

(Including Amendments to Resolve Conflicts)

## B-Engrossed Senate Bill 232

Ordered by the House August 3  
Including Senate Amendments dated July 27 and House Amendments  
dated August 3

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 Joint Interim Committee on Judiciary for Oregon Law Commission)

### 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.

Provides for affirmative defense of mental disease or defect constituting insanity in juvenile delinquency proceedings. **Provides that mental disease or defect does not include developmental disability.** Establishes disposition for juveniles who successfully use affirmative defense and have serious mental condition or present substantial danger to others. Increases number of members on Psychiatric Security Review Board. Divides board into adult and juvenile panels. Appropriates moneys to board.

*[Takes effect January 1, 2007.]*

### A BILL FOR AN ACT

1  
2 Relating to juveniles; creating new provisions; amending ORS 21.010, 40.015, 137.290, 137.712,  
3 151.216, 161.375, 161.385, 181.595, 181.607, 419A.004, 419B.100, 419C.005, 419C.285, 419C.400,  
4 419C.411, 419C.501 and 419C.626; and appropriating money.

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

6 **SECTION 1.** ORS 419A.004 is amended to read:

7 419A.004. As used in this chapter and ORS chapters 419B and 419C, unless the context requires  
8 otherwise:

9 (1) "CASA Volunteer Program" means a program approved or sanctioned by the juvenile court  
10 to recruit, train and supervise volunteer persons to serve as court appointed special advocates.

11 (2) "Child care center" means a residential facility for wards or youth offenders that is licensed  
12 under the provisions of ORS 418.240.

13 (3) "Community service" has the meaning given that term in ORS 137.126.

14 (4) "Conflict of interest" means a person appointed to a local citizen review board who has a  
15 personal or pecuniary interest in a case being reviewed by that board.

16 (5) "Counselor" means a juvenile department counselor.

17 (6) "Court" means the juvenile court.

18 (7) "Court appointed special advocate" or "CASA" means a person appointed by the court pur-  
19 suant to a CASA Volunteer Program to act as special advocate pursuant to ORS 419A.170.

20 (8) "Court facility" has the meaning given that term in ORS 166.360.

21 (9) "Department" means the Department of Human Services.

22 (10) "Detention" or "detention facility" means a facility established under ORS 419A.010 to

**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 419A.020 and 419A.050 to 419A.063 for the detention of children, wards, youths or youth offenders  
2 pursuant to a judicial commitment or order.

3 (11) "Director" means the director of a juvenile department established under ORS 419A.010 to  
4 419A.020 and 419A.050 to 419A.063.

5 (12) "Guardian" means guardian of the person and not guardian of the estate.

6 (13) "Indian child" means any unmarried person less than 18 years of age who is:

7 (a) A member of an Indian tribe; or

8 (b) Eligible for membership in an Indian tribe and is the biological child of a member of an In-  
9 dian tribe.

10 (14) "Juvenile court" means the court having jurisdiction of juvenile matters in the several  
11 counties of this state.

12 (15) "Local citizen review board" means the board specified by ORS 419A.090 and 419A.092.

13 (16) "Parent" means the biological or adoptive mother and the legal or adoptive father of the  
14 child, ward, youth or youth offender. A legal father includes:

15 (a) A nonimpotent, nonsterile man who was cohabiting with his wife, who is the mother of the  
16 child, ward, youth or youth offender, at the time of conception;

17 (b) A man married to the mother of the child, ward, youth or youth offender at the time of birth,  
18 when there is no judgment of separation and the presumption of paternity has not been disputed;

19 (c) A biological father who marries the mother of the child, ward, youth or youth offender after  
20 the birth of the child, ward, youth or youth offender;

21 (d) A biological father who has established or declared paternity through filiation proceedings  
22 or under ORS 416.400 to 416.470; and

23 (e) A biological father who has, with the mother, established paternity through a voluntary ac-  
24 knowledgment of paternity under ORS 109.070.

25 (17) "Permanent foster care" means an out-of-home placement in which there is a long-term  
26 contractual foster care agreement between the foster parents and the department that is approved  
27 by the juvenile court and in which the foster parents commit to raise a ward in substitute care or  
28 youth offender until the age of majority.

29 (18) "Planned permanent living arrangement" means an out-of-home placement other than by  
30 adoption, placement with a relative or placement with a legal guardian that is consistent with the  
31 case plan and in the best interests of the ward.

32 (19) "Public building" has the meaning given that term in ORS 166.360.

33 (20) "Reasonable time" means a period of time that is reasonable given a child or ward's emo-  
34 tional and developmental needs and ability to form and maintain lasting attachments.

35 (21) "Records" means any information in written form, pictures, photographs, charts, graphs,  
36 recordings or documents pertaining to a case.

37 (22) "Resides" or "residence," when used in reference to the residence of a child, ward, youth  
38 or youth offender, means the place where the child, ward, youth or youth offender is actually living  
39 or the jurisdiction in which wardship or jurisdiction has been established.

40 (23) "Restitution" has the meaning given that term in ORS 137.103.

41 (24) "Serious physical injury" means:

42 (a) A serious physical injury as defined in ORS 161.015; or

43 (b) A physical injury that:

44 (A) Has a permanent or protracted significant effect on a child's daily activities;

45 (B) Results in substantial and recurring pain; or

1 (C) In the case of a child under 10 years of age, is a broken bone.

2 (25) "Shelter care" means a home or other facility suitable for the safekeeping of a child, ward,  
3 youth or youth offender who is taken into temporary custody pending investigation and disposition.

4 (26) "Short-term detention facility" means a facility established under ORS 419A.050 (3) for  
5 holding children, youths and youth offenders pending further placement.

6 (27) "Substitute care" means an out-of-home placement directly supervised by the department  
7 or other agency, including placement in a foster family home, group home or other child caring in-  
8 stitution or facility. "Substitute care" does not include care in:

9 (a) A detention facility, forestry camp or youth correction facility;

10 (b) A family home that the court has approved as a ward's permanent placement, when a private  
11 child caring agency has been appointed guardian of the ward and when the ward's care is entirely  
12 privately financed; or

13 (c) In-home placement subject to conditions or limitations.

14 (28) "Surrogate" means a person appointed by the court to protect the right of the child, ward,  
15 youth or youth offender to receive procedural safeguards with respect to the provision of free ap-  
16 propriate public education.

17 (29) "Tribal court" means a court with jurisdiction over child custody proceedings and that is  
18 either a Court of Indian Offenses, a court established and operated under the code of custom of an  
19 Indian tribe or any other administrative body of a tribe that is vested with authority over child  
20 custody proceedings.

21 (30) "Ward" means a person within the jurisdiction of the juvenile court under ORS 419B.100.

22 (31) **"Young person" means a person who has been found responsible except for insanity**  
23 **under ORS 419C.411 and placed under the jurisdiction of the Psychiatric Security Review**  
24 **Board.**

25 [(31)] (32) "Youth" means a person under 18 years of age who is alleged to have committed an  
26 act that is a violation, or, if done by an adult would constitute a violation, of a law or ordinance  
27 of the United States or a state, county or city.

28 [(32)] (33) "Youth care center" has the meaning given that term in ORS 420.855.

29 [(33)] (34) "Youth offender" means a person who has been found to be within the jurisdiction  
30 of the juvenile court under ORS 419C.005 for an act committed when the person was under 18 years  
31 of age.

32 **SECTION 2. Sections 3 to 6 of this 2005 Act are added to and made a part of ORS chapter**  
33 **419C.**

34 **SECTION 3. As used in ORS 419C.411 and sections 4 to 6 and 13 to 19 of this 2005 Act:**

35 (1) **"Conditional release" includes but is not limited to the monitoring of mental and**  
36 **physical health treatment.**

37 (2) **"Mental disease or defect" does not include:**

38 (a) **An abnormality:**

39 (A) **Manifested only by repeated criminal or otherwise antisocial conduct;**

40 (B) **Constituting solely a personality disorder; or**

41 (C) **Constituting solely a conduct disorder; or**

42 (b) **A mental defect manifesting in significantly subaverage general intellectual func-**  
43 **tioning that is accompanied by significant limitations in adaptive functioning in at least two**  
44 **areas or characterized by severe and pervasive impairment manifested during the develop-**  
45 **mental period.**

1       (3) “Serious mental condition” means a condition that requires supervision and treat-  
2 ment services for the safety of others and is:

- 3       (a) A mental illness of major depression;  
4       (b) A mental illness of bipolar disorder; or  
5       (c) A mental illness of psychotic disorder.

6       SECTION 4. Mental disease or defect constituting insanity under ORS 419C.411 (2) is an  
7 affirmative defense.

8       SECTION 5. (1) A youth may not introduce evidence on the issue of the defense set forth  
9 in section 4 of this 2005 Act unless the youth gives notice of intent to do so in the manner  
10 provided in subsection (2) of this section.

11       (2) A youth who is required under subsection (1) of this section to give notice must do  
12 so by filing a written notice of intent. A youth who is not in detention must file the notice  
13 of intent no later than 60 days after the petition is filed unless the court finds good cause  
14 to extend the time. If the youth fails to file notice timely, the youth may not introduce evi-  
15 dence for the establishment of the defense set forth in section 4 of this 2005 Act unless the  
16 court permits the evidence to be introduced when just cause for failure to file the notice is  
17 shown.

18       (3) Just cause for failure to file notice timely exists if the youth was not represented by  
19 counsel until after the filing period.

20       (4) The filing of a notice of intent under this section by a youth in detention constitutes  
21 express consent of the youth for continued detention under ORS 419C.150.

22       SECTION 6. Upon the filing of a written notice of intent or the introduction of evidence  
23 by the youth as provided in section 5 of this 2005 Act, the state may have at least one psy-  
24 chiatrist certified, or eligible to be certified, by the Board of Medical Examiners in child  
25 psychiatry or licensed psychologist with expertise in child psychology of its selection examine  
26 the youth. Unless the court finds good cause to extend the time, the state must obtain an  
27 examination under this section no later than 60 days after the notice of intent was filed or  
28 the evidence was introduced. The state shall file notice with the court of its intention to have  
29 the youth examined. Upon filing of the notice, the court shall order the youth to participate  
30 in an examination. If the youth objects to the examiner chosen by the state, the court for  
31 good cause shown may direct the state to select a different examiner. The examiner shall  
32 provide a copy of the report generated from the examination to the state. A report generated  
33 from an examination under this section is a report relating to the youth’s history and  
34 prognosis under ORS 419A.255 (2).

35       SECTION 7. ORS 419C.005 is amended to read:

36       419C.005. (1) Except as otherwise provided in ORS 137.707, the juvenile court has exclusive or-  
37 iginal jurisdiction in any case involving a person who is under 18 years of age and who has com-  
38 mitted an act that is a violation, or that if done by an adult would constitute a violation, of a law  
39 or ordinance of the United States or a state, county or city.

