# TITLE 16

# CRIMES AND PUNISHMENTS



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# Chapter 161

**2023 EDITION**

## General Provisions

## PRINCIPLES

**161.005 Short title.** ORS 161.005 to 161.055, 161.065, 161.085 to 161.125, 161.150 to 161.175, 161.190 to 161.275, 161.290 to 161.373, 161.405 to 161.485, 161.505 to 161.585, 161.605, 161.615 to 161.685, 161.705 to 161.737, 162.005, 162.015 to 162.035, 162.055 to 162.115, 162.135 to 162.205, 162.225 to 162.375, 162.405 to 162.425, 162.465, 163.005, 163.095, 163.107, 163.115, 163.125 to 163.145, 163.149, 163.160 to 163.208, 163.191, 163.196, 163.215 to 163.257, 163.261, 163.263, 163.264, 163.266, 163.275, 163.285, 163.305 to 163.467, 163.429, 163.432, 163.433, 163.472, 163.505 to 163.575, 163.665 to 163.693, 163.700, 163.701, 163.715, 164.005, 164.015 to 164.135, 164.138, 164.140, 164.205 to 164.270, 164.305 to 164.377, 164.395 to 164.415, 164.805, 164.857, 164.886, 165.002 to 165.102, 165.109, 165.118, 165.805, 165.815, 166.005 to 166.095, 166.119, 166.125, 166.128, 166.350, 166.382, 166.384, 166.660, 167.002 to 167.027, 167.057, 167.060 to 167.100, 167.117, 167.122 to 167.162, 167.203 to 167.252, 167.310 to 167.340, 167.350, 167.810 and 167.820 shall be known and may be cited as Oregon Criminal Code of 1971. [1971 c.743 §1; 1979 c.476 §1; 1983 c.740 §25; 1983 c.792 §1; 1985 c.366 §2; 1985 c.557 §9; 1985 c.662 §10; 1985 c.755 §1; 1989 c.982 §3; 1989 c.1003 §5; 2003 c.383 §3; 2007 c.475 §4; 2007 c.684 §2; 2007 c.811 §6; 2007 c.867 §16; 2007 c.869 §5; 2007 c.876 §5; 2009 c.783 §6; 2009 c.811 §15; 2011 c.681 §5; 2015 c.321 §2; 2015 c.379 §2; 2015 c.645 §9; 2016 c.22 §4; 2017 c.649 §2; 2019 c.635 §15; 2021 c.276 §2; 2023 c.200 §3; 2023 c.205 §2; 2023 c.228 §50; 2023 c.608 §4]

**161.010** [Repealed by 1971 c.743 §432]

**161.015 General definitions.** As used in chapter 743, Oregon Laws 1971, and ORS 166.635, unless the context requires otherwise:

(1) "Dangerous weapon" means any weapon, device, instrument, material or substance which under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing death or serious physical injury.

(2) "Deadly weapon" means any instrument, article or substance specifically designed for and presently capable of causing death or serious physical injury.

(3) "Deadly physical force" means physical force that under the circumstances in which it is used is readily capable of causing death or serious physical injury.

(4) "Peace officer" means:

(a) A member of the Oregon State Police;

(b) A sheriff, constable, marshal, municipal police officer or reserve officer as defined in ORS 133.005, or a police officer commissioned by a university under ORS 352.121 or 353.125;

(c) An investigator of the Criminal Justice Division of the Department of Justice or investigator of a district attorney's office;

(d) A humane special agent as defined in ORS 181A.345;

(e) A regulatory specialist exercising authority described in ORS 471.775 (2);

(f) An authorized tribal police officer as defined in ORS 181A.940; and

(g) Any other person designated by law as a peace officer.

(5) "Person" means a human being and, where appropriate, a public or private corporation, an unincorporated association, a partnership, a government or a governmental instrumentality.

(6) "Physical force" includes, but is not limited to, the use of an electrical stun gun, tear gas or mace.

(7) "Physical injury" means impairment of physical condition or substantial pain.

(8) "Serious physical injury" means physical injury which creates a substantial risk of death or which causes serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.

(9) "Possess" means to have physical possession or otherwise to exercise dominion or control over property.

(10) "Public place" means a place to which the general public has access and includes, but is not limited to, hallways, lobbies and other parts of apartment houses and hotels not constituting rooms or apartments designed for actual residence, and highways, streets, schools, places of amusement, parks, playgrounds and premises used in connection with public passenger transportation. [1971 c.743 §3; 1973 c.139 §1; 1979 c.656 §3; 1991 c.67 §33; 1993 c.625 §4; 1995 c.651 §5; 2011 c.506 §22; 2011 c.641 §2; 2011 c.644 §§23,46; 2012 c.54 §§16,17; 2012 c.67 §§9,10; 2013 c.180 §§23,24; 2015 c.174 §11; 2015 c.614 §§147,148]

**Note:** Legislative Counsel has substituted "chapter 743, Oregon Laws 1971," for the words "this Act" in sections 2, 3, 4, 5, 6, 7, 19, 20, 21 and 36, chapter 743, Oregon Laws 1971, compiled as 161.015, 161.025, 161.035, 161.045, 161.055, 161.085, 161.195, 161.200, 161.205 and 161.295. Specific ORS references have not been substituted, pursuant to 173.160. These sections may be determined by referring to the 1971 Comparative Section Table located in Volume 22 of ORS.

**161.020** [Amended by 1967 c.372 §9; repealed by 1971 c.743 §432]

**161.025 Purposes; principles of construction.** (1) The general purposes of chapter 743, Oregon Laws 1971, are:

(a) To insure the public safety by preventing the commission of offenses through the deterrent influence of the sentences authorized, the correction and rehabilitation of those convicted, and their confinement when required in the interests of public protection.

(b) To forbid and prevent conduct that unjustifiably and inexcusably inflicts or

threatens substantial harm to individual or public interests.

(c) To give fair warning of the nature of the conduct declared to constitute an offense and of the sentences authorized upon conviction.

(d) To define the act or omission and the accompanying mental state that constitute each offense and limit the condemnation of conduct as criminal when it is without fault.

(e) To differentiate on reasonable grounds between serious and minor offenses.

(f) To prescribe penalties which are proportionate to the seriousness of offenses and which permit recognition of differences in rehabilitation possibilities among individual offenders.

(g) To safeguard offenders against excessive, disproportionate or arbitrary punishment.

(2) The rule that a penal statute is to be strictly construed shall not apply to chapter 743, Oregon Laws 1971, or any of its provisions. Chapter 743, Oregon Laws 1971, shall be construed according to the fair import of its terms, to promote justice and to effect the purposes stated in subsection (1) of this section. [1971 c.743 §2]

**Note:** See note under 161.015.

**161.030** [Amended by 1955 c.660 §20; 1967 c.372 §10; repealed by 1971 c.743 §432]

**161.035 Application of Criminal Code.** (1) Chapter 743, Oregon Laws 1971, shall govern the construction of and punishment for any offense defined in chapter 743, Oregon Laws 1971, and committed after January 1, 1972, as well as the construction and application of any defense to a prosecution for such an offense.

(2) Except as otherwise expressly provided, or unless the context requires otherwise, the provisions of chapter 743, Oregon Laws 1971, shall govern the construction of and punishment for any offense defined outside chapter 743, Oregon Laws 1971, and committed after January 1, 1972, as well as the construction and application of any defense to a prosecution for such an offense.

(3) Chapter 743, Oregon Laws 1971, shall not apply to or govern the construction of and punishment for any offense committed before January 1, 1972, or the construction and application of any defense to a prosecution for such an offense. Such an offense shall be construed and punished according to the law existing at the time of the commission of the offense in the same manner as if chapter 743, Oregon Laws 1971, had not been enacted.

(4) When all or part of a criminal statute is amended or repealed, the criminal statute or part thereof so amended or repealed remains in force for the purpose of authorizing the accusation, prosecution, conviction and punishment of a person who violated the statute or part thereof before the effective date of the amending or repealing Act. [1971 c.743 §5]

**Note:** See note under 161.015.

**161.040** [Repealed by 1971 c.743 §432]

**161.045 Limits on application.** (1) Except as otherwise expressly provided, the procedure governing the accusation, prosecution, conviction and punishment of offenders and offenses is not regulated by chapter 743, Oregon Laws 1971, but by the criminal procedure statutes.

(2) Chapter 743, Oregon Laws 1971, does not affect any power conferred by law upon a court-martial or other military authority or officer to prosecute and punish conduct and offenders violating military codes or laws.

(3) Chapter 743, Oregon Laws 1971, does not bar, suspend or otherwise affect any right or liability to damages, penalty, forfeiture or other remedy authorized by law to be recovered or enforced in a civil action, regardless of whether the conduct involved in the proceeding constitutes an offense defined in chapter 743, Oregon Laws 1971.

(4) No conviction of a person for an offense works a forfeiture of the property of the person, except in cases where a forfeiture is expressly provided by law. [1971 c.743 §6]

**Note:** See note under 161.015.

**161.050** [Repealed by 1971 c.743 §432]

**161.055 Burden of proof as to defenses.** (1) When a "defense," other than an "affirmative defense" as defined in subsection (2) of this section, is raised at a trial, the state has the burden of disproving the defense beyond a reasonable doubt.

(2) When a defense, declared to be an "affirmative defense" by chapter 743, Oregon Laws 1971, is raised at a trial, the defendant has the burden of proving the defense by a preponderance of the evidence.

(3) The state is not required to negate a defense as defined in subsection (1) of this section unless it is raised by the defendant. "Raised by the defendant" means either notice in writing to the state before commencement of trial or affirmative evidence by a defense witness in the defendant's case in chief. [1971 c.743 §4]

**Note:** See note under 161.015.

**161.060** [Repealed by 1971 c.743 §432]

**161.062** [1985 c.722 §4; 1991 c.386 §8; repealed by 1999 c.136 §1]

**161.065 Evidence of physical injury.** (1) In a prosecution for an offense that includes, as an element, causing physical injury to another person, evidence of physical injury may include but is not limited to:

(a) Testimony by the person alleged to have been injured;

(b) Evidence of physical trauma;

(c) Testimony from witnesses indicating that the person alleged to have been injured experienced substantial pain or impairment of physical condition; or

(d) Expert testimony addressing the effect of the type and amount of force used by the defendant.

(2) As used in this section, "physical trauma" includes but is not limited to fractures, cuts, punctures, bruises, burns or other observable effects. [2023 c.205 §1]

**161.067 Determining punishable offenses for violation of multiple statutory provisions, multiple victims or repeated violations.** (1) When the same conduct or criminal episode violates two or more statutory provisions and each provision requires proof of an element that the others do not, there are as many separately punishable offenses as there are separate statutory violations.

(2) When the same conduct or criminal episode, though violating only one statutory provision involves two or more victims, there are as many separately punishable offenses as there are victims. However, two or more persons owning joint interests in real or personal property shall be considered a single victim for purposes of determining the number of separately punishable offenses if the property is the subject of one of the following crimes:

(a) Theft as defined in ORS 164.015.

(b) Unauthorized use of a vehicle as defined in ORS 164.135.

(c) Criminal possession of rented or leased personal property as defined in ORS 164.140.

(d) Criminal possession of a rented or leased motor vehicle as defined in ORS 164.138.

(e) Burglary as defined in ORS 164.215 or 164.225.

(f) Criminal trespass as defined in ORS 164.243, 164.245, 164.255, 164.265 or 164.278.

(g) Arson and related offenses as defined in ORS 164.315, 164.325 or 164.335.

(h) Forgery and related offenses as defined in ORS 165.002 to 165.070.

(3) When the same conduct or criminal episode violates only one statutory provision and involves only one victim, but nevertheless involves repeated violations of the same statutory provision against the same victim, there are as many separately punishable offenses as there are violations, except that each violation, to be separately punishable under this subsection, must be separated from other such violations by a sufficient pause in the defendant's criminal conduct to afford the defendant an opportunity to renounce the criminal intent. Each method of engaging in oral or anal sexual intercourse as defined in ORS 163.305, and each method of engaging in unlawful sexual penetration as defined in ORS 163.408 and 163.411 shall constitute separate violations of their respective statutory provisions for purposes of determining the number of statutory violations. [1987 c.2 §13; 1991 c.386 §9; 2003 c.629 §4; 2007 c.684 §3; 2017 c.318 §1]

**161.070** [Repealed by 1971 c.743 §432]

**161.075** [1965 c.516 §1; repealed by 1971 c.743 §432]

**161.080** [Repealed by 1971 c.743 §432]

## CRIMINAL LIABILITY

**161.085 Definitions with respect to culpability.** As used in chapter 743, Oregon Laws 1971, and ORS 166.635, unless the context requires otherwise:

(1) "Act" means a bodily movement.

(2) "Voluntary act" means a bodily movement performed consciously and includes the conscious possession or control of property.

(3) "Omission" means a failure to perform an act the performance of which is required by law.

(4) "Conduct" means an act or omission and its accompanying mental state.

(5) "To act" means either to perform an act or to omit to perform an act.

(6) "Culpable mental state" means intentionally, knowingly, recklessly or with criminal negligence as these terms are defined in subsections (7), (8), (9) and (10) of this section.

(7) "Intentionally" or "with intent," when used with respect to a result or to conduct described by a statute defining an offense, means that a person acts with a conscious objective to cause the result or to engage in the conduct so described.

(8) "Knowingly" or "with knowledge," when used with respect to conduct or to a circumstance described by a statute defining an offense, means that a person acts with an awareness that the conduct of the person is of a nature so described or that a circumstance so described exists.

(9) "Recklessly," when used with respect to a result or to a circumstance described by

a statute defining an offense, means that a person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

(10) "Criminal negligence" or "criminally negligent," when used with respect to a result or to a circumstance described by a statute defining an offense, means that a person fails to be aware of a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that the failure to be aware of it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation. [1971 c.743 §7; 1973 c.139 §2]

**Note:** See note under 161.015.

**161.090** [Amended by 1967 c.372 §11; repealed by 1971 c.743 §432]

**161.095 Requirements for criminal liability.** (1) The minimal requirement for criminal liability is the performance by a person of conduct which includes a voluntary act or the omission to perform an act which the person is capable of performing.

(2) Except as provided in ORS 161.105, a person is not guilty of an offense unless the person acts with a culpable mental state with respect to each material element of the offense that necessarily requires a culpable mental state. [1971 c.743 §8]

**161.100** [Repealed by 1971 c.743 §432]

**161.105 Culpability requirement inapplicable to certain violations and offenses.** (1) Notwithstanding ORS 161.095, a culpable mental state is not required if:

(a) The offense constitutes a violation, unless a culpable mental state is expressly included in the definition of the offense; or

(b) An offense defined by a statute outside the Oregon Criminal Code clearly indicates a legislative intent to dispense with any culpable mental state requirement for the offense or for any material element thereof.

(2) Notwithstanding any other existing law, and unless a statute enacted after January 1, 1972, otherwise provides, an offense defined by a statute outside the Oregon Criminal Code that requires no culpable mental state constitutes a violation.

(3) Although an offense defined by a statute outside the Oregon Criminal Code requires no culpable mental state with respect to one or more of its material elements, the culpable commission of the offense may be alleged and proved, in which case criminal negligence constitutes sufficient culpability, and the classification of the offense and the authorized sentence shall be determined by ORS 161.505 to 161.605 and 161.615 to 161.655. [1971 c.743 §9]

**161.110** [Repealed by 1971 c.743 §432]

**161.115 Construction of statutes with respect to culpability.** (1) If a statute defining an offense prescribes a culpable mental state but does not specify the element to which it applies, the prescribed culpable mental state applies to each material element of the offense that necessarily requires a culpable mental state.

(2) Except as provided in ORS 161.105, if a statute defining an offense does not prescribe a culpable mental state, culpability is nonetheless required and is established only if a person acts intentionally, knowingly, recklessly or with criminal negligence.

(3) If the definition of an offense prescribes criminal negligence as the culpable mental state, it is also established if a person acts intentionally, knowingly or recklessly. When recklessness suffices to establish a culpable mental state, it is also established if a person acts intentionally or knowingly. When acting knowingly suffices to establish a culpable mental state, it is also established if a person acts intentionally.

(4) Knowledge that conduct constitutes an offense, or knowledge of the existence, meaning or application of the statute defining an offense, is not an element of an offense unless the statute clearly so provides. [1971 c.743 §10]

**161.120** [Repealed by 1971 c.743 §432]

**161.125 Drug or controlled substance use or dependence or intoxication as defense.** (1) The use of drugs or controlled substances, dependence on drugs or controlled substances or voluntary intoxication shall not, as such, constitute a defense to a criminal charge, but in any prosecution for an offense, evidence that the defendant used drugs or controlled substances, or was dependent on drugs or controlled substances, or was intoxicated may be offered by the defendant whenever it is relevant to negative an element of the crime charged.

(2) When recklessness establishes an element of the offense, if the defendant, due to the use of drugs or controlled substances, dependence on drugs or controlled substances or voluntary intoxication, is unaware of a risk of which the defendant would have been aware had the defendant been not intoxicated, not using drugs or controlled substances, or not dependent on drugs or controlled substances, such unawareness is immaterial. [1971 c.743 §11; 1973 c.697 §13; 1979 c.744 §6]

## PARTIES TO CRIME

**161.150 Criminal liability described.** A person is guilty of a crime if it is committed by the person's own conduct or by the conduct of another for which the person is criminally liable, or both. [1971 c.743 §12]

**161.155 Criminal liability for conduct of another.** A person is criminally liable for the conduct of another person constituting a crime if:

(1) The person is made criminally liable by the statute defining the crime; or

(2) With the intent to promote or facilitate the commission of the crime the person:

(a) Solicits or commands such other person to commit the crime; or

(b) Aids or abets or agrees or attempts to aid or abet such other person in planning or committing the crime; or

(c) Having a legal duty to prevent the commission of the crime, fails to make an effort the person is legally required to make. [1971 c.743 §13]

**161.160 Exclusion of defenses to criminal liability for conduct of another.** In any prosecution for a crime in which criminal liability is based upon the conduct of another person pursuant to ORS 161.155, it is no defense that:

(1) Such other person has not been prosecuted for or convicted of any crime based upon the conduct in question or has been convicted of a different crime or degree of crime; or

(2) The crime, as defined, can be committed only by a particular class or classes of persons to which the defendant does not belong, and the defendant is for that reason legally incapable of committing the crime in an individual capacity. [1971 c.743 §14]

**161.165 Exemptions to criminal liability for conduct of another.** Except as otherwise provided by the statute defining the crime, a person is not criminally liable for conduct of another constituting a crime if:

(1) The person is a victim of that crime; or

(2) The crime is so defined that the conduct of the person is necessarily incidental thereto. [1971 c.743 §15]

**161.170 Criminal liability of corporations.** (1) A corporation is guilty of an offense if:

(a) The conduct constituting the offense is engaged in by an agent of the corporation while acting within the scope of employment and in behalf of the corporation and the offense is a misdemeanor or a violation, or the offense is one defined by a statute that clearly indicates a legislative intent to impose criminal liability on a corporation; or

(b) The conduct constituting the offense consists of an omission to discharge a specific duty of affirmative performance imposed on corporations by law; or

(c) The conduct constituting the offense is engaged in, authorized, solicited, requested, commanded or knowingly tolerated by the board of directors or by a high managerial agent acting within the scope of employment and in behalf of the corporation.

(2) As used in this section:

(a) "Agent" means any director, officer or employee of a corporation, or any other person who is authorized to act in behalf of the corporation.

