

Senate Bill 205

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

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**.

Authorizes court to commit person to state hospital or secure mental health facility during pendency of petition to commit person as extremely dangerous person with mental illness.

A BILL FOR AN ACT

1
2 Relating to extremely dangerous persons with mental illness; amending ORS 426.701.

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

4 **SECTION 1.** ORS 426.701 is amended to read:

5 426.701. (1) For the purposes of this section and ORS 426.702:

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

7 (A) Is at least 18 years of age;

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

10 (C) Because of a mental disorder:

11 (i) Presents a serious danger to the safety of other persons by reason of an extreme risk that
12 the person will inflict grave or potentially lethal physical injury on other persons; and

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

15 (b) "Mental disorder" does not include:

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

17 (B) A disorder constituting solely a personality disorder.

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

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

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

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

29 (B) The right to a hearing to determine whether the person is an extremely dangerous person
30 with mental illness, unless the person consents to the commitment by waiving the right to a hearing

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.

1 in writing after consultation with legal counsel.

2 (c) A person against whom a petition described in this subsection is filed shall have the follow-
3 ing:

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

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

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

9 (D) The right to examine all reports, documents and information that the court considers, in-
10 cluding the right to examine the reports, documents and information prior to the hearing, if avail-
11 able.

12 (d) **Upon receipt of the petition**, the court shall **schedule a hearing and shall** appoint an
13 examiner as described in ORS 426.110 to evaluate the person.

14 (e) **The court may order that the person be committed to the custody of the super-**
15 **intendent of a state hospital or the director of a secure mental health facility while the pe-**
16 **tion is pending.**

17 (3)(a) [*Upon receipt of a petition filed under subsection (2) of this section, the court shall schedule*
18 *a hearing.*] At the hearing **on the petition**, the court shall order the person committed as an ex-
19 tremely dangerous person with mental illness under the jurisdiction of the Psychiatric Security Re-
20 view Board for a maximum of 24 months if the court finds, by clear and convincing evidence, that:

21 (A) The person is extremely dangerous;

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

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

25 (i) Caused the death of another person;

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

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

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

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

32 (vi) Caused a fire or explosion that damaged the protected property of another, as those terms
33 are defined in ORS 164.305, or placed another person in danger of physical injury, and the fire or
34 explosion was not the incidental result of normal and usual daily activities.

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

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

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

45 (e) The provisions of ORS 40.230, 40.235, 40.240, 40.250 and 179.505 do not apply to the use of

1 the examiner's report and the court may consider the report as evidence.

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

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

7 (6)(a) The board shall hold a hearing six months after the initial commitment described in sub-
8 section (3) of this section, and thereafter six months after a further commitment described in ORS
9 426.702, to determine the placement of the person and whether the person is eligible for conditional
10 release or early discharge. The board shall provide written notice of the hearing to the person, the
11 person's legal counsel and the office of the district attorney who filed the initial petition under
12 subsection (2) of this section within a reasonable time prior to the hearing. The board shall further
13 notify the person of the following:

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

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

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

18 (D) The right to subpoena witnesses;

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

20 (F) The right to examine all reports, documents and information that the board considers, in-
21 cluding the right to examine the reports, documents and information prior to the hearing if avail-
22 able.

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

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

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

35 (7)(a) At any time during the commitment to a state hospital, the superintendent of the state
36 hospital may request a hearing to determine the status of the person's commitment under the juris-
37 diction of the board. The request shall be accompanied by a report setting forth the facts supporting
38 the request. If the request is for conditional release, the request shall be accompanied by a verified
39 conditional release plan. The hearing shall be conducted as described in subsection (6) of this sec-
40 tion.

41 (b) The board may make the findings described in subsection (6)(c) of this section and condi-
42 tionally release the person without a hearing if the office of the district attorney who filed the ini-
43 tial petition under subsection (2) of this section does not object to the conditional release.

44 (c) At any time during conditional release, a state or local mental health facility providing
45 treatment to the person may request a hearing to determine the status of the person's commitment

1 under the jurisdiction of the board. The hearing shall be conducted as described in subsection (6)
2 of this section.

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

8 (b) When a person is referred to a state or local mental health facility for an evaluation under
9 this subsection, the facility shall perform the evaluation and submit a written report of its findings
10 to the board. If the facility finds that treatment of the person is appropriate, the facility shall in-
11 clude its recommendations for treatment in the report to the board.

12 (c) Whenever treatment is provided to the person by a state or local mental health facility under
13 this subsection, the facility shall furnish reports to the board on a regular basis concerning the
14 progress of the person.

15 (d) Copies of all reports submitted to the board pursuant to this subsection shall be furnished
16 to the person and to the person's legal counsel, if applicable. The confidentiality of these reports is
17 determined pursuant to ORS 192.338, 192.345 and 192.355.

18 (e) The state or local mental health facility providing treatment to the person under this sub-
19 section shall comply with the conditional release order and any modifications of the conditions or-
20 dered by the board.

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

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

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

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

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

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

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

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

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

16
