

HOUSE AMENDMENTS TO RESOLVE CONFLICTS TO A-ENGROSSED SENATE BILL 1059

By COMMITTEE ON STATE AND FEDERAL AFFAIRS

July 15

1 On page 1 of the printed A-engrossed bill, line 2, after the semicolon insert “creating new pro-
2 visions;”.

3 In line 3, after the semicolon insert “repealing section 2, chapter 337, Oregon Laws 2005 (En-
4 rolled Senate Bill 39);”.

5 On page 3, after line 2, insert:

6 “**SECTION 1a. If Senate Bill 39 becomes law, section 2, chapter 337, Oregon Laws 2005**
7 **(Enrolled Senate Bill 39) (amending ORS 161.327), is repealed and ORS 161.327, as amended**
8 **by section 1 of this 2005 Act, is amended to read:**

9 “161.327. (1)(a) Following the entry of a judgment pursuant to ORS 161.319 and the dispositional
10 determination under ORS 161.325, **if the court finds that the person would have been guilty of**
11 **a felony, or of a misdemeanor during a criminal episode in the course of which the person**
12 **caused physical injury or risk of physical injury to another, the court shall order that a**
13 **psychiatric or psychological evaluation be performed and a report of the evaluation be pro-**
14 **vided to the court if an evaluation was not performed or a report was not provided to the**
15 **court prior to trial. Upon receipt of the evaluation, the court shall order that the person be**
16 **placed under the jurisdiction of the Psychiatric Security Review Board for care and treat-**
17 **ment if the court finds by a preponderance of the evidence that the person is affected by**
18 **mental disease or defect and presents a substantial danger to others requiring commitment**
19 **to:** *[the court shall order the person placed under the jurisdiction of the Psychiatric Security Review*
20 *Board for care and treatment if the court:]*

21 “[*(A) Finds that the person would have been guilty of a felony or guilty of a misdemeanor during*
22 *a criminal episode in the course of which the person caused physical injury or risk of physical injury*
23 *to another; and]*

24 “[*(B) Finds by a preponderance of the evidence that the person is affected by a mental disease or*
25 *defect and presents a substantial danger to others requiring conditional release or commitment to:]*

26 “[*(i) (A) A state hospital designated by the Department of Human Services if the person is at*
27 *least 18 years of age; or*

28 “[*(ii) (B) A secure intensive community inpatient facility designated by the Department of Hu-*
29 *man Services if the person is under 18 years of age.*

30 “(b) The period of jurisdiction of the board is equal to the maximum sentence provided by stat-
31 ute for the crime for which the person was found guilty except for insanity.

32 “(c) **When a court orders a psychiatric or psychological evaluation of a financially eligible**
33 **person under this subsection, the court shall order the public defense services executive di-**
34 **rector to pay a reasonable fee for the evaluation from funds available for the purpose.**

35 “(2) The court shall determine whether the person should be committed to a state hospital, or

1 to a secure intensive community inpatient facility, designated by the Department of Human Services
2 or conditionally released pending any hearing before the board as follows:

3 “(a) If the court finds that the person presents a substantial danger to others and is not a proper
4 subject for conditional release, the court shall order the person committed to a state hospital des-
5 ignated by the Department of Human Services if the person is at least 18 years of age, or to a secure
6 intensive community inpatient facility designated by the Department of Human Services if the per-
7 son is under 18 years of age, for custody, care and treatment pending hearing before the board in
8 accordance with ORS 161.341 to 161.351.

9 “(b) If the court finds that the person presents a substantial danger to others but that the person
10 can be adequately controlled with supervision and treatment if conditionally released and that nec-
11 essary supervision and treatment are available, the court may order the person conditionally re-
12 leased, subject to those supervisory orders of the court as are in the best interests of justice, the
13 protection of society and the welfare of the person. The court shall designate a person or state,
14 county or local agency to supervise the person upon release, subject to those conditions as the court
15 directs in the order for conditional release. Prior to the designation, the court shall notify the per-
16 son or agency to whom conditional release is contemplated and provide the person or agency an
17 opportunity to be heard before the court. After receiving an order entered under this paragraph, the
18 person or agency designated shall assume supervision of the person pursuant to the direction of the
19 Psychiatric Security Review Board. The person or agency designated as supervisor shall be required
20 to report in writing no less than once per month to the board concerning the supervised person’s
21 compliance with the conditions of release.

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

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

28 “(5) In determining whether a person should be committed to a state hospital or to a secure
29 intensive community inpatient facility or conditionally released, the court shall have as its primary
30 concern the protection of society.

31 “(6) Upon placing a person on conditional release, the court shall notify the board in writing
32 of the court’s conditional release order, the supervisor appointed, and all other conditions of release,
33 and the person shall be on conditional release pending hearing before the board in accordance with
34 ORS 161.336 to 161.351. Upon compliance with this subsection and subsections (1) and (2) of this
35 section, the court’s jurisdiction over the person is terminated and the board assumes jurisdiction
36 over the person.

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

45 “(8) Upon placing a person under the jurisdiction of the board, the court shall notify the person

1 of the right to appeal and the right to a hearing before the board in accordance with ORS 161.336
2 (7) and 161.341 (4).

3 **“SECTION 1b. The amendments to ORS 161.327 by section 1a of this 2005 Act become**
4 **operative on January 1, 2006.”**

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