(b) "High managerial agent" means an officer of a corporation who exercises authority with respect to the formulation of corporate policy or the supervision in a managerial capacity of subordinate employees, or any other agent in a position of comparable authority. [1971 c.743 §16]

**161.175 Criminal liability of an individual for corporate conduct.** A person is criminally liable for conduct constituting an offense which the person performs or causes to be performed in the name of or in behalf of a corporation to the same extent as if such conduct were performed in the person's own name or behalf. [1971 c.743 §17]

## JUSTIFICATION

**161.190 Justification as a defense.** In any prosecution for an offense, justification, as defined in ORS 161.195 to 161.275, is a defense. [1971 c.743 §18]

**161.195 "Justification" described.** (1) Unless inconsistent with other provisions of chapter 743, Oregon Laws 1971, defining justifiable use of physical force, or with some other provision of law, conduct which would otherwise constitute an offense is justifiable and not criminal when it is required or authorized by law or by a judicial decree or is performed by a public servant in the reasonable exercise of official powers, duties or functions.

(2) As used in subsection (1) of this section, "laws and judicial decrees" include but are not limited to:

(a) Laws defining duties and functions of public servants;

(b) Laws defining duties of private citizens to assist public servants in the performance of certain of their functions;

(c) Laws governing the execution of legal process;

(d) Laws governing the military services and conduct of war; and

(e) Judgments and orders of courts. [1971 c.743 §19]

**Note:** See note under 161.015.

**161.200 Choice of evils.** (1) Unless inconsistent with other provisions of chapter 743, Oregon Laws 1971, defining justifiable use of physical force, or with some other provision of law, conduct which would otherwise constitute an offense is justifiable and not criminal when:

(a) That conduct is necessary as an emergency measure to avoid an imminent public or private injury; and

(b) The threatened injury is of such gravity that, according to ordinary standards of intelligence and morality, the desirability and urgency of avoiding the injury clearly outweigh the desirability of avoiding the injury sought to be prevented by the statute defining the offense in issue.

(2) The necessity and justifiability of conduct under subsection (1) of this section shall not rest upon considerations pertaining only to the morality and advisability of the statute, either in its general application or with respect to its application to a particular class of cases arising thereunder. [1971 c.743 §20]

**Note:** See note under 161.015.

**161.205 Use of physical force generally.** The use of physical force upon another person that would otherwise constitute an offense is justifiable and not criminal under any of the following circumstances:

(1)(a) A parent or legal guardian of a minor child may use reasonable physical force upon the minor child when and to the extent the person reasonably believes the physical force is necessary to maintain discipline or promote the welfare of the minor child, unless the physical force constitutes abuse as defined in ORS 418.257 or 419B.005.

(b) Personnel of a public education program, as that term is defined in ORS 339.285, may use reasonable physical force upon a student only to the extent that the application of force is consistent with ORS 339.285 to 339.303 and is not corporal punishment as defined in ORS 339.250 (9).

(2) Subject to ORS 161.237 and 421.107, an authorized official of a jail, prison or correctional facility, including a youth correction facility as defined in ORS 162.135, may use physical force when and to the extent that the official reasonably believes it necessary to maintain order and discipline or as is authorized by law.

(3) A person responsible for the maintenance of order in a common carrier of passengers, or a person acting under the direction of the person, may use physical force when and to the extent that the person reasonably believes it necessary to maintain order, but the person may use deadly physical force only when the person reasonably believes it necessary to prevent death or serious physical injury.

(4) A person acting under a reasonable belief that another person is about to commit suicide or to inflict serious physical self-injury may use physical force upon that person to the extent that the person reasonably believes it necessary to thwart the result.

(5) A person may use physical force upon another person in self-defense or in defending a third person, in defending property, in making an arrest or in preventing an escape, as hereafter prescribed in chapter 743, Oregon Laws 1971. [1971 c.743 §21; 1981 c.246 §1; 2011 c.665 §§10,11; 2013 c.133 §4; 2013 c.267 §4; 2019 c.267 §7; 2019 c.333 §2; 2020 s.s.2 c.3 §2; 2023 c.27 §1]

**Note:** See note under 161.015.

**161.209 Use of physical force in defense of a person.** Except as provided in ORS 161.215 and 161.219, a person is justified in using physical force upon another person for self-defense or to defend a third person from what the person reasonably believes to be the use or imminent use of unlawful physical force, and the person may use a degree of force which the person reasonably believes to be necessary for the purpose. [1971 c.743 §22]

**161.210** [Repealed by 1971 c.743 §432]

**161.215 Limitations on use of physical force in defense of a person.** (1) Notwithstanding ORS 161.209, a person is not justified in using physical force upon another person if:

(a) With intent to cause physical injury or death to another person, the person provokes the use of unlawful physical force by that person.

(b) The person is the initial aggressor, except that the use of physical force upon another person under such circumstances is justifiable if the person withdraws from the encounter and effectively communicates to the other person the intent to do so, but the latter nevertheless continues or threatens to continue the use of unlawful physical force.

(c) The physical force involved is the product of a combat by agreement not specifically authorized by law.

(d) The person would not have used physical force but for the discovery of the other person's actual or perceived gender, gender identity, gender expression or sexual orientation.

(2) As used in this section, "gender identity" has the meaning given that term in ORS 166.155. [1971 c.743 §24; 2021 c.84 §2]

**161.219 Limitations on use of deadly physical force in defense of a person.** Notwithstanding the provisions of ORS 161.209, a person is not justified in using deadly physical force upon another person unless the person reasonably believes that the other person is:

(1) Committing or attempting to commit a felony involving the use or threatened imminent use of physical force against a person; or

(2) Committing or attempting to commit a burglary in a dwelling; or

(3) Using or about to use unlawful deadly physical force against a person. [1971 c.743 §23]

**161.220** [Repealed by 1971 c.743 §432]

**161.225 Use of physical force in defense of premises.** (1) A person in lawful possession or control of premises is justified in using physical force upon another person when and to the extent that the person reasonably believes it necessary to prevent or terminate what the person reasonably believes to be the commission or attempted commission of a criminal trespass by the other person in or upon the premises.

(2) A person may use deadly physical force under the circumstances set forth in subsection (1) of this section only:

(a) In defense of a person as provided in ORS 161.219; or

(b) When the person reasonably believes it necessary to prevent the commission of arson or a felony by force and violence by the trespasser.

(3) As used in subsection (1) and subsection (2)(a) of this section, "premises" includes any building as defined in ORS 164.205 and any real property. As used in subsection (2)(b) of this section, "premises" includes any building. [1971 c.743 §25]

**161.229 Use of physical force in defense of property.** A person is justified in using physical force, other than deadly physical force, upon another person when and to the extent that the person reasonably believes it to be necessary to prevent or terminate the commission or attempted commission by the other person of theft or criminal mischief of property. [1971 c.743 §26]

**161.230** [Repealed by 1971 c.743 §432]

**161.233 Use of physical force by peace officer.** (1) A peace officer may use physical force upon another person only when it is objectively reasonable, under the totality of circumstances known to the peace officer, to believe:

(a) That the person poses an imminent threat of physical injury to the peace officer or to a third person; or

(b) That the use of physical force is necessary to:

(A) Make a lawful arrest when the peace officer has probable cause to believe the person has committed a crime; or

(B) Prevent the escape from custody of the person when the peace officer has probable cause to believe the person has committed a crime.

(2) A peace officer may use physical force upon another person under this section only to the degree that the peace officer reasonably believes necessary to prevent physical injury under subsection (1)(a) of this section or to carry out a purpose described in subsection (1)(b) of this section.

(3) Prior to using physical force upon another person, if the peace officer has a reasonable opportunity to do so, the peace officer shall:

(a) Consider alternatives such as verbal de-escalation, waiting or using other available resources and techniques if reasonable, safe and feasible; and

(b) Give a verbal warning to the person that physical force may be used and provide the person with a reasonable opportunity to comply. [2020 s.s.2 c.3 §7]

**161.235** [1971 c.743 §27; 2020 s.s.1 c.3 §3; repealed by 2021 s.s.2 c.3 §17]

**161.237 Use of physical force involving pressure on throat or neck by peace officer or corrections officer.** (1) Notwithstanding ORS 161.233, a peace officer or corrections officer is not justified in any circumstance in knowingly using physical force that impedes the normal breathing or circulation of the blood of another person by applying pressure on the throat or neck of the other person except in circumstances in which physical force is justified under ORS 161.209 and 161.215.

(2) Notwithstanding ORS 161.233, it is not reasonable under any circumstance for a peace officer or corrections officer to knowingly use physical force that impedes the normal breathing or circulation of the blood of another person by applying pressure on the throat or neck of the other person except in circumstances in which physical force is justified under ORS 161.209 and 161.215.

(3) As used in this section, "corrections officer" means a guard, peace officer or other official employed in a jail, prison or correctional facility, including a youth correction facility, who primarily performs the duty of custody, control or supervision of individuals charged with or convicted of a crime or oth-

erwise confined under a court order. [2020 s.s.1 c.3 §2; 2020 s.s.2 c.3 §§1,10]

**161.239** [1971 c.743 §28; 2020 s.s.2 c.3 §3; repealed by 2020 s.s.2 c.3 §17]

**161.240** [Repealed by 1971 c.743 §432]

**161.242 Use of deadly physical force by peace officer.** (1) A peace officer may use deadly physical force upon another person only when it is objectively reasonable, under the totality of circumstances known to the peace officer, to believe that the person poses an imminent threat of death or serious physical injury to the peace officer or to a third person and the use of deadly physical force is necessary to:

(a) Make a lawful arrest when the peace officer has probable cause to believe the person has committed a violent felony;

(b) Defend the peace officer or a third person from the imminent threat of death or serious physical injury; or

(c) Prevent the escape from custody of the person when the peace officer has probable cause to believe the person has committed a violent felony.

(2) Prior to using deadly physical force upon another person, if the peace officer has a reasonable opportunity to do so, the peace officer shall:

(a) Consider alternatives such as verbal de-escalation, waiting, using other available resources and techniques if reasonable, safe and feasible, or using a lesser degree of force; and

(b) Give a verbal warning to the person that deadly physical force may be used and provide the person with a reasonable opportunity to comply.

(3) Nothing in subsection (1) of this section constitutes justification for reckless or criminally negligent conduct by a peace officer constituting an offense against or with respect to innocent persons whom the peace officer is not seeking to arrest or retain in custody.

(4) As used in this section, "violent felony" has the meaning given that term in ORS 419A.004. [2020 s.s.2 c.3 §8]

**161.245 "Reasonable belief" described; status of unlawful arrest.** (1) For the purposes of ORS 161.233 and 161.242, a reasonable belief that a person has committed an offense means a reasonable belief in facts or circumstances which, if true, would constitute an offense.

(2) A peace officer who is making an arrest is justified in using the physical force prescribed in ORS 161.233 and 161.242 unless the arrest is unlawful and is known by the officer to be unlawful. [1971 c.743 §29; 2020 s.s.2 c.3 §9]

**161.249 Use of physical force by private person assisting an arrest.** (1) Except as provided in subsection (2) of this section, a person who has been directed by a peace officer to assist the peace officer to make an arrest or to prevent an escape from custody is justified in using physical force when and to the extent that the person reasonably believes that force to be necessary to carry out the peace officer's direction.

(2) A person who has been directed to assist a peace officer under circumstances specified in subsection (1) of this section may use deadly physical force to make an arrest or to prevent an escape only when:

(a) The person reasonably believes that force to be necessary for self-defense or to defend a third person from what the person reasonably believes to be the use or imminent use of deadly physical force; or

(b) The person is directed or authorized by the peace officer to use deadly physical force unless the person knows that the peace officer is not authorized to use deadly physical force under the circumstances. [1971 c.743 §30]

**161.250** [Repealed by 1971 c.743 §432]

**161.255 Use of physical force by private person making citizen's arrest.** (1) Except as provided in subsection (2) of this section, a private person acting on the person's own account is justified in using physical force upon another person when and to the extent that the person reasonably believes it necessary to make an arrest or to prevent the escape from custody of an arrested person whom the person has arrested under ORS 133.225.

(2) A private person acting under the circumstances prescribed in subsection (1) of this section is justified in using deadly physical force only when the person reasonably believes it necessary for self-defense or to defend a third person from what the person reasonably believes to be the use or imminent use of deadly physical force. [1971 c.743 §31; 1973 c.836 §339]

**161.260 Use of physical force in resisting arrest prohibited.** A person may not use physical force to resist an arrest by a peace officer who is known or reasonably appears to be a peace officer, whether the arrest is lawful or unlawful. [1971 c.743 §32]

**161.265 Use of physical force by guard or peace officer employed in correctional facility.** (1) Except as provided in ORS 161.237, a guard or other peace officer employed in a correctional facility, as that term is defined in ORS 162.135, is justified in using physical force, including deadly physical force, upon another person if the person poses an imminent threat of physical injury

to the guard or peace officer or to a third person or the guard or peace officer reasonably believes it necessary to prevent the escape of a prisoner from a correctional facility. The guard or peace officer may use physical force under this subsection only to the degree that the guard or peace officer reasonably believes necessary to prevent the physical injury or escape.

(2) Notwithstanding subsection (1) of this section, a guard or other peace officer employed by the Department of Corrections may not use deadly physical force in the circumstances described in ORS 161.267 (3). [1971 c.743 §33; 2005 c.431 §3; 2020 s.s.2 c.3 §§4,11]

**161.267 Use of physical force by corrections officer or official employed by Department of Corrections.** (1) As used in this section:

(a) "Colocated minimum security facility" means a Department of Corrections institution that has been designated by the Department of Corrections as a minimum security facility and has been located by the department on the grounds of a medium or higher security Department of Corrections institution.

(b) "Department of Corrections institution" has the meaning given that term in ORS 421.005.

(c) "Stand-alone minimum security facility" means a Department of Corrections institution that has been designated by the department as a minimum security facility and that has been located by the department separate and apart from other Department of Corrections institutions.

(2) Subject to ORS 161.237 and 421.107, a corrections officer or other official employed by the Department of Corrections is justified in using physical force, including deadly physical force, when and to the extent that the officer or official reasonably believes it necessary to:

(a) Prevent the escape of an adult in custody from a Department of Corrections institution, including the grounds of the institution, or from custody;

(b) Maintain or restore order and discipline in a Department of Corrections institution, or any part of the institution, in the event of a riot, disturbance or other occurrence that threatens the safety of adults in custody, department employees or other persons; or

(c) Prevent serious physical injury to or the death of the officer, official or another person.

(3) Notwithstanding subsection (2)(a) of this section, a corrections officer or other official employed by the department may not use deadly physical force to prevent the escape of an adult in custody from:

(a) A stand-alone minimum security facility;

(b) A colocated minimum security facility, if the corrections officer or other official knows that the adult in custody has been classified by the department as minimum custody; or

(c) Custody outside of a Department of Corrections institution:

(A) While the adult in custody is assigned to an adult in custody work crew; or

(B) During transport or other supervised activity, if the adult in custody is classified by the department as minimum custody and the adult in custody is not being transported or supervised with an adult in custody who has been classified by the department as medium or higher custody.

(4) Nothing in this section limits the authority of a person to use physical force under ORS 161.205 (2) or 161.265. [2005 c.431 §2; 2019 c.213 §38; 2019 c.333 §3; 2020 s.s.2 c.3 §5]

**161.270 Duress.** (1) The commission of acts which would otherwise constitute an offense, other than murder, is not criminal if the actor engaged in the proscribed conduct because the actor was coerced to do so by the use or threatened use of unlawful physical force upon the actor or a third person, which force or threatened force was of such nature or degree to overcome earnest resistance.

(2) Duress is not a defense for one who intentionally or recklessly places oneself in a situation in which it is probable that one will be subjected to duress.

(3) It is not a defense that a spouse acted on the command of the other spouse, unless the spouse acted under such coercion as would establish a defense under subsection (1) of this section. [1971 c.743 §34; 1987 c.158 §22]

**161.275 Entrapment.** (1) The commission of acts which would otherwise constitute an offense is not criminal if the actor engaged in the proscribed conduct because the actor was induced to do so by a law enforcement official, or by a person acting in cooperation with a law enforcement official, for the purpose of obtaining evidence to be used against the actor in a criminal prosecution.

(2) As used in this section, "induced" means that the actor did not contemplate and would not otherwise have engaged in the proscribed conduct. Merely affording the actor an opportunity to commit an offense does not constitute entrapment. [1971 c.743 §35]

## RESPONSIBILITY

**161.290 Incapacity due to immaturity.** (1) A person who is tried as an adult in a court of criminal jurisdiction is not criminally responsible for any conduct which occurred when the person was under 12 years of age.

(2) Incapacity due to immaturity, as defined in subsection (1) of this section, is a defense. [Formerly 161.380; 1995 c.422 §58]

**161.295 Effect of qualifying mental disorder; guilty except for insanity.** (1) A person is guilty except for insanity if, as a result of a qualifying mental disorder at the time of engaging in criminal conduct, the person lacks substantial capacity either to appreciate the criminality of the conduct or to conform the conduct to the requirements of law.

(2) As used in chapter 743, Oregon Laws 1971, the term "qualifying mental disorder" does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct, nor does the term include any abnormality constituting solely a personality disorder. [1971 c.743 §36; 1983 c.800 §1; 2017 c.634 §3]

**Note:** See note under 161.015.

**161.300 Evidence of qualifying mental disorder admissible as to intent.** Evidence that the actor suffered from a qualifying mental disorder is admissible whenever it is relevant to the issue of whether the actor did or did not have the intent which is an element of the crime. [1971 c.743 §37; 2017 c.634 §4]

**161.305 Qualifying mental disorder as affirmative defense.** Qualifying mental disorder constituting insanity under ORS 161.295 is an affirmative defense. [1971 c.743 §38; 1983 c.800 §2; 2017 c.634 §5]

**161.309 Notice of mental defense; when report required; contents of report; plea.** (1) The defendant may not introduce evidence on the issue of insanity under ORS 161.295, unless the defendant:

(a) Gives notice of intent to do so in the manner provided in subsection (3) of this section; and

(b) Files with the court a report of a psychiatric or psychological evaluation, conducted by a certified evaluator, in the manner provided in subsection (4) of this section.

(2) The defendant may not introduce in the case in chief expert testimony regarding partial responsibility or diminished capacity under ORS 161.300 unless the defendant gives notice of intent to do so in the manner provided in subsection (3) of this section.

(3)(a) A defendant who is required under subsection (1) or (2) of this section to give notice shall file a written notice of purpose at least 45 days before trial.

(b) Notwithstanding paragraph (a) of this subsection, the court may, for good cause, permit the defendant to file the notice within 45 days before trial.

(c) If the defendant fails to file notice under this subsection, the defendant may not introduce evidence for the establishment of a defense under ORS 161.295 or 161.300 unless the court, in its discretion, permits the evidence to be introduced where just cause for failure to file the notice is shown.

(4) A defendant who is required under subsection (1) of this section to file a report of a psychiatric or psychological evaluation shall file the report before trial. The report must be based on an evaluation conducted after the date of the alleged offense and must address the issue of insanity under ORS 161.295 and the dispositional determination described in ORS 161.325. If the defendant fails to file a complete report before trial, the defendant may not introduce evidence for the establishment of a defense under ORS 161.295 unless:

(a) The court, in its discretion, permits the evidence to be introduced when just cause for failure to file the report is shown; and

(b) If the defendant is charged with a felony, the defendant is tried by a jury.

(5)(a) A court may not accept a plea of guilty except for insanity to a felony unless a report described in subsection (4) of this section is filed with the court. If the report has not been filed, the court may order that a psychiatric or psychological evaluation of the defendant be conducted by a certified evaluator and a report of the evaluation be filed with the court.

(b) When the court orders an evaluation of a financially eligible person under this subsection, the court shall order the executive director of the Oregon Public Defense Commission to pay a reasonable fee for the evaluation from funds available for that purpose.

(c) A certified evaluator performing an evaluation of a defendant on the issue of insanity under this subsection is not obligated to evaluate the defendant for fitness to proceed unless, during the evaluation, the certified evaluator determines that the defendant's fitness to proceed is drawn in question.

