district attorney.

(c) The Attorney General.

(3) If a city attorney, district attorney or Attorney General who regularly appears before the court declines to prosecute a contempt, and the court determines that remedial sanctions would not provide an effective alternative remedy, the court may appoint an attorney who is authorized to practice law in this state, and who is not counsel for an interested party, to prosecute the contempt. The court shall allow reasonable compensation for the appointed attorney's attendance, to be paid by:

(a) The Oregon Department of Administrative Services, if the attorney is appointed by the Supreme Court, the Court of Appeals or the Oregon Tax Court;

(b) The city where the court is located, if the attorney is appointed by a municipal court; and

(c) The county where the prosecution is initiated, in all other cases.

(4) The prosecutor may initiate proceedings on the prosecutor's own initiative, on the request of a party to an action or proceeding or on the request of the court. After the prosecutor files an

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

accusatory instrument, the court may issue any order or warrant necessary to compel the appearance of the defendant.

(5) Except as otherwise provided by this section, the accusatory instrument is subject to the same requirements and laws applicable to an accusatory instrument in a criminal proceeding, and all proceedings on the accusatory instrument shall be in the manner prescribed for criminal proceedings.

(6) Except for the right to a jury trial, the defendant is entitled to the constitutional and statutory protections, including the right to appointed counsel, that a defendant would be entitled to in a criminal proceeding in which the fine or term of imprisonment that could be imposed is equivalent to the punitive sanctions sought in the contempt proceeding. This subsection does not affect any right to a jury that may otherwise be created by statute.

(7) Inability to comply with an order of the court is an affirmative defense. If the defendant proposes to rely in any way on evidence of inability to comply with an order of the court, the defendant shall, not less than five days before the trial of the cause, file and serve upon the city attorney, district attorney or Attorney General prosecuting the contempt a written notice of intent to offer that evidence. If the defendant fails to file and serve the notice, the defendant shall not be permitted to introduce evidence of inability to comply with an order of the court at the trial of the cause unless the court, in its discretion, permits such evidence to be introduced where just cause for failure to file the notice, or to file the notice within the time allowed, is made to appear.

(8) The court may impose a remedial sanction in addition to or in lieu of a punitive sanction.

(9) In any proceeding for imposition of a punitive sanction, proof of contempt shall be beyond a reasonable doubt.

(10) Notwithstanding ORS 133.535, evidence of the commission of contempt of court is subject to search and seizure under ORS 133.525 to 133.703 prior to or during a proceeding for imposition of a punitive sanction under this section.

SECTION 2. The amendments to ORS 33.065 by section 1 of this 2019 Act apply to contempt of court alleged to have been committed on or after the effective date of this 2019 Act.

SECTION 3. ORS 165.540 is amended to read:

165.540. (1) Except as otherwise provided in ORS 133.724 or 133.726 or subsections (2) to (7) of this section, a person may not:

(a) Obtain or attempt to obtain the whole or any part of a telecommunication or a radio communication to which the person is not a participant, by means of any device, contrivance, machine or apparatus, whether electrical, mechanical, manual or otherwise, unless consent is given by at least one participant.

(b) Tamper with the wires, connections, boxes, fuses, circuits, lines or any other equipment or facilities of a telecommunication or radio communication company over which messages are transmitted, with the intent to obtain unlawfully the contents of a telecommunication or radio communication to which the person is not a participant.

(c) Obtain or attempt to obtain the whole or any part of a conversation by means of any device, contrivance, machine or apparatus, whether electrical, mechanical, manual or otherwise, if not all participants in the conversation are specifically informed that their conversation is being obtained.

(d) Obtain the whole or any part of a conversation, telecommunication or radio communication from any person, while knowing or having good reason to believe that the conversation, telecommunication or radio communication was initially obtained in a manner prohibited by this section.

(e) Use or attempt to use, or divulge to others, any conversation, telecommunication or radio

communication obtained by any means prohibited by this section.

