

## SENATE AMENDMENTS TO SENATE BILL 39

By COMMITTEE ON JUDICIARY

April 18

1 In line 2 of the printed bill, after "161.325" insert "and 161.327".

2 In lines 11 and 12, delete the boldfaced material and insert:

3 "(b) State on the record the mental disease or defect on which the defendant relied for the guilty  
4 except for insanity defense;".

5 After line 21, insert:

6 "**SECTION 2.** ORS 161.327 is amended to read:

7 "161.327. (1)(a) Following the entry of a judgment pursuant to ORS 161.319 and the dispositional  
8 determination under ORS 161.325, if the court finds that the person would have been guilty of a  
9 felony, or of a misdemeanor during a criminal episode in the course of which the person caused  
10 physical injury or risk of physical injury to another, [*and*] **the court shall order that a psychiatric  
11 or psychological evaluation be performed and a report of the evaluation be provided to the  
12 court if an evaluation was not performed or a report was not provided to the court prior to  
13 trial. Upon receipt of the evaluation,** if the court finds by a preponderance of the evidence that  
14 the person is affected by mental disease or defect and presents a substantial danger to others re-  
15 quiring commitment to a state mental hospital designated by the Department of Human Services or  
16 conditional release, the court shall order the person placed under the jurisdiction of the Psychiatric  
17 Security Review Board for care and treatment. The period of jurisdiction of the board shall be equal  
18 to the maximum sentence provided by statute for the crime for which the person was found guilty  
19 except for insanity.

20 "**(b) When a court orders a psychiatric or psychological evaluation of a financially eligible  
21 person under this subsection, the court shall order the public defense services executive di-  
22 rector to pay a reasonable fee for the evaluation from funds available for the purpose.**

23 "(2) The court shall determine whether the person should be committed to a state hospital des-  
24 ignated by the Department of Human Services or conditionally released pending any hearing before  
25 the board as follows:

26 "(a) If the court finds that the person presents a substantial danger to others and is not a proper  
27 subject for conditional release, the court shall order the person committed to a state hospital des-  
28 ignated by the Department of Human Services for custody, care and treatment pending hearing be-  
29 fore the board in accordance with ORS 161.341 to 161.351.

30 "(b) If the court finds that the person presents a substantial danger to others but that the person  
31 can be adequately controlled with supervision and treatment if conditionally released and that nec-  
32 essary supervision and treatment are available, the court may order the person conditionally re-  
33 leased, subject to those supervisory orders of the court as are in the best interests of justice, the  
34 protection of society and the welfare of the person. The court shall designate a person or state,  
35 county or local agency to supervise the person upon release, subject to those conditions as the court

1 directs in the order for conditional release. Prior to the designation, the court shall notify the per-  
2 son or agency to whom conditional release is contemplated and provide the person or agency an  
3 opportunity to be heard before the court. After receiving an order entered under this paragraph, the  
4 person or agency designated shall assume supervision of the person pursuant to the direction of the  
5 Psychiatric Security Review Board. The person or agency designated as supervisor shall be required  
6 to report in writing no less than once per month to the board concerning the supervised person's  
7 compliance with the conditions of release.

8 “(3) For purposes of this section, a person affected by a mental disease or defect in a state of  
9 remission is considered to have a mental disease or defect requiring supervision when the disease  
10 may, with reasonable medical probability, occasionally become active and, when active, render the  
11 person a danger to others.

12 “(4) In determining whether a person should be conditionally released, the court may order  
13 evaluations, examinations and compliance as provided in ORS 161.336 (4) and 161.346 (2).

14 “(5) In determining whether a person should be committed to a state hospital or conditionally  
15 released, the court shall have as its primary concern the protection of society.

16 “(6) Upon placing a person on conditional release, the court shall notify the board in writing  
17 of the court's conditional release order, the supervisor appointed, and all other conditions of release,  
18 and the person shall be on conditional release pending hearing before the board in accordance with  
19 ORS 161.336 to 161.351. Upon compliance with this subsection and subsections (1) and (2) of this  
20 section, the court's jurisdiction over the person is terminated and the board assumes jurisdiction  
21 over the person.

22 “(7) An order of the court under this section is a final order appealable by the person found  
23 guilty except for insanity in accordance with ORS 19.205 (5). Notwithstanding ORS 19.255, notice  
24 of an appeal under this section shall be served and filed within 90 days after the order appealed from  
25 is entered in the register. The person shall be entitled on appeal to suitable counsel possessing  
26 skills and experience commensurate with the nature and complexity of the case. If the person is fi-  
27 nancially eligible, suitable counsel shall be appointed in the manner provided in ORS 138.500 (1), and  
28 the compensation for counsel and costs and expenses of the person necessary to the appeal shall be  
29 determined and paid as provided in ORS 138.500.

30 “(8) Upon placing a person under the jurisdiction of the board, the court shall notify the person  
31 of the right to appeal and the right to a hearing before the board in accordance with ORS 161.336  
32 (7) and 161.341 (4).”

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