(6) Prior to accepting a plea of guilty except for insanity to a felony, the court shall inform the defendant of the possibility that the court may order commitment or conditional discharge after entry of judgment, and of the maximum total period of commitment or conditional discharge under ORS 161.327 (7).

(7) As used in this section, "certified evaluator" means a psychiatrist or psychologist who holds a valid certification under the provisions of ORS 161.392. [1971 c.743 §§39,40,41; 1983 c.800 §3; 2003 c.127 §2; 2011 c.724 §1; 2017 c.48 §1; 2019 c.326 §1; 2019 c.329 §1; 2021 c.483 §2; 2023 c.281 §40]

**161.310** [Repealed by 1971 c.743 §432]

**161.313 Jury instructions; insanity.** When the issue of insanity under ORS 161.295 is submitted to be determined by a jury in the trial court, the court shall instruct the jury in accordance with ORS 161.327. [1983 c.800 §16]

**161.315 Right of state to obtain mental examination of defendant; limitations; report.** (1) Upon filing of notice or the introduction of evidence by the defendant as provided in ORS 161.309, the state shall have the right to have at least one psychiatrist or licensed psychologist of its selection examine the defendant. The state shall file notice with the court of its intention to have the defendant examined.

(2)(a) Upon filing of the notice, the court, in its discretion, may order the defendant committed to a state mental hospital or any other suitable facility, if the defendant is 18 years of age or older, for observation and examination, which may include treatment as permitted by law.

(b) If the defendant is under 18 years of age, upon filing of the notice, the court, in its discretion, may order the defendant committed to a secure intensive community inpatient facility designated by the Oregon Health Authority for examination.

(c) The state mental hospital or other facility may retain custody of a defendant committed under this subsection only for the duration necessary to complete the observation and examination of the defendant, not to exceed 30 days.

(3) If the defendant objects to the examiner chosen by the state, the court for good cause shown may direct the state to select a different examiner.

(4) An examiner performing an examination on the issue of insanity of a defendant under this section is not obligated to examine the defendant for fitness to proceed unless, during the examination, the examiner determines that the defendant's fitness to proceed is drawn in question. If, during the examination, the examiner determines that the defendant's fitness to proceed is in doubt, the examiner shall report the issue to the court and to the superintendent of the state mental hospital or the superintendent's designee, or to the director of the facility to which the defendant is committed. The superintendent or director may:

(a) Return the defendant to the facility from which the defendant was transported; or

(b) Inform the court and the parties that the defendant should remain at the state mental hospital or other facility for the purpose of an examination under ORS 161.365. If neither party objects, the court may order an examination under ORS 161.365 without holding a hearing.

(5) A report resulting from an examination under this section may be filed with the court electronically.

(6)(a) Reports resulting from examinations conducted under this section are confidential and may be made available only:

(A) To the court, prosecuting attorney, defense attorney, agent of the prosecuting or defense attorney, defendant, community mental health program director or designee and any facility in which the defendant is housed; or

(B) As ordered by a court.

(b) Any facility in which a defendant is housed may not use a report prepared under this section to support a disciplinary action against the defendant.

(c) Nothing in this subsection prohibits the prosecuting attorney, defense attorney or agent of the prosecuting or defense attorney from discussing the contents of a report prepared under this section with witnesses or victims as otherwise permitted by law. [1971 c.743 §42; 1977 c.380 §3; 2007 c.14 §5; 2009 c.595 §101; 2011 c.724 §10; 2017 c.48 §2; 2019 c.311 §3; 2019 c.538 §3a]

**161.319 Form of verdict on guilty except for insanity.** When the defendant is found guilty except for insanity under ORS 161.295, the verdict and judgment shall so state. [1971 c.743 §43; 1977 c.380 §4; 1983 c.800 §4]

**161.320** [Repealed by 1971 c.743 §432]

**161.325 Finding of guilty except for insanity; dispositional order.** (1) After the defendant is found guilty except for insanity, the court shall, on the basis of the evidence given at the trial or at a separate hearing, if requested by either party, order a disposition as provided in ORS 161.327, 161.328 or 161.329, whichever is appropriate.

(2) If the court enters an order as provided in ORS 161.327, it shall also:

(a) Determine on the record the offense of which the person otherwise would have been convicted;

(b) State on the record the qualifying mental disorder on which the defendant relied for the guilty except for insanity defense;

(c) State on the record the maximum total period of commitment or conditional discharge under ORS 161.327 (7); and

(d) Make specific findings on whether there is a victim of the crime for which the defendant has been found guilty except for insanity and, if so, whether the victim wishes to be notified, under ORS 161.326, of any hearings and orders concerning the defendant and of any conditional release, discharge or escape of the defendant.

(3) The court shall include in its order the information described in subsection (2) of this section.

(4) Except under circumstances described in ORS 137.076 (4), whenever a defendant charged with any offense listed in ORS 137.076 (1) has been found guilty of that offense except for insanity, the court shall, in any order entered under ORS 161.327, 161.328 or 161.329, direct the defendant to submit to the obtaining of a blood or buccal sample in the manner provided in ORS 137.076. [1971 c.743 §44; 1977 c.380 §5; 1979 c.885 §1; 1981 c.711 §1; 1983 c.800 §5; 1991 c.669 §8; 1999 c.97 §2; 2005 c.337 §1; 2010 c.89 §9; 2011 c.708 §40; 2011 c.724 §2; 2017 c.634 §6; 2019 c.329 §2; 2021 c.483 §3]

**161.326 Notice to victim.** (1) If the trial court or the Psychiatric Security Review Board determines that a victim desires notification as described in ORS 161.325 (2), the board shall make a reasonable effort to notify the victim of hearings and orders, conditional release, discharge or escape. Nothing in this subsection authorizes the board to disseminate information that is otherwise privileged by law.

(2) When the board conducts a hearing involving a person found guilty except for insanity of a crime for which there is a victim, the board shall afford the victim an opportunity to be heard, either orally or in writing, at the hearing.

(3)(a) If the board fails to make a reasonable effort to notify the victim of a hearing under subsection (1) of this section or fails to afford the victim an opportunity to be heard at the hearing under subsection (2) of this section, the victim may request that the board reconsider the order of the board.

(b) If the board determines that the board failed to make a reasonable effort to notify the victim or failed to afford the victim an opportunity to be heard, except as provided in paragraph (c) of this subsection, the board shall grant the request for reconsideration. Upon reconsideration, the board shall consider the statement of the victim and may consider any other information that was not available to the board at the previous hearing.

(c) The board may not grant a request for reconsideration that is made:

(A) After the person has been discharged from the jurisdiction of the board;

(B) After the board has held a subsequent hearing involving the person; or

(C) If the board failed to make a reasonable effort to notify the victim of a hearing, more than 30 days after the victim knew or reasonably should have known of the hearing. [1981 c.711 §9; 2010 c.89 §6; 2011 c.708 §6; 2017 c.442 §7]

**Note:** 161.326 was enacted into law by the Legislative Assembly but was not added to or made a part of 161.290 to 161.373 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**161.327 Commitment or conditional release of person found guilty except for insanity of felony; consultation; evaluation; appeal; rules.** (1) After the defendant is found guilty except for insanity pursuant to ORS 161.319, if the court finds by a preponderance of the evidence that a person found guilty except for insanity of a felony is affected by a qualifying mental disorder and presents a substantial danger to others, the court shall order as follows:

(a) If the court finds that the person is not a proper subject for conditional release, the court shall order the person committed to a state hospital or, if the person is under 18 years of age, to a secure intensive community inpatient facility for custody, care and treatment. When the court orders a person committed under this paragraph, the court shall place the person under the jurisdiction of the Psychiatric Security Review Board.

(b) If the court finds that the person can be adequately controlled with supervision and treatment if conditionally released and that necessary supervision and treatment are available, the court shall order the person conditionally released.

(2)(a) If a party intends to request conditional release under this section, the party shall, as soon as practicable, notify the opposing party, the court and the board of the request. The party requesting conditional release shall make every effort to provide the notification in a manner that allows sufficient time to carry out the provisions described in this subsection before the court determination on conditional release.

(b) Upon receipt of a request for conditional release under this section:

(A) If the most serious offense in the charging instrument is a Class C felony, the court shall order that a local mental health program designated by the board consult with the person to determine whether the necessary supervision and treatment for the person are available in the community and appropriate for the person and shall order the release of any records to the program

director that are necessary to complete the consultation.

(B) If the most serious offense in the charging instrument is a Class A or Class B felony, the court may order that a local mental health program designated by the board consult with the person to determine whether the necessary supervision and treatment for the person are available in the community and appropriate for the person. If the court orders the consultation, the court shall further order the release of any records to the program director that are necessary to complete the consultation.

(3)(a) If the outcome of a consultation described in subsection (2)(b) of this section indicates that the necessary supervision and treatment are available in the community and appropriate for the person, the local mental health program shall evaluate the person to determine whether the person can be adequately controlled with supervision and treatment if conditionally released, and the program director shall provide to the court and to the board a report of the findings resulting from the consultation, a report of the findings resulting from the evaluation and recommendations for treatment.

(b) If the outcome of a consultation described in subsection (2)(b) of this section indicates that the necessary supervision and treatment for the person are not available in the community or not appropriate for the person, the program director shall submit to the court and to the board a report of the findings resulting from the consultation and may include any recommendations for treatment.

(4) In determining whether a person should be conditionally released, the court:

(a) May order evaluations and examinations as provided in ORS 161.336 (3) and 161.346 (2) or as otherwise needed by the court;

(b) Shall act in conformance with subsection (2)(b) of this section concerning an order for a local mental health program designated by the board to consult with the person;

(c) Shall have as its primary concern the protection of society; and

(d) May not order conditional release without a report from the consultation described in subsection (2)(b) of this section and the evaluation described in subsection (3)(b) of this section.

(5) When a person is conditionally released under this section, the person is subject to those supervisory orders of the court as are in the best interests of justice, the protection of society and the welfare of the person. The court shall designate a person or state, county or local agency to supervise the person upon release, subject to those conditions as the court directs in the order for conditional release. Prior to the designation, the court shall notify the person or agency to whom conditional release is contemplated and provide the person or agency an opportunity to be heard before the court. After receiving an order entered under subsection (1)(b) of this section, the person or agency designated shall assume supervision of the person pursuant to the direction of the board. The person or agency designated as supervisor shall be required to report in writing no less than once per month to the board concerning the supervised person's compliance with the conditions of release.

(6) Upon placing a person on conditional release, the court shall within one judicial day provide to the board an electronic copy of the conditional release order. The court shall additionally notify the board in writing of the supervisor appointed and all other conditions of release, and the person shall be on conditional release pending hearing before the board. Upon compliance with this section, the court's jurisdiction over the person is terminated.

(7) The total period of commitment or conditional release under ORS 161.315 to 161.351 may not exceed the maximum sentence provided by statute for the crime for which the person was found guilty except for insanity.

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

(9) Following the order described in subsection (1) of this section, the court shall notify the person of the right to appeal and the right to a hearing before the board in accordance with ORS 161.336 (5) and 161.341 (3).

(10) The board shall hold a review hearing within 90 days for a person conditionally released under this section.

(11) The board shall establish by rule standards for the consultations described in subsection (2)(b) of this section and the eval-

uations described in subsection (3)(a) of this section. [1979 c.867 §5; 1979 c.885 §2; 1981 c.711 §2; 1981 s.s. c.3 §129; 1983 c.800 §6; 1989 c.790 §48; 1995 c.208 §1; 2001 c.962 §89; 2003 c.576 §§578,579; 2005 c.685 §§1,1a; 2009 c.595 §102; 2011 c.708 §36; 2011 c.724 §3; 2013 c.1 §9; 2017 c.442 §12; 2017 c.634 §7; 2019 c.329 §3; 2021 c.483 §1]

**161.328 Commitment of person found guilty except for insanity of misdemeanor.** (1) After the defendant is found guilty except for insanity pursuant to ORS 161.319, the court shall order a person committed to a state mental hospital or other facility designated by the Oregon Health Authority if:

(a) Each offense for which the person is found guilty except for insanity is a misdemeanor; and

(b) The court finds that the person is affected by a qualifying mental disorder and presents a substantial danger to others that requires commitment.

(2) The total period of commitment under this section may not exceed the maximum sentence provided by statute for the crime for which the person was found guilty except for insanity.

(3) If the superintendent of the state mental hospital or the director of the facility to which the person is committed determines that a person committed under this section is no longer affected by a qualifying mental disorder or, if so affected, no longer presents a substantial danger to others that requires commitment, the superintendent or director shall file notice of that determination with the committing court. Upon filing of the notice, the superintendent or director shall discharge the person from custody. [1981 c.711 §3; 1983 c.800 §7; 1987 c.903 §36; 1995 c.529 §1; 2011 c.708 §37; 2011 c.724 §4; 2017 c.634 §8; 2019 c.329 §4]

**161.329 Order of discharge.** After the defendant is found guilty except for insanity pursuant to ORS 161.319, the court shall order that the person be discharged from custody if:

(1) The court finds that the person is no longer affected by a qualifying mental disorder, or, if so affected, no longer presents a substantial danger to others and is not in need of care, supervision or treatment; or

(2)(a) Each offense for which the person is found guilty except for insanity is a misdemeanor; and

(b) The court finds that the person does not present a substantial danger to others that requires commitment. [1971 c.743 §45; 1977 c.380 §6; 1981 c.711 §4; 2011 c.724 §5; 2017 c.634 §9; 2019 c.329 §5]

**161.330** [Repealed by 1971 c.743 §432]

**161.332 "Conditional release" defined.** As used in ORS 161.315 to 161.351 and 161.385 to 161.395, "conditional release" includes, but is not limited to, the monitoring of mental and physical health treatment. [1977 c.380 §1; 1983 c.800 §8; 2011 c.708 §11a; 2017 c.442 §11]

**161.335** [1971 c.743 §46; 1973 c.137 §1; 1975 c.380 §1; repealed by 1977 c.380 §10 (161.336 enacted in lieu of 161.335)]

**161.336 Conditional release by board; order for return; termination or modification of conditional release; hearing.** (1)(a) When a person is conditionally released under ORS 161.315 to 161.351, the person is subject to those supervisory orders of the Psychiatric Security Review Board as are in the best interests of justice, the protection of society and the welfare of the person.

(b) An order of conditional release entered by the board may designate any person or state, county or local agency capable of supervising the person upon release, subject to the conditions described in the order of conditional release.

(c) Prior to the designation, the board shall notify the person or state, county or local agency to whom conditional release is contemplated and provide the person or state, county or local agency an opportunity to be heard.

(d) After receiving an order entered under this section, the person or state, county or local agency designated in the order shall assume supervision of the person in accordance with the conditions described in the order and any modifications of the conditions ordered by the board.

(2) Conditions of release contained in orders entered under this section may be modified from time to time and conditional releases may be terminated as provided in ORS 161.351.

(3)(a) As a condition of release, the person may be required to report to any state or local mental health facility for evaluation. Whenever medical, psychiatric or psychological treatment is recommended, the order may require the person, as a condition of release, to cooperate with and accept the treatment from the facility.

(b) The facility to which the person has been referred for evaluation shall perform the evaluation and submit a written report of its findings to the board. If the facility finds that treatment of the person is appropriate, it shall include its recommendations for treatment in the report to the board.

(c) Whenever treatment is provided by the facility, it shall furnish reports to the board on a regular basis concerning the progress of the person.

(d) Copies of all reports submitted to the board pursuant to this section shall be furnished to the person and the person's counsel. The confidentiality of these reports is determined pursuant to ORS 192.338, 192.345 and 192.355.

(e) The facility shall comply with the conditional release order and any modifications of the conditions ordered by the board.

(4)(a)(A) A written or electronic order for the return of a person on conditional release to a state hospital or other facility designated by the supervising entity or, if the person is under 18 years of age, to a secure intensive community inpatient facility or other facility designated by the supervising entity, may be issued by:

(i) The supervising entity;

(ii) A person designated by the supervising entity, if the designation is made as part of a written policy; or

(iii) The community mental health program director, if the person has absconded from conditional release.

(B) An order described in this paragraph may be issued when the supervising entity, the authorized designee or, if the person has absconded, the community mental health program director, has determined that:

(i) The person has violated the terms of conditional release; or

(ii) The mental health of the person has changed such that the supervising entity, or, if applicable, the authorized designee or the community mental health program director, reasonably believes that the person may no longer be fit for conditional release.

(C) A written order under this paragraph is sufficient warrant for any law enforcement officer to take into custody and transport the person named in the order. A peace officer shall execute the order and the person shall be transported as described in paragraph (c) of this subsection.

(b) A peace officer, the director of the facility providing treatment to a person on conditional release or any person responsible for the supervision of a person on conditional release may take a person on conditional release into custody, or request that the person be taken into custody, if there is reasonable cause to believe the person is a substantial danger to others because of a mental disorder and that the person is in need of immediate care, custody or treatment.

(c) When a person is taken into custody by a peace officer under this subsection, the agency employing the peace officer shall cause the person, as soon as practicable, to be transported to a state hospital or other facility designated by the supervising entity. If the person was taken into custody pursuant to an order described in paragraph (a) of this subsection, the supervising entity shall facilitate the reimbursement of reasonable costs of the transport to the agency employing the peace officer.

(d) Within 20 days following the return of the person to a state hospital or secure intensive community inpatient facility under this subsection, the board shall conduct a hearing. The board shall provide notice of the hearing to the person, the attorney representing the person and the Attorney General. The state must prove by a preponderance of the evidence the person's unfitness for conditional release. The hearing shall be conducted in accordance with ORS 161.346.

(e) As used in this subsection, "supervising entity" means the board or the chairperson or executive director of the board.

(5)(a) Any person conditionally released under this section may apply to the board for discharge from or modification of an order of conditional release on the ground that the person is no longer affected by a qualifying mental disorder or, if still so affected, no longer presents a substantial danger to others and no longer requires supervision, medication, care or treatment. Notice of the hearing on an application for discharge or modification of an order of conditional release shall be made to the Attorney General. The applicant, at the hearing pursuant to this subsection, must prove by a preponderance of the evidence the applicant's fitness for discharge or modification of the order of conditional release. Applications by the person for discharge or modification of conditional release may not be filed more often than once every six months.

(b) Upon application by any person or agency responsible for supervision or treatment pursuant to an order of conditional release, the board shall conduct a hearing to determine if the conditions of release shall be continued, modified or terminated. The application shall be accompanied by a report setting forth the facts supporting the application.

(6) A person who has spent five years on conditional release shall be brought before the board for hearing within 30 days before the expiration of the five-year period. The board shall review the person's status and determine whether the person should be discharged from the jurisdiction of the board. [1977 c.380 §11 (enacted in lieu of 161.335); 1979 c.885 §3; 1981 c.711 §5; 1983 c.800 §9; 1987 c.140 §1; 1989 c.790 §49; 2001 c.326 §1; 2005 c.264 §14; 2005 c.685 §2; 2009 c.595 §103; 2011 c.708 §2; 2017 c.442 §3; 2017 c.634 §10; 2018 c.120 §5]

**161.340** [1971 c.743 §47; 1975 c.380 §2; repealed by 1977 c.380 §12 (161.341 enacted in lieu of 161.340)]

**161.341 Application for discharge or conditional release; release plan; examination; right to hearing.** (1) If at any time after a person is committed under ORS 161.315 to 161.351 to a state hospital or a secure intensive community inpatient facility, the superintendent of the hospital or the director of the secure intensive community inpatient facility is of the opinion that the person is no longer affected by a qualifying mental disorder, or, if so affected, no longer presents a substantial danger to others or that the person continues to be affected by a qualifying mental disorder and continues to be a danger to others, but that the person can be controlled with proper care, medication, supervision and treatment if conditionally released, the superintendent or director shall apply to the Psychiatric Security Review Board for an order of discharge or conditional release. The application shall be accompanied by a report setting forth the facts supporting the opinion of the superintendent or director. If the application is for conditional release, the application must be accompanied by a verified conditional release plan. The board shall hold a hearing on the application within 60 days of its receipt. Not less than 20 days prior to the hearing before the board, copies of the report shall be sent to the Attorney General.

