

Enrolled Senate Bill 205

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CHAPTER

AN ACT

Relating to extremely dangerous persons with mental illness; amending ORS 426.701 and 426.702; and declaring an emergency.

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

SECTION 1. 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 **qualifying** mental disorder substantially similar to those that preceded the act described in subsection (3)(a)(C) of this section; and

(C) Because of a **qualifying** 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) “**Qualifying** 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 **qualifying** 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. **Venue is proper in the county in which the person is alleged to have committed the qualifying act or the county in which the person lives.** The petition shall immediately be served upon the person.

(b) If a person is committed to a state hospital under ORS 161.365 or 161.370 and the state hospital intends to discharge the person, the district attorney may provide notice to the superintendent of the state hospital indicating an intent to file a petition under this section. Upon receipt of the notice, the superintendent may delay discharge of the person for up to

seven judicial days to allow for the petition to be filed and for the court to make findings under paragraph (f) of this subsection.

[(b)] **(c)** 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)] **(d)** 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)] **(e)** Upon receipt of the petition, the court shall schedule a hearing and shall appoint an examiner as described in ORS 426.110 to evaluate the person. **If the person is in custody or committed while the hearing is pending, the hearing must commence within 30 days of filing the petition unless good cause is found by the court. If the court finds good cause, the hearing must commence no later than 60 days after the filing of the petition or, if the district attorney provided notice under paragraph (b) of this subsection, the date of the notice, whichever occurs first. As used in this paragraph, “good cause” means:**

(A) The person who would be considered the victim of the act described in subsection (3)(a)(C) of this section if the act were criminally prosecuted, or an essential witness for either the state or the person, is unable to testify within the 30-day period.

(B) The attorney for the person cannot reasonably be expected to participate in the hearing within the 30-day period, cannot be adequately prepared to represent the person at the hearing within the 30-day period, or has a schedule conflict that cannot be resolved in a manner that allows the attorney to represent the person at a hearing within the 30-day period.

(C) An examiner cannot be appointed to conduct the examination, or conduct the examination and prepare a report, within the 30-day period.

(D) If a guardian ad litem is appointed on the case, the guardian ad litem cannot be prepared for a hearing within the 30-day period.

(f)(A) The court may order that the person be committed to the custody of the superintendent of a state hospital or the director of a secure mental health facility while the petition is pending if the court finds probable cause that:

(i) The person is at least 18 years of age;

(ii) The person has a qualifying mental disorder that is resistant to treatment;

(iii) The person committed an act described in subsection (3)(a)(C) of this section; and

(iv) Failure to commit the person while the hearing is pending would pose serious harm or danger to the person or others.

(B) If a person committed under this paragraph is held in a secure facility other than a state hospital or secure mental health facility, including but not limited to a jail or prison, at the time the petition is filed, the court may further order that the person remain at that placement for sufficient time to allow the superintendent or director to safely admit the person. Any order of the court concerning the placement of a person under this subparagraph must be in accordance with the person’s constitutional right to due process. If the

person remains in a secure facility under this subparagraph, the superintendent, director or designee may consult with the facility to ensure continuity of care for the person.

(C) Commitment to the custody of the superintendent of a state hospital or the director of a secure mental health facility under this paragraph may not exceed 60 days. If the hearing does not occur within 60 days, if the district attorney dismisses the petition, or if the court holds the hearing but does not commit the person, the person shall be returned to the county in which the petition was filed and the court shall hold a disposition hearing within five judicial days to determine how to proceed on the petition and any outstanding criminal charges. A person who is returned to a secure facility other than a state hospital or secure mental health facility, including but not limited to a jail or prison, under this paragraph may remain at the placement until the disposition hearing.

(g) If the hearing is not commenced within the time period required by paragraph (e) of this subsection, the court shall either dismiss the petition or release the person on personal recognizance, to the custody of a third party or upon any additional reasonable terms and conditions the court deems appropriate.

(3)(a) [Upon receipt of a petition filed under subsection (2) of this section, the court shall schedule a hearing.] At the hearing on the petition, 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 **qualifying** mental disorder that is resistant to treatment; and
- (C) Because of the **qualifying** 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) **If the court commits a person under this section and the person has pending criminal charges at the time of the hearing, the court shall dismiss the criminal charges without prejudice, and if the person is further committed to a state hospital under this section, the dismissal shall not take effect until the person's transportation to the state hospital.**

(b) If the court commits a person to the state hospital under this section and:

(A) The person is in a setting other than a state hospital, the court may additionally order that the person remain in that placement until the person can be safely transported to a state hospital pursuant to the order. Any order of the court concerning the placement of the person under this subparagraph must be in accordance with the person's constitutional right to due process.

(B) The person is at a state hospital at the time of the hearing, the person may remain at the state hospital under the commitment.

(c) 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 **qualifying** 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 **qualifying** 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 **qualifying** 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 **filing of the petition for 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) Unless the court orders otherwise or either party objects, any party or witness may attend a hearing held under this section via simultaneous electronic transmission.