40       (2) The provisions of subsection (1) of this section do not prevent a court of competent juris-  
41 diction from entertaining a civil action or suit involving a youth.

42       (3) The court does not have jurisdiction as provided in subsection (1) of this section after a mi-  
43 nor has been emancipated pursuant to ORS 419B.550 to 419B.558.

44       (4) The court’s jurisdiction over a person under this section or ORS 419C.067 continues until  
45 one of the following occurs:

1 (a) The court dismisses a petition filed under this chapter or waives the case under ORS  
2 419C.340. If jurisdiction is based on a previous adjudication, then dismissal or waiver of a later case  
3 does not terminate jurisdiction under the previous case unless the court so orders.

4 (b) The court transfers jurisdiction of the case as provided in ORS 419C.053, 419C.056 and  
5 419C.059.

6 (c) The court enters an order terminating jurisdiction.

7 (d) The person becomes 25 years of age.

8 **(e) The court places the person under the jurisdiction of the Psychiatric Security Review**  
9 **Board as provided in section 13 of this 2005 Act. If the court also has jurisdiction over the**  
10 **person based on a previous adjudication under this chapter or ORS chapter 419B, placing a**  
11 **person under the jurisdiction of the board in a later case does not terminate wardship under**  
12 **the previous case unless the court so orders.**

13 **SECTION 8.** ORS 419C.285 is amended to read:

14 419C.285. (1) At the adjudication stage of a delinquency proceeding, the parties to the proceed-  
15 ing are the youth and the state, represented by the district attorney or the juvenile department. At  
16 the dispositional stage of a delinquency proceeding, the following are also parties:

17 (a) The parents or guardian of the youth;

18 (b) A court appointed special advocate, if appointed;

19 (c) The Oregon Youth Authority or other child care agency, if the youth is temporarily com-  
20 mitted to the agency; and

21 (d) An intervenor who petitions or files a motion on the basis of a child-parent relationship un-  
22 der ORS 109.119.

23 (2) The rights of the parties include, but are not limited to:

24 (a) The right to notice of the proceeding and copies of the pleadings;

25 (b) The right to appear with counsel and to have counsel appointed if otherwise provided by law;

26 (c) The right to call witnesses, cross-examine witnesses and participate in hearings;

27 (d) The right to appeal; *and*

28 (e) The right to request a hearing; **and**

29 **(f) The right to notice of any proceeding before the Psychiatric Security Review Board.**

30 (3)(a) Persons who are not parties under subsection (1) of this section may petition the court for  
31 rights of limited participation. The petition must be filed and served on all parties no later than two  
32 weeks before a proceeding in the case in which participation is sought. The petition must state:

33 (A) The reason the participation is sought;

34 (B) How the person's involvement is in the best interest of the youth or the administration of  
35 justice;

36 (C) Why the parties cannot adequately present the case; and

37 (D) What specific relief is being sought.

38 (b) If the court finds that the petition is well founded, the court may grant rights of limited  
39 participation as specified by the court.

40 (c) Persons petitioning for rights of limited participation are not entitled to appointed counsel.

41 (4) In all delinquency proceedings, interpreters shall be appointed in the manner specified by  
42 ORS 45.275 and 45.285 for the parties to the proceeding, any person granted rights of limited par-  
43 ticipation, and any parent or guardian of the youth without regard to whether the parent or  
44 guardian is a party to the proceeding.

45 **SECTION 9.** ORS 419C.400 is amended to read:

1 419C.400. (1) The hearing shall be held by the court without a jury and may be continued from  
2 time to time.

3 (2) The facts alleged in the petition showing the youth to be within the jurisdiction of the court  
4 as provided in ORS 419C.005, unless admitted, must be established beyond a reasonable doubt.

5 **(3) If the youth files written notice of intent to rely on the defense set forth in section**  
6 **4 of this 2005 Act, the youth has the burden of proving the defense by a preponderance of**  
7 **the evidence.**

8 [(3)] (4) For the purpose of determining proper disposition of the youth, testimony, reports or  
9 other material relating to the youth's mental, physical and social history and prognosis may be re-  
10 ceived by the court without regard to their competency or relevancy under the rules of evidence.

11 [(4)] (5) An adjudication by a juvenile court that a youth is within its jurisdiction is not a con-  
12 viction of a crime or offense.

13 **SECTION 10.** ORS 419C.411 is amended to read:

14 419C.411. (1) At the termination of the hearing or hearings in the proceeding or after entry of  
15 an order under ORS 419C.067, the court shall enter an appropriate order directing the disposition  
16 to be made of the case.

17 **(2) The court shall find a youth responsible except for insanity if:**

18 **(a) The youth asserted mental disease or defect as a defense as provided in section 5 of**  
19 **this 2005 Act; and**

20 **(b) The court determined by a preponderance of the evidence that, as a result of mental**  
21 **disease or defect at the time the youth committed the act alleged in the petition, the youth**  
22 **lacked substantial capacity either to appreciate the nature and quality of the act or to con-**  
23 **form the youth's conduct to the requirements of law.**

24 [(2)] (3) **Except as otherwise provided in subsections (6) and (7) of this section,** in deter-  
25 mining the disposition of the case, the court shall consider each of the following:

26 (a) The gravity of the loss, damage or injury caused or attempted during, or as part of, the  
27 conduct that is the basis for jurisdiction under ORS 419C.005;

28 (b) Whether the manner in which the youth offender engaged in the conduct was aggressive,  
29 violent, premeditated or willful;

30 (c) Whether the youth offender was held in detention under ORS 419C.145 and, if so, the reasons  
31 for the detention;

32 (d) The immediate and future protection required by the victim, the victim's family and the  
33 community; and

34 (e) The youth offender's juvenile court record and response to the requirements and conditions  
35 imposed by previous juvenile court orders.

36 [(3)] (4) In addition to the factors listed in subsection [(2)] (3) of this section, the court may  
37 consider the following:

38 (a) Whether the youth offender has made any efforts toward reform or rehabilitation or making  
39 restitution;

40 (b) The youth offender's educational status and school attendance record;

41 (c) The youth offender's past and present employment;

42 (d) The disposition proposed by the youth offender;

43 (e) The recommendations of the district attorney and the juvenile court counselor and the  
44 statements of the victim and the victim's family;

45 (f) The youth offender's mental, emotional and physical health and the results of the mental

1 health or substance abuse treatment; and

2 (g) Any other relevant factors or circumstances raised by the parties.

3 [(4)] (5) The court's consideration of matters under this section may be addressed on appeal only  
4 if raised by a party at a dispositional hearing or by a motion to modify or set aside under ORS  
5 419C.610.

6 (6) **When a youth is found responsible except for insanity, the court shall order a dispo-**  
7 **sition under section 13 of this 2005 Act if the court finds by a preponderance of the evidence**  
8 **that, at the time of disposition, the youth:**

9 (a) **Has a serious mental condition; or**

10 (b) **Has a mental disease or defect other than a serious mental condition and presents a**  
11 **substantial danger to others.**

12 (7) **When a youth is found responsible except for insanity and the court does not make**  
13 **a finding described in subsection (6) of this section, the court may:**

14 (a) **Enter an order finding the youth to be within the court's jurisdiction under ORS**  
15 **419B.100 and make any disposition authorized by ORS chapter 419B;**

16 (b) **Initiate civil commitment proceedings; or**

17 (c) **Enter an order of discharge.**

18 **SECTION 11.** ORS 419C.501 is amended to read:

19 419C.501. (1) **The court shall fix** the duration of any disposition made pursuant to this chapter  
20 [*shall be fixed by the court*] and **the duration** may be for an indefinite period. Any placement in the  
21 legal custody of the Department of Human Services or the Oregon Youth Authority under ORS  
22 419C.478 **or placement under the jurisdiction of the Psychiatric Security Review Board under**  
23 **section 13 of this 2005 Act** shall be for an indefinite period. However, [*in cases under ORS*  
24 *419C.005,*] the period of institutionalization or commitment may not exceed:

25 (a) The period of time specified in the statute defining the crime for an act that would constitute  
26 an unclassified misdemeanor if committed by an adult;

27 (b) Thirty days for an act that would constitute a Class C misdemeanor if committed by an adult;

28 (c) Six months for an act that would constitute a Class B misdemeanor if committed by an adult;

29 (d) One year for an act that would constitute a Class A misdemeanor if committed by an adult;

30 (e) Five years for an act that would constitute a Class C felony if committed by an adult;

31 (f) Ten years for an act that would constitute a Class B felony if committed by an adult; [*and*]

32 (g) Twenty years for an act that would constitute a Class A felony if committed by an adult;

33 **and**

34 (h) **Life for a young person who was found to have committed an act that, if committed**  
35 **by an adult would constitute murder or any aggravated form of murder under ORS 163.095**  
36 **or 163.115.**

37 (2) **Except as provided in subsection (1)(h) of this section,** the period of any disposition may  
38 not extend beyond the date on which the **young person or** youth offender becomes 25 years of age.

39 **SECTION 12.** Sections 13 to 19 of this 2005 Act are added to and made a part of ORS  
40 chapter 419C.

41 **SECTION 13.** (1) **After the entry of a jurisdictional order under ORS 419C.411 (2), if the**  
42 **court finds by a preponderance of the evidence that the young person, at the time of dispo-**  
43 **sition, has a serious mental condition or has a mental disease or defect other than a serious**  
44 **mental condition and presents a substantial danger to others, requiring conditional release**  
45 **or commitment to a hospital or facility designated by the Department of Human Services,**

1 the court shall order the young person placed under the jurisdiction of the Psychiatric Se-  
2 curity Review Board.

3 (2) The court shall determine whether the young person should be committed to a hos-  
4 pital or facility designated by the department or conditionally released pending a hearing  
5 before the juvenile panel of the Psychiatric Security Review Board as follows:

6 (a) If the court finds that the young person is not a proper subject for conditional re-  
7 lease, the court shall order the young person committed to a hospital or facility designated  
8 by the department for custody, supervision and treatment pending a hearing before the ju-  
9 venile panel in accordance with sections 14, 15, 16, 17 and 18 of this 2005 Act and shall order  
10 the young person placed under the jurisdiction of the board.

11 (b) If the court finds that the young person can be adequately controlled with supervision  
12 and treatment services if conditionally released and that necessary supervision and treat-  
13 ment services are available, the court may order the young person conditionally released,  
14 subject to those supervisory orders of the court that are in the best interests of justice and  
15 the young person. The court shall designate a qualified mental health treatment provider or  
16 state, county or local agency to supervise the young person on release, subject to those  
17 conditions as the court directs in the order for conditional release. Prior to the designation,  
18 the court shall notify the qualified mental health treatment provider or agency to whom  
19 conditional release is contemplated and provide the qualified mental health treatment pro-  
20 vider or agency an opportunity to be heard before the court. After receiving an order en-  
21 tered under this paragraph, the qualified mental health treatment provider or agency  
22 designated shall assume supervision of the young person subject to the direction of the ju-  
23 venile panel. The qualified mental health treatment provider or agency designated as super-  
24 visor shall report in writing no less than once per month to the juvenile panel concerning  
25 the supervised young person's compliance with the conditions of release.