(2) The attorney representing the state may choose a psychiatrist or licensed psychologist to examine the person prior to the initial or any later decision by the board on discharge or conditional release. The results of the examination shall be in writing and filed with the board, and shall include, but need not be limited to, an opinion as to the mental condition of the person, whether the person presents a substantial danger to others and whether the person could be adequately controlled with treatment as a condition of release.

(3) Any person who has been committed to a state hospital, or to a secure intensive community inpatient facility, for custody, care and treatment under ORS 161.315 to 161.351, or another person acting on the person's behalf, may apply to the board for an order of discharge or conditional release upon the grounds:

(a) That the person is no longer affected by a qualifying mental disorder;

(b) That the person, if so affected, no longer presents a substantial danger to others; or

(c) That the person continues to be affected by a qualifying mental disorder and would continue to be a danger to others without treatment, but that the person can be adequately controlled and given proper care and treatment if placed on conditional release.

(4) When application is made under subsection (3) of this section, the board shall require that a report from the superintendent of the hospital or the director of the secure intensive community inpatient facility be prepared and transmitted as provided in subsection (1) of this section. The applicant must prove by a preponderance of the evidence the applicant's fitness for discharge or conditional release under the standards of subsection (3) of this section, unless more than two years has passed since the state had the burden of proof on that issue, in which case the state shall have the burden of proving by a preponderance of the evidence the applicant's lack of fitness for discharge or conditional release. Applications for discharge or conditional release under subsection (3) of this section may not be filed more often than once every six months commencing with the date of the initial board hearing.

(5) The board is not required to hold a hearing on a first application under subsection (3) of this section any sooner than 90 days after the initial hearing. Hearings resulting from any subsequent requests shall be held within 60 days of the filing of the application.

(6)(a) In no case shall a person committed by the court under ORS 161.327 to a state hospital, or to a secure intensive community inpatient facility, be held in the hospital or facility for more than 90 days from the date of the court's commitment order without an initial hearing before the board to determine whether the person should be conditionally released or discharged.

(b) In no case shall a person be held pursuant to this section for a period of time exceeding two years without a hearing before the board to determine whether the person should be conditionally released or discharged. [1977 c.380 §13 (enacted in lieu of 161.340); 1979 c.885 §4; 1981 c.711 §6; 1983 c.800 §10; 1985 c.192 §3; 1989 c.790 §50; 1991 c.244 §1; 2005 c.685 §3; 2009 c.595 §104; 2011 c.708 §3; 2017 c.442 §4; 2017 c.634 §11]

**161.345** [1971 c.743 §48; repealed by 1977 c.380 §14 (161.346 enacted in lieu of 161.345)]

**161.346 Hearings on discharge, conditional release, commitment or modification; psychiatric reports; notice of hearing.** (1) When the Psychiatric Security Review Board conducts a hearing under ORS 161.315 to 161.351, the board shall enter an order and make findings in support of the order. If the board finds that a person under the jurisdiction of the board:

(a) Is no longer affected by a qualifying mental disorder, or, if so affected, no longer presents a substantial danger to others, the

board shall order the person discharged from commitment and conditional release.

(b) Is still affected by a qualifying mental disorder and is a substantial danger to others, but can be controlled adequately if conditionally released with treatment as a condition of release, the board shall order the person conditionally released as provided in ORS 161.336.

(c) Has not recovered from the qualifying mental disorder, is a substantial danger to others and cannot adequately be controlled if conditionally released on supervision, the board shall order the person committed to, or retained in, a state hospital, or if the person is under 18 years of age, a secure intensive community inpatient facility, for care, custody and treatment.

(2) To assist the board in making the determination described in subsection (1) of this section, the board may, at any time, appoint a psychiatrist or licensed psychologist to examine the person and to submit a report to the board. The report must include an opinion as to the mental condition of the person, whether the person presents a substantial danger to others and whether the person could be adequately controlled with treatment as a condition of release.

(3) The board may make the determination regarding discharge or conditional release based upon the written reports submitted pursuant to this section. If any member of the board desires further information from the examining psychiatrist or licensed psychologist who submitted the report, the board shall summon the person to give testimony. The board shall consider all evidence available to it that is material, relevant and reliable regarding the issues before the board. The evidence may include but is not limited to the record of trial, the information supplied by the attorney representing the state or by any other interested party, including the person, and information concerning the person's mental condition and the entire psychiatric and criminal history of the person. All evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible at hearings. Testimony shall be taken upon oath or affirmation of the witness from whom received. The officer presiding at the hearing shall administer oaths or affirmations to witnesses.

(4) The board shall furnish to the person about whom the hearing is being conducted, the attorney representing the person, the Attorney General and the district attorney of the county from which the person was committed written notice of any hearing pending under this section within a reasonable time prior to the hearing. The notice shall include:

(a) The time, place and location of the hearing.

(b) The nature of the hearing and the specific action for which a hearing has been requested, the issues to be considered at the hearing and a reference to the particular sections of the statutes and rules involved.

(c) A statement of the legal authority and jurisdiction under which the hearing is to be held.

(d) A statement of all rights under subsection (6) of this section.

(5) Prior to the commencement of the hearing, the board shall serve personally or by mail a written notice to each party as provided in ORS 183.413 (2).

(6) At the hearing, the person about whom the hearing is being held shall have the right:

(a) To appear at all proceedings held pursuant to this section, except for deliberations.

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

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

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

(e) To examine all information, documents and reports that the board considers. If then available to the board, the information, documents and reports shall be disclosed to the person so as to allow examination prior to the hearing.

(7) A record shall be kept of all hearings conducted under ORS 161.315 to 161.351, except for deliberations.

(8) Upon request of any party, or on motion of the board, the hearing may be continued for a reasonable period not to exceed 60 days to obtain additional information or testimony or for other good cause shown.

(9) Within 30 days following the conclusion of the hearing, the board shall provide to the person, the attorney representing the person, the Attorney General or other attorney representing the state, if any, written notice of the order entered by the board.

(10) The burden of proof on all issues at hearings under ORS 161.315 to 161.351 shall be by a preponderance of the evidence.

(11) If the board determines that the person about whom the hearing is being held is financially eligible, the board shall appoint suitable counsel to represent the person. Counsel so appointed shall be an attorney who satisfies the minimum standards established by the Oregon Public Defense Commission under ORS 151.216. The executive director of the commission shall determine and allow fair compensation for counsel appointed under this subsection and the reasonable expenses of the person in respect to the hearing. Compensation payable to appointed counsel shall not be less than the applicable compensation level established under ORS 151.216. The compensation and expenses so allowed shall be paid by the executive director from funds available for the purpose.

(12) The Attorney General may represent the state at contested hearings under ORS 161.315 to 161.351 unless the district attorney of the county from which the person was committed elects to represent the state. The district attorney of the county from which the person was committed shall cooperate with the Attorney General in securing the material necessary for presenting a contested hearing. If the district attorney elects to represent the state, the district attorney shall give timely written notice of such election to the Attorney General, the board and the attorney representing the person. [1977 c.380 §15 (enacted in lieu of 161.345); 1979 c.867 §6; 1979 c.885 §5; 1981 c.711 §7; 1981 s.s. c.3 §130; 1983 c.430 §1; 1985 c.502 §23; 1987 c.803 §19; 1991 c.827 §3; 2001 c.962 §40; 2003 c.449 §32; 2005 c.685 §4; 2007 c.288 §7; 2009 c.595 §105; 2011 c.708 §1; 2017 c.232 §1; 2017 c.442 §2; 2017 c.634 §12; 2023 c.281 §41]

**161.348 Judicial review.** (1) When a person over whom the Psychiatric Security Review Board exercises jurisdiction under ORS 161.315 to 161.351 or 419C.544 is adversely affected or aggrieved by a final order of the board, the person is entitled to judicial review of the final order. The person is entitled on judicial review to suitable counsel possessing skills and experience commensurate with the nature and complexity of the case. If the person is financially eligible, suitable counsel shall be appointed by the reviewing court in the manner provided in ORS 138.500 (1). If the person is financially eligible, the executive director of the Oregon Public Defense Commission shall determine and pay, as provided in ORS 138.500, the cost of briefs, any other expenses of the person necessary to the review and compensation for counsel appointed for the person. The costs, expenses and compensation so allowed shall be paid as provided in ORS 138.500.

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

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

(4) The filing of the petition does not stay the order of the board, but the board or the Court of Appeals may order a stay upon application on such terms as are deemed proper. [2011 c.708 §9; 2017 c.442 §8; 2023 c.281 §42]

**161.349 Person committed under ORS 161.315 to 161.351 sentenced to term of incarceration.** (1) When a person who is committed to a state hospital or a secure intensive community inpatient facility under ORS 161.315 to 161.351 is convicted of a crime and sentenced to a term of incarceration and when the person is sentenced to a term of incarceration as a sanction for violating the conditions of probation, parole or post-prison supervision, the sentencing court shall stay execution of the sentence pending the conditional release or discharge of the person or the expiration of the period of time described in ORS 161.327 (7). When the person is conditionally released or discharged by the Psychiatric Security Review Board under ORS 161.315 to 161.351, or when the maximum period of jurisdiction described in ORS 161.327 (7) expires, the stay shall be lifted by operation of law and the person shall be delivered to the custody of the Department of Corrections or the supervisory authority to begin service of the sentence imposed.

(2) When a person described in subsection (1) of this section is delivered to the custody of the department or the supervisory authority as described in this section, the board shall notify the department or the supervisory authority when the period of time described in ORS 161.327 (7) will expire.

(3) The department or supervisory authority shall notify the board when the person has served the term of incarceration imposed by the court and the board shall resume exercising active jurisdiction over the person in accordance with ORS 161.315 to 161.351.

(4) As used in this section, "supervisory authority" has the meaning given that term in ORS 144.087. [2011 c.708 §15; 2011 c.708 §39; 2017 c.442 §13; 2021 c.483 §4]

**161.350** [1971 c.743 §49; 1975 c.380 §3; repealed by 1977 c.380 §16 (161.351 enacted in lieu of 161.350)]

**161.351 Discharge by board; effect of remission; protection of society.** (1) Any person placed under the jurisdiction of the Psychiatric Security Review Board under ORS 161.315 to 161.351 shall be discharged at such time as the board, upon a hearing, finds by a preponderance of the evidence that the person is no longer affected by a qualifying mental disorder or, if so affected, no longer presents a substantial danger to others that requires regular medical care, medication, supervision or treatment.

(2) For purposes of ORS 161.315 to 161.351, a person affected by a qualifying mental disorder in a state of remission is considered to have a qualifying mental disorder. A person whose qualifying mental disorder may, with reasonable medical probability, occasionally become active and when it becomes active will render the person a danger to others may not be discharged. The person shall continue under supervision and treatment necessary to protect the person and others.

(3) In determining whether a person should be committed to a state hospital or secure intensive community inpatient facility, conditionally released or discharged, the board shall have as its primary concern the protection of society. [1977 c.380 §17 (enacted in lieu of 161.350); 1981 c.711 §13; 1985 c.192 §4; 1989 c.49 §1; 2011 c.708 §4; 2017 c.442 §5; 2017 c.634 §13]

**161.355 Definitions.** As used in ORS 161.355 to 161.371:

(1) "Certified evaluator" has the meaning given that term in ORS 161.309.

(2) "Community restoration services" means services and treatment necessary to safely allow a defendant to gain or regain fitness to proceed in the community, which may include supervision by pretrial services.

(3) "Hospital level of care" means that a defendant requires the type of care provided by an inpatient hospital in order to gain or regain fitness to proceed.

(4) "Public safety concerns" means that the defendant presents a risk to self or to the public if not hospitalized or in custody. [2021 c.395 §2]

**161.360 Qualifying mental disorder affecting fitness to proceed.** (1) If, before or during the trial in any criminal case, the court has reason to doubt the defendant's fitness to proceed by reason of incapacity, the court may order an examination in the manner provided in ORS 161.365.

(2) A defendant may be found incapacitated if, as a result of a qualifying mental disorder, the defendant is unable:

(a) To understand the nature of the proceedings against the defendant;

(b) To assist and cooperate with the counsel of the defendant; or

(c) To participate in the defense of the defendant. [1971 c.743 §50; 1993 c.238 §1; 2017 c.634 §14; 2021 c.97 §16]

**161.362 Requirements for recommendations, determinations and orders; confidentiality; electronic appearance.** (1) A recommendation provided by a certified evaluator, pursuant to ORS 161.355 to 161.371, that a defendant requires a hospital level of care due to the acuity of the defendant's symptoms must be based upon the defendant's current diagnosis and symptomology, the defendant's current ability to engage in treatment, present safety concerns relating to the defendant and any other pertinent information known to the evaluator. If the defendant is in a placement in a facility, the evaluator may defer to the treatment provider's recommendation regarding whether a hospital level of care is needed.

(2) A determination by a community mental health program director, or the director's designee, pursuant to ORS 161.355 to 161.371, that appropriate community restoration services are not present and available in the community must include information concerning the specific services necessary to safely allow the defendant to gain or regain fitness to proceed in the community and must specify the necessary services that are not present and available in the community.

(3)(a) Reports resulting from examinations performed by a certified evaluator, and documents containing the recommendations of or resulting from consultations with a community mental health program director or the director's designee, prepared under ORS 161.355 to 161.371, and any document submitted to the court by a state mental hospital related to the proceedings under ORS 161.355 to 161.371, are confidential and may be made available only:

(A) To the court, prosecuting attorney, defense attorney, agent of the prosecuting or defense attorney, defendant, community mental health program director or designee, state mental hospital and any facility in which the defendant is housed; or

(B) As ordered by a court.

(b) Any facility in which a defendant is housed may not use a report or document described in paragraph (a) of this subsection to support a disciplinary action against the defendant.

(c) Nothing in this subsection prohibits the prosecuting attorney, defense attorney or agent of the prosecuting or defense attorney from discussing the contents of a report or

document described in paragraph (a) of this subsection with witnesses or victims as otherwise permitted by law.

(4) The court shall ensure that an order entered under ORS 161.355 to 161.371 is provided, by the end of the next judicial day, to any entity ordered to provide restoration services.

(5) Unless the court orders otherwise or either party objects, a defendant committed to a state mental hospital or other facility, or a certified evaluator or other expert witness, may attend hearings held under ORS 161.355 to 161.371 via simultaneous electronic transmission. [2021 c.395 §3]

**161.365 Procedure for determining issue of fitness to proceed; consultation; examination; report; rules.** (1)(a) When the court has reason to doubt the defendant's fitness to proceed by reason of incapacity as described in ORS 161.360, the court may call any witness to assist it in reaching its decision and, except as provided in paragraph (b) of this subsection, shall order that a community mental health program director, or the director's designee, consult with the defendant and with any local entity that would be responsible for providing community restoration services to the defendant if the defendant were to be released in the community, to determine whether appropriate community restoration services are present and available in the community. After the consultation, the program director or the director's designee shall provide to the court a copy of the findings resulting from the consultation.

(b) If the defendant is charged with one or more of the following offenses the court is not required to, but may in its discretion, order the consultation described in paragraph (a) of this subsection:

(A) Aggravated murder;

(B) Murder in any degree;

(C) Attempted aggravated murder;

(D) Attempted murder in any degree;

(E) Manslaughter in any degree;

(F) Aggravated vehicular homicide;

(G) Arson in the first degree when classified as crime category 10 of the sentencing guidelines grid of the Oregon Criminal Justice Commission;

(H) Assault in the first degree;

(I) Assault in the second degree;

(J) Kidnapping in the first degree;

(K) Kidnapping in the second degree;

(L) Rape in the first degree;

(M) Sodomy in the first degree;

(N) Unlawful sexual penetration in the first degree;

(O) Robbery in the first degree; or

(P) Robbery in the second degree.

(c) If the court determines the assistance of a psychiatrist or psychologist would be helpful, the court may:

(A) Order that a psychiatric or psychological examination of the defendant be conducted by a certified evaluator and a report of the examination be prepared; or

(B) Order the defendant to be committed for the purpose of an examination to a state mental hospital or other facility designated by the Oregon Health Authority if the defendant is at least 18 years of age, or to a secure intensive community inpatient facility designated by the authority if the defendant is under 18 years of age. The state mental hospital or other facility may retain custody of a defendant committed under this paragraph for the duration necessary to complete the examination of the defendant, not to exceed 30 days. The examination may include a period of observation.

(d) The court shall provide a copy of any order entered under this subsection to the community mental health program director or designee and to the state mental hospital or other facility by the end of the next judicial day.

(2)(a) A defendant committed under subsection (1)(c)(B) of this section shall be transported to the state mental hospital or other facility for the examination.

(b) At the conclusion of the examination, the superintendent of the state mental hospital or the superintendent's designee or the director of the facility may:

(A) Return the defendant to the facility from which the defendant was transported; or

(B) Inform the court and the parties that the defendant requires a hospital level of care due to the acuity of symptoms of the defendant's qualifying mental disorder and request that the defendant remain at the state mental hospital or other facility pending a hearing or order under ORS 161.370.

(3) The report of an examination described in this section must include, but is not necessarily limited to, the following:

(a) A description of the nature of the examination;

(b) A statement of the mental condition of the defendant;

(c) If the defendant suffers from a qualifying mental disorder, an opinion as to whether the defendant is incapacitated within the description set out in ORS 161.360; and

(d) If the defendant is incapacitated within the description set out in ORS 161.360, a recommendation of treatment and services necessary to allow the defendant to gain or regain capacity, including whether a hospital level of care is required due to the acuity of symptoms of the defendant's qualifying mental disorder.

(4) Except when the defendant and the court both request to the contrary, the report may not contain any findings or conclusions as to whether the defendant as a result of a qualifying mental disorder was subject to the provisions of ORS 161.295 or 161.300 at the time of the criminal act charged.

(5) If the examination by the certified evaluator cannot be conducted by reason of the unwillingness of the defendant to participate in the examination, the report must so state and must include, if possible, an opinion as to whether the unwillingness of the defendant was the result of a qualifying mental disorder affecting fitness to proceed.

(6) The report resulting from the examination of a defendant under this section may be filed electronically and must be filed with the clerk of the court, who shall cause copies to be delivered to the district attorney and to counsel for defendant.

(7)(a) When upon motion of the court or a financially eligible defendant, the court has ordered a psychiatric or psychological examination of the defendant, a county or justice court shall order the county to pay, a municipal court shall order the city to pay, and a circuit court shall order the executive director of the Oregon Public Defense Commission to pay from funds available for the purpose:

(A) A reasonable fee if the examination of the defendant is conducted by a certified evaluator in private practice; and

(B) All costs including transportation of the defendant if the examination is conducted by a certified evaluator in the employ of the Oregon Health Authority or a community mental health program established under ORS 430.610 to 430.670.

(b) When an examination is ordered at the request or with the acquiescence of a defendant who is determined not to be financially eligible, the examination shall be performed at the defendant's expense. When an examination is ordered at the request of the prosecution, the county shall pay for the expense of the examination.