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

[(13)] (14) 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 2. ORS 426.702 is amended to read:

426.702. (1)(a) At the end of the 24-month period of commitment described in ORS 426.701, any person who remains committed under the jurisdiction of the Psychiatric Security Review Board shall be discharged, unless the board certifies to the court in the county [*where the state hospital or state or local mental health facility providing treatment to the person is located*] **in which the person was originally committed** that the person is still extremely dangerous and suffers from a **qualifying** mental disorder that is resistant to treatment. The board, pursuant to its rules, may delegate to the superintendent of the state hospital or the director of the state or local mental health facility providing treatment to the person the responsibility for making the certification. If the certification is made, the person will not be released.

(b) The board may additionally certify that the person cannot be controlled in the community with proper care, medication, supervision and treatment on conditional release and must be committed to a state hospital. The board, pursuant to its rules, may delegate to the superintendent of the state hospital or the director of the state or local mental health facility providing treatment to the person the responsibility for making the additional certification.

(2) The certification shall immediately be served upon the person by the superintendent of the state hospital or the director of the state or local mental health facility providing treatment to the person. The superintendent or director shall inform the court in writing that service has been made and the date thereof.

(3) The certification shall advise the person of all the following:

(a) That the board, hospital or facility has requested that commitment be continued for an additional 24 months.

(b) That the person may protest this further commitment within 14 days, and that, if the person does not protest, the commitment will be continued for a maximum of 24 months.

(c) That the person may consult with legal counsel when deciding whether to protest the further commitment and that legal counsel will be provided for the person without cost if the person is without funds to retain legal counsel.

(d) That the person may protest a further period of commitment either orally or in writing by signing the form accompanying the certification.

(e) That if the person does protest a further period of commitment, the person is entitled to a hearing before the court to determine whether commitment should be continued.

(f) That the person is entitled to have a psychologist or psychiatrist, other than a member of the staff at the facility where the person is being treated, examine the person and report to the court the results of the examination at the hearing.

(g) That the person may subpoena witnesses and offer evidence on behalf of the person at the hearing.

(h) That if the person is without funds to retain legal counsel or an examining psychologist or psychiatrist for the hearing, the court will appoint legal counsel or an examining psychologist or psychiatrist.

(4) The person serving the certification shall read and deliver the certification to the person and ask whether the person protests a further period of commitment. The person may protest a further period of commitment and request a hearing either orally or by signing a simple protest form to be given to the person with the certification. If the person does not protest a further period of commitment within 14 days of service of the certification, the board, hospital or facility shall so notify the court, and the court shall, without further hearing, order the commitment of the person to the jurisdiction of the board for a maximum of 24 months. The court shall further order that the person be committed to a state hospital if a certification under subsection (1)(b) of this section has been made.

(5) When the person protests a further period of commitment and requests a hearing, the board, hospital or facility shall immediately notify the court, and the court shall have the person brought before it and shall again advise the person that the board, hospital or facility has requested that commitment be continued for an additional period of time and that if the person does not protest this commitment the commitment will be continued for a maximum of 24 months. The person shall also be informed of the rights set forth in subsection (3) of this section.

(6) If the person requests a hearing under subsections (4) and (5) of this section, the following provisions apply as described:

(a) The hearing shall be conducted as promptly as possible, **but no more than 60 days from the date of the protest and request for a hearing**, and at a time and place as the court may direct. **Venue for the hearing is proper in the county in which the person was originally committed.**

(b) **While the hearing is pending, the person remains under the jurisdiction of the board and the person's placement may continue.**

[(b)] (c) If the person requests a continuance in order to prepare for the hearing or to obtain legal counsel to represent the person, the court may grant postponement and **order the continued detention of the person** during postponement [*as described in ORS 426.095 (2)(c)*] **for an additional 30 days.**

[(c)] (d) The person has the right to representation by or appointment of legal counsel subject to ORS 135.055, 151.216 and 151.219.

[(d)] (e) If the person requests an examination by a psychologist or psychiatrist and is without funds to retain a psychologist or psychiatrist for purposes of the examination, the court shall appoint a psychologist or psychiatrist, other than a member of the staff from the facility where the person is being treated, to examine the person at no expense to the person and to report to the court the results of the examination.

[(e)] (f) The provisions of ORS 40.230, 40.235, 40.240, 40.250 and 179.505 do not apply to the use of medical records from the current period of commitment or to testimony related to such records or period of commitment in connection with hearings under this section. The court may consider as evidence such reports and testimony.

(g) **Unless the court orders otherwise or either party objects, any party or witness may attend the hearing via simultaneous electronic transmission.**

[(f)] (h) The court shall then conduct a hearing. The court may take judicial notice of the findings regarding the act described in ORS 426.701 (3)(a)(C) made by the court at the initial commitment. If, after hearing the evidence and reviewing the recommendations of the board and the state hospital or the state or local mental health facility providing treatment to the person, in the opinion of the court the person is still extremely dangerous and suffering from a **qualifying** mental disorder that is resistant to treatment by clear and convincing evidence, the court may order commitment to the jurisdiction of the board for an additional maximum of 24 months. 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.

[(g)] (i) At the end of the 24-month period, the person shall be discharged unless the board, hospital or facility again certifies to the committing court that the person is still an extremely

dangerous person with mental illness and in need of further treatment, in which event the procedures set forth in this section shall be followed.

SECTION 3. This 2021 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect on its passage.

Passed by Senate May 5, 2021

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House June 9, 2021

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Tina Kotek, Speaker of House

Received by Governor:

.....M,....., 2021

Approved:

.....M,....., 2021

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2021

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Shemia Fagan, Secretary of State