

## HB 2807 STAFF MEASURE SUMMARY

### Senate Committee On Judiciary

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**Meeting Dates:** 4/15, 4/22

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#### WHAT THE MEASURE DOES:

The measure immunizes the Psychiatric Security Review Board from liability for injury to property or persons and for death of persons for conducting Board hearings required by law and performing other specified Board functions. The measure immunizes the Board from liability for the actions or omissions of persons who are or were under the jurisdiction of the Board while those persons are on conditional release or have been discharged from the Board's jurisdiction.

#### Detailed Summary

- Immunizes the Psychiatric Security Review Board from liability for claims of injury to persons or property or claims of death of persons resulting from acts or omissions related to these Board functions:
  - Conducting hearings required by law to determine
    - status, release, or commitment of a person under the Board's jurisdiction
    - sex offender reporting or classification
    - restoration of right to possess firearms
    - sex offender classification assessment
  - Making oversight and supervision decisions
  - Modifying or terminating conditional release plans
- Immunizes the Board from claims of injury to persons or property or claims of death of persons resulting from the acts or omissions of persons who are or were under the Board's jurisdiction while those persons are on conditional release or have been discharged from the Board's jurisdiction, except for in cases of "willful or wanton misconduct" by the Board.
- Applies to all claims arising on, before, or after the measure's effective date, except for causes of action for which a final judgment has been entered before that date.

*HOUSE VOTE: Ayes, 53; Excused, 6; Excused for Business of the House, 1*

*REVENUE: No revenue impact*

*FISCAL: Has minimal fiscal impact*

#### ISSUES DISCUSSED:

- Current appellate review process for the Board's decisions
- Comparison of the current law and the proposed measure to protections for other quasi-judicial and judicial bodies
- Comparison of liability of the Board to liability of other state agencies, such as the Board of Parole and Probation
- Deposition of PSRB members in litigation
- Judicial opinion in *Harmon v. State of Oregon*, 320 Or. App. 406 (2022)
- Recourse for victims if PSRB is immune from liability

#### EFFECT OF AMENDMENT:

No amendment.

#### BACKGROUND:

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The Oregon Psychiatric Security Review Board ("the Board") is established by ORS 161.385 and is made up of two five-member panels whose duties include the oversight of people who have been found guilty except for insanity, responsible except for insanity (for juveniles), or who have been committed as extremely dangerous persons under ORS 426.701 and 426.702. The Board's members are appointed by the Governor and confirmed by the Oregon Senate and include psychiatrists, psychologists, lawyers, parole and probation employees, and members of the general public. ORS 30.265 prescribes the scope of liability of public bodies and officers and provides that "every public body is subject to civil action for its torts and those of its officers, employees and agents acting within the scope of their employment or duties," subject to certain limitations and exceptions.

The Board's decisions are subject to judicial review under ORS 183.480. Judicial review of the Board's decisions is heard by the Oregon Court of Appeals and is subject to the processes and standards laid out in ORS 183.482, which includes a review of whether the decision is consistent with the law and whether there is "substantial evidence in the record" to support the decision.

A 2022 Oregon Appeals Court opinion examined whether the PSRB is entitled to "judicial immunity" for certain actions. *Harmon v. State by and Through Psychiatric Security Review Board*, 320 Or.App. 406 (2022). Judicial immunity is a longstanding legal principal that judicial officers, like judges, are immune from civil liability for actions "in the exercise of their judicial functions." *Butz v. Economou*, 438 U.S. 478 (1978). Judicial immunity can also apply to the actions of public officials and agencies when the action is functionally comparable to judicial actions or when the action is done to comply with a court order or directive. *Harmon* held that the PSRB's determination to release a person under their jurisdiction was entitled to judicial immunity because the PSRB hearing to determine whether to release him was functionally comparable to judicial action. *Harmon*, 320 Or.App. at 425.