(8) The Oregon Health Authority shall establish by rule standards for the consultation described in subsection (1) of this section. [1971 c.743 §51; 1975 c.380 §4; 1981 s.s. c.3 §131; 1983 c.800 §11; 1987 c.803 §18; 1993 c.238 §2; 2001 c.962 §90; 2005 c.685 §5; 2009 c.595 §106; 2011 c.724 §7; 2015 c.130 §1; 2017 c.252 §25; 2017 c.634 §15; 2019 c.311 §4; 2019 c.318 §1; 2019 c.538 §1a; 2021 c.395 §6; 2023 c.281 §43]

**161.367 Gaining or regaining fitness; credit for time served; firearm prohibition.** (1) If at any time the court determines that the defendant lacks fitness to proceed, the court shall further determine whether there is a substantial probability that the defendant, in the foreseeable future, will gain or regain fitness to proceed. If the court determines that there is no substantial probability that the defendant, in the foreseeable future, will gain or regain fitness to proceed, the court shall dismiss, without prejudice and in accordance with subsection (6) of this section, all charges against the defendant and:

(a) Order that the defendant be discharged; or

(b) Initiate commitment proceedings under ORS 426.070, 426.701 or 427.235 to 427.292.

(2)(a) The superintendent of the hospital or director of the facility in which the defendant is committed under ORS 161.370 or a person examining the defendant as a condition of release to community restoration services shall notify the court if the defendant gains or regains fitness to proceed.

(b) A party to the case may notify the court if the defendant has gained or regained fitness to proceed.

(c) The court may, upon its own motion or the request of either party, hold a hearing to determine whether the defendant has gained or regained fitness to proceed. If the court determines that the defendant has gained or regained fitness to proceed, the court shall resume the criminal proceeding unless the court determines that so much time has elapsed since the commitment or release of the defendant to community restoration services that it would be unjust to resume the criminal proceeding. If the court determines that it would be unjust to resume the criminal proceeding, the court, on motion of either party, may dismiss the charge in accordance with subsection (6) of this section, and may order the defendant to be discharged or cause a proceeding to be commenced forthwith under ORS 426.070 to 426.170, 426.701 or 427.235 to 427.292.

(3) If the defendant gains or regains fitness to proceed, the defendant shall be given credit against each charge alleged in the accusatory instrument for each day the defendant was committed under ORS 161.370 to the custody of a state mental hospital, or to the custody of a secure intensive community inpatient facility designated by the Oregon Health Authority.

(4) Notwithstanding the suspension of the criminal proceeding under ORS 161.370 (2), the fact that the defendant is unfit to proceed does not preclude any objection through counsel and without the personal participation of the defendant on the grounds that the indictment is insufficient, that the statute of limitations has run, that double jeopardy principles apply or upon any other ground at the discretion of the court which the court deems susceptible of fair determination prior to trial.

(5) At the time that the court determines that the defendant lacks fitness to proceed under ORS 161.370 (2), the court shall notify the defendant in writing that federal law prohibits the defendant from purchasing or possessing a firearm unless the person obtains relief from the prohibition under federal law. The court shall again notify the defendant in writing of the prohibition if the court finds that the defendant has gained or regained fitness to proceed under subsection (2) of this section.

(6) If the court intends to dismiss all charges involving orders of commitment against a defendant who is committed to and currently located at a state mental hospital or other facility, the court shall order that the defendant be immediately transported back to the jurisdiction in which the charges were initiated, and the dismissal shall take effect only upon the defendant's arrival in that jurisdiction. [2021 c.395 §4; 2023 c.227 §1]

**161.370 Determination of fitness to proceed; proceedings upon finding of unfitness; commitment; rules.** (1)(a) When the defendant's fitness to proceed is drawn in question, the issue shall be determined by the court.

(b) If neither the prosecuting attorney nor counsel for the defendant contests the finding of the report filed under ORS 161.365, the court may make the determination on the basis of the report. If the finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence in the hearing, the party who contests the finding has the right to summon and to cross-examine any certified evaluator who submitted the report and to offer evidence upon the issue. Other evidence regarding the defendant's fitness to proceed may be introduced by either party.

(2)(a) If the court determines that the defendant lacks fitness to proceed, the criminal proceeding against the defendant shall be suspended and the court shall proceed in accordance with this subsection.

(b) After making the determination under paragraph (a) of this subsection, the court shall receive a recommendation from a community mental health program director or the director's designee, and from any local entity that would be responsible for treating the defendant if the defendant were to be released in the community, concerning whether appropriate community restoration services are present and available in the community.

(c) If the parties agree as to the appropriate action under this section, the court may, after making all findings required by law, enter any order authorized by this section. If the parties do not agree as to the appropriate action, the court and the parties shall, at a hearing, consider an appropriate action in the case, and the court shall make a determination and enter an order necessary to implement the action. In determining the appropriate action, the court shall consider the primary and secondary release criteria as defined in ORS 135.230, the least restrictive option appropriate for the defendant, the needs of the defendant and the interests of justice. Actions may include but are not limited to:

(A) Commitment for the defendant to gain or regain fitness to proceed under subsection (3) or (4) of this section;

(B) An order to engage in community restoration services, as recommended by the community mental health program director or designee, under subsection (6) of this section;

(C) Commencement of a civil commitment proceeding under ORS 426.070 to 426.170, 426.701 or 427.235 to 427.292;

(D) Commencement of protective proceedings under ORS chapter 125; or

(E) Dismissal of the charges pursuant to ORS 135.755 and in accordance with ORS 161.367 (6).

(d) If the court, while considering or ordering an appropriate action under this subsection, does not order the defendant committed to a state mental hospital or other facility, but finds that appropriate community restoration services are not present and available in the community, for any defendant remaining in custody after such determination, the court shall set a review hearing seven days from the date of the determination under paragraph (a) of this subsection. At the review hearing, the court shall consider all relevant information and determine if commitment to the state mental hospital or other facility is appropriate under subsection (3) or (4) of this section, or if another action described in paragraph (c) of this subsection is appropriate. At the conclusion of the hearing the court shall enter an order in accordance with the defendant's constitutional rights to due process.

(e) If the court determines that the appropriate action in the case is an order for the defendant to engage in community restoration services, but the defendant has a pending criminal case, warrant or hold in one or more other jurisdictions, the other jurisdictions shall, within two judicial days of becoming aware of the proceeding under this section, communicate with the court and the other jurisdictions, if applicable, to develop a plan to address the interests of all jurisdictions in the defendant in a timely manner.

(3)(a) If the most serious offense in the charging instrument is a felony, the court shall commit the defendant to the custody of the superintendent of a state mental hospital or director of a facility designated by the Oregon Health Authority if the defendant is at least 18 years of age, or to the custody of the director of a secure intensive community inpatient facility designated by the authority if the defendant is under 18 years of age, if the court makes the following findings:

(A) The defendant requires a hospital level of care due to public safety concerns if the defendant is not hospitalized or in custody or the acuity of symptoms of the defendant's qualifying mental disorder; and

(B) Based on the findings resulting from a consultation described in ORS 161.365 (1), if applicable, from any information provided by community-based mental health providers or any other sources, and primary and secondary release criteria as defined in ORS 135.230, the appropriate community restoration services are not present and available in the community.

(b) If the defendant is committed under this subsection, the community mental health program director, or director's designee, shall at regular intervals, during any period of commitment, review available community restoration services and maintain communication with the defendant and the superintendent of the state mental hospital or director of the facility in order to facilitate an efficient transition to treatment in the community when ordered.

(c) If the court does not order the commitment of the defendant under this subsection, the court shall proceed in accordance with subsection (2)(c) of this section to determine and order an appropriate action other than commitment.

(4)(a) If the most serious offense in the charging instrument is a misdemeanor, the court may not commit the defendant to the custody of the superintendent of a state mental hospital or director of a facility designated by the Oregon Health Authority if the defendant is at least 18 years of age, or to the custody of the director of a secure intensive community inpatient facility designated by the authority if the defendant is under 18 years of age, unless the court:

(A)(i) Receives a recommendation from a certified evaluator that the defendant requires a hospital level of care due to the acuity of symptoms of the defendant's qualifying mental disorder; and

(ii) Receives a recommendation from a community mental health program director, or director's designee, that the appropriate community restoration services are not present and available in the community; or

(B) Determines that the defendant requires a hospital level of care after making all of the following written findings:

(i) The defendant needs a hospital level of care due to the acuity of the symptoms of the defendant's qualifying mental disorder;

(ii) There are public safety concerns; and

(iii) The appropriate community restoration services are not present and available in the community.

(b) If at the time of determining the appropriate action for the case, the court is considering commitment under paragraph (a)(A) of this subsection and:

(A) Has not received a recommendation from a certified evaluator as to whether the defendant requires a hospital level of care due to the acuity of symptoms of the defendant's qualifying mental disorder, the court shall order a certified evaluator to make such a recommendation.

(B) Has not received a recommendation from the community mental health program director or designee concerning whether appropriate community restoration services are present and available in the community, the court shall order the director or designee to make such a recommendation.

(c) If the court does not order the commitment of the defendant under this subsection, the court shall proceed in accordance with subsection (2)(c) of this section to determine and order an appropriate action other than commitment.

(d) If the defendant is committed under this subsection, the community mental health program director, or director's designee, shall at regular intervals, during any period of commitment, review available community restoration services and maintain communication with the defendant and the superintendent of the state mental hospital or director of the facility in order to facilitate an efficient transition to treatment in the community when ordered.

(5) If the most serious offense in the charging instrument is a violation, the court may not commit the defendant to the custody

of the superintendent of a state mental hospital or director of a facility designated by the Oregon Health Authority if the defendant is at least 18 years of age, or to the custody of the director of a secure intensive community inpatient facility designated by the authority if the defendant is under 18 years of age.

(6)(a) If the court does not order the commitment of the defendant under subsection (3) or (4) of this section, if commitment is precluded under subsection (5) of this section or if the court determines that care other than commitment would better serve the defendant and the community, the court shall release the defendant, pursuant to an order that the defendant engage in community restoration services, until the defendant has gained or regained fitness to proceed, or until the court finds there is no substantial probability that the defendant will, within the foreseeable future, gain or regain fitness to proceed. The court may not order the defendant to engage in community restoration services in another county without permission from the other county.

(b) The court may order a community mental health program director coordinating the defendant's treatment in the community to provide the court with status reports on the defendant's progress in gaining or regaining fitness to proceed. The director shall provide a status report if the defendant is not complying with court-ordered restoration services.

(c) A community mental health program director coordinating the defendant's treatment in the community shall notify the court if the defendant gains or regains fitness to proceed. The notice shall be filed with the court and may be filed electronically. The clerk of the court shall cause copies of the notice to be delivered to both the district attorney and the counsel for the defendant.

(d) When a defendant is ordered to engage in community restoration services under this subsection, the court may place conditions that the court deems appropriate on the release, including the requirement that the defendant regularly report to a state mental hospital or a certified evaluator for examination to determine if the defendant has gained or regained fitness to proceed.

(7) The Oregon Health Authority shall establish by rule standards for the recommendation provided to the court described in subsection (2) of this section. [1971 c.743 §52; 1975 c.380 §5; 1993 c.238 §3; 1999 c.931 §§1,2; 2005 c.685 §6; 2009 c.595 §107; 2011 c.508 §1; 2011 c.724 §8; 2015 c.130 §2; 2017 c.49 §1; 2017 c.233 §3; 2017 c.628 §1; 2017 c.634 §16; 2019 c.311 §5; 2019 c.318 §2; 2019 c.538 §2a; 2021 c.395 §7; 2023 c.227 §2]

**161.371 Procedures upon commitment of defendant; maximum term of commitment.** (1) The superintendent of a state mental hospital or director of a facility to which the defendant is committed under ORS 161.370 shall cause the defendant to be evaluated within 60 days from the defendant's delivery into the superintendent's or director's custody, for the purpose of determining whether there is a substantial probability that, in the foreseeable future, the defendant will have fitness to proceed. In addition, the superintendent or director shall:

(a) Immediately notify the committing court if the defendant, at any time, gains or regains fitness to proceed or if there is no substantial probability that, within the foreseeable future, the defendant will gain or regain fitness to proceed.

(b) Within 90 days of the defendant's delivery into the superintendent's or director's custody, notify the committing court that:

(A) The defendant has present fitness to proceed;

(B) There is no substantial probability that, in the foreseeable future, the defendant will gain or regain fitness to proceed; or

(C) There is a substantial probability that, in the foreseeable future, the defendant will gain or regain fitness to proceed. If the probability exists, the superintendent or director shall give the court an estimate of the time in which the defendant, with appropriate treatment, is expected to gain or regain fitness to proceed.

(c) Notify the court if court-ordered involuntary medication is necessary for the defendant to gain or regain fitness to proceed and, if appropriate, submit a report to the court under ORS 161.372.

(2)(a) If the superintendent of the state mental hospital or director of the facility to which the defendant is committed determines that there is a substantial probability that, in the foreseeable future, the defendant will gain or regain fitness to proceed, unless the court otherwise orders, the defendant shall remain in the superintendent's or director's custody where the defendant shall receive treatment designed for the purpose of enabling the defendant to gain or regain fitness to proceed. In keeping with the notice requirement under subsection (1)(b) of this section, the superintendent or director shall, for the duration of the defendant's period of commitment, submit a progress report to the committing court, concerning the defendant's fitness to proceed, at least once every 180 days as measured from the date of the defendant's delivery into the superintendent's or director's custody.

(b) A progress report described in paragraph (a) of this subsection may consist of an update to:

(A) The original examination report conducted under ORS 161.365; or

(B) An evaluation conducted under subsection (1) of this section, if the defendant did not receive an examination under ORS 161.365.

(3)(a) Notwithstanding subsection (2) of this section, if the most serious offense in the charging instrument is a felony, and the superintendent of the state mental hospital or director of the facility to which the defendant is committed determines that a hospital level of care is no longer necessary due to present public safety concerns and the acuity of symptoms of the defendant's qualifying mental disorder, the superintendent or director may file notice of the determination with the court. Upon receipt of the notice, the court shall order that a community mental health program director or the director's designee, within five judicial days:

(A) Consult with the defendant and with any local entity that would be responsible for providing community restoration services, if the defendant were to be released in the community, to determine whether community restoration services are present and available in the community; and

(B) Provide the court and the parties with recommendations from the consultation.

(b) Notwithstanding subsection (2) of this section, if the most serious offense in the charging instrument is a felony, and the community mental health program director determines that community restoration services that would mitigate any risk posed by the defendant are present and available in the community, the community mental health program director may file notice of the determination with the court. Upon receipt of the notice, the court shall order that the superintendent of the state mental hospital or director of the facility to which the defendant is committed, within five judicial days:

(A) Evaluate the defendant to determine whether a hospital level of care is no longer necessary due to present public safety concerns, or no longer necessary due to the acuity of symptoms of the defendant's qualifying mental disorder; and

(B) Provide the court and the parties with recommendations from the evaluation.

(c) Within 10 judicial days of receiving the recommendations described in paragraph (a) or (b) of this subsection, the court shall hold a hearing to determine an appropriate action in accordance with ORS 161.370 (2)(c) as follows:

(A) If, after consideration of the factors and possible actions described in ORS 161.370 (2)(c) and any recommendations received under paragraph (a) or (b) of this subsection, the court determines that a hospital level of care is necessary due to public safety concerns or the acuity of symptoms of the defendant's qualifying mental disorder, and that based on the consultation or evaluation described in paragraph (a) or (b) of this subsection, any information provided by community-based mental health providers or any other sources, primary and secondary release criteria as defined in ORS 135.230, and any other information the court finds to be trustworthy and reliable, the appropriate community restoration services are not present and available in the community, the court may continue the commitment of the defendant.

(B) If the court does not make the determination described in subparagraph (A) of this paragraph, the court shall terminate the commitment and shall set a review hearing seven days from the date of the commitment termination for any defendant remaining in custody. At the review hearing, the court shall consider all relevant information, determine an appropriate action in the case as described in ORS 161.370 (2)(c) and enter an order in accordance with the defendant's constitutional rights to due process.

(4)(a) Notwithstanding subsection (2) of this section, if the most serious offense in the charging instrument is a misdemeanor, and the superintendent of the state mental hospital or director of the facility to which the defendant is committed determines that the defendant no longer needs a hospital level of care due to the acuity of symptoms of the defendant's qualifying mental disorder or there are not present public safety concerns, the superintendent or director shall file notice of the determination with the court, along with recommendations regarding the necessary community restoration services that would mitigate any risk presented by the defendant. Upon receipt of the notice, the court shall order that a community mental health program director or the director's designee, within five judicial days:

(A) Consult with the defendant and with any local entity that would be responsible for providing community restoration services, if the defendant were to be released in the community, to determine whether appropriate community restoration services are present and available in the community; and

(B) Provide the court and the parties with recommendations from the consultation.

(b) Notwithstanding subsection (2) of this section, if the most serious offense in the charging instrument is a misdemeanor, and

the community mental health program director determines that the community restoration services that would mitigate any risk posed by the defendant are present and available in the community, the community mental health program director may file notice of the determination with the court. Upon receipt of the notice, the court shall order that the superintendent of the state mental hospital or director of the facility to which the defendant is committed, within five judicial days:

(A) Evaluate the defendant to determine whether a hospital level of care is no longer necessary due to present public safety concerns, or no longer necessary due to the acuity of symptoms of the defendant's qualifying mental disorder; and

(B) Provide the court and the parties with recommendations from the evaluation.

(c) Within 10 judicial days of receiving the recommendations described in paragraph (a) or (b) of this subsection, the court shall hold a hearing to determine an appropriate action in accordance with ORS 161.370 (2)(c) as follows:

(A) After consideration of the factors and possible actions described in ORS 161.370 (2)(c), the consultation or evaluation and any recommendations described in paragraph (a) or (b) of this subsection, and any other information the court finds to be trustworthy and reliable, the court may continue the commitment of the defendant if the court makes written findings that a hospital level of care is necessary due to public safety concerns and the acuity of symptoms of the defendant's qualifying mental disorder, and that appropriate community restoration services are not present and available in the community.

(B) If the court does not make the findings described in subparagraph (A) of this paragraph, the court shall terminate the commitment and shall set a review hearing seven days from the date of the commitment termination for any defendant remaining in custody. At the review hearing, the court shall consider all relevant information, determine an appropriate action in the case as described in ORS 161.370 (2)(c) and enter an order in accordance with the defendant's constitutional rights to due process.

(5)(a) If a defendant remains committed under this section, the court shall determine within a reasonable period of time whether there is a substantial probability that, in the foreseeable future, the defendant will gain or regain fitness to proceed. However, regardless of the number of charges with which the defendant is accused, in no event shall the defendant be committed for longer than whichever of the following, measured from the defendant's initial custody date, is shorter:

(A) Three years; or

(B) A period of time equal to the maximum sentence the court could have imposed if the defendant had been convicted.

(b) For purposes of calculating the maximum period of commitment described in paragraph (a) of this subsection:

(A) The initial custody date is the date on which the defendant is first committed under this section on any charge alleged in the accusatory instrument; and

(B) The defendant shall be given credit against each charge alleged in the accusatory instrument:

(i) For each day the defendant is committed under this section, whether the days are consecutive or are interrupted by a period of time during which the defendant has gained or regained fitness to proceed; and

(ii) Unless the defendant is charged on any charging instrument with aggravated murder or a crime listed in ORS 137.700 (2), for each day the defendant is held in jail before and after the date the defendant is first committed, whether the days are consecutive or are interrupted by a period of time during which the defendant lacks fitness to proceed.

(c) The superintendent of the state mental hospital or director of the facility to which the defendant is committed shall notify the committing court of the defendant's impending discharge 30 days before the date on which the superintendent or director is required to discharge the defendant under this subsection.

(6)(a) All notices required under this section shall be filed with the court and may be filed electronically. The clerk of the court shall cause copies of the notices to be delivered to both the district attorney and the counsel for the defendant.

(b) When the committing court receives a notice from the superintendent or director under subsection (1) of this section concerning the defendant's progress or lack thereof, or under subsection (5) of this section concerning the defendant's impending discharge, the committing court shall determine, after a hearing if a hearing is requested, whether the defendant presently has fitness to proceed.