26 (c) For purposes of determining whether to order commitment to a hospital or facility  
27 or conditional release, the primary concern of the court is the protection of society.

28 (3) In determining whether a young person should be conditionally released, the court  
29 may order examinations or evaluations deemed necessary.

30 (4) Upon placing a young person on conditional release and ordering the young person  
31 placed under the jurisdiction of the board, the court shall notify the juvenile panel in writing  
32 of the court's conditional release order, the supervisor designated and all other conditions  
33 of release pending a hearing before the juvenile panel in accordance with sections 14, 15, 16,  
34 17 and 18 of this 2005 Act.

35 (5) When making an order under this section, the court shall:

36 (a) Determine whether the parent or guardian of the young person is able and willing to  
37 assist the young person in obtaining necessary mental health services and is willing to  
38 acquiesce in the decisions of the juvenile panel. If the court finds that the parent or guard-  
39 ian:

40 (A) Is able and willing to do so, the court shall order the parent or guardian to sign an  
41 irrevocable consent form in which the parent agrees to any placement decision made by the  
42 juvenile panel.

43 (B) Is unable or unwilling to do so, the court shall order that the young person be placed  
44 in the legal custody of the Department of Human Services for the purpose of obtaining nec-  
45 essary mental health services.

1 (b) Make specific findings on whether there is a victim and, if so, whether the victim  
2 wishes to be notified of any board hearings concerning the young person and of any condi-  
3 tional release, discharge or escape of the young person.

4 (c) Include in the order a list of the persons who wish to be notified of any board hearing  
5 concerning the young person.

6 (d) Determine on the record the act committed by the young person for which the young  
7 person was found responsible except for insanity.

8 (e) State on the record the mental disease or defense on which the young person relied  
9 for the responsible except for insanity defense.

10 **SECTION 14.** (1) The juvenile panel of the Psychiatric Security Review Board shall con-  
11 duct hearings on an application for discharge, conditional release, commitment or modifica-  
12 tion filed under or required by section 16, 17 or 18 of this 2005 Act, and shall make findings  
13 on the issues before the juvenile panel.

14 (2) In every hearing before the juvenile panel, the juvenile panel shall determine whether  
15 the young person:

16 (a) Has a serious mental condition; or

17 (b) Has a mental disease or defect other than a serious mental condition and presents a  
18 substantial danger to others.

19 (3) The juvenile panel shall order a young person discharged from commitment or con-  
20 ditional release if the juvenile panel finds that the young person:

21 (a) No longer has a mental disease or defect; or

22 (b) Has a mental disease or defect other than a serious mental condition but no longer  
23 presents a substantial danger to others.

24 (4) The juvenile panel shall order a young person conditionally released subject to section  
25 16 of this 2005 Act if the juvenile panel finds that:

26 (a) The young person:

27 (A) Has a serious mental condition; or

28 (B) Has a mental disease or defect other than a serious mental condition and presents a  
29 substantial danger to others;

30 (b) The young person can be adequately controlled with treatment services as a condition  
31 of release; and

32 (c) Necessary supervision and treatment services are available.

33 (5) The juvenile panel shall order a young person committed to, or retained in, a hospital  
34 or facility designated by the Department of Human Services for custody, supervision and  
35 treatment subject to section 17 of this 2005 Act if the juvenile panel finds that the young  
36 person:

37 (a)(A) Has a serious mental condition; or

38 (B) Has a mental disease or defect other than a serious mental condition and presents a  
39 substantial danger to others; and

40 (b) Cannot be adequately controlled if conditionally released.

41 (6) In determining whether a young person should be committed to or retained in a hos-  
42 pital or facility, conditionally released or discharged, the primary concern of the juvenile  
43 panel is the protection of society.

44 (7) In a hearing before the juvenile panel, a young person who has a mental disease or  
45 defect in a state of remission is considered to have a mental disease or defect if the mental

1 disease or defect may, with reasonable medical probability, occasionally become active.

2 (8) At any time, the juvenile panel may appoint a psychiatrist certified, or eligible to be  
3 certified, by the Board of Medical Examiners in child psychiatry or a licensed psychologist  
4 with expertise in child psychology to examine the young person and submit a written report  
5 to the juvenile panel. Reports filed with the juvenile panel pursuant to the examination must  
6 include, but need not be limited to, an opinion as to whether the young person:

7 (a)(A) Has a serious mental condition; or

8 (B) Has a mental disease or defect other than a serious mental condition and presents a  
9 substantial danger to others; and

10 (b) Could be adequately controlled with treatment services as a condition of release.

11 (9) The juvenile panel may make a determination regarding discharge or conditional re-  
12 lease based upon the written report submitted under subsection (8) of this section or section  
13 17 (3) of this 2005 Act. If a member of the juvenile panel desires further information from  
14 the examining psychiatrist or licensed psychologist who submitted the report, the juvenile  
15 panel shall summon the psychiatrist or psychologist to give testimony.

16 (10) The juvenile panel shall consider all available evidence that is material, relevant and  
17 reliable regarding the issues before the juvenile panel. Evidence may include, but is not lim-  
18 ited to, the record of the juvenile court adjudication, information supplied by the attorney  
19 representing the state or by any other interested person, including the young person, infor-  
20 mation concerning the young person's mental condition and the entire psychiatric and juve-  
21 nile court history of the young person. All evidence of a type commonly relied upon by  
22 reasonably prudent persons in the conduct of their serious affairs is admissible at the  
23 hearings. Testimony must be taken upon oath or affirmation of the witness from whom re-  
24 ceived. The officer presiding at the hearing shall administer oaths and affirmations to wit-  
25 nesses.

26 (11) The standard of proof on all issues at a hearing of the juvenile panel is by a pre-  
27 ponderance of the evidence.

28 (12)(a) The juvenile panel shall furnish written notice of any hearing pending under this  
29 section within a reasonable time prior to the hearing to:

30 (A) The young person about whom the hearing is being conducted;

31 (B) The attorney representing the young person;

32 (C) The young person's parents or guardians, if known;

33 (D) The person having legal custody of the young person;

34 (E) The Attorney General or other attorney representing the state, if any; and

35 (F) The district attorney and the court or juvenile department of the county in which the  
36 young person was adjudicated.

37 (b) The juvenile panel shall include in the notice required by paragraph (a) of this sub-  
38 section:

39 (A) The time, place and location of the hearing;

40 (B) The nature of the hearing, the specific action for which the hearing has been re-  
41 quested, the issues to be considered at the hearing and a reference to the particular sections  
42 of the statutes and rules involved;

43 (C) A statement of the authority and jurisdiction under which the hearing is to be held;  
44 and

45 (D) A statement of all rights under subsection (13) of this section.

1 (13) A young person about whom a hearing is being held has the right:

2 (a) To appear at all proceedings held under this section, except juvenile panel deliber-  
3 ations.

4 (b) To cross-examine all witnesses appearing to testify at the hearing.

5 (c) To subpoena witnesses and documents as provided in ORS 161.395.

6 (d) To be represented by suitable legal counsel possessing skills and experience  
7 commensurate with the nature and complexity of the case, to consult with counsel prior to  
8 the hearing and, if financially eligible, to have suitable counsel appointed at state expense.

9 (e) To examine all information, documents and reports that the juvenile panel considers  
10 and, if the information, documents and reports are available to the juvenile panel before the  
11 hearing, to examine them prior to the hearing.

12 (14) Except for deliberations of the juvenile panel, the juvenile panel shall keep a record  
13 of all hearings before the juvenile panel.

14 (15) Upon request of a person listed in subsection (12)(a) of this section or on its own  
15 motion, the juvenile panel may continue a hearing for a reasonable period not to exceed 60  
16 days to obtain additional information or testimony or for other good cause shown.

17 (16) Within 15 days after the conclusion of the hearing, the juvenile panel shall provide  
18 written notice of the juvenile panel's decision to the young person, the attorney representing  
19 the young person, the young person's parents or guardians, if known, the person having legal  
20 custody of the young person, the district attorney of the county in which the young person  
21 was adjudicated and the Attorney General or other attorney representing the state, if any.

22 (17) The juvenile panel shall maintain and keep current the medical, social and delin-  
23 quency history of all young persons. The juvenile panel shall determine the confidentiality  
24 of records maintained by the juvenile panel pursuant to ORS 192.501 to 192.505.

25 **SECTION 15.** (1) If the juvenile panel of the Psychiatric Security Review Board deter-  
26 mines that a young person about whom a hearing under section 14 of this 2005 Act is being  
27 held is financially eligible, the juvenile panel shall appoint suitable counsel to represent the  
28 young person. Counsel appointed must be an attorney who satisfies the professional quali-  
29 fication standards established by the Public Defense Services Commission under ORS 151.216.  
30 The public defense services executive director shall determine and allow fair compensation  
31 for counsel appointed under this subsection and the reasonable expenses of the young person  
32 in respect to the hearing. Compensation payable to appointed counsel may not be less than  
33 the applicable compensation level established under ORS 151.216. The public defense services  
34 executive director shall pay compensation and expenses allowed from funds available for that  
35 purpose.

36 (2) When the juvenile panel appoints counsel to represent the young person, the juvenile  
37 panel may order the young person, if able, parent, if able, or guardian of the estate, if the  
38 estate is able, to pay to the Public Defense Services Account in the General Fund, through  
39 the clerk of the court, in full or in part, the administrative costs of determining the ability  
40 of the young person, parent or estate to pay for legal services and the costs of the legal and  
41 other services that are related to the provision of appointed counsel. The juvenile panel's  
42 order of payment may be entered in the County Clerk Lien Record and enforced as provided  
43 in ORS 205.126.

44 (3) The test of the young person's, parent's or estate's ability to pay costs under sub-  
45 section (2) of this section is the same test as applied to appointment of counsel for defend-

1 ants under ORS 135.050 or under the rules adopted under ORS 151.216. If counsel is provided  
2 at state expense, the juvenile panel shall apply this test in accordance with the guidelines  
3 adopted by the Public Defense Services Commission under ORS 151.485.

4 (4) If counsel is provided at state expense, the juvenile panel shall determine the amount  
5 the young person, parent or estate is required to pay for the costs of administrative, legal  
6 and other services related to the provision of appointed counsel in the same manner as this  
7 amount is determined under ORS 151.487.

8 (5) The Attorney General may represent the state at contested hearings before the ju-  
9 venile panel unless the district attorney of the county in which the young person was adju-  
10 dicated elects to represent the state. The district attorney of the county in which the young  
11 person was adjudicated shall cooperate with the Attorney General in securing the material  
12 necessary for presenting a contested hearing before the juvenile panel. If the district attor-  
13 ney elects to represent the state, the district attorney shall give timely written notice to the  
14 Attorney General, the juvenile panel and the attorney representing the young person.