(2)(a) The prohibitions in subsection (1)(a), (b) and (c) of this section do not apply to:

(A) Officers, employees or agents of a telecommunication or radio communication company who perform the acts prohibited by subsection (1)(a), (b) and (c) of this section for the purpose of construction, maintenance or conducting of their telecommunication or radio communication service, facilities or equipment.

(B) Public officials in charge of and at jails, police premises, sheriffs' offices, Department of Corrections institutions and other penal or correctional institutions, except as to communications or conversations between an attorney and the client of the attorney.

(b) Officers, employees or agents of a telecommunication or radio communication company who obtain information under paragraph (a) of this subsection may not use or attempt to use, or divulge to others, the information except for the purpose of construction, maintenance, or conducting of their telecommunication or radio communication service, facilities or equipment.

(3) The prohibitions in subsection (1)(a), (b) or (c) of this section do not apply to subscribers or members of their family who perform the acts prohibited in subsection (1) of this section in their homes.

(4) The prohibitions in subsection (1)(a) of this section do not apply to the receiving or obtaining of the contents of any radio or television broadcast transmitted for the use of the general public.

(5) The prohibitions in subsection (1)(c) of this section do not apply to:

(a) A person who records a conversation during [*a felony that endangers human life*] **or regarding the commission of an offense against any person**;

(b) A person who records a conversation in which a law enforcement officer is a participant, if:

(A) The recording is made while the officer is performing official duties;

(B) The recording is made openly and in plain view of the participants in the conversation;

(C) The conversation being recorded is audible to the person by normal unaided hearing; and

(D) The person is in a place where the person lawfully may be;

(c) A person who, pursuant to ORS 133.400, records an interview conducted by a peace officer in a law enforcement facility;

(d) A law enforcement officer who is in uniform and displaying a badge and who is operating:

(A) A vehicle-mounted video camera that records the scene in front of, within or surrounding a police vehicle, unless the officer has reasonable opportunity to inform participants in the conversation that the conversation is being obtained; or

(B) A video camera worn upon the officer's person that records the officer's interactions with members of the public while the officer is on duty, unless:

(i) The officer has an opportunity to announce at the beginning of the interaction that the conversation is being obtained; and

(ii) The announcement can be accomplished without causing jeopardy to the officer or any other person and without unreasonably impairing a criminal investigation; or

(e) A law enforcement officer who, acting in the officer's official capacity, deploys an Electro-Muscular Disruption Technology device that contains a built-in monitoring system capable of recording audio or video, for the duration of that deployment.

(6) The prohibitions in subsection (1)(c) of this section do not apply to persons who intercept or attempt to intercept with an unconcealed recording device the oral communications that are part of any of the following proceedings:

(a) Public or semipublic meetings such as hearings before governmental or quasi-governmental

bodies, trials, press conferences, public speeches, rallies and sporting or other events;

(b) Regularly scheduled classes or similar educational activities in public or private institutions; or

(c) Private meetings or conferences if all others involved knew or reasonably should have known that the recording was being made.

(7) The prohibitions in subsection (1)(a), (c), (d) and (e) of this section do not apply to any:

(a) Radio communication that is transmitted by a station operating on an authorized frequency within the amateur or citizens bands; or

(b) Person who intercepts a radio communication that is transmitted by any governmental, law enforcement, civil defense or public safety communications system, including police and fire, readily accessible to the general public provided that the interception is not for purposes of illegal activity.

(8) Violation of subsection (1) or (2)(b) of this section is a Class A misdemeanor.

(9) The exception described in subsection (5)(b) of this section does not authorize the person recording the law enforcement officer to engage in criminal trespass as described in ORS 164.243, 164.245, 164.255, 164.265 or 164.278 or to interfere with a peace officer as described in ORS 162.247.

(10) As used in this section:

(a) "Electro-Muscular Disruption Technology device" means a device that uses a high-voltage, low power charge of electricity to induce involuntary muscle contractions intended to cause temporary incapacitation. "Electro-Muscular Disruption Technology device" includes devices commonly known as tasers.

(b) "Law enforcement officer" has the meaning given that term in ORS 133.726.