(7) If at any time the court determines that the defendant lacks fitness to proceed, the court shall further determine whether the defendant is entitled to discharge under subsection (5) of this section. If the court determines that the defendant is entitled to discharge under subsection (5) of this section, the court shall dismiss, without preju-

dice and in accordance with ORS 161.367 (6), all charges against the defendant and:

(a) Order that the defendant be discharged; or

(b) Initiate commitment proceedings under ORS 426.070, 426.701 or 427.235 to 427.292. [2021 c.395 §5; 2023 c.227 §3]

**161.372 Involuntary administration of medication for fitness to proceed; hearing; court order; confidentiality.** (1) If, at any point while the defendant is in the custody of the superintendent of the state mental hospital after commitment under ORS 161.370, the superintendent determines that medication is the recommended treatment in order to allow the defendant to gain or regain fitness to proceed, the defendant is refusing to take the recommended medication and the defendant cannot be involuntarily medicated without a court order, the superintendent shall submit a report of the determination to the court.

(2) The report described in subsection (1) of this section shall include:

(a) Information regarding the benefits and side effects of each recommended medication;

(b) Information concerning the defendant's refusal to take the recommended medication; and

(c) The likelihood that the medication will allow the defendant to gain or regain fitness to proceed.

(3)(a) Based upon the report described in subsection (1) of this section, the prosecuting attorney may file a motion requesting that the court authorize the involuntary administration of medication to the defendant. The prosecuting attorney shall provide a copy of the motion to the defendant.

(b) The court shall hold a hearing on the motion if either the prosecuting attorney or the defendant requests a hearing. At the hearing, the court shall determine whether to issue an order authorizing the involuntary administration of medication to the defendant.

(c) In order to enter an order authorizing the involuntary administration of medication to the defendant, the court must find that:

(A) Involuntary medication of the defendant is not otherwise authorized by law;

(B) There are important state interests at stake in the prosecution of the defendant;

(C) The recommended medication will significantly further the important state interests because:

(i) It is substantially likely that the medication will render the defendant fit to proceed; and

(ii) It is substantially unlikely that the medication will cause side effects that will impair the fairness of the criminal proceeding;

(D) Involuntary administration of medication is necessary to further the important state interests because there are no alternative, less intrusive treatments that would produce the same result as the medication; and

(E) Administration of the medication is medically appropriate because it is in the defendant's best medical interest in light of the defendant's medical condition.

(d) A court order authorizing the involuntary administration of medication to a defendant under this section must specify:

(A) The specific medication or type of medications permitted to be administered to the defendant;

(B) The maximum dosage that may be administered; and

(C) The duration of time that the state mental hospital may involuntarily medicate the defendant before reporting back to the court on the defendant's mental condition and progress toward gaining or regaining fitness to proceed. The duration of time shall not exceed the maximum period of the defendant's commitment to the state mental hospital, or 180 calendar days, whichever is shorter.

(4)(a) Reports, motions and orders concerning the involuntary medication of a defendant under this section are confidential and may be made available only:

(A) To the court, prosecuting attorney, defense attorney, agent of the prosecuting or defense attorney, defendant, community mental health program director or designee, state mental hospital and any facility in which the defendant is housed; or

(B) As ordered by a court.

(b) Any facility in which a defendant is housed may not use a report or document described in paragraph (a) of this subsection to support a disciplinary action against the defendant.

(c) Nothing in this subsection prohibits the prosecuting attorney, defense attorney or agent of the prosecuting or defense attorney from discussing the contents of a report or document described in paragraph (a) of this subsection with witnesses or victims as otherwise permitted by law. [2019 c.318 §4; 2021 c.395 §8]

**161.373 Records for fitness to proceed examination; compliance with court order.** (1) Unless otherwise prohibited by law or for good cause, all public bodies, as defined in ORS 174.109, and any private med-

ical provider in possession of records concerning the defendant, shall, within five business days of receipt of the order, comply with a court order for the release of records to the state mental hospital or other facility designated by the Oregon Health Authority for the purpose of conducting an examination or evaluation under ORS 161.355 to 161.371.

(2) Notwithstanding subsection (1) of this section, the Oregon Youth Authority, the Department of Corrections, a community college district, a community college service district, a public university, a school district or an education service district may, after notifying the state hospital or other facility designated by the Oregon Health Authority, comply with the court order within 15 business days of receipt of the order without good cause.

(3) As used in this section, in the case of a community college district, a community college service district, a public university, a school district or an education service district, "business day" does not include any day on which the central administration offices of the district or university are closed. [2019 c.311 §2; 2021 c.395 §9]

**161.375 Escape of person placed at hospital or facility; authority to order arrest.** (1) When a patient, who has been placed at a state hospital for evaluation, care, custody and treatment under ORS 161.315 to 161.351 or by court order under ORS 161.315, 161.365 or 161.370, has escaped or is absent without authorization from the hospital or from the custody of any person in whose charge the superintendent has placed the patient, the superintendent may order the arrest and detention of the patient.

(2) When a patient, who has been placed at a secure intensive community inpatient facility for evaluation, care, custody and treatment under ORS 161.315 to 161.351 or by court order under ORS 161.315, 161.365, 161.370 or 419C.527, has escaped or is absent without authorization from the facility or from the custody of any person in whose charge the director of the facility has placed the patient, the director of the facility shall notify the Director of the Oregon Health Authority. The Director of the Oregon Health Authority may order the arrest and detention of the patient.

(3) The superintendent or the Director of the Oregon Health Authority may issue an order under this section based upon a reasonable belief that grounds exist for issuing the order. When reasonable, the superintendent or the Director of the Oregon Health Authority shall investigate to ascertain whether such grounds exist.

(4) Any order issued by the superintendent or the Director of the Oregon Health Authority as authorized by this section constitutes full authority for the arrest and detention of the patient and all laws applicable to warrant or arrest apply to the order. An order issued by the superintendent or the Director of the Oregon Health Authority under this section expires 72 hours after being signed by the superintendent or the Director of the Oregon Health Authority.

(5) As used in this section, "superintendent" means the superintendent of the state hospital to which the person was committed or the superintendent's authorized representative. [1997 c.423 §1; 2005 c.685 §7; 2005 c.843 §24a; 2009 c.595 §108; 2011 c.708 §7]

**161.380** [1971 c.743 §53; renumbered 161.290]

**161.385 Psychiatric Security Review Board; composition, term, qualifications, compensation, appointment, confirmation and meetings.** (1) There is hereby created a Psychiatric Security Review Board consisting of 10 members appointed by the Governor and subject to confirmation by the Senate under section 4, Article III of the Oregon Constitution.

(2) The membership of the board may not include any district attorney, deputy district attorney or public defender. The Governor shall appoint:

(a) A psychiatrist experienced in the criminal justice system and not otherwise employed on a full-time basis by the Oregon Health Authority or a community mental health program;

(b) A licensed psychologist experienced in the criminal justice system and not otherwise employed on a full-time basis by the authority or a community mental health program;

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

(d) A lawyer with substantial experience in criminal trial practice;

(e) A psychiatrist certified, or eligible to be certified, by the Oregon Medical Board in child psychiatry who is experienced in the juvenile justice system and not employed on a full-time basis by the authority or a community mental health program;

(f) A licensed psychologist who is experienced in child psychology and the juvenile justice system and not employed on a full-time basis by the authority or a community mental health program;

(g) A member with substantial experience in the processes of juvenile parole and probation;

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

(i) Two members of the general public.

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

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

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

(6) The board consists of two five-member panels. The adult panel is responsible for persons placed under the board's jurisdiction under ORS 161.315 to 161.351 and 419C.544 and consists of those members appointed under subsection (2)(a) to (d) of this section and one of the public members. The juvenile panel is responsible for young persons placed under the board's jurisdiction under ORS 419C.529 and consists of those members appointed under subsection (2)(e) to (h) of this section and the other public member.

(7)(a) Each panel shall select one of its members as chairperson to serve for a one-year term with such duties and powers as the panel determines.

(b) A majority of the voting members of a panel constitutes a quorum for the transaction of business of the panel.

(8) Each panel shall meet at least twice every month, unless the chairperson determines that there is not sufficient business before the panel to warrant a meeting at the scheduled time. The panel shall also meet at other times and places specified by the call of the chairperson or of a majority of the members of the panel. [1977 c.380 §8; 1979 c.867 §7; 1979 c.885 §6; 1981 c.711 §15; 1981 s.s. c.3 §132; 1983 c.740 §26; 1983 c.800 §12; 1987 c.133 §1; 2001 c.962 §70; 2005 c.843 §20; 2009 c.595 §109; 2011 c.708 §8]

**161.387 Board to implement policies; rulemaking.** (1) The Psychiatric Security Review Board, by rule pursuant to ORS 183.325 to 183.410 and not inconsistent with law, may implement its policies and set out its procedure and practice requirements and may promulgate such interpretive rules as the board deems necessary or appropriate to carry out its statutory responsibilities.

(2) Administrative meetings of the board are not deliberations for the purposes of ORS 192.690. [1981 c.711 §§10,11; 2011 c.708 §11b]

**Note:** 161.387 was enacted into law by the Legislative Assembly but was not added to or made a part of 161.385 to 161.395 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**161.390 Rules for assignment of persons to state mental hospitals or secure intensive community inpatient facilities; release plan prepared by Oregon Health Authority.** (1) The Oregon Health Authority shall adopt rules for the assignment of persons to state mental hospitals or secure intensive community inpatient facilities after commitment under ORS 161.365 and 161.370 and for establishing standards for evaluation and treatment of persons committed to a state hospital or a secure intensive community inpatient facility or ordered to a community mental health program under ORS 161.315 to 161.351.

(2) When the Psychiatric Security Review Board requires the preparation of a predischarge or preconditional release plan before a hearing or as a condition of granting discharge or conditional release for a person committed under ORS 161.315 to 161.351 to a state hospital or a secure intensive community inpatient facility for custody, care and treatment, the authority is responsible for and shall prepare the plan.

(3) In carrying out a conditional release plan prepared under subsection (2) of this section, the authority may contract with a community mental health program, other public agency or private corporation or an individual to provide supervision and treatment for the conditionally released person.

(4)(a) The board shall maintain and keep current the medical, social and criminal history of all persons committed to its jurisdiction. The confidentiality of records maintained by the board shall be determined pursuant to ORS 192.338, 192.345, 192.355 and 192.398.

(b) Except as otherwise provided by law, upon request of the board, a state hospital, a community mental health program and any other health care service provider shall provide the board with all medical records pertaining to a person committed to the jurisdiction of the board.

(5) The evidentiary phase of a hearing conducted by the board under ORS 161.315 to 161.351 is not a deliberation for purposes of ORS 192.690. [1975 c.380 §7; 1977 c.380 §18; 1981

c.711 §14; 1993 c.680 §18; 2005 c.22 §109; 2005 c.685 §8; 2009 c.595 §110; 2011 c.708 §5; 2017 c.442 §6; 2018 c.120 §4; 2019 c.328 §1; 2021 c.395 §10]

**161.392 Certification of psychiatrists and licensed psychologists; rules; fees.** (1) The Oregon Health Authority shall adopt rules necessary to certify psychiatrists and licensed psychologists for the purpose of performing evaluations and examinations described in ORS 161.309, 161.355 to 161.371 and 419C.524. The rules must include a description of the standards and qualifications necessary for certification. The authority may charge a fee for certification under this section in an amount determined by rule.

(2) The authority shall consult with the Psychiatric Security Review Board about proposed rules described in subsection (1) of this section before issuing the proposed rules for public comment and before adopting the rules. [2011 c.724 §9; 2021 c.395 §11]

**Note:** 161.392 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 161 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**161.395 Subpoena power.** (1) Upon request of any party to a hearing before the Psychiatric Security Review Board under ORS 161.315 to 161.351, the board shall issue, or on its own motion may issue, subpoenas requiring the attendance and testimony of witnesses.

(2) Upon request of any party to the hearing before the board and upon a proper showing of the general relevance and reasonable scope of the documentary or physical evidence sought, the board shall issue, or on its own motion may issue, subpoenas duces tecum.

(3) Witnesses appearing under subpoenas, other than the parties or state officers or employees, shall receive fees and mileage as prescribed by law for witnesses in ORS 44.415 (2). If the board certifies that the testimony of a witness was relevant and material, any person who has paid fees and mileage to that witness shall be reimbursed by the board.

(4) If any person fails to comply with a subpoena issued under subsections (1) or (2) of this section or any party or witness refuses to testify regarding any matter on which the party or witness may be lawfully interrogated, the judge of the circuit court of any county, on the application of the board or of the party requesting the issuance of the subpoena, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued by the court.

(5) If any person, agency or facility fails to comply with an order of the board issued pursuant to subsection (2) of this section, the judge of a circuit court of any county, on application of the board, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of an order issued by the court. Contempt for disobedience of an order of the board shall be punishable by a fine of $100. [1977 c.380 §9; 1989 c.980 §8; 2011 c.708 §10; 2017 c.442 §9]

**161.397 Psychiatric Security Review Board Account.** The Psychiatric Security Review Board Account is established separate and distinct from the General Fund. All moneys received by the Psychiatric Security Review Board, other than appropriations from the General Fund, shall be deposited into the account and are continuously appropriated to the board to carry out the duties, functions and powers of the board. [2001 c.716 §3]

**161.398 Restorative justice program; rules.** (1)(a) The Psychiatric Security Review Board may develop a restorative justice program to assist the recovery of crime victims when a person is found guilty except for insanity of a crime or responsible except for insanity for an act.

(b) The board may enter into a contract with a nonprofit educational institution or other nonprofit organization that provides for the administration of the restorative justice program by the institution or organization.

(2) Any documents or oral communications created, submitted or provided for use in the restorative justice program are confidential, exempt from public disclosure and:

(a) May not be disclosed to or used by board members.

(b) May not be used or disclosed by restorative justice program staff, volunteers or participants for any purpose unrelated to the program.

(c) Are not admissible as evidence in any subsequent administrative or judicial proceeding, including board proceedings and deliberations.

(3) The board may adopt rules to carry out the provisions of this section. [2017 c.442 §1]

**161.400 Leave of absence; notice to board.** If, at any time after the commitment of a person to a state hospital or a secure intensive community inpatient facility under ORS 161.315 to 161.351, the superintendent of the hospital or the director of the facility is of the opinion that a leave of absence from the hospital or facility would be therapeutic for the person and that such leave would pose no substantial danger to others, the superintendent or director may authorize such leave for up to 48 hours in accordance with rules adopted by the Psychiatric Security

Review Board. However, the superintendent or director, before authorizing the leave of absence, shall first notify the board for the purposes of ORS 161.326. [1981 c.711 §12; 2005 c.685 §9; 2011 c.708 §11; 2017 c.442 §10]

**161.403** [1983 c.800 §14; repealed by 1993 c.77 §1]

## INCHOATE CRIMES

**161.405 "Attempt" described.** (1) A person is guilty of an attempt to commit a crime when the person intentionally engages in conduct which constitutes a substantial step toward commission of the crime.

(2) An attempt is a:

(a) Class A felony if the offense attempted is any degree of murder, aggravated murder or treason.

(b) Class B felony if the offense attempted is a Class A felony.

(c) Class C felony if the offense attempted is a Class B felony.

(d) Class A misdemeanor if the offense attempted is a Class C felony or an unclassified felony.

(e) Class B misdemeanor if the offense attempted is a Class A misdemeanor.

(f) Class C misdemeanor if the offense attempted is a Class B misdemeanor.

(g) Violation if the offense attempted is a Class C misdemeanor or an unclassified misdemeanor. [1971 c.743 §54; 2019 c.635 §15a]

**161.425 Impossibility not a defense.** In a prosecution for an attempt, it is no defense that it was impossible to commit the crime which was the object of the attempt where the conduct engaged in by the actor would be a crime if the circumstances were as the actor believed them to be. [1971 c.743 §55]

**161.430 Renunciation as a defense to attempt.** (1) A person is not liable under ORS 161.405 if, under circumstances manifesting a voluntary and complete renunciation of the criminal intent of the person, the person avoids the commission of the crime attempted by abandoning the criminal effort and, if mere abandonment is insufficient to accomplish this avoidance, doing everything necessary to prevent the commission of the attempted crime.

(2) The defense of renunciation is an affirmative defense. [1971 c.743 §56]

**161.435 Solicitation.** (1) A person commits the crime of solicitation if with the intent of causing another to engage in specific conduct constituting a crime punishable as a felony or as a Class A misdemeanor or an attempt to commit such felony or Class A misdemeanor the person commands or solicits such other person to engage in that conduct.

(2) Solicitation is a:

(a) Class A felony if the offense solicited is murder or treason.

(b) Class B felony if the offense solicited is a Class A felony.

(c) Class C felony if the offense solicited is a Class B felony.

(d) Class A misdemeanor if the offense solicited is a Class C felony.

(e) Class B misdemeanor if the offense solicited is a Class A misdemeanor. [1971 c.743 §57]

**161.440 Renunciation as defense to solicitation.** (1) It is a defense to the crime of solicitation that the person soliciting the crime, after soliciting another person to commit a crime, persuaded the person solicited not to commit the crime or otherwise prevented the commission of the crime, under circumstances manifesting a complete and voluntary renunciation of the criminal intent.

(2) The defense of renunciation is an affirmative defense. [1971 c.743 §58]

**161.450 "Criminal conspiracy" described.** (1) A person is guilty of criminal conspiracy if with the intent that conduct constituting a crime punishable as a felony or a Class A misdemeanor be performed, the person agrees with one or more persons to engage in or cause the performance of such conduct.

(2) Criminal conspiracy is a:

(a) Class A felony if an object of the conspiracy is commission of murder, treason or a Class A felony.

(b) Class B felony if an object of the conspiracy is commission of a Class B felony.

(c) Class C felony if an object of the conspiracy is commission of a Class C felony.

(d) Class A misdemeanor if an object of the conspiracy is commission of a Class A misdemeanor. [1971 c.743 §59]

**161.455 Conspiratorial relationship.** If a person is guilty of conspiracy, as defined in ORS 161.450, and knows that a person with whom the person conspires to commit a crime has conspired or will conspire with another person or persons to commit the same crime, the person is guilty of conspiring with such other person or persons, whether or not the person knows their identity, to commit such crime. [1971 c.743 §60]

**161.460 Renunciation as defense to conspiracy.** (1) It is a defense to a charge of conspiracy that the actor, after conspiring to commit a crime, thwarted commission of the crime which was the object of the conspiracy, under circumstances manifesting a complete and voluntary renunciation of the

criminal purpose of the actor. Renunciation by one conspirator does not, however, affect the liability of another conspirator who does not join in the renunciation of the conspiratorial objective.

(2) The defense of renunciation is an affirmative defense. [1971 c.743 §61]

**161.465 Duration of conspiracy.** For the purpose of application of ORS 131.125:

(1) Conspiracy is a continuing course of conduct which terminates when the crime or crimes which are its object are completed or the agreement that they be committed is abandoned by the defendant and by those with whom the defendant conspired.

(2) Abandonment is presumed if neither the defendant nor anyone with whom the defendant conspired does any overt act in pursuance of the conspiracy during the applicable period of limitation.

(3) If an individual abandons the agreement, the conspiracy is terminated as to the individual only if and when the individual advises those with whom the individual conspired of the abandonment or the individual informs the law enforcement authorities of the existence of the conspiracy and of the participation of the individual therein. [1971 c.743 §62; 1973 c.836 §340]

**161.475 Defenses to solicitation and conspiracy.** (1) Except as provided in subsection (2) of this section, it is immaterial to the liability of a person who solicits or conspires with another to commit a crime that:

(a) The person or the person whom the person solicits or with whom the person conspires does not occupy a particular position or have a particular characteristic which is an element of such crime, if the person believes that one of them does; or

(b) The person whom the person solicits or with whom the person conspires is irresponsible or has an immunity to prosecution or conviction for the commission of the crime, or, in the case of conspiracy, has feigned the agreement; or

(c) The person with whom the person conspires has not been prosecuted for or convicted of the conspiracy or a crime based upon the conduct in question, or has previously been acquitted.