15 **SECTION 16.** (1) When the juvenile panel of the Psychiatric Security Review Board or-  
16 ders a young person conditionally released under section 14 (4) of this 2005 Act, the juvenile  
17 panel may designate a qualified mental health treatment provider or state, county or local  
18 agency to supervise the young person on release subject to those conditions as the juvenile  
19 panel directs in the order for conditional release. Prior to the designation, the juvenile panel  
20 shall notify the qualified mental health treatment provider or agency to whom conditional  
21 release is contemplated and provide the qualified mental health treatment provider or agency  
22 an opportunity to be heard before the juvenile panel. After receiving an order entered under  
23 section 14 (4) of this 2005 Act, the qualified mental health treatment provider or agency  
24 designated shall assume supervision of the young person pursuant to the direction of the  
25 juvenile panel.

26 (2) Conditions of release contained in orders entered under section 14 (4) of this 2005 Act  
27 may be modified from time to time and conditional release may be terminated by order of  
28 the juvenile panel as provided in sections 14 and 18 of this 2005 Act.

29 (3)(a) As a condition of release, the juvenile panel may require the young person to report  
30 to any state, county or local mental health facility for evaluation. Whenever medical, psy-  
31 chiatric or psychological treatment is recommended, the juvenile panel may order the young  
32 person, as a condition of release, to cooperate with and accept the treatment of the facility.

33 (b) The facility to which the young person has been referred for evaluation shall perform  
34 the evaluation and submit a written report of its findings to the juvenile panel. If the facility  
35 finds that treatment of the young person is appropriate, the facility shall include its recom-  
36 mendations for treatment in the report to the juvenile panel.

37 (c) Whenever treatment is provided by the facility, the facility shall furnish reports to  
38 the juvenile panel on a regular basis concerning the progress of the young person.

39 (d) The facility shall comply with any other conditions of release prescribed by order of  
40 the juvenile panel.

41 (4) If at any time it appears to the juvenile panel or the chairperson of the juvenile panel  
42 that a young person has violated the terms of conditional release or that the mental health  
43 of the young person has changed, the juvenile panel or the chairperson of the juvenile panel  
44 may order the young person returned to a hospital or facility designated by the Department  
45 of Human Services for evaluation and treatment. A written order of the juvenile panel, or

1 the chairperson of the juvenile panel on behalf of the juvenile panel, is sufficient warrant for  
2 any peace officer to take the young person into custody and transport the young person ac-  
3 cordingly. A peace officer shall execute the order, and the young person shall be returned  
4 as soon as practicable to a facility designated by the department. Within 20 days following  
5 the return of the young person to the facility designated by the department, the juvenile  
6 panel shall conduct a hearing. At a hearing required by this subsection, the state has the  
7 burden of proving the young person's lack of fitness for conditional release.

8 (5) The community mental health and developmental disabilities program director, the  
9 director of the facility providing treatment for the young person on conditional release, a  
10 peace officer or a person responsible for the supervision of a young person on conditional  
11 release may take a young person into custody or request that the young person be taken into  
12 custody if there is reasonable cause to believe the young person presents a substantial dan-  
13 ger to others and that the young person is in need of immediate custody, supervision and  
14 treatment. A young person taken into custody under this subsection must immediately be  
15 transported to a hospital or facility designated by the department. Within 20 days following  
16 the return of the young person to the facility designated by the department, the juvenile  
17 panel shall conduct a hearing. At a hearing required by this subsection, the state has the  
18 burden of proving the young person's lack of fitness for conditional release.

19 (6)(a) A young person conditionally released under section 14 (4) of this 2005 Act may  
20 apply to the juvenile panel for discharge from or modification of an order of conditional re-  
21 lease on the ground that the young person no longer has a mental disease or defect or, if  
22 affected by a mental disease or defect other than a serious mental condition, no longer pre-  
23 sents a substantial danger to others and no longer requires supervision or treatment ser-  
24 vices. Within 60 days after receiving an application under this paragraph, the juvenile panel  
25 shall conduct a hearing. At a hearing required by this paragraph, the young person has the  
26 burden of proving the young person's fitness for discharge or modification of the order of  
27 conditional release. A young person may not apply for discharge or modification of condi-  
28 tional release more often than once every six months.

29 (b) Upon application by any qualified mental health treatment provider or state, county  
30 or local agency responsible for supervision or treatment services pursuant to an order of  
31 conditional release, the juvenile panel shall conduct a hearing to determine if the conditions  
32 of release should be continued, modified or terminated. The application must be accompanied  
33 by a report setting forth the facts supporting the application. At a hearing required by this  
34 paragraph, the state has the burden of proving the young person's lack of fitness for dis-  
35 charge or modification of the order of conditional release.

36 **SECTION 17.** (1) The director of a hospital or facility to which a young person was com-  
37 mitted under section 14 (5) of this 2005 Act shall apply to the juvenile panel of the Psychiatric  
38 Security Review Board for an order of discharge or conditional release of the young person  
39 if, at any time after the commitment, the director is of the opinion that the young person:

40 (a) No longer has a mental disease or defect;

41 (b) Has a mental disease or defect other than a serious mental condition but no longer  
42 presents a substantial danger to others; or

43 (c) Can be controlled with proper supervision and treatment services if conditionally re-  
44 leased.

45 (2) The director shall include in an application under subsection (1) of this section a re-

1 port setting forth the facts that support the opinion of the director. If the application is for  
2 conditional release, the director shall also include a verified conditional release plan. The  
3 juvenile panel shall hold a hearing on an application under subsection (1) of this section  
4 within 30 days of its receipt. Not less than 10 days prior to the hearing before the juvenile  
5 panel, copies of the report must be sent to the Attorney General or other attorney repre-  
6 senting the state, if any, the district attorney of the county in which the young person was  
7 adjudicated, the young person, the young person's attorney, the young person's parents or  
8 guardians, if known, and the person having legal custody of the young person.

9 (3) The attorney representing the state may choose a psychiatrist certified, or eligible to  
10 be certified, by the Board of Medical Examiners in child psychiatry or a licensed psychologist  
11 with expertise in child psychology to examine the young person prior to any decision of the  
12 juvenile panel on discharge or conditional release. The results of the examination must be  
13 in writing and filed with the juvenile panel and must include, but need not be limited to, an  
14 opinion as to whether the young person:

15 (a)(A) Has a serious mental condition; or

16 (B) Has a mental disease or defect other than a serious mental condition and presents a  
17 substantial danger to others; and

18 (b) Could be adequately controlled with treatment services as a condition of release.

19 (4) A young person who has been committed to a hospital or facility under section 14 (5)  
20 of this 2005 Act or the young person's parents or guardians acting on the young person's  
21 behalf may apply to the juvenile panel for an order of discharge or conditional release upon  
22 the grounds that the young person:

23 (a) No longer has a mental disease or defect;

24 (b) Has a mental disease or defect other than a serious mental condition but no longer  
25 presents a substantial danger to others; or

26 (c) Can be controlled with proper supervision and treatment services if conditionally re-  
27 leased.

28 (5) When an application is made under subsection (4) of this section, the juvenile panel  
29 shall require a report from the director of the hospital or facility. The director shall prepare  
30 and transmit the report as provided in subsection (2) of this section.

31 (6) At a hearing on an application under subsection (4) of this section:

32 (a) The applicant has the burden of proving the young person's fitness for discharge or  
33 conditional release; or

34 (b) If more than two years have passed since the state had the burden of proving the  
35 young person's lack of fitness for discharge or conditional release, the state has the burden  
36 of proving the young person's lack of fitness for discharge or conditional release.

37 (7) A person may not file an application for discharge or conditional release under sub-  
38 section (4) of this section:

39 (a) Sooner than 90 days after the initial juvenile panel hearing concerning the young  
40 person.

41 (b) If another application for discharge or conditional release of the young person was  
42 filed during the immediately preceding 90 days.

43 (8) The juvenile panel shall hold a hearing on an application under subsection (4) of this  
44 section within 30 days after the application is filed.

45 **SECTION 18.** (1) A young person committed by the court under section 13 of this 2005

1 Act to a hospital or facility designated by the Department of Human Services may not be  
2 held in the hospital or facility for more than 90 days from the date of the court's commit-  
3 ment order without an initial hearing before the juvenile panel of the Psychiatric Security  
4 Review Board to determine whether the young person should be discharged or conditionally  
5 released.

6 (2) A young person may not be held pursuant to an order under section 14 (5) of this 2005  
7 Act for a period of time exceeding one year without a hearing before the juvenile panel to  
8 determine whether the young person should be discharged or conditionally released.

9 (3) When a young person has spent three years on conditional release, the juvenile panel  
10 shall bring the young person before the juvenile panel no later than 30 days after the expi-  
11 ration of the three-year period. The juvenile panel shall review the young person's status and  
12 determine whether the young person should be discharged from the jurisdiction of the board.

13 (4) Notwithstanding the fact that a young person who is brought before the juvenile panel  
14 under subsection (3) of this section continues to have a serious mental condition, the juvenile  
15 panel may discharge the young person if the young person did not exhibit behaviors that  
16 presented a substantial danger to others during the period of conditional release and no  
17 longer requires supervision by the juvenile panel.

18 **SECTION 19.** (1) When a young person attains 18 years of age, the juvenile panel of the  
19 Psychiatric Security Review Board shall transfer the young person's case to the adult panel  
20 of the board if the act that brought the young person within the board's jurisdiction would  
21 constitute murder or any aggravated form of murder if committed by an adult.

22 (2) At any time after a young person not described in subsection (1) of this section at-  
23 tains 18 years of age, the juvenile panel of the board may hold a hearing to determine  
24 whether it is in the young person's best interest to transfer the young person's case to the  
25 adult panel of the board. The juvenile panel of the board shall transfer the young person's  
26 case to the adult panel of the board unless good cause is shown for retaining the young  
27 person's case with the juvenile panel.

28 **SECTION 20.** ORS 161.385 is amended to read:

29 161.385. (1) There is hereby created a Psychiatric Security Review Board consisting of [*five*] 10  
30 members appointed by the Governor and subject to confirmation by the Senate under section 4,  
31 Article III of the Oregon Constitution.