SECTION 4. ORS 41.910 is amended to read:

41.910. Evidence of the contents of any wire or oral communication intercepted:

(1) In violation of ORS 165.540 [*shall not be*] **is not** admissible in any court of this state, except as evidence of unlawful interception or when the evidence was created by the use of a video camera worn upon a law enforcement officer's person and the officer either substantially complied with or attempted in good faith to comply with ORS 165.540 (5)(d)(B).

(2) Under ORS 165.540 (2)(a) [*shall not be*] **is not** admissible in any court of this state unless:

(a) The interception is otherwise permitted under ORS 165.540 (5)(a); or

[*(a)*] **(b)(A)** The communication was intercepted by a public official in charge of and at a jail, police premises, sheriff's office, Department of Corrections institution or other penal or correctional institution; and

[*(b)*] **(B)** The participant in the communication, against whom the evidence is being offered, had actual notice that the communication was being monitored or recorded.

SECTION 5. The amendments to ORS 41.910 and 165.540 by sections 3 and 4 of this 2019 Act apply to offenses alleged to have been committed on or after the effective date of this 2019 Act.

SECTION 6. ORS 40.450 is amended to read:

40.450. As used in ORS 40.450 to 40.475, unless the context requires otherwise:

(1) A "statement" is:

(a) An oral or written assertion; or

(b) Nonverbal conduct of a person, if intended as an assertion.

(2) A "declarant" is a person who makes a statement.

(3) "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

(4) A statement is not hearsay if:

(a) The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is:

(A) Inconsistent with the testimony of the witness and was given under oath subject to the penalty of perjury at a trial, hearing or other proceeding, or in a deposition;

(B) Consistent with the testimony of the witness and is offered to rebut an inconsistent statement or an express or implied charge against the witness of recent fabrication or improper influence or motive; or

(C) One of identification of a person made after perceiving the person.

(b) The statement is offered against a party and is:

(A) That party's own statement, in either an individual or a representative capacity;

(B) A statement of which the party has manifested the party's adoption or belief in its truth;

(C) A statement by a person authorized by the party to make a statement concerning the subject;

(D) A statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship; or

(E) A statement by a coconspirator of a party during the course and in furtherance of the conspiracy.

(c) The statement is made in a deposition taken in the same proceeding pursuant to ORCP 39 I.

(d) The statement is a translation by a qualified interpreter, as defined in ORS 45.275 or 45.285, of a statement made by or to a party or a witness.

SECTION 7. The amendments to ORS 40.450 by section 6 of this 2019 Act apply to translations occurring on or after the effective date of this 2019 Act.

SECTION 8. ORS 131.315 is amended to read:

131.315. (1) If conduct constituting elements of an offense or results constituting elements of an offense occur in two or more counties, trial of the offense may be held in any of the counties concerned.

(2) If a cause of death is inflicted on a person in one county and the person dies therefrom in another county, trial of the offense may be held in either county.

(3) If the commission of an offense commenced outside this state is consummated within this state, trial of the offense shall be held in the county in which the offense is consummated or the interest protected by the criminal statute in question is impaired.

(4) If an offense is committed on any body of water located in, or adjacent to, two or more counties or forming the boundary between two or more counties, trial of the offense may be held in any nearby county bordering on the body of water.

(5) If an offense is committed in or upon any railroad car, vehicle, aircraft, boat or other conveyance in transit and it cannot readily be determined in which county the offense was committed, trial of the offense may be held in any county through or over which the conveyance passed.

(6) If an offense is committed on the boundary of two or more counties or within one mile thereof, trial of the offense may be held in any of the counties concerned.

(7) A person who commits theft, burglary or robbery may be tried in any county in which the person exerts control over the property that is the subject of the crime.

(8) If the offense is an attempt or solicitation to commit a crime, trial of the offense may be held in any county in which any act that is an element of the offense is committed.

(9) If the offense is criminal conspiracy, trial of the offense may be held in any county in which any act or agreement that is an element of the offense occurs.

(10) A person who in one county commits an inchoate offense that results in the commission of an offense by another person in another county, or who commits the crime of hindering prosecution of the principal offense, may be tried in either county.

