

SB 205-1
(LC 1647)
3/18/21 (JLM/ps)

Requested by SENATE COMMITTEE ON JUDICIARY AND BALLOT MEASURE 110 IMPLEMENTATION (at the request of Psychiatric Security Review Board work group)

**PROPOSED AMENDMENTS TO
SENATE BILL 205**

1 On page 1 of the printed bill, delete lines 4 through 30 and delete pages
2 2 through 5 and insert:

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

4 “426.701. (1) For the purposes of this section and ORS 426.702:

5 “(a) A person is ‘extremely dangerous’ if the person:

6 “(A) Is at least 18 years of age;

7 “(B) Is exhibiting symptoms or behaviors of a mental disorder substan-
8 tially similar to those that preceded the act described in subsection (3)(a)(C)
9 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
12 an extreme risk that the person will inflict grave or potentially lethal
13 physical injury on other persons; and

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

16 “(b) ‘Mental disorder’ does not include:

17 “(A) A disorder manifested solely by repeated criminal or otherwise anti-
18 social conduct; or

19 “(B) A disorder constituting solely a personality disorder.

20 “(c) A mental disorder is ‘resistant to treatment’ if, after receiving care
21 from a licensed psychiatrist and exhausting all reasonable psychiatric treat-

1 ment, or after refusing psychiatric treatment, the person continues to be
2 significantly impaired in the person's ability to make competent decisions
3 and to be aware of and control extremely dangerous behavior.

4 “(2)(a) A district attorney may petition the court to initiate commitment
5 proceedings described in this section if there is reason to believe a person
6 is an extremely dangerous person with mental illness. **Venue is proper in**
7 **the county in which the person committed the qualifying act or the**
8 **county in which the person lives.** The petition shall immediately be served
9 upon the person.

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

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

14 “(B) The right to a hearing to determine whether the person is an ex-
15 tremely dangerous person with mental illness, unless the person consents to
16 the commitment by waiving the right to a hearing in writing after consul-
17 tation with legal counsel.

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

20 “(A) The right to obtain suitable legal counsel possessing skills and ex-
21 perience commensurate with the nature of the allegations and complexity of
22 the case and, if the person is without funds to retain legal counsel, the right
23 to have the court appoint legal counsel;

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

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

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

1 “(d) **Upon receipt of the petition, the court shall schedule a hearing**
2 **and shall** appoint an examiner as described in ORS 426.110 to evaluate the
3 person. **If the person is detained under paragraph (e) of this subsection**
4 **while the hearing is pending, the hearing must commence within 30**
5 **days of filing the petition unless good cause is found by the court. If**
6 **the court finds good cause, the hearing may commence no later than**
7 **60 days after the filing of the petition. As used in this paragraph, good**
8 **cause means:**

9 “(A) **The person who would be considered the victim of the act de-**
10 **scribed in subsection (3)(a)(C) of this section if the act were criminally**
11 **prosecuted, or an essential witness for either the state or the person,**
12 **is unavailable to testify within the 30-day period.**

13 “(B) **The attorney for the person cannot reasonably be expected to**
14 **participate in the hearing within the 30-day period, cannot be ade-**
15 **quately prepared to represent the person at the hearing within the**
16 **30-day period, or has a schedule conflict that cannot be resolved in a**
17 **manner that allows the attorney to represent the person at a hearing**
18 **within the 30-day period.**

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

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

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

28 “(i) **Is at least 18 years of age;**

29 “(ii) **Suffers from a mental disorder that is resistant to treatment;**

30 **and**

1 “(iii) Committed an act described in subsection (3)(a)(C) of this
2 section.

3 “(B) If a person committed under this paragraph is held in a secure
4 facility other than a state hospital or secure mental health facility,
5 including but not limited to a jail or prison, at the time the petition
6 is filed, the person may remain at that placement for sufficient time
7 to allow the superintendent or director to safely admit the person. If
8 the person remains in a secure facility under this subparagraph, the
9 superintendent, director or designee may consult with the facility to
10 ensure continuity of care for the person.

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

23 “(3)(a) [*Upon receipt of a petition filed under subsection (2) of this section,*
24 *the court shall schedule a hearing.*] At the hearing **on the petition**, the court
25 shall order the person committed as an extremely dangerous person with
26 mental illness under the jurisdiction of the Psychiatric Security Review
27 Board for a maximum of 24 months if the court finds, by clear and convinc-
28 ing evidence, that:

29 “(A) The person is extremely dangerous;

30 “(B) The person suffers from a mental disorder that is resistant to treat-

1 ment; and

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

4 “(i) Caused the death of another person;

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

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

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

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

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

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

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

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

29 “(e) The provisions of ORS 40.230, 40.235, 40.240, 40.250 and 179.505 do not
30 apply to the use of the examiner’s report and the court may consider the

1 report as evidence.