32 (2) The membership of the board [*shall*] **may** not include any district attorney, deputy district  
33 attorney or public defender[, *but the membership shall be composed of*] **The Governor shall**  
34 **appoint:**

35 (a) A psychiatrist experienced in the criminal justice system and not otherwise employed on a  
36 full-time basis by the Department of Human Services or a community mental health and develop-  
37 mental disabilities program;

38 (b) A licensed psychologist experienced in the criminal justice system and not otherwise em-  
39 ployed on a full-time basis by the Department of Human Services or a community mental health and  
40 developmental disabilities program;

41 (c) A member with substantial experience in the processes of parole and probation;

42 [*d*] A member of the general public; and]

43 [*e*] (d) A lawyer with substantial experience in criminal trial practice;

44 (e) A psychiatrist certified, or eligible to be certified, by the Board of Medical Examiners  
45 in child psychiatry who is experienced in the juvenile justice system and not employed on a

1 **full-time basis by the Department of Human Services or a community mental health and**  
2 **developmental disabilities program;**

3 **(f) A licensed psychologist who is experienced in child psychology and the juvenile justice**  
4 **system and not employed on a full-time basis by the Department of Human Services or a**  
5 **community mental health and developmental disabilities program;**

6 **(g) A member with substantial experience in the processes of juvenile parole and pro-**  
7 **bation;**

8 **(h) A lawyer with substantial experience in juvenile law practice; and**

9 **(i) Two members of the general public.**

10 (3) The term of office of each member is four years. The Governor at any time may remove any  
11 member for inefficiency, neglect of duty or malfeasance in office. Before the expiration of the term  
12 of a member, the Governor shall appoint a successor whose term begins on July 1 next following.  
13 A member is eligible for reappointment. If there is a vacancy for any cause, the Governor shall make  
14 an appointment to become immediately effective for the unexpired term.

15 (4) A member of the board not otherwise employed full-time by the state[,] shall be paid on a  
16 per diem basis an amount equal to [~~\$212~~] **\$289.22**, adjusted according to the executive pay plan for  
17 the biennium, for each day during which the member is engaged in the performance of official duties,  
18 including necessary travel time. In addition, subject to ORS 292.220 to 292.250 regulating travel and  
19 other expenses of state officers and employees, the member shall be reimbursed for actual and nec-  
20 essary travel and other expenses incurred in the performance of official duties.

21 (5) Subject to any applicable provision of the State Personnel Relations Law, the board may hire  
22 employees to aid it in performing its duties.

23 **(6) The board consists of two five-member panels. The adult panel is responsible for**  
24 **persons placed under the board's jurisdiction under ORS 161.327 and section 19 of this 2005**  
25 **Act and consists of those members appointed under subsection (2)(a) to (d) of this section**  
26 **and one of the public members. The juvenile panel is responsible for young persons placed**  
27 **under the board's jurisdiction under section 13 of this 2005 Act and consists of those mem-**  
28 **bers appointed under subsection (2)(e) to (h) of this section and the other public member.**

29 [(6)(a)] **(7)(a) [The board] Each panel** shall select one of its members as chairperson to serve  
30 for a one-year term with such duties and powers as the [board] **panel** determines.

31 (b) A majority of the voting members of [the board] **a panel** constitutes a quorum for the  
32 transaction of business **of the panel.**

33 [(7)] **(8) [The board] Each panel** shall meet at least twice every month, unless the chairperson  
34 determines that there is not sufficient business before the [board] **panel** to warrant a meeting at the  
35 scheduled time. The [board] **panel** shall also meet at other times and places specified by the call of  
36 the chairperson or of a majority of the members of the [board] **panel.**

37 [(8)(a)] **(9)(a)** When a person over whom **a panel of** the board exercises its jurisdiction is ad-  
38 versely affected or aggrieved by a final order of the [board] **panel**, the person is entitled to judicial  
39 review of the final order. The person is entitled on judicial review to suitable counsel possessing  
40 skills and experience commensurate with the nature and complexity of the case. If the person is fi-  
41 nancially eligible, suitable counsel shall be appointed by the reviewing court in the manner provided  
42 in ORS 138.500 (1). If the person is financially eligible, the public defense services executive director  
43 shall determine and pay, as provided in ORS 138.500, the cost of briefs, any other expenses of the  
44 person necessary to the review and compensation for counsel appointed for the person. The costs,  
45 expenses and compensation so allowed shall be paid as provided in ORS 138.500.

1 (b) The order and the proceedings underlying the order are subject to review by the Court of  
2 Appeals upon petition to that court filed within 60 days of the order for which review is sought. The  
3 [board] **panel** shall submit to the court the record of the proceeding or, if the person agrees, a  
4 shortened record. The record may include a certified true copy of a tape recording of the pro-  
5 ceedings at a hearing in accordance with ORS 161.346. A copy of the record transmitted shall be  
6 delivered to the person by the [board] **panel**.

7 (c) The court may affirm, reverse or remand the order on the same basis as provided in ORS  
8 183.482 (8).

9 (d) The filing of the petition [shall] **does** not stay the [board's] **panel's** order, but the [board]  
10 **panel** or the Court of Appeals may order a stay upon application on such terms as are deemed  
11 proper.

12 **SECTION 21.** ORS 137.290 is amended to read:

13 137.290. (1) In all cases of conviction for the commission of a crime or violation, excluding  
14 parking violations, the trial court, whether a circuit, justice or municipal court, shall impose upon  
15 the defendant, in addition to any other monetary obligation imposed, a unitary assessment under this  
16 section. **Except when the person successfully asserts the defense set forth in section 4 of this**  
17 **2005 Act**, the unitary assessment shall also be imposed by the circuit court and county court in  
18 juvenile cases under ORS 419C.005 (1). The unitary assessment is a penal obligation in the nature  
19 of a fine and shall be in an amount as follows:

20 (a) \$107 in the case of a felony.

21 (b) \$67 in the case of a misdemeanor.

22 (c) \$97 in the case of a conviction for driving under the influence of intoxicants.

23 (d) \$37 in the case of a violation as described in ORS 153.008.

24 (2) The unitary assessment shall include, in addition to the amount in subsection (1) of this  
25 section:

26 (a) \$42 if the defendant was driving a vehicle that requires a commercial driver license to op-  
27 erate and the conviction was for violating:

28 (A) ORS 811.100 by driving at a speed at least 10 miles per hour greater than is reasonable and  
29 prudent under the circumstances; or

30 (B) ORS 811.111 (1)(b) by driving at least 65 miles per hour; and

31 (b) \$500 if the crime of conviction is a crime found in ORS chapter 163.

32 (3) Subject to subsection (4) of this section, the court in any case may waive payment of the  
33 unitary assessment, in whole or in part, if, upon consideration, the court finds that payment of the  
34 assessment or portion thereof would impose upon the defendant a total monetary obligation incon-  
35 sistent with justice in the case. In making its determination under this subsection, the court shall  
36 consider:

37 (a) The financial resources of the defendant and the burden that payment of the unitary as-  
38 sessment will impose, with due regard to the other obligations of the defendant; and

39 (b) The extent to which such burden can be alleviated by allowing the defendant to pay the  
40 monetary obligations imposed by the court on an installment basis or on other conditions to be fixed  
41 by the court.

42 (4) If a defendant is convicted of an offense, the court may waive all or part of the unitary as-  
43 sessment required under subsections (1) and (2)(a) of this section only if the court imposes no fine  
44 on the defendant.

45 **SECTION 22.** ORS 137.712 is amended to read:

1 137.712. (1)(a) Notwithstanding ORS 137.700 and 137.707, when a person is convicted of  
2 manslaughter in the second degree as defined in ORS 163.125, assault in the second degree as de-  
3 fined in ORS 163.175 (1)(b), kidnapping in the second degree as defined in ORS 163.225, rape in the  
4 second degree as defined in ORS 163.365, sodomy in the second degree as defined in ORS 163.395,  
5 unlawful sexual penetration in the second degree as defined in ORS 163.408, sexual abuse in the first  
6 degree as defined in ORS 163.427 (1)(a)(A) or robbery in the second degree as defined in ORS  
7 164.405, the court may impose a sentence according to the rules of the Oregon Criminal Justice  
8 Commission that is less than the minimum sentence that otherwise may be required by ORS 137.700  
9 or 137.707 if the court, on the record at sentencing, makes the findings set forth in subsection (2)  
10 of this section and finds that a substantial and compelling reason under the rules of the Oregon  
11 Criminal Justice Commission justifies the lesser sentence. When the court imposes a sentence under  
12 this subsection, the person is eligible for a reduction in the sentence as provided in ORS 421.121 and  
13 any other statute.

14 (b) In order to make a dispositional departure under this section, the court must make the fol-  
15 lowing additional findings on the record:

16 (A) There exists a substantial and compelling reason not relied upon in paragraph (a) of this  
17 subsection;

18 (B) A sentence of probation will be more effective than a prison term in reducing the risk of  
19 offender recidivism; and

20 (C) A sentence of probation will better serve to protect society.

21 (2) A conviction is subject to subsection (1) of this section only if the sentencing court finds on  
22 the record by a preponderance of the evidence:

23 (a) If the conviction is for manslaughter in the second degree:

24 (A) That the defendant is the mother or father of the victim;

25 (B) That the death of the victim was the result of an injury or illness that was not caused by  
26 the defendant;

27 (C) That the defendant treated the injury or illness solely by spiritual treatment in accordance  
28 with the religious beliefs or practices of the defendant and based on a good faith belief that spiritual  
29 treatment would bring about the victim's recovery from the injury or illness;

30 (D) That no other person previously under the defendant's care has died or sustained significant  
31 physical injury as a result of or despite the use of spiritual treatment, regardless of whether the  
32 spiritual treatment was used alone or in conjunction with medical care; and

33 (E) That the defendant does not have a previous conviction for a crime listed in subsection (4)  
34 of this section or for criminal mistreatment in the second degree.

35 (b) If the conviction is for assault in the second degree:

36 (A) That the victim was not physically injured by means of a deadly weapon;

37 (B) That the victim did not suffer a significant physical injury; and

38 (C) That the defendant does not have a previous conviction for a crime listed in subsection (4)  
39 of this section.

40 (c) If the conviction is for kidnapping in the second degree:

41 (A) That the victim was at least 12 years of age at the time the crime was committed; and

42 (B) That the defendant does not have a previous conviction for a crime listed in subsection (4)  
43 of this section.

44 (d) If the conviction is for robbery in the second degree:

45 (A) That the victim did not suffer a significant physical injury;

1 (B) That, if the defendant represented by words or conduct that the defendant was armed with  
2 a dangerous weapon, the representation did not reasonably put the victim in fear of imminent sig-  
3 nificant physical injury;

4 (C) That, if the defendant represented by words or conduct that the defendant was armed with  
5 a deadly weapon, the representation did not reasonably put the victim in fear of imminent physical  
6 injury; and

7 (D) That the defendant does not have a previous conviction for a crime listed in subsection (4)  
8 of this section.

9 (e) If the conviction is for rape in the second degree, sodomy in the second degree or sexual  
10 abuse in the first degree:

11 (A) That the victim was at least 12 years of age, but under 14 years of age, at the time of the  
12 offense;

13 (B) That the defendant does not have a prior conviction for a crime listed in subsection (4) of  
14 this section;

15 (C) That the defendant has not been previously found to be within the jurisdiction of a juvenile  
16 court for an act that would have been a felony sexual offense if the act had been committed by an  
17 adult;

18 (D) That the defendant was no more than five years older than the victim at the time of the  
19 offense;

20 (E) That the offense did not involve sexual contact with any minor other than the victim; and

21 (F) That the victim's lack of consent was due solely to incapacity to consent by reason of being  
22 under 18 years of age at the time of the offense.