(11) A criminal nonsupport action may be tried in any county in which the dependent child is found, irrespective of the domicile of the parent, guardian or other person lawfully charged with support of the child.

(12) If the offense is theft, forgery or identity theft and the offense consists of an aggregate transaction involving more than one county, trial of the offense may be held in any county in which one of the acts of theft, forgery or identity theft was committed.

(13) When a prosecution is for violation of the Oregon Securities Law, the trial of the offense may be held in the county in which:

(a) The offer to purchase or sell securities took place or where the sale or purchase of securities took place; or

(b) Any act that is an element of the offense occurred.

(14) When a prosecution under ORS 165.692 and 165.990 or 411.675 and 411.990 (2) and (3) involves Medicaid funds, the trial of the offense may be held in the county in which the claim was submitted for payment or in the county in which the claim was paid.

(15)(a) If the offense is stalking under ORS 163.732 and involves contacts as defined in ORS 163.730 in more than one county, trial of the offense may be held in any county in which a contact occurred.

(b) If the offense is violating a court's stalking protective order under ORS 163.750, trial of the offense may be held in the county in which the defendant engaged in conduct prohibited by the order or in the county in which the order was issued.

(16) If two or more offenses involving domestic violence, as defined in ORS 135.230, abuse, as defined in ORS 107.705 or 419B.005, or abuse of an elderly person, as described in ORS 124.050, are alleged to have occurred between the same defendant and victim and could be charged in the same charging instrument under ORS 132.560, trial of the offenses may be held in any county in which one of the acts in the charging instrument was committed, with the agreement of the district attorney of each county in which the defendant could be charged.

SECTION 9. The amendments to ORS 131.315 by section 8 of this 2019 Act apply to offenses alleged to have been committed on or after the effective date of this 2019 Act.

SECTION 10. ORS 161.309 is amended to read:

161.309. (1) The defendant may not introduce evidence on the issue of insanity under ORS 161.295, unless the defendant:

(a) Gives notice of intent to do so in the manner provided in subsection (3) of this section; and

(b) Files with the court a report of a psychiatric or psychological evaluation, conducted by a certified evaluator, in the manner provided in subsection (4) of this section.

(2) The defendant may not introduce in the case in chief expert testimony regarding partial responsibility or diminished capacity under ORS 161.300 unless the defendant gives notice of intent to do so in the manner provided in subsection (3) of this section.

(3)**(a)** A defendant who is required under subsection (1) or (2) of this section to give notice shall file a written notice of purpose at the time the defendant pleads not guilty.

(b) Notwithstanding paragraph (a) of this subsection, the court may, for good cause, permit the defendant [*may*] **to** file the notice at any time after the plea but **at least 60 days** before trial [*when just cause for failure to file the notice at the time of making the plea is shown*].

(c) If the defendant fails to file notice **as provided in this subsection**, the defendant may not introduce evidence for the establishment of a defense under ORS 161.295 or 161.300 unless the court, in its discretion, permits the evidence to be introduced where just cause for failure to file the notice is shown.

(4) A defendant who is required under subsection (1) of this section to file a report of a psychiatric or psychological evaluation shall file the report before trial. The report must be based on an evaluation conducted after the date of the alleged offense and must address the issue of insanity under ORS 161.295 and the dispositional determination described in ORS 161.325. If the defendant fails to file a complete report before trial, the defendant may not introduce evidence for the establishment of a defense under ORS 161.295 unless:

(a) The court, in its discretion, permits the evidence to be introduced when just cause for failure to file the report is shown; and

(b) If the defendant is charged with a felony, the defendant is tried by a jury.

(5)(a) A court may not accept a plea of guilty except for insanity to a felony unless a report described in subsection (4) of this section is filed with the court. If the report has not been filed, the court may order that a psychiatric or psychological evaluation of the defendant be conducted by a certified evaluator and a report of the evaluation be filed with the court.

(b) When the court orders an evaluation of a financially eligible person under this subsection, the court shall order the public defense services executive director to pay a reasonable fee for the evaluation from funds available for that purpose.