(2) It is a defense to a charge of solicitation or conspiracy to commit a crime that if the criminal object were achieved, the actor would not be guilty of a crime under the law defining the offense or as an accomplice under ORS 161.150 to 161.165. [1971 c.743 §63]

**161.485 Multiple convictions barred in inchoate crimes.** (1) It is no defense to a prosecution under ORS 161.405, 161.435 or 161.450 that the offense the defendant either attempted to commit, solicited to commit or conspired to commit was actually committed pursuant to such attempt, solicitation or conspiracy.

(2) A person shall not be convicted of more than one offense defined by ORS 161.405, 161.435 and 161.450 for conduct designed to commit or to culminate in commission of the same crime.

(3) A person shall not be convicted on the basis of the same course of conduct of both the actual commission of an offense and an attempt to commit that offense or solicitation of that offense or conspiracy to commit that offense.

(4) Nothing in this section shall be construed to bar inclusion of multiple counts charging violation of the substantive crime and ORS 161.405, 161.435 and 161.450 in a single indictment or information, provided the penal conviction is consistent with subsections (2) and (3) of this section. [1971 c.743 §64]

## CLASSES OF OFFENSES

**161.505 "Offense" described.** An offense is conduct for which a sentence to a term of imprisonment or to a fine is provided by any law of this state or by any law or ordinance of a political subdivision of this state. An offense is either a crime, as described in ORS 161.515, or a violation, as described in ORS 153.008. [1971 c.743 §65; 1975 c.451 §173; 1981 c.626 §2; 1981 c.692 §7; 1999 c.1051 §43]

**161.515 "Crime" described.** (1) A crime is an offense for which a sentence of imprisonment is authorized.

(2) A crime is either a felony or a misdemeanor. [1971 c.743 §66]

**161.525 "Felony" described.** Except as provided in ORS 161.585, 161.705 and 161.710, a crime is a felony if it is so designated in any statute of this state or if a person convicted under a statute of this state may be sentenced to a maximum term of imprisonment of more than one year. [1971 c.743 §67; 2017 c.439 §3]

**161.535 Classification of felonies.** (1) Felonies are classified for the purpose of sentence into the following categories:

(a) Class A felonies;

(b) Class B felonies;

(c) Class C felonies; and

(d) Unclassified felonies.

(2) The particular classification of each felony defined in the Oregon Criminal Code,

except murder in any degree under ORS 163.107 or 163.115 and treason under ORS 166.005, is expressly designated in the section defining the crime. An offense defined outside this code which, because of the express sentence provided is within the definition of ORS 161.525, shall be considered an unclassified felony. [1971 c.743 §68; 2019 c.635 §16]

**161.545 "Misdemeanor" described.** A crime is a misdemeanor if it is so designated in any statute of this state or if a person convicted thereof may be sentenced to a maximum term of imprisonment of not more than one year. [1971 c.743 §69]

**161.555 Classification of misdemeanors.** (1) Misdemeanors are classified for the purpose of sentence into the following categories:

(a) Class A misdemeanors;

(b) Class B misdemeanors;

(c) Class C misdemeanors; and

(d) Unclassified misdemeanors.

(2) The particular classification of each misdemeanor defined in the Oregon Criminal Code is expressly designated in the section defining the crime. An offense defined outside this code which, because of the express sentence provided is within the definition of ORS 161.545, shall be considered an unclassified misdemeanor.

(3) An offense defined by a statute of this state, but without specification as to its classification or as to the penalty authorized upon conviction, shall be considered a Class A misdemeanor. [1971 c.743 §70]

**161.565** [1971 c.743 §71; 1987 c.783 §1; 1989 c.1053 §17; 1991 c.111 §17; 1993 c.533 §4; 1997 c.852 §12; repealed by 1999 c.1051 §49]

**161.566 Misdemeanor treated as violation; prosecuting attorney's election.** (1) Except as provided in subsection (4) of this section, a prosecuting attorney may elect to treat any misdemeanor as a Class A violation. The election must be made by the prosecuting attorney orally at the time of the first appearance of the defendant or in writing filed on or before the time scheduled for the first appearance of the defendant. If no election is made within the time allowed, the case shall proceed as a misdemeanor.

(2) If a prosecuting attorney elects to treat a misdemeanor as a Class A violation under this section, the court shall amend the accusatory instrument to reflect the charged offense as a Class A violation and clearly denominate the offense as a Class A violation in any judgment entered in the matter. Notwithstanding ORS 153.021, the fine that a court may impose upon conviction of a violation under this section may not:

(a) Be less than the presumptive fine established by ORS 153.019 for a Class A violation; or

(b) Exceed the maximum fine established by ORS 153.018 for a Class A violation.

(3) If a prosecuting attorney elects to treat a misdemeanor as a Class A violation under this section, and the defendant fails to make any required appearance in the matter, the court may enter a default judgment against the defendant in the manner provided by ORS 153.102. Notwithstanding ORS 153.021, the fine that the court may impose under a default judgment entered pursuant to ORS 153.102 may not:

(a) Be less than the presumptive fine established by ORS 153.019 for a Class A violation; or

(b) Exceed the maximum fine established by ORS 153.018 for a Class A violation.

(4) A prosecuting attorney may not elect to treat misdemeanors created under ORS 811.540 or 813.010 as violations under the provisions of this section.

(5) The election provided for in this section may be made by a city attorney acting as prosecuting attorney in the case of municipal ordinance offenses, a county counsel acting as prosecuting attorney under a county charter in the case of county ordinance offenses, and the Attorney General acting as prosecuting attorney in those criminal actions or proceedings within the jurisdiction of the Attorney General. [1999 c.1051 §47; 2003 c.737 §89; 2011 c.597 §16; 2012 c.82 §2]

**161.568 Misdemeanor treated as violation; court's election.** (1) Except as provided in subsection (4) of this section, a court may elect to treat any misdemeanor as a Class A violation for the purpose of entering a default judgment under ORS 153.102 if:

(a) A complaint or information has been filed with the court for the misdemeanor;

(b) The defendant has failed to make an appearance in the proceedings required by the court or by law; and

(c) The court has given notice to the district attorney for the county and the district attorney has informed the court that the district attorney does not object to treating the misdemeanor as a Class A violation.

(2) If the court treats a misdemeanor as a Class A violation under this section, the court shall amend the accusatory instrument to reflect the charged offense as a Class A violation and clearly denominate the offense as a Class A violation in the judgment entered in the matter.

(3) Notwithstanding ORS 153.021, if the court treats a misdemeanor as a Class A violation under this section, the fine that the

court may impose under a default judgment entered pursuant to ORS 153.102 may not:

(a) Be less than the presumptive fine established by ORS 153.019 for a Class A violation; or

(b) Exceed the maximum fine established by ORS 153.018 for a Class A violation.

(4) A court may not treat misdemeanors created under ORS 811.540 or 813.010 as violations under the provisions of this section. [1999 c.1051 §48; 2003 c.737 §90; 2011 c.597 §17; 2012 c.82 §3]

**161.570 Felony treated as misdemeanor.** (1) As used in this section, "nonperson felony" has the meaning given that term in the rules of the Oregon Criminal Justice Commission.

(2) A district attorney may elect to treat a Class C nonperson felony or a violation of ORS 475.752 (7)(b), 475.854 (2)(c) or 475.874 (2)(c) as a Class A misdemeanor. The election must be made by the district attorney orally or in writing at the time of the first appearance of the defendant. If a district attorney elects to treat a Class C felony or a violation of ORS 475.752 (7)(b), 475.854 (2)(c) or 475.874 (2)(c) as a Class A misdemeanor under this subsection, the court shall amend the accusatory instrument to reflect the charged offense as a Class A misdemeanor.

(3) If, at some time after the first appearance of a defendant charged with a Class C nonperson felony or a violation of ORS 475.752 (7)(b), 475.854 (2)(c) or 475.874 (2)(c), the district attorney and the defendant agree to treat the charged offense as a Class A misdemeanor, the court may allow the offense to be treated as a Class A misdemeanor by stipulation of the parties.

(4) If a Class C felony or a violation of ORS 475.752 (7)(b), 475.854 (2)(c) or 475.874 (2)(c) is treated as a Class A misdemeanor under this section, the court shall clearly denominate the offense as a Class A misdemeanor in any judgment entered in the matter.

(5) If no election or stipulation is made under this section, the case proceeds as a felony.

(6) Before a district attorney may make an election under subsection (2) of this section, the district attorney shall adopt written guidelines for determining when and under what circumstances the election may be made. The district attorney shall apply the guidelines uniformly.

(7) Notwithstanding ORS 161.635, the fine that a court may impose upon conviction of a misdemeanor under this section may not:

(a) Be less than the minimum fine established by ORS 137.286 for a felony; or

(b) Exceed the amount provided in ORS 161.625 for the class of felony receiving Class A misdemeanor treatment. [2003 c.645 §2; 2005 c.708 §47; 2007 c.286 §1; 2011 c.597 §18; 2013 c.591 §4; 2017 c.706 §25; 2021 c.591 §43]

**161.575** [1971 c.743 §72; repealed by 1999 c.1051 §49]

**161.585 Classification of certain crimes determined by punishment.** (1) When a crime punishable as a felony is also punishable by imprisonment for a maximum term of one year or by a fine, the crime shall be classed as a misdemeanor if the court imposes a punishment other than imprisonment under ORS 137.124 (1).

(2) Notwithstanding the provisions of ORS 161.525, upon conviction of a crime punishable as described in subsection (1) of this section, the crime is a felony for all purposes until one of the following events occurs, after which occurrence the crime is a misdemeanor for all purposes:

(a) Without imposing a sentence of probation, the court imposes a sentence of imprisonment other than to the legal and physical custody of the Department of Corrections.

(b) Without imposing a sentence of probation, the court imposes a fine.

(c) Upon revocation of probation, the court imposes a sentence of imprisonment other than to the legal and physical custody of the Department of Corrections.

(d) Upon revocation of probation, the court imposes a fine.

(e) The court declares the offense to be a misdemeanor, either at the time of imposing a sentence of probation, upon suspension of imposition of a part of a sentence, or on application of defendant or the parole and probation officer of the defendant thereafter.

(f) The court imposes a sentence of probation on the defendant without imposition of any other sentence upon conviction and defendant is thereafter discharged without any other sentence.

(g) Without imposing a sentence of probation and without imposing any other sentence, the court declares the offense to be a misdemeanor and discharges the defendant.

(3) The provisions of this section shall apply only to persons convicted of a felony committed prior to November 1, 1989. [1971 c.743 §73; 1987 c.320 §85; 1989 c.790 §52; 1993 c.14 §18; 2005 c.264 §15]

## DISPOSITION OF OFFENDERS

**161.605 Maximum terms of imprisonment for felonies.** The maximum term of an indeterminate sentence of imprisonment for a felony is as follows:

(1) For a Class A felony, 20 years.

(2) For a Class B felony, 10 years.

(3) For a Class C felony, 5 years.

(4) For an unclassified felony as provided in the statute defining the crime. [1971 c.743 §74]

**161.610 Enhanced penalty for use of firearm during commission of felony; pleading; minimum penalties; suspension or reduction of penalty.** (1) As used in this section, "firearm" has the meaning given that term in ORS 166.210.

(2) The use or threatened use of a firearm, whether operable or inoperable, by a defendant during the commission of a felony may be pleaded in the accusatory instrument and proved at trial as an element in aggravation of the crime as provided in this section. When a crime is so pleaded, the aggravated nature of the crime may be indicated by adding the words "with a firearm" to the title of the offense. The unaggravated crime shall be considered a lesser included offense.

(3) Notwithstanding the provisions of ORS 161.605 or 137.010 (3) and except as otherwise provided in subsection (6) of this section, if a defendant is convicted of a felony having as an element the defendant's use or threatened use of a firearm during the commission of the crime, the court shall impose at least the minimum term of imprisonment as provided in subsection (4) of this section. Except as provided in ORS 144.122 and 144.126 and subsection (5) of this section, in no case shall any person punishable under this section become eligible for work release, parole, temporary leave or terminal leave until the minimum term of imprisonment is served, less a period of time equivalent to any reduction of imprisonment granted for good time served or time credits earned under ORS 421.121, nor shall the execution of the sentence imposed upon such person be suspended by the court.

(4) The minimum terms of imprisonment for felonies having as an element the defendant's use or threatened use of a firearm in the commission of the crime shall be as follows:

(a) Except as provided in subsection (5) of this section, upon the first conviction for such felony, five years, except that if the firearm is a machine gun, short-barreled rifle, short-barreled shotgun or is equipped with a firearms silencer, the term of imprisonment shall be 10 years.

(b) Upon conviction for such felony committed after punishment pursuant to paragraph (a) of this subsection or subsection (5) of this section, 10 years, except that if the firearm is a machine gun, short-barreled rifle, short-barreled shotgun or is equipped with a firearms silencer, the term of imprisonment shall be 20 years.

(c) Upon conviction for such felony committed after imprisonment pursuant to paragraph (b) of this subsection, 30 years.

(5) If it is the first time that the defendant is subject to punishment under this section, rather than impose the sentence otherwise required by subsection (4)(a) of this section, the court may:

(a) For felonies committed prior to November 1, 1989, suspend the execution of the sentence or impose a lesser term of imprisonment, when the court expressly finds mitigating circumstances justifying such lesser sentence and sets forth those circumstances in its statement on sentencing; or

(b) For felonies committed on or after November 1, 1989, impose a lesser sentence in accordance with the rules of the Oregon Criminal Justice Commission.

(6) When a defendant who is convicted of a felony having as an element the defendant's use or threatened use of a firearm during the commission of the crime is a person who was waived under ORS 137.707 (5)(b)(A), 419C.349 (1)(b), 419C.352, 419C.364 or 419C.370, the court is not required to impose a minimum term of imprisonment under this section. [1979 c.779 §2; 1985 c.552 §1; 1989 c.790 §72; 1989 c.839 §18; 1991 c.133 §3; 1993 c.692 §9; 1999 c.951 §3; 2005 c.407 §1; 2009 c.610 §5; 2019 c.634 §7]

**161.615 Maximum terms of imprisonment for misdemeanors.** Sentences for misdemeanors shall be for a definite term. The court shall fix the term of imprisonment within the following maximum limitations:

(1) For a Class A misdemeanor, 364 days.

(2) For a Class B misdemeanor, 6 months.

(3) For a Class C misdemeanor, 30 days.

(4) For an unclassified misdemeanor, as provided in the statute defining the crime. [1971 c.743 §75; 2017 c.706 §22]

**161.620 Sentences imposed upon waiver.** Notwithstanding any other provision of law, a sentence imposed upon any person waived under ORS 419C.349, 419C.352, 419C.364 or 419C.370 shall not include any sentence of death or life imprisonment without the possibility of release or parole nor imposition of any mandatory minimum sentence except that a mandatory minimum sentence under:

(1) ORS 137.707 shall be imposed, except as provided in ORS 137.712;

(2) ORS 163.105 (1)(c) shall be imposed; and

(3) ORS 161.610 may be imposed. [1985 c.631 §9; 1989 c.720 §3; 1993 c.33 §306; 1993 c.546 §119; 1995 c.422 §131y; 1999 c.951 §2; 2019 c.634 §8]

**Note:** 161.620 was added to and made a part of ORS 161.615 to 161.685 by legislative action but was not added to any smaller series in that series. See Preface to Oregon Revised Statutes for further explanation.

**161.625 Fines for felonies.** (1) A sentence to pay a fine for a felony shall be a sentence to pay an amount, fixed by the court, not exceeding:

(a) $500,000 for murder or aggravated murder.

(b) $375,000 for a Class A felony.

(c) $250,000 for a Class B felony.

(d) $125,000 for a Class C felony.

(2) A sentence to pay a fine for an unclassified felony shall be a sentence to pay an amount, fixed by the court, as provided in the statute defining the crime.

(3)(a) If a person has gained money or property through the commission of a felony, then upon conviction thereof the court, in lieu of imposing the fine authorized for the crime under subsection (1) or (2) of this section, may sentence the defendant to pay an amount, fixed by the court, not exceeding double the amount of the defendant's gain from the commission of the crime.

(b) The provisions of paragraph (a) of this subsection do not apply to the felony theft of a companion animal, as defined in ORS 164.055, or a captive wild animal.

(4) As used in this section, "gain" means the amount of money or the value of property derived from the commission of the felony, less the amount of money or the value of property returned to the victim of the crime or seized by or surrendered to lawful authority before the time sentence is imposed. "Value" shall be determined by the standards established in ORS 164.115.

(5) When the court imposes a fine for a felony the court shall make a finding as to the amount of the defendant's gain from the crime. If the record does not contain sufficient evidence to support a finding the court may conduct a hearing upon the issue.

(6) Except as provided in ORS 161.655, this section does not apply to a corporation. [1971 c.743 §76; 1981 c.390 §1; 1991 c.837 §11; 1993 c.680 §36; 2003 c.615 §1; 2003 c.737 §86]

**161.635 Fines for misdemeanors.** (1) A sentence to pay a fine for a misdemeanor shall be a sentence to pay an amount, fixed by the court, not exceeding:

(a) $6,250 for a Class A misdemeanor.

(b) $2,500 for a Class B misdemeanor.

(c) $1,250 for a Class C misdemeanor.

(2) A sentence to pay a fine for an unclassified misdemeanor shall be a sentence to pay an amount, fixed by the court, as provided in the statute defining the crime.

(3) If a person has gained money or property through the commission of a misdemeanor, then upon conviction thereof the court, instead of imposing the fine authorized for the offense under this section, may sentence the defendant to pay an amount fixed by the court, not exceeding double the amount of the defendant's gain from the commission of the offense. In that event, ORS 161.625 (4) and (5) apply.

(4) This section does not apply to corporations. [1971 c.743 §77; 1981 c.390 §2; 1993 c.680 §30; 1995 c.545 §2; 1999 c.1051 §44; 2003 c.737 §87]

**161.645 Standards for imposing fines.** In determining whether to impose a fine and its amount, the court shall consider:

(1) The financial resources of the defendant and the burden that payment of a fine will impose, with due regard to the other obligations of the defendant; and

(2) The ability of the defendant to pay a fine on an installment basis or on other conditions to be fixed by the court. [1971 c.743 §78]

**161.655 Fines for corporations.** (1) A sentence to pay a fine when imposed on a corporation for an offense defined in the Oregon Criminal Code or for an offense defined outside this code for which no special corporate fine is specified, shall be a sentence to pay an amount, fixed by the court, not exceeding:

(a) $50,000 when the conviction is of a felony.

(b) $5,000 when the conviction is of a Class A misdemeanor or of an unclassified misdemeanor for which a term of imprisonment of more than six months is authorized.

(c) $2,500 when the conviction is of a Class B misdemeanor or of an unclassified misdemeanor for which the authorized term of imprisonment is not more than six months.

(d) $1,000 when the conviction is of a Class C misdemeanor or an unclassified misdemeanor for which the authorized term of imprisonment is not more than 30 days.

(2) A sentence to pay a fine, when imposed on a corporation for an offense defined outside the Oregon Criminal Code, if a special fine for a corporation is provided in the statute defining the offense, shall be a sentence to pay an amount, fixed by the court, as provided in the statute defining the offense.