23 (f) If the conviction is for unlawful sexual penetration in the second degree:

24 (A) That the victim was 12 years of age or older at the time of the offense;

25 (B) That the defendant does not have a prior conviction for a crime listed in subsection (4) of  
26 this section;

27 (C) That the defendant has not been previously found to be within the jurisdiction of a juvenile  
28 court for an act that would have been a felony sexual offense if the act had been committed by an  
29 adult;

30 (D) That the defendant was no more than five years older than the victim at the time of the  
31 offense;

32 (E) That the offense did not involve sexual contact with any minor other than the victim;

33 (F) That the victim's lack of consent was due solely to incapacity to consent by reason of being  
34 under 18 years of age at the time of the offense; and

35 (G) That the object used to commit the unlawful sexual penetration was the hand or any part  
36 thereof of the defendant.

37 (3) In making the findings required by subsections (1) and (2) of this section, the court may  
38 consider any evidence presented at trial and may receive and consider any additional relevant in-  
39 formation offered by either party at sentencing.

40 (4) The crimes to which subsection (2)(a)(E), (b)(C), (c)(B), (d)(D), (e)(B) and (f)(B) of this section  
41 refer are:

42 (a) A crime listed in ORS 137.700 (2) or 137.707 (4);

43 (b) Escape in the first degree, as defined in ORS 162.165;

44 (c) Aggravated murder, as defined in ORS 163.095;

45 (d) Criminally negligent homicide, as defined in ORS 163.145;

- 1 (e) Assault in the third degree, as defined in ORS 163.165;
- 2 (f) Criminal mistreatment in the first degree, as defined in ORS 163.205 (1)(b)(A);
- 3 (g) Rape in the third degree, as defined in ORS 163.355;
- 4 (h) Sodomy in the third degree, as defined in ORS 163.385;
- 5 (i) Sexual abuse in the second degree, as defined in ORS 163.425;
- 6 (j) Stalking, as defined in ORS 163.732;
- 7 (k) Burglary in the first degree, as defined in ORS 164.225, when it is classified as a person
- 8 felony under the rules of the Oregon Criminal Justice Commission;
- 9 (L) Arson in the first degree, as defined in ORS 164.325;
- 10 (m) Robbery in the third degree, as defined in ORS 164.395;
- 11 (n) Intimidation in the first degree, as defined in ORS 166.165;
- 12 (o) Promoting prostitution, as defined in ORS 167.012; and
- 13 (p) An attempt or solicitation to commit any Class A or B felony listed in paragraphs (a) to (L)
- 14 of this subsection.

15 (5) Notwithstanding ORS 137.545 (5)(b), if a person sentenced to probation under this section  
16 violates a condition of probation by committing a new crime, the court shall revoke the probation  
17 and impose the presumptive sentence of imprisonment under the rules of the Oregon Criminal Jus-  
18 tice Commission.

19 (6) As used in this section:

20 (a) “Conviction” includes, but is not limited to:

21 (A) A juvenile court adjudication finding a person within the court’s jurisdiction under ORS  
22 419C.005, if the person was at least 15 years of age at the time the person committed the offense  
23 that brought the person within the jurisdiction of the juvenile court. **“Conviction” does not include**  
24 **a juvenile court adjudication described in this subparagraph if the person successfully as-**  
25 **serted the defense set forth in section 4 of this 2005 Act.**

26 (B) A conviction in another jurisdiction for a crime that if committed in this state would con-  
27 stitute a crime listed in subsection (4) of this section.

28 (b) “Previous conviction” means a conviction that was entered prior to imposing sentence on the  
29 current crime provided that the prior conviction is based on a crime committed in a separate crim-  
30 inal episode. “Previous conviction” does not include a conviction for a Class C felony, including an  
31 attempt or solicitation to commit a Class B felony, or a misdemeanor, unless the conviction was  
32 entered within the 10-year period immediately preceding the date on which the current crime was  
33 committed.

34 (c) “Significant physical injury” means a physical injury that:

35 (A) Creates a risk of death that is not a remote risk;

36 (B) Causes a serious and temporary disfigurement;

37 (C) Causes a protracted disfigurement; or

38 (D) Causes a prolonged impairment of health or the function of any bodily organ.

39 **SECTION 23.** ORS 151.216 is amended to read:

40 151.216. (1) The Public Defense Services Commission shall:

41 (a) Establish and maintain a public defense system that ensures the provision of public defense  
42 services in the most cost-efficient manner consistent with the Oregon Constitution, the United States  
43 Constitution and Oregon and national standards of justice.

44 (b) Establish an office of public defense services and appoint a public defense services executive  
45 director who serves at the pleasure of the commission.

1 (c) Submit the budget of the commission and the office of public defense services to the Legis-  
2 lative Assembly after the budget is submitted to the commission by the director and approved by the  
3 commission. The Chief Justice of the Supreme Court and the chairperson of the commission shall  
4 present the budget to the Legislative Assembly.

5 (d) Review and approve any public defense services contract negotiated by the director before  
6 the contract can become effective.

7 (e) Adopt a compensation plan, classification system and personnel plan for the office of public  
8 defense services that are commensurate with other state agencies.

9 (f) Adopt policies, procedures, standards and guidelines regarding:

10 (A) The determination of financial eligibility of persons entitled to be represented by appointed  
11 counsel at state expense;

12 (B) The appointment of counsel;

13 (C) The fair compensation of counsel appointed to represent a person financially eligible for  
14 appointed counsel at state expense;

15 (D) Appointed counsel compensation disputes;

16 (E) Any other costs associated with the representation of a person by appointed counsel in the  
17 state courts that are required to be paid by the state under ORS 34.355, 135.055, 138.500, 138.590,  
18 161.346, 161.365, 161.385, 419A.211, 419B.201, 419B.208, 419B.518, 419B.908, 419C.206, 419C.209,  
19 419C.408, 426.100, 426.135, 426.250, 426.307, 427.265, 427.295, 436.265 or 436.315 **or section 15 of this**  
20 **2005 Act** or any other provision of law that expressly provides for payment of such compensation,  
21 costs or expenses by the commission;

22 (F) Professional qualifications for counsel appointed to represent public defense clients;

23 (G) Performance for legal representation;

24 (H) The contracting of public defense services;

25 (I) Contracting with expert witnesses to allow contracting with out-of-state expert witnesses  
26 only if in-state expert witnesses are not available or are more expensive than out-of-state expert  
27 witnesses; and

28 (J) Any other matters necessary to carry out the duties of the commission.

29 (g) Establish a peer review system for the approval of nonroutine fees and expenses incurred in  
30 cases involving aggravated murder and the crimes listed in ORS 137.700 and 137.707. The review  
31 shall be conducted by a panel of attorneys who practice in the area of criminal defense.

32 (h) Establish a complaint process that allows district attorneys, criminal defense counsel and the  
33 public to file complaints concerning the payment from public funds of nonroutine fees and expenses  
34 incurred in cases.

35 (i) Reimburse the State Court Administrator from funds deposited in the subaccount established  
36 under ORS 151.225 for the costs of personnel and other costs associated with location of eligibility  
37 verification and screening personnel pursuant to ORS 151.489 by the State Court Administrator.

38 (2) Policies, procedures, standards and guidelines adopted by the commission supersede any  
39 conflicting rules, policies or procedures of the Public Defender Committee, State Court Administra-  
40 tor, circuit courts, the Court of Appeals, the Supreme Court and the Psychiatric Security Review  
41 Board related to the exercise of the commission's administrative responsibilities under this section  
42 and transferred duties, functions and powers as they occur.

43 (3) The commission may accept gifts, grants or contributions from any source, whether public  
44 or private. However, the commission may not accept a gift, grant or contribution if acceptance  
45 would create a conflict of interest. Moneys accepted under this subsection shall be deposited in the

1 Public Defense Services Account created in ORS 151.225 and expended for the purposes for which  
2 given or granted.

3 (4) The commission may not:

4 (a) Make any decision regarding the handling of any individual case;

5 (b) Have access to any case file; or

6 (c) Interfere with the director or any member of the staff of the director in carrying out pro-  
7 fessional duties involving the legal representation of public defense clients.

8 **SECTION 24.** ORS 161.375 is amended to read:

9 161.375. (1) When a patient, who has been placed at the Oregon State Hospital for evaluation,  
10 care, custody and treatment under the jurisdiction of the Psychiatric Security Review Board or by  
11 court order under ORS 161.315, 161.365 or 161.370 **or section 6 of this 2005 Act**, has escaped or is  
12 absent without authorization from the Oregon State Hospital or from the custody of any person in  
13 whose charge the superintendent has placed the patient, the superintendent may order the arrest  
14 and detention of the patient.

15 (2) The superintendent may issue an order under this section based upon a reasonable belief that  
16 grounds exist for issuing the order. When reasonable, the superintendent shall investigate to ascer-  
17 tain whether such grounds exist.

18 (3) Any order issued by the superintendent as authorized by this section constitutes full au-  
19 thority for the arrest and detention of the patient and all laws applicable to warrant or arrest apply  
20 to the order. An order issued by the superintendent under this section expires 72 hours after being  
21 signed by the superintendent.

22 (4) As used in this section, "superintendent" means the superintendent of the Oregon State  
23 Hospital or the superintendent's authorized representative.

24 **SECTION 24a. If Senate Bill 1059 becomes law, section 24 of this 2005 Act (amending ORS**  
25 **161.375) is repealed and ORS 161.375, as amended by section 7, chapter \_\_\_, Oregon Laws 2005**  
26 **(Enrolled Senate Bill 1059), is amended to read:**

27 161.375. (1) When a patient, who has been placed at the Oregon State Hospital for evaluation,  
28 care, custody and treatment under the jurisdiction of the Psychiatric Security Review Board or by  
29 court order under ORS 161.315, 161.365 or 161.370, has escaped or is absent without authorization  
30 from the Oregon State Hospital or from the custody of any person in whose charge the superinten-  
31 dent has placed the patient, the superintendent may order the arrest and detention of the patient.

32 (2) When a patient, who has been placed at a secure intensive community inpatient facility for  
33 evaluation, care, custody and treatment under the jurisdiction of the Psychiatric Security Review  
34 Board or by court order under ORS 161.315, 161.365 or 161.370 **or section 6 of this 2005 Act**, has  
35 escaped or is absent without authorization from the facility or from the custody of any person in  
36 whose charge the director of the facility has placed the patient, the director of the facility shall  
37 notify the Director of Human Services. The Director of Human Services may order the arrest and  
38 detention of the patient.

39 (3) The superintendent or the Director of Human Services may issue an order under this section  
40 based upon a reasonable belief that grounds exist for issuing the order. When reasonable, the su-  
41 perintendent or the Director of Human Services shall investigate to ascertain whether such grounds  
42 exist.