(c) A certified evaluator performing an evaluation of a defendant on the issue of insanity under this subsection is not obligated to evaluate the defendant for fitness to proceed unless, during the evaluation, the certified evaluator determines that the defendant's fitness to proceed is drawn in question.

(6) As used in this section, "certified evaluator" means a psychiatrist or psychologist who holds a valid certification under the provisions of ORS 161.392.

SECTION 11. The amendments to ORS 161.309 by section 10 of this 2019 Act apply to notices of intent to introduce evidence on the issue of insanity under ORS 161.295 given on or after the effective date of this 2019 Act.

SECTION 12. ORS 137.719 is amended to read:

137.719. (1) The presumptive sentence for a sex crime that is a felony is life imprisonment without the possibility of release or parole if the defendant has been sentenced for sex crimes that are felonies at least two times prior to the current sentence.

(2) The court may impose a sentence other than the presumptive sentence provided by subsection (1) of this section if the court imposes a departure sentence authorized by the rules of the Oregon Criminal Justice Commission based upon findings of substantial and compelling reasons.

(3) For purposes of this section:

(a) Sentences for two or more convictions that are imposed in the same sentencing proceeding are considered to be one sentence; and

(b) A prior sentence includes:

(A) Sentences imposed before, on or after July 31, 2001; and

(B) Sentences imposed by any other state or federal court [*for comparable offenses*] **that are**

felony sex crimes in that jurisdiction.

(4) As used in this section, "sex crime" has the meaning given that term in ORS 163A.005.

SECTION 13. The amendments to ORS 137.719 by section 12 of this 2019 Act apply to crimes with sentences eligible for sentencing under ORS 137.719 alleged to have been committed on or after the effective date of this 2019 Act.

SECTION 14. ORS 426.701 is amended to read:

426.701. (1) For the purposes of this section and ORS 426.702:

(a) A person is "extremely dangerous" if the person:

(A) Is at least 18 years of age;

(B) Is exhibiting symptoms or behaviors of a mental disorder substantially similar to those that preceded the act described in subsection (3)(a)(C) of this section; and

(C) Because of a mental disorder:

(i) 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

(ii) Unless committed, will continue to represent an extreme risk to the safety of other persons in the foreseeable future.

(b) "Mental disorder" does not include:

(A) A disorder manifested solely by repeated criminal or otherwise antisocial conduct; or

(B) A disorder constituting solely a personality disorder.

(c) A mental disorder is "resistant to treatment" if, after receiving care from a licensed psychiatrist and exhausting all reasonable psychiatric treatment, or after refusing psychiatric treatment, the person continues to be significantly impaired in the person's ability to make competent decisions and to be aware of and control extremely dangerous behavior.

(2)(a) A district attorney may petition the court to initiate commitment proceedings described in this section if there is reason to believe a person is an extremely dangerous person with mental illness. The petition shall immediately be served upon the person.

(b) The person shall be advised in writing of:

(A) The allegation that the person is an extremely dangerous person with mental illness and may be committed to the jurisdiction of the Psychiatric Security Review Board for a maximum period of 24 months; and

(B) The right to a hearing to determine whether the person is an extremely dangerous person with mental illness, unless the person consents to the commitment by waiving the right to a hearing in writing after consultation with legal counsel.

(c) A person against whom a petition described in this subsection is filed shall have the following:

(A) The right to obtain suitable legal counsel possessing skills and experience commensurate with the nature of the allegations and complexity of the case and, if the person is without funds to retain legal counsel, the right to have the court appoint legal counsel;

(B) The right to subpoena witnesses and to offer evidence on behalf of the person at the hearing;

(C) The right to cross-examine any witnesses who appear at the hearing; and

(D) The right to examine all reports, documents and information that the court considers, including the right to examine the reports, documents and information prior to the hearing, if available.

(d) The court shall appoint an examiner as described in ORS 426.110 to evaluate the person.

