

Senate Bill 887

Sponsored by COMMITTEE ON RULES (at the request of Oregon Law Commission)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Provides for affirmative defense of mental disease or defect in juvenile delinquency proceedings. Establishes disposition for juveniles who successfully use affirmative defense and have serious mental condition or present substantial danger to others. Increases number of members on Psychiatric Security Review Board. Divides board into two panels. Appropriates moneys to board.

Declares emergency, effective July 1, 2003.

A BILL FOR AN ACT

Relating to juveniles; creating new provisions; amending ORS 21.010, 40.015, 137.290, 137.712, 151.216, 161.375, 161.385, 162.135, 181.594, 181.607, 419A.004, 419B.100, 419C.005, 419C.285, 419C.400, 419C.411, 419C.501, 419C.626 and 419C.656; appropriating money; and declaring an emergency.

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

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

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

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

(2) "Child" means a person within the jurisdiction of the juvenile court as provided in ORS 419B.100.

(3) "Child care center" means a residential facility for the care and supervision of children that is licensed under the provisions of ORS 418.240.

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

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

(6) "Counselor" means a juvenile department counselor.

(7) "Court" means the juvenile court.

(8) "Court appointed special advocate" or "CASA" means a person appointed by the court pursuant to a CASA Volunteer Program to act as special advocate for a child pursuant to ORS 419A.170.

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

(10) "Department" means the Department of Human Services.

(11) "Detention" or "detention facility" means a facility established under ORS 419A.010 to 419A.020 and 419A.050 to 419A.063 for the detention of dependent children or delinquent youth pursuant to a judicial commitment or order.

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

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

(13) “Guardian” means guardian of the person and not guardian of the estate.

(14) “Indian child” means any unmarried person less than 18 years of age who is:

(a) A member of an Indian tribe; or

(b) Eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

(15) “Juvenile court” means the court having jurisdiction of juvenile matters in the several counties of this state.

(16) “Local citizen review board” means the board specified by ORS 419A.090 and 419A.092.

(17) “Mental disease or defect” does not include an abnormality:

(a) Manifested only by repeated criminal or otherwise antisocial conduct;

(b) Constituting solely a personality disorder; or

(c) Constituting solely a conduct disorder.

[(17)] **(18)** “Parent” means the biological or adoptive mother of the child and the legal or adoptive father of the child. A legal father includes:

(a) A nonimpotent, nonsterile man who was cohabiting with his wife, who is the mother of the child, at the time of conception;

(b) A man married to the mother of the child at the time of birth, where there is no decree of separation and the presumption of paternity has not been disputed;

(c) A biological father who marries the mother of the child after the birth of the child;

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

(e) A biological father who has, with the mother, established paternity through a voluntary acknowledgment of paternity under ORS 109.070.

[(18)] **(19)** “Permanent foster care” means an out-of-home placement in which there is a long-term contractual foster care agreement between the foster parents and the department that is approved by the juvenile court and in which the foster parents commit to raise a foster child until the age of majority.

[(19)] **(20)** “Planned permanent living arrangement” means an out-of-home placement other than by adoption, placement with a relative or placement with a legal guardian that is consistent with the case plan and in the best interests of the child.

[(20)] **(21)** “Public building” has the meaning given that term in ORS 166.360.

[(21)] **(22)** “Reasonable time” means a period of time that is reasonable given a child’s emotional and developmental needs and ability to form and maintain lasting attachments.

[(22)] **(23)** “Records” means any information in written form, pictures, photographs, charts, graphs, recordings or documents pertaining to a case.

[(23)] **(24)** “Resides” or “residence,” when used in reference to the residence of a child or youth, means the place where the child or youth is actually living or the jurisdiction in which wardship of the child or youth has been established.

[(24)] **(25)** “Restitution” has the meaning given that term in ORS 137.103.

(26) “Serious mental condition” means:

(a) A mental illness of major depression;

(b) A mental illness of bipolar disorder;

(c) A mental illness of psychotic disorder; or

(d) A mental defect manifesting in significantly subaverage general intellectual functioning that is accompanied by significant limitations in adaptive functioning in at least two

1 **areas or characterized by severe and pervasive impairment manifested during the develop-**
 2 **mental period.**

3 [(25)] **(27)** "Serious physical injury" means:

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

5 (b) A physical injury that:

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

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

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

9 [(26)] **(28)** "Shelter care" means a home or other facility suitable for the safekeeping of a child
 10 who is taken into temporary custody pending investigation and disposition where the circumstances
 11 are such that the child does not need to be kept in secure custody.

12 [(27)] **(29)** "Short-term detention facility" means a facility established under ORS 419A.050 (3) for
 13 holding youths pending further placement.