(3) If a corporation has gained money or property through the commission of an offense, then upon conviction thereof the court, in lieu of imposing the fine authorized for the offense under subsection (1) or (2) of this section, may sentence the corporation to pay an amount, fixed by the court, not exceeding double the amount of the

corporation's gain from the commission of the offense. In that event, ORS 161.625 (4) and (5) apply. [1971 c.743 §79; 1999 c.1051 §45]

**161.665 Costs.** (1) Except as provided in ORS 151.505, the court, only in the case of a defendant for whom it enters a judgment of conviction, may include in its sentence thereunder a money award for all costs specially incurred by the state in prosecuting the defendant. Costs include a reasonable attorney fee for counsel appointed pursuant to ORS 135.045 or 135.050 and a reasonable amount for fees and expenses incurred pursuant to preauthorization under ORS 135.055. A reasonable attorney fee is presumed to be a reasonable number of hours at the hourly rate authorized by the Oregon Public Defense Commission under ORS 151.216. Costs do not include expenses inherent in providing a constitutionally guaranteed jury trial or expenditures in connection with the maintenance and operation of government agencies that must be made by the public irrespective of specific violations of law.

(2) Except as provided in ORS 151.505, the court, after the conclusion of an appeal of its initial judgment of conviction, may include in its general judgment, or enter a supplemental judgment that includes, a money award that requires a convicted defendant to pay a reasonable attorney fee for counsel appointed pursuant to ORS 138.500, including counsel who is appointed under ORS 151.216 or counsel who is under contract to provide services for the proceeding under ORS 151.219, and other costs and expenses allowed by the executive director of the Oregon Public Defense Commission under ORS 138.500 (4). A reasonable attorney fee is presumed to be a reasonable number of hours at the hourly rate authorized by the commission under ORS 151.216.

(3) For purposes of subsections (1) and (2) of this section, compensation of counsel is determined by reference to a schedule of compensation established by the commission under ORS 151.216.

(4) The court may not sentence a defendant to pay costs under this section unless the defendant is or may be able to pay them. In determining the amount and method of payment of costs, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose.

(5) A defendant who has been sentenced to pay costs under this section and who is not in contumacious default in the payment of costs may at any time petition the court that sentenced the defendant for remission of the payment of costs or of any unpaid portion of costs. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the immediate family of the defendant, the court may enter a supplemental judgment that remits all or part of the amount due in costs, or modifies the method of payment under ORS 161.675.

(6) Except as provided in subsection (7) of this section, all moneys collected or paid under this section shall be paid into the Criminal Fine Account.

(7) The court may, in the judgment of conviction, include a money award requiring the defendant to pay the costs of extraditing the defendant to this state. Any amounts awarded to the state under this subsection must be listed separately in the money award portion of the judgment. All moneys collected or paid under this subsection shall be deposited into the Arrest and Return Account established by ORS 133.865. [1971 c.743 §80; 1981 s.s. c.3 §120; 1983 c.763 §12; 1985 c.710 §3; 1987 c.803 §26; 1989 c.1053 §11; 1991 c.460 §12; 1991 c.840 §1; 1997 c.761 §1; 2001 c.962 §§41,113; 2003 c.449 §29; 2003 c.576 §§247,248; 2003 c.615 §2; 2011 c.597 §44; 2015 c.198 §2; 2023 c.281 §44]

**161.675 Time and method of payment of fines, restitution and costs.** (1) When a defendant, as a part of a sentence or as condition of probation or suspension of sentence, is required to pay a sum of money for any purpose, the court may order payment to be made immediately or within a specified period of time or in specified installments. If a defendant is sentenced to a term of imprisonment, any part of the sentence that requires the payment of a sum of money for any purpose is enforceable during the period of imprisonment if the court expressly finds that the defendant has assets to pay all or part of the amounts ordered.

(2) When a defendant whose sentence requires the payment of a sum of money for any purpose is also sentenced to probation or imposition or execution of sentence is suspended, the court may make payment of the sum of money a condition of probation or suspension of sentence.

(3) When a defendant is sentenced to probation or imposition or execution of sentence is suspended and the court requires as a part of the sentence or as a condition of the probation or suspension of sentence that the defendant pay a sum of money in installments, the court, or the court clerk or parole and probation officer if so ordered by the court, shall establish a schedule of payments to satisfy the obligation. A schedule of payments shall be reviewed by the court upon motion of the defendant at any time, so long as the obligation remains unsatisfied. [1971 c.743 §81; 1977 c.371 §4; 1985 c.46 §1; 1993 c.14 §19; 1995 c.512 §3; 2005 c.264 §16]

**161.685 Effect of nonpayment of fines, restitution or costs; report to consumer reporting agency; rules.** (1) When a defendant who has been sentenced or ordered to pay a fine, or to make restitution, defaults on a payment or installment ordered by the court, the court on motion of the district attorney or upon its own motion may require the defendant to show cause why the default should not be treated as contempt of court, and may issue a show cause citation or a warrant of arrest for the appearance of the defendant.

(2) If the court finds that the default constitutes contempt, the court may impose one or more of the sanctions authorized by ORS 33.105.

(3) When a fine or an order of restitution is imposed on a corporation or unincorporated association, it is the duty of the person authorized to make disbursement from the assets of the corporation or association to pay the fine or make the restitution from those assets, and if that person fails to do so, the court may hold that person in contempt.

(4) Notwithstanding ORS 33.105, the term of confinement for contempt for nonpayment of fines or failure to make restitution shall be set forth in the commitment order, and shall not exceed one day for each $25 of the fine or restitution, 30 days if the fine or order of restitution was imposed upon conviction of a violation or misdemeanor, or one year in any other case, whichever is the shorter period.

(5) If it appears to the satisfaction of the court that the default in the payment of a fine or restitution is not contempt, the court may enter an order allowing the defendant additional time for payment, reducing the amount of the payment or installments due on the payment, or revoking the fine or order of restitution in whole or in part.

(6) A default in the payment of a fine or costs or failure to make restitution or a default on an installment on a fine, costs or restitution may be collected by any means authorized by law for the enforcement of a judgment. The levy of execution or garnishment for the collection of a fine or restitution shall not discharge a defendant confined for contempt until the amount of the fine or restitution has actually been collected.

(7) The court, or the court clerk if ordered by the court, may report a default on a court-ordered payment to a consumer reporting agency.

(8) The Chief Justice of the Supreme Court shall adopt rules under ORS 1.002 establishing policies and procedures for reporting a default under subsection (7) of this section to a consumer reporting agency that may include, but are not limited to, limitations on reporting a default to a consumer reporting agency.

(9) Except as otherwise provided in this section, proceedings under this section shall be conducted:

(a) As provided in ORS 33.055, if the court seeks to impose remedial sanctions as described in ORS 33.015 to 33.155; and

(b) As provided in ORS 33.065, if the court seeks to impose punitive sanctions as described in ORS 33.015 to 33.155.

(10) Confinement under this section may be custody or incarceration, whether actual or constructive.

(11) As used in this section:

(a) "Consumer reporting agency" means any person that regularly engages for fees, dues, or on a nonprofit basis, in whole or in part, in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.

(b) "Restitution" has the meaning given that term in ORS 137.103. [1971 c.743 §82; 1977 c.371 §5; 1987 c.709 §3; 1987 c.873 §28; 1991 c.724 §27a; 1995 c.79 §50; 1995 c.512 §4; 2015 c.9 §3]

## AUTHORITY OF SENTENCING COURT

**161.705 Reduction of certain felonies to misdemeanors.** (1) Notwithstanding ORS 161.525, the court may enter judgment of conviction for a Class A misdemeanor and make disposition accordingly when:

(a)(A) A person is convicted of any Class C felony; or

(B) A person convicted of a Class C felony, of possession or delivery of marijuana or a marijuana item as defined in ORS 475C.009 constituting a Class B felony, of possession of a controlled substance constituting a Class B felony or of a Class A felony pursuant to ORS 166.720, has successfully completed a sentence of probation; and

(b) The court, considering the nature and circumstances of the crime and the history and character of the defendant, believes that a felony conviction would be unduly harsh.

(2) The entry of judgment of conviction for a Class A misdemeanor under this section may be made:

(a) At the time of conviction, for offenses described in subsection (1)(a)(A) of this section; or

(b) At any time after the sentence of probation has been completed, for offenses described in subsection (1)(a)(B) of this section. [1971 c.743 §83; 1977 c.745 §31; 1979 c.124 §1; 1981 c.769 §8; 2005 c.708 §48; 2009 c.610 §2; 2013 c.591 §5; 2015 c.290 §2; 2015 c.614 §125; 2017 c.21 §100; 2018 c.120 §11]

**161.710 Reduction of certain felony driving offenses after completion of sentence.** Notwithstanding ORS 161.525, the court has authority, at any time after a sentence of probation has been completed, to enter judgment of conviction for a Class A misdemeanor for a person convicted of criminal driving while suspended or revoked under ORS 811.182 committed before September 1, 1999, and constituting a felony if:

(1) The suspension or revocation resulted from habitual offender status under ORS 809.640;

(2) The person successfully completed the sentence of probation; and

(3) The court finds that, considering the nature and circumstances of the crime and the history and character of the person, it would be unduly harsh for the person to continue to have a felony conviction. [2017 c.439 §2]

**161.715 Standards for discharge of defendant.** (1) Any court empowered to suspend imposition or execution of sentence or to sentence a defendant to probation may discharge the defendant if:

(a) The conviction is for an offense other than murder, treason or a Class A or B felony; and

(b) The court is of the opinion that no proper purpose would be served by imposing any condition upon the defendant's release.

(2) If a sentence of discharge is imposed for a felony, the court shall set forth in the record the reasons for its action.

(3) If the court imposes a sentence of discharge, the defendant shall be released with respect to the conviction for which the sentence is imposed without imprisonment, probationary supervision or conditions. The judgment entered by the court shall include a monetary obligation payable to the state in an amount equal to the minimum fine for the offense established by ORS 137.286.

(4) If a defendant pleads not guilty and is tried and found guilty, a sentence of discharge is a judgment on a conviction for all purposes, including an appeal by the defendant.

(5) If a defendant pleads guilty, a sentence of discharge is not appealable, but for all other purposes is a judgment on a conviction. [1971 c.743 §84; 1993 c.14 §20; 2003 c.576 §249; 2011 c.597 §20]

**161.725 Standards for sentencing of dangerous offenders.** (1) Subject to the provisions of ORS 161.737, the maximum term of an indeterminate sentence of imprisonment for a dangerous offender is 30 years, if because of the dangerousness of the defendant an extended period of confined correctional treatment or custody is required for the protection of the public and one or more of the following grounds exist:

(a) The defendant is being sentenced for a Class A felony and the defendant is suffering from a severe personality disorder indicating a propensity toward crimes that seriously endanger the life or safety of another.

(b) The defendant is being sentenced for a felony that seriously endangered the life or safety of another, the defendant has been previously convicted of a felony not related to the instant crime as a single criminal episode and the defendant is suffering from a severe personality disorder indicating a propensity toward crimes that seriously endanger the life or safety of another.

(c) The defendant is being sentenced for a felony that seriously endangered the life or safety of another, the defendant has previously engaged in unlawful conduct not related to the instant crime as a single criminal episode that seriously endangered the life or safety of another and the defendant is suffering from a severe personality disorder indicating a propensity toward crimes that seriously endanger the life or safety of another.

(2) As used in this section, "previously convicted of a felony" means:

(a) Previous conviction of a felony in a court of this state;

(b) Previous conviction in a court of the United States, other than a court-martial, of an offense which at the time of conviction of the offense was and at the time of conviction of the instant crime is punishable under the laws of the United States by death or by imprisonment in a penitentiary, prison or similar institution for a term of one year or more; or

(c) Previous conviction by a general court-martial of the United States or in a court of any other state or territory of the United States, or of the Commonwealth of Puerto Rico, of an offense which at the time of conviction of the offense was punishable by death or by imprisonment in a penitentiary, prison or similar institution for a term of one year or more and which offense also at the time of conviction of the instant crime would have been a felony if committed in this state.

(3) As used in this section, "previous conviction of a felony" does not include:

(a) An offense committed when the defendant was less than 16 years of age;

(b) A conviction rendered after the commission of the instant crime;

(c) A conviction that is the defendant's most recent conviction described in subsection (2) of this section, and the defendant was finally and unconditionally discharged from all resulting imprisonment, probation or parole more than seven years before the commission of the instant crime; or

(d) A conviction that was by court-martial of an offense denounced only by military law and triable only by court-martial.

(4) As used in this section, "conviction" means an adjudication of guilt upon a plea, verdict or finding in a criminal proceeding in a court of competent jurisdiction, but does not include an adjudication which has been expunged by pardon, reversed, set aside or otherwise rendered nugatory. [1971 c.743 §85; 1989 c.790 §75; 1993 c.334 §5; 2005 c.463 §§9,14; 2007 c.16 §4]

**161.735 Procedure for determining whether defendant dangerous.** (1) Upon motion of the district attorney, and if, in the opinion of the court, there is reason to believe that the defendant falls within ORS 161.725, the court shall order a presentence investigation and an examination by a psychiatrist or psychologist. The court may appoint one or more qualified psychiatrists or psychologists to examine the defendant in the local correctional facility.

(2) All costs connected with the examination shall be paid by the state.

(3) The examination performed pursuant to this section shall be completed within 30 days, subject to additional extensions not exceeding 30 days on order of the court. Each psychiatrist and psychologist appointed to examine a defendant under this section shall file with the court a written report of findings and conclusions, including an evaluation of whether the defendant is suffering from a severe personality disorder indicating a propensity toward criminal activity.

(4) No statement made by a defendant under this section or ORS 137.124 or 423.090 shall be used against the defendant in any civil proceeding or in any other criminal proceeding.

(5) Upon receipt of the examination and presentence reports the court shall set a time for a presentence hearing, unless the district attorney and the defendant waive the hearing. At the presentence hearing the district attorney and the defendant may question any psychiatrist or psychologist who examined the defendant pursuant to this section.

(6) If, after considering the evidence in the case or in the presentence hearing, the jury or, if the defendant waives the right to a jury trial, the court finds that the defendant comes within ORS 161.725, the court may sentence the defendant as a dangerous offender.

(7) In determining whether a defendant has been previously convicted of a felony for purposes of ORS 161.725, the court shall consider as prima facie evidence of the previous conviction:

(a) A copy of the judicial record of the conviction which copy is authenticated under ORS 40.510;

(b) A copy of the fingerprints of the subject of that conviction which copy is authenticated under ORS 40.510; and

(c) Testimony that the fingerprints of the subject of that conviction are those of the defendant.

(8) Subsection (7) of this section does not prohibit proof of the previous conviction by any other procedure.

(9) The facts required to be found to sentence a defendant as a dangerous offender under this section are enhancement facts, as defined in ORS 136.760, and ORS 136.765 to 136.785 apply to making determinations of those facts. [1971 c.743 §86; 1973 c.836 §341; 1981 c.892 §89a; 1983 c.740 §27; 1987 c.248 §1; 1999 c.163 §9; 2005 c.463 §§10,15; 2007 c.16 §5]

**161.737 Sentence imposed on dangerous offender as departure from sentencing guidelines.** (1) A sentence imposed under ORS 161.725 and 161.735 for felonies committed on or after November 1, 1989, shall constitute a departure from the sentencing guidelines created by rules of the Oregon Criminal Justice Commission. The findings made to classify the defendant as a dangerous offender under ORS 161.725 and 161.735 shall constitute substantial and compelling reasons to depart from the presumptive sentence as provided by rules of the Oregon Criminal Justice Commission.

(2) When the sentence is imposed, the sentencing judge shall indicate on the record the reasons for the departure and shall impose, in addition to the indeterminate sentence imposed under ORS 161.725, a required incarceration term that the offender must serve before release to post-prison supervision. If the presumptive sentence that would have been imposed if the court had not imposed the sentence under ORS 161.725 and 161.735 as a departure is a prison sentence, the required incarceration term shall be no less than the presumptive incarceration term and no more than twice the maximum presumptive incarceration term. If the presumptive sentence for the offense is probation, the required incarceration term shall be no less than the maximum incarceration term provided by the rule of the Oregon Criminal Justice Commission that establishes incarceration terms for dispositional depar-

tures and no more than twice that amount. However, the indeterminate sentence imposed under this section and ORS 161.725 is not subject to any guideline rule establishing limitations on the duration of departures. [1989 c.790 §77; 1993 c.334 §6]

**161.740 Sentencing of juvenile offenders.** (1) A court may not impose a sentence of life imprisonment without the possibility of release or parole on a person who was under 18 years of age at the time of committing the offense.

(2) In determining the appropriate sentence for a person who was under 18 years of age at the time of committing the offense, if the court is provided information concerning the following circumstances, or any other relevant circumstances, the court shall consider those circumstances in imposing the sentence:

(a) The person's age, intellectual capacity and impetuousness at the time of the offense.

(b) The person's family and community environment, history of trauma and prior involvement in the juvenile dependency system at the time of the offense.

(c) The person's ability at the time of the offense to appreciate the risks and consequences of the conduct constituting the offense.

(d) The person's community involvement prior to the offense.

(e) Any peer or familial pressure to which the person was subjected at the time of the offense.

(f) Whether and to what extent an adult was involved in the commission of the offense.

(g) The person's capacity for rehabilitation.

(h) The person's school records and special education evaluations.

(i) Any other mitigating factors or circumstances presented by the person.

(3)(a) If the court is provided with a report of a mental health evaluation of the person, the court shall give the evaluation substantial weight in imposing the sentence if:

(A) The evaluation was conducted by a psychiatrist or psychologist whose primary practice involves the treatment of adolescents; and

(B) The report includes the assessment of the person's degree of insight, judgment, self-awareness, emotional regulation and impulse control.

(b) Paragraph (a) of this subsection does not constitute a requirement that a person obtain or submit an evaluation for sentencing.

(4) When sentencing a person who was under 18 years of age at the time of committing the offense, under no circumstances may the court consider the age of the person as an aggravating factor.

(5) When sentencing a person who was under 18 years of age at the time of committing an offense to a term of imprisonment, the court shall indicate in the judgment:

(a) The age of the person at the time of committing the offense; and

(b) That the person is eligible for a hearing and release under ORS 144.397. [2019 c.634 §24]

**Note:** Section 32, chapter 634, Oregon Laws 2019, provides:

**Sec. 32.** (1) Sections 24 [161.740] and 25 [144.397], chapter 634, Oregon Laws 2019, and the amendments to ORS 137.071, 137.124, 137.705, 137.707, 137.712, 144.185, 161.610, 161.620, 163.105, 163.115, 163.155, 163A.130, 163A.135, 339.317, 339.319, 339.321, 419C.005, 419C.050, 419C.346, 419C.349, 419C.352, 419C.355, 419C.358, 419C.361, 420.011, 420.081 and 420A.203 and section 3, chapter 635, Oregon Laws 2019 [163.107], by sections 1 to 23 and 26 to 29, chapter 634, Oregon Laws 2019, and section 3a, chapter 635, Oregon Laws 2019, apply to sentences imposed on or after January 1, 2020.

(2) Notwithstanding subsection (1) of this section, sections 24 and 25, chapter 634, Oregon Laws 2019, and the amendments to ORS 137.071, 137.124, 137.705, 137.707, 137.712, 144.185, 161.610, 161.620, 163.105, 163.115, 163.155, 163A.130, 163A.135, 339.317, 339.319, 339.321, 419C.005, 419C.050, 419C.346, 419C.349, 419C.352, 419C.355, 419C.358, 419C.361, 420.011, 420.081 and 420A.203 and section 3, chapter 635, Oregon Laws 2019, by sections 1 to 23 and 26 to 29, chapter 634, Oregon Laws 2019, and section 3a, chapter 635, Oregon Laws 2019, do not apply to persons who were originally sentenced before January 1, 2020, and who are subsequently resentenced on or after January 1, 2020, as the result of an appellate decision or a post-conviction relief proceeding or for any other reason. [2019 c.634 §32; 2019 c.635 §3c; 2019 c.685 §4]