(3)(a) Upon receipt of a petition filed under subsection (2) of this section, the court shall

schedule a hearing. **The court shall order that the person be held in custody pending evaluation by the examiner appointed under ORS 426.110 and the hearing.** At the hearing, the court shall order the person committed as an extremely dangerous person with mental illness under the jurisdiction of the Psychiatric Security Review Board for a maximum of 24 months if the court finds, by clear and convincing evidence, that:

(A) The person is extremely dangerous;

(B) The person suffers from a mental disorder that is resistant to treatment; and

(C) Because of the mental disorder that is resistant to treatment, the person committed one of the following acts:

(i) Caused the death of another person;

(ii) Caused serious physical injury to another person by means of a dangerous weapon;

(iii) Caused physical injury to another person by means of a firearm as defined in ORS 166.210 or an explosive as defined in ORS 164.055;

(iv) Engaged in oral-genital contact with a child under 14 years of age;

(v) Forcibly compelled sexual intercourse, oral-genital contact or the penetration of another person's anus or vagina; or

(vi) Caused a fire or explosion that damaged the protected property of another, as those terms are defined in ORS 164.305, 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.

(b) The court shall further commit the person to a state hospital for custody, care and treatment if the court finds, by clear and convincing evidence, that the person cannot be controlled in the community with proper care, medication, supervision and treatment on conditional release.

(c) The court shall specify in the order whether any person who would be considered a victim as defined in ORS 131.007 of the act described in paragraph (a)(C) of this subsection, if the act had been criminally prosecuted, requests notification of any order or hearing, conditional release, discharge or escape of the person committed under this section.

(d) The court shall be fully advised of all drugs and other treatment known to have been administered to the alleged extremely dangerous person with mental illness that may substantially affect the ability of the person to prepare for, or to function effectively at, the hearing.

(e) The provisions of ORS 40.230, 40.235, 40.240, 40.250 and 179.505 do not apply to the use of the examiner's report and the court may consider the report as evidence.

(4) The findings of the court that a person committed an act described in subsection (3)(a)(C) of this section may not be admitted in a criminal prosecution.

(5) A person committed under this section shall remain under the jurisdiction of the board for a maximum of 24 months unless the board conducts a hearing and makes the findings described in subsection (6)(d) of this section.

(6)(a) The board shall hold a hearing six months after the initial commitment described in subsection (3) of this section, and thereafter six months after a further commitment described in ORS 426.702, to determine the placement of the person and whether the person is eligible for conditional release or early discharge. The board shall provide written notice of the hearing to the person, the person's legal counsel and the office of the district attorney who filed the initial petition under subsection (2) of this section within a reasonable time prior to the hearing. The board shall further notify the person of the following:

(A) The nature of the hearing and possible outcomes;

(B) The right to appear at the hearing and present evidence;

(C) The right to be represented by legal counsel and, if the person is without funds to retain legal counsel, the right to have the court appoint legal counsel;

(D) The right to subpoena witnesses;

(E) The right to cross-examine witnesses who appear at the hearing; and

(F) The right to examine all reports, documents and information that the board considers, including the right to examine the reports, documents and information prior to the hearing if available.

(b) If the board determines at the hearing that the person still suffers from a mental disorder that is resistant to treatment and continues to be extremely dangerous, and that the person cannot be controlled in the community with proper care, medication, supervision and treatment if conditionally released, the person shall remain committed to a state hospital.

(c) If the board determines at the hearing that the person still suffers from a mental disorder that is resistant to treatment and continues to be extremely dangerous, but finds that the person can be controlled in the community with proper care, medication, supervision and treatment if conditionally released, the board shall conditionally release the person.

(d) If the board determines at the hearing that the person no longer suffers from a mental disorder that is resistant to treatment or is no longer extremely dangerous, the board shall discharge the person. The discharge of a person committed under this section does not preclude commitment of the person pursuant to ORS 426.005 to 426.390.

(7)(a) At any time during the commitment to a state hospital, the superintendent of the state hospital may request a hearing to determine the status of the person's commitment under the jurisdiction of the board. The request shall be accompanied by a report setting forth the facts supporting the request. If the request is for conditional release, the request shall be accompanied by a verified conditional release plan. The hearing shall be conducted as described in subsection (6) of this section.