2 **“(f) If the court does not commit the person, and the person has**
3 **pending criminal charges at the time of the hearing, the court shall**
4 **determine the person’s fitness to proceed under ORS 161.370.**

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

8 **“(5)(a) If the court commits a person under this section and the**
9 **person has pending criminal charges at the time of the hearing, the**
10 **court shall further determine under ORS 161.370 whether there is a**
11 **substantial probability that, in the foreseeable future, the person will**
12 **gain or regain fitness to proceed. If the court finds that there is no**
13 **substantial probability, the court shall dismiss the criminal charges,**
14 **and if the person is further committed to a state hospital under this**
15 **section, the dismissal shall not take effect until the person’s trans-**
16 **portation to the state hospital.**

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

19 **“(A) The person is in a setting other than a state hospital, the**
20 **person shall remain in that placement until the person can be safely**
21 **transported to a state hospital pursuant to the order.**

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

24 **“(c) A person committed under this section shall remain under the juris-**
25 **diction of the board for a maximum of 24 months unless the board conducts**
26 **a hearing and makes the findings described in subsection (6)(d) of this sec-**
27 **tion.**

28 **“(6)(a) The board shall hold a hearing six months after the initial com-**
29 **mitment described in subsection (3) of this section, and thereafter six months**
30 **after a further commitment described in ORS 426.702, to determine the**

1 placement of the person and whether the person is eligible for conditional
2 release or early discharge. The board shall provide written notice of the
3 hearing to the person, the person's legal counsel and the office of the district
4 attorney who filed the initial petition under subsection (2) of this section
5 within a reasonable time prior to the hearing. The board shall further notify
6 the person of the following:

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

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

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

12 “(D) The right to subpoena witnesses;

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

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

17 “(b) If the board determines at the hearing that the person still suffers
18 from a mental disorder that is resistant to treatment and continues to be
19 extremely dangerous, and that the person cannot be controlled in the com-
20 munity with proper care, medication, supervision and treatment if condi-
21 tionally released, the person shall remain committed to a state hospital.

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

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

1 person pursuant to ORS 426.005 to 426.390.

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

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

13 “(c) At any time during conditional release, a state or local mental health
14 facility providing treatment to the person may request a hearing to deter-
15 mine the status of the person’s commitment under the jurisdiction of the
16 board. The hearing shall be conducted as described in subsection (6) of this
17 section.

18 “(8)(a) If the board orders the conditional release of a person under sub-
19 section (6)(c) of this section, the board shall order conditions of release that
20 may include a requirement to report to any state or local mental health fa-
21 cility for evaluation. The board may further require cooperation with, and
22 acceptance of, psychiatric or psychological treatment from the facility. Con-
23 ditions of release may be modified by the board from time to time.

24 “(b) When a person is referred to a state or local mental health facility
25 for an evaluation under this subsection, the facility shall perform the eval-
26 uation and submit a written report of its findings to the board. If the facility
27 finds that treatment of the person is appropriate, the facility shall include
28 its recommendations for treatment in the report to the board.

29 “(c) Whenever treatment is provided to the person by a state or local
30 mental health facility under this subsection, the facility shall furnish reports

1 to the board on a regular basis concerning the progress of the person.

2 “(d) Copies of all reports submitted to the board pursuant to this sub-
3 section shall be furnished to the person and to the person’s legal counsel, if
4 applicable. The confidentiality of these reports is determined pursuant to
5 ORS 192.338, 192.345 and 192.355.

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

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

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

23 “(c) Within 30 days following the return of the person to a state hospital,
24 the board shall conduct a hearing to determine if, by a preponderance of the
25 evidence, the person is no longer fit for conditional release. The board shall
26 provide written notice of the hearing to the person, the person’s legal coun-
27 sel and the office of the district attorney who filed the initial petition under
28 subsection (2) of this section within a reasonable time prior to the hearing.
29 The notice shall advise the person of the nature of the hearing, the right to
30 have the court appoint legal counsel and the right to subpoena witnesses,

1 examine documents considered by the board and cross-examine all witnesses
2 who appear at the hearing.

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

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

21 “(c) The person committed under this section may not waive an evalu-
22 ation ordered by the court to determine if the person is fit to proceed with
23 the criminal proceeding as described in this subsection.

24 “(11) The board shall make reasonable efforts to notify any person de-
25 scribed in subsection (3)(c) of this section of any order or hearing, condi-
26 tional release, discharge or escape of the person committed under this
27 section.

28 “(12) The board shall adopt rules to carry out the provisions of this sec-
29 tion and ORS 426.702.

30 “(13) Any time limitation described in ORS 131.125 to 131.155 does not run

1 during a commitment described in this section or a further commitment de-
2 scribed in ORS 426.702.”.

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