43 (4) Any order issued by the superintendent or the Director of Human Services as authorized by  
44 this section constitutes full authority for the arrest and detention of the patient and all laws appli-  
45 cable to warrant or arrest apply to the order. An order issued by the superintendent or the Director

1 of Human Services under this section expires 72 hours after being signed by the superintendent or  
2 the Director of Human Services.

3 (5) As used in this section, “superintendent” means the superintendent of the Oregon State  
4 Hospital or the superintendent’s authorized representative.

5 **SECTION 25.** ORS 40.015 is amended to read:

6 40.015. (1) The Oregon Evidence Code applies to all courts in this state except for:

7 (a) A tax court small claims procedure or a hearing or mediation before a magistrate of the  
8 Oregon Tax Court as provided by ORS 305.501;

9 (b) The small claims department of a circuit court as provided by ORS 46.415; and

10 (c) The small claims department of a justice court as provided by ORS 55.080.

11 (2) The Oregon Evidence Code applies generally to civil actions, suits and proceedings, criminal  
12 actions and proceedings and to contempt proceedings except those in which the court may act  
13 summarily.

14 (3) ORS 40.225 to 40.295 relating to privileges apply at all stages of all actions, suits and pro-  
15 ceedings.

16 (4) ORS 40.010 to 40.210 and 40.310 to 40.585 do not apply in the following situations:

17 (a) The determination of questions of fact preliminary to admissibility of evidence when the issue  
18 is to be determined by the court under ORS 40.030.

19 (b) Proceedings before grand juries, except as required by ORS 132.320.

20 (c) Proceedings for extradition, except as required by ORS 133.743 to 133.857.

21 (d) Sentencing proceedings, except proceedings under ORS 138.012 and 163.150 or as required  
22 by ORS 137.090.

23 (e) Proceedings to revoke probation, except as required by ORS 137.090.

24 (f) Issuance of warrants of arrest, bench warrants or search warrants.

25 (g) Proceedings under ORS chapter 135 relating to conditional release, security release, release  
26 on personal recognizance, or preliminary hearings, subject to ORS 135.173.

27 (h) Proceedings to determine proper disposition of a child in accordance with ORS 419B.325 (2)  
28 and 419C.400 [(3)] (4).

29 (i) Proceedings under ORS 813.210, 813.215, 813.220, 813.230, 813.250 and 813.255 to determine  
30 whether a driving while under the influence of intoxicants diversion agreement should be allowed  
31 or terminated.

32 **SECTION 26.** ORS 419C.626 is amended to read:

33 419C.626. (1) Upon receiving any report required by ORS 419C.620, the court may hold a hearing  
34 to review the youth offender’s condition and circumstances and to determine if the court should  
35 continue jurisdiction over the youth offender or order modifications in the care, placement and  
36 supervision of the youth offender. The court shall hold a hearing if requested by the youth offender,  
37 the attorney for the youth offender, if any, the parents or the public or private agency having  
38 guardianship or legal custody of the youth offender within 30 days of receipt of the notice provided  
39 in ORS 419C.629.

40 (2) The hearing provided in subsection (1) of this section shall be conducted in the manner  
41 provided in ORS 419C.400 (1), 419C.405 and 419C.408, except that the court may receive testimony  
42 and reports as provided in ORS 419C.400 [(3)] (4). At the conclusion of the hearing, the court shall  
43 enter findings of fact if the decision is to continue the youth offender in substitute care. Such  
44 findings shall specifically state:

45 (a) Why continued care is necessary as opposed to returning the youth offender to the youth

1 offender's home or prompt action to secure another permanent placement; or

2 (b) The expected timetable for return or other permanent placement.

3 (3) Any final decision of the court made pursuant to the hearing provided in subsection (1) of  
4 this section is appealable under ORS 419A.200.

5 **NOTE:** Section 27 was deleted by amendment. Subsequent sections were not renumbered.

6 **SECTION 28. Section 29 of this 2005 Act is added to and made a part of ORS chapter**  
7 **419A.**

8 **SECTION 29. (1)(a) Once each month, the Department of Human Services shall provide**  
9 **to each school district a list of all young persons enrolled in a school in the school district**  
10 **who are on conditional release. The department shall include in the list the name and busi-**  
11 **ness telephone number of the caseworker assigned to each case.**

12 (b) When a young person who is on conditional release transfers from one school district  
13 to a different school district, the caseworker assigned to the case shall notify the super-  
14 intendent of the school district to which the young person has transferred of the young  
15 person's status. The caseworker shall make the notification no later than 72 hours after the  
16 caseworker knows of the transfer.

17 (2) Upon request by the school district, the department shall provide additional informa-  
18 tion, including the offense that brought the young person within the jurisdiction of the ju-  
19 venile court and such other information that is subject to disclosure under ORS 419A.255 (5).

20 (3) In addition to the general notification required by subsection (1) of this section, the  
21 department:

22 (a) Shall notify the school district of the specific offense if the act that brought the young  
23 person within the jurisdiction of the juvenile court involved a firearm or delivery of a con-  
24 trolled substance.

25 (b) May notify the school district of the specific offense if the act that brought the young  
26 person within the jurisdiction of the juvenile court involved a violation of ORS 163.355 to  
27 163.445 or 163.465 or any other offense if the department believes the young person repres-  
28 ents a risk to other students or school staff.

29 (4) ORS 419A.015 (4) and (5) apply to persons sending or receiving records under this  
30 section.

31 **SECTION 30.** ORS 181.607 is amended to read:

32 181.607. (1)(a) No sooner than two years, but no later than five years, after the termination of  
33 juvenile court **jurisdiction or, if the person was placed under the jurisdiction of the Psychi-**  
34 **atric Security Review Board under section 13 of this 2005 Act, board** jurisdiction over a person  
35 required to report under ORS 181.595, 181.596 or 181.597, the person may file a petition for relief  
36 from the duty to report. The person must file the petition in the juvenile court in which the person  
37 was adjudicated for the act that requires reporting.

38 (b) The juvenile court in which a petition under this section is filed may transfer the matter to  
39 the juvenile court of the county that last supervised the person if the court determines that the  
40 convenience of the parties, the victim and witnesses require the transfer.

41 (c) The juvenile court has exclusive original jurisdiction in any proceeding under this section.

42 (d) The person, the district attorney and the juvenile department are parties to a hearing on a  
43 petition filed under this section.

44 (2) When a person files a petition under this section and the petition was filed:

45 (a) No later than three years after the termination of juvenile court **jurisdiction or, if the**

1 **person was placed under the jurisdiction of the Psychiatric Security Review Board under**  
2 **section 13 of this 2005 Act, board** jurisdiction, the state has the burden of proving by clear and  
3 convincing evidence that the person is not rehabilitated and continues to pose a threat to the safety  
4 of the public.

5 (b) More than three years, but no later than five years, after the termination of juvenile court  
6 **jurisdiction or, if the person was placed under the jurisdiction of the Psychiatric Security**  
7 **Review Board under section 13 of this 2005 Act, board** jurisdiction, the person has the burden  
8 of proving by clear and convincing evidence that the person is rehabilitated and does not pose a  
9 threat to the safety of the public.

10 (3) In determining whether the state or the person has met the burden of proof established in  
11 subsection (2) of this section, the juvenile court may consider but need not be limited to considering:

12 (a) The extent and impact of any physical or emotional injury to the victim;

13 (b) The nature of the act that subjected the person to the duty of reporting as a sex offender;

14 (c) Whether the person used or threatened to use force in committing the act;

15 (d) Whether the act was premeditated;

16 (e) Whether the person took advantage of a position of authority or trust in committing the act;

17 (f) The age of any victim at the time of the act, the age difference between any victim and the  
18 person and the number of victims;

19 (g) The vulnerability of the victim;

20 (h) Other acts committed by the person that would be crimes if committed by an adult and  
21 criminal activities engaged in by the person before and after the adjudication;

22 (i) Statements, documents and recommendations by or on behalf of the victim or the parents of  
23 the victim;

24 (j) The person's willingness to accept personal responsibility for the act and personal account-  
25 ability for the consequences of the act;

26 (k) The person's ability and efforts to pay the victim's expenses for counseling and other  
27 trauma-related expenses or other efforts to mitigate the effects of the act;

28 (L) Whether the person has participated in and satisfactorily completed a sex offender treatment  
29 program or any other intervention, and if so the juvenile court may also consider:

30 (A) The availability, duration and extent of the treatment activities;

31 (B) Reports and recommendations from the providers of the treatment;

32 (C) The person's compliance with court, **board** or supervision requirements regarding treatment;

33 and

34 (D) The quality and thoroughness of the treatment program;

35 (m) The person's academic and employment history;

36 (n) The person's use of drugs or alcohol before and after the adjudication;

37 (o) The person's history of public or private indecency;

38 (p) The person's compliance with and success in completing the terms of supervision;

39 (q) The results of psychological examinations of the person;

40 (r) The protection afforded the public by the continued existence of the records; and

41 (s) Any other relevant factors.

42 (4) In a hearing under this section, the juvenile court may receive testimony, reports and other  
43 evidence without regard to whether the evidence is admissible under ORS 40.010 to 40.210 and  
44 40.310 to 40.585 if the evidence is relevant to the determination and findings required under this  
45 section. As used in this subsection, "relevant evidence" has the meaning given that term in ORS

1 40.150.

2 (5) When a petition is filed under this section, the state has the right to have a psychosexual  
3 evaluation of the person conducted. The state shall file notice with the juvenile court of its intention  
4 to have the person evaluated. If the person objects to the evaluator chosen by the state, the juvenile  
5 court for good cause shown may direct the state to select a different evaluator.

6 (6) As soon as practicable after a petition has been filed under this section, the district attorney  
7 shall make a reasonable effort to notify the victim of the crime that the person has filed a petition  
8 seeking relief under this section.

9 (7)(a) When a petition has been filed under this section and the petition was filed:

10 (A) No later than three years after the termination of juvenile court **jurisdiction or, if the**  
11 **person was placed under the jurisdiction of the Psychiatric Security Review Board under**  
12 **section 13 of this 2005 Act, board** jurisdiction, the court shall hold a hearing on the petition no  
13 sooner than 60 days and no later than 120 days after the date of filing.

14 (B) More than three years, but no later than five years, after the termination of juvenile court  
15 **jurisdiction or, if the person was placed under the jurisdiction of the Psychiatric Security**  
16 **Review Board under section 13 of this 2005 Act, board** jurisdiction, the court shall hold a hearing  
17 no sooner than 90 days and no later than 150 days after the date of filing.

18 (b) Notwithstanding paragraph (a) of this subsection, upon a showing of good cause, the court  
19 may extend the period of time in which a hearing on the petition must be held.

20 (8) When the state has the burden of proof under subsection (2) of this section and proves by  
21 clear and convincing evidence that the person is not rehabilitated and continues to pose a threat  
22 to the safety of the public, the court shall deny the petition. When the person has the burden of  
23 proof under subsection (2) of this section and proves by clear and convincing evidence that the  
24 person is rehabilitated and does not pose a threat to the safety of the public, the court shall grant  
25 the petition.