(b) The board may make the findings described in subsection (6)(c) of this section and conditionally release the person without a hearing if the office of the district attorney who filed the initial petition under subsection (2) of this section does not object to the conditional release.

(c) At any time during conditional release, a state or local mental health facility providing treatment to the person may request a hearing to determine the status of the person's commitment under the jurisdiction of the board. The hearing shall be conducted as described in subsection (6) of this section.

(8)(a) If the board orders the conditional release of a person under subsection (6)(c) of this section, the board shall order conditions of release that may include a requirement to report to any state or local mental health facility for evaluation. The board may further require cooperation with, and acceptance of, psychiatric or psychological treatment from the facility. Conditions of release may be modified by the board from time to time.

(b) When a person is referred to a state or local mental health facility for an evaluation under this subsection, the facility 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, the facility shall include its recommendations for treatment in the report to the board.

(c) Whenever treatment is provided to the person by a state or local mental health facility under this subsection, the facility 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 subsection shall be furnished

to the person and to the person's legal counsel, if applicable. The confidentiality of these reports is determined pursuant to ORS 192.338, 192.345 and 192.355.

(e) The state or local mental health facility providing treatment to the person under this subsection shall comply with the conditional release order and any modifications of the conditions ordered by the board.

(9)(a) If at any time while the person is conditionally released it appears that the person has violated the terms of the conditional release, the board may order the person returned to a state hospital for evaluation or treatment. A written order of the board is sufficient warrant for any law enforcement officer to take the person into custody. A sheriff, municipal police officer, parole or probation officer or other peace officer shall execute the order, and the person shall be returned to the state hospital as soon as practicable.

(b) The director of a state or local mental health facility providing treatment to a person under subsection (8) of this section may request that the board issue a written order for a person on conditional release to be taken into custody if there is reason to believe that the person can no longer be controlled in the community with proper care, medication, supervision and treatment.

(c) Within 30 days following the return of the person to a state hospital, the board shall conduct a hearing to determine if, by a preponderance of the evidence, the person is no longer fit for conditional release. The board shall provide written notice of the hearing to the person, the person's legal counsel and the office of the district attorney who filed the initial petition under subsection (2) of this section within a reasonable time prior to the hearing. The notice shall advise the person of the nature of the hearing, the right to have the court appoint legal counsel and the right to subpoena witnesses, examine documents considered by the board and cross-examine all witnesses who appear at the hearing.

(10)(a) If the person had unadjudicated criminal charges at the time of the person's initial commitment under this section and the state hospital or the state or local mental health facility providing treatment to the person intends to recommend discharge of the person at an upcoming hearing, the superintendent of the state hospital or the director of the facility shall provide written notice to the board and the district attorney of the county where the criminal charges were initiated of the discharge recommendation at least 45 days before the hearing. The notice shall be accompanied by a report describing the person's diagnosis and the treatment the person has received.

(b) Upon receiving the notice described in this subsection, the district attorney may request an order from the court in the county where the criminal charges were initiated for an evaluation to determine if the person is fit to proceed in the criminal proceeding. The court may order the state hospital or the state or local mental health facility providing treatment to the person to perform the evaluation. The hospital or facility shall provide copies of the evaluation to the district attorney, the person and the person's legal counsel, if applicable.

(c) The person committed under this section may not waive an evaluation ordered by the court to determine if the person is fit to proceed with the criminal proceeding as described in this subsection.

(11) The board shall make reasonable efforts to notify any person described in subsection (3)(c) of this section of any order or hearing, conditional release, discharge or escape of the person committed under this section.

(12) The board shall adopt rules to carry out the provisions of this section and ORS 426.702.

(13) Any time limitation described in ORS 131.125 to 131.155 does not run during a commitment described in this section or a further commitment described in ORS 426.702.

SECTION 15. The amendments to ORS 426.701 by section 14 of this 2019 Act apply to petitions to initiate commitment proceedings filed on or after the effective date of this 2019 Act.