26 (9) When a juvenile court enters an order relieving a person of the requirement to report under  
27 ORS 181.595, 181.596 or 181.597, the person is responsible for sending a certified copy of the juvenile  
28 court order to the Department of State Police.

29 (10) If a person commits an act that could be charged as a sex crime listed in ORS 137.707 and  
30 the person is 15, 16 or 17 years of age at the time the act is committed, the state and the person  
31 may stipulate that the person may not petition for relief under this section as part of an agreement  
32 that the person be subject to the jurisdiction of the juvenile court rather than being prosecuted as  
33 an adult under ORS 137.707.

34 **SECTION 31.** ORS 419B.100 is amended to read:

35 419B.100. (1) Except as otherwise provided in subsection (6) of this section and ORS 107.726, the  
36 juvenile court has exclusive original jurisdiction in any case involving a person who is under 18  
37 years of age and:

38 (a) Who is beyond the control of the person's parents, guardian or other person having custody  
39 of the person;

40 (b) Whose behavior is such as to endanger the welfare of the person or of others;

41 (c) Whose condition or circumstances are such as to endanger the welfare of the person or of  
42 others;

43 (d) Who is dependent for care and support on a public or private child-caring agency that needs  
44 the services of the court in planning for the best interest of the person;

45 (e) Whose parents or any other person or persons having custody of the person have:

1 (A) Abandoned the person;

2 (B) Failed to provide the person with the care or education required by law;

3 (C) Subjected the person to cruelty, depravity or unexplained physical injury; or

4 (D) Failed to provide the person with the care, guidance and protection necessary for the  
5 physical, mental or emotional well-being of the person;

6 (f) Who has run away from the home of the person; *[or]*

7 (g) Who has filed a petition for emancipation pursuant to ORS 419B.550 to 419B.558; **or**

8 **(h) Who is subject to an order entered under ORS 419C.411 (7)(a).**

9 (2) The court shall have jurisdiction under subsection (1) of this section even though the child  
10 is receiving adequate care from the person having physical custody of the child.

11 (3) The practice of a parent who chooses for the parent or the child of the parent treatment by  
12 prayer or spiritual means alone *[shall]* **may** not be construed as a failure to provide physical care  
13 within the meaning of this chapter, but *[shall]* **does** not prevent a court of competent jurisdiction  
14 from exercising that jurisdiction under subsection (1)(c) of this section.

15 (4) The provisions of subsection (1) of this section do not prevent a court of competent juris-  
16 diction from entertaining a civil action or suit involving a child.

17 (5) The court *[shall have no]* **does not have** further jurisdiction as provided in subsection (1)  
18 of this section after a minor has been emancipated pursuant to ORS 419B.550 to 419B.558.

19 (6)(a) An Indian tribe has exclusive jurisdiction over any child custody proceeding involving an  
20 Indian child who resides or is domiciled within the reservation of the tribe, except where the juris-  
21 diction is otherwise vested in the state by existing federal law.

22 (b) Upon the petition of either parent, the Indian custodian or the Indian child's tribe, the ju-  
23 venile court, absent good cause to the contrary and absent objection by either parent, shall transfer  
24 a proceeding for the foster care placement of, or termination of parental rights to, an Indian child  
25 not domiciled or residing within the reservation of the Indian child's tribe, to the jurisdiction of the  
26 tribe.

27 (c) The juvenile court shall give full faith and credit to the public acts, records and judicial  
28 proceedings of an Indian tribe applicable to an Indian child custody proceeding to the same extent  
29 that the juvenile court gives full faith and credit to the public acts, records and judicial proceedings  
30 of any other entity.

31 **NOTE:** Section 32 was deleted by amendment. Subsequent sections were not renumbered.

32 **SECTION 33.** ORS 21.010, as amended by section 3, chapter 737, Oregon Laws 2003, is amended  
33 to read:

34 21.010. (1) Except as provided in subsection (2) of this section, the appellant in an appeal or the  
35 petitioner in a judicial review in the Supreme Court or the Court of Appeals shall pay a filing fee  
36 of \$154 in the manner prescribed by ORS 19.265. The respondent in such case and any other person  
37 appearing in the appeal, upon entering first appearance or filing first brief in the court, shall pay  
38 to the State Court Administrator the sum of \$92. The party entitled to costs and disbursements on  
39 such appeal shall recover from the opponent the amount so paid.

40 (2) Filing and appearance fees shall not be assessed in appeals from habeas corpus proceedings  
41 under ORS 34.710, post-conviction relief proceedings under ORS 138.650, juvenile court under ORS  
42 419A.200 and the involuntary commitment of allegedly mentally ill persons under ORS 426.135 or  
43 allegedly mentally retarded persons under ORS 427.295, or on judicial review of orders of the Psy-  
44 chiatric Security Review Board under ORS 161.385 *[(8)]* **(9)** or orders of the State Board of Parole  
45 and Post-Prison Supervision.

1 (3) Filing and appearance fees shall be assessed in an appeal from an appeal to a circuit court  
2 from a justice court or municipal court in an action alleging commission of a state offense desig-  
3 nated as a violation or an action alleging violation of a city charter or ordinance, but not in an  
4 action alleging commission of a state crime.

5 (4) Filing and appearance fees shall only be assessed in an appeal in a contempt proceeding  
6 seeking imposition of remedial sanctions under the provisions of ORS 33.055.

7 **SECTION 34.** ORS 181.595 is amended to read:

8 181.595. (1)(a) Except as otherwise provided in paragraph (b) of this subsection, the agency or  
9 official to whom a person reports under subsection (3) of this section shall complete a sex offender  
10 registration form concerning the person when the person reports under subsection (3) of this section.

11 (b) When a person who is under supervision reports to the agency supervising the person, the  
12 supervising agency may require the person to report instead to the Department of State Police, a  
13 chief of police or a county sheriff and provide the supervising agency with proof of the completed  
14 registration.

15 (2) Subsection (3) of this section applies to a person who:

16 (a) Is discharged, paroled or released on any form of supervised or conditional release from a  
17 jail, prison or other correctional facility or detention facility in this state at which the person was  
18 confined as a result of:

19 (A) Conviction of a sex crime;

20 (B) Having been found guilty except for insanity of a sex crime; or

21 (C) Having been found to be within the jurisdiction of the juvenile court for having committed  
22 an act that if committed by an adult would constitute a sex crime;

23 (b) Is paroled to this state under ORS 144.610 after being convicted in another jurisdiction of a  
24 crime that would constitute a sex crime if committed in this state;

25 (c) Is paroled to or otherwise placed in this state after having been found by a court in another  
26 jurisdiction to have committed an act while the person was under 18 years of age that would con-  
27 stitute a sex crime if committed in this state by an adult; *[or]*

28 **(d) Is discharged or placed on conditional release by the juvenile panel of the Psychiatric**  
29 **Security Review Board after having been found to be responsible except for insanity under**  
30 **ORS 419C.411 for an act that would constitute a sex crime if committed by an adult; or**

31 *[(d)]* (e) Is discharged by the court under ORS 161.329 after having been found guilty except for  
32 insanity of a sex crime.

33 (3)(a) Within 10 days following discharge, release on parole, post-prison supervision or other  
34 supervised or conditional release, the person shall report, in person, to the Department of State  
35 Police, a chief of police or a county sheriff or to the supervising agency, if any. Thereafter, the  
36 person shall report, in person:

37 (A) Within 10 days of a change of residence; and

38 (B) Once each year within 10 days of the person's birth date, regardless of whether the person  
39 changed residence.

40 (b) The person shall make the reports required by paragraph (a)(A) and (B) of this subsection  
41 to the department, a chief of police, a county sheriff or the supervising agency, if any.

42 (c) If the person required to report under this subsection is a youth offender **or young person**,  
43 as defined in ORS 419A.004, who is under supervision, the person shall make the reports required  
44 by paragraph (a) of this subsection to the agency supervising the person.

45 (d) The obligation to report under this section terminates if the conviction or adjudication that

1 gave rise to the obligation is reversed or vacated or if the registrant is pardoned.

2 (4) As part of the registration requirement under this section, the Department of State Police,  
3 the chief of police, the county sheriff or the supervising agency:

- 4 (a) Shall photograph the person and obtain the signature of the person; and
- 5 (b) May fingerprint the person.

6 **SECTION 35.** (1) **The Governor shall appoint the five members of the Psychiatric Security**  
7 **Review Board added to the board by the amendments to ORS 161.385 by section 20 of this 2005**  
8 **Act before the operative date of section 4 of this 2005 Act.**

9 (2) **Notwithstanding the terms of office specified in ORS 161.385, of the members ap-**  
10 **pointed to the board under subsection (1) of this section:**

- 11 (a) **One shall serve for a term ending January 1, 2008.**
- 12 (b) **One shall serve for a term ending January 1, 2009.**
- 13 (c) **One shall serve for a term ending January 1, 2010.**
- 14 (d) **Two shall serve for terms ending January 1, 2011.**

15 **SECTION 36.** **There is appropriated to the Psychiatric Security Review Board, for the**  
16 **biennium beginning July 1, 2005, out of the General Fund, the amount of \$15,000 for the**  
17 **purpose of carrying out the duties, functions and powers of the board relating to persons**  
18 **found responsible except for insanity under ORS 419C.411.**

19 **SECTION 37.** **The dispositions described in section 13 of this 2005 Act apply to any pro-**  
20 **ceeding initiated by a petition alleging jurisdiction under ORS 419C.005 for which the court**  
21 **has not entered an order directing disposition of the case before the operative date of section**  
22 **4 of this 2005 Act.**

23 **SECTION 38.** (1) **Sections 35 to 37 of this 2005 Act and the amendments to ORS 21.010**  
24 **and 161.385 by sections 20 and 33 of this 2005 Act become operative on January 1, 2007.**

25 (2) **Sections 2 to 6, 12 to 19, 28 and 29 of this 2005 Act and the amendments to ORS 40.015,**  
26 **137.290, 137.712, 151.216, 161.375, 181.595, 181.607, 419A.004, 419B.100, 419C.005, 419C.285,**  
27 **419C.400, 419C.411, 419C.501 and 419C.626 by sections 1, 7 to 11, 21 to 26, 30, 31 and 34 of this**  
28 **2005 Act become operative on July 1, 2007.**

29 **SECTION 39.** (1) **The Department of Human Services shall study the issue of how to allow**  
30 **a child with developmental disabilities to assert the affirmative defense of mental disease or**  
31 **defect constituting insanity when the child is alleged to be within the jurisdiction of the ju-**  
32 **venile court under ORS chapter 419C.**

33 (2) **The department shall submit a written report to the Legislative Assembly no later**  
34 **than January 1, 2007, summarizing the results of the study required by this section. The re-**  
35 **port shall contain recommendations for legislation if the department finds that legislation is**  
36 **required.**

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