14 [(28)] **(30)** "Substitute care" means an out-of-home placement directly supervised by the depart-
 15 ment or other agency, including placement in a foster family home, group home or other child caring
 16 institution or facility. "Substitute care" does not include care in:

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

18 (b) A family home which the court has approved as a child's permanent placement, where a
 19 private child caring agency has been appointed guardian of the child and where the child's care is
 20 entirely privately financed; or

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

22 [(29)] **(31)** "Surrogate" means a person appointed by the court to protect the right of the child
 23 to receive procedural safeguards with respect to the provision of free appropriate public education.

24 [(30)] **(32)** "Tribal court" means a court with jurisdiction over child custody proceedings and
 25 that is either a Court of Indian Offenses, a court established and operated under the code of custom
 26 of an Indian tribe or any other administrative body of a tribe that is vested with authority over child
 27 custody proceedings.

28 **(33) "Young person" means a person who has been found responsible except for insanity**
 29 **under ORS 419C.411 and placed under the jurisdiction of the Psychiatric Security Review**
 30 **Board.**

31 [(31)] **(34)** "Youth" means a person under 18 years of age who is alleged to have committed an
 32 act that is a violation, or, if done by an adult would constitute a violation, of a law or ordinance
 33 of the United States or a state, county or city.

34 [(32)] **(35)** "Youth care center" has the meaning given that term in ORS 420.855.

35 [(33)] **(36)** "Youth offender" means a person at least 12 years of age who has been found to be
 36 within the jurisdiction of the juvenile court under ORS 419C.005 for an act committed when the
 37 person was under 18 years of age.

38 **SECTION 2. Sections 3 to 5 of this 2003 Act are added to and made a part of ORS chapter**
 39 **419C.**

40 **SECTION 3. Mental disease or defect constituting insanity under ORS 419C.411 (2) is an**
 41 **affirmative defense.**

42 **SECTION 4. (1) A youth may not introduce evidence on the issue of a mental disease or**
 43 **defect defense, set forth in section 3 of this 2003 Act, unless the youth gives notice of intent**
 44 **to do so in the manner provided in subsection (2) of this section.**

45 **(2) A youth who is required under subsection (1) of this section to give notice must do**

so by filing a written notice of intent. A youth who is not in detention must file the notice of intent no later than 60 days after the petition is filed unless the court finds good cause to extend the time. If the youth fails to file notice timely, the youth may not introduce evidence for the establishment of a mental disease or defect defense unless the court permits the evidence to be introduced when just cause for failure to file the notice is shown.

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

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

SECTION 5. Upon the filing of a notice of intent or the introduction of evidence by the youth as provided in section 4 of this 2003 Act, the state may have at least one psychiatrist certified, or eligible to be certified, by the Board of Medical Examiners in child psychiatry or licensed psychologist with expertise in child psychology of its selection examine the youth. Unless the court finds good cause to extend the time, the state must obtain an examination under this section no later than 60 days after the notice of intent was filed or the evidence was introduced. The state shall file notice with the court of its intention to have the youth examined. Upon filing of the notice, the court shall order the youth to participate in an examination. If the youth objects to the examiner chosen by the state, the court for good cause shown may direct the state to select a different examiner. The examiner shall provide a copy of the report generated from the examination to the state. A report generated from an examination under this section is a report relating to the youth's history and prognosis under ORS 419A.255 (2).

SECTION 6. ORS 419C.005 is amended to read:

419C.005. (1) Except as otherwise provided in ORS 137.707, the juvenile court has exclusive original jurisdiction in any case involving a person who is under 18 years of age and who has committed an act [*which*] **that** is a violation, or [*which*] **that** if done by an adult would constitute a violation, of a law or ordinance of the United States or a state, county or city.

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

(3) The court [*shall have*] **has** no further jurisdiction as provided in subsection (1) of this section after a minor has been emancipated pursuant to ORS 419B.550 to 419B.558.

(4) The court's wardship over a person found to be within the court's jurisdiction under this section or ORS 419C.067 continues, and the person is subject to the court's jurisdiction, until one of the following occurs:

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

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

(c) The court enters an order terminating wardship.

(d) The person becomes 25 years of age.

(e) **The court places the person under the jurisdiction of the Psychiatric Security Review Board as provided in section 13 of this 2003 Act. If the court also has jurisdiction over the person based on a previous adjudication under this chapter or ORS chapter 419B, placing a person under the jurisdiction of the board in a later case does not terminate wardship under**

1 **the previous case unless the court so orders.**

2 **SECTION 7.** ORS 419C.285 is amended to read:

3 419C.285. (1) At the adjudication stage of a delinquency proceeding, the parties to the proceed-
4 ing are the youth and the state, represented by the district attorney or the juvenile department. At
5 the dispositional stage of a delinquency proceeding, the following are also parties:

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

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

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

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

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

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

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

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

16 (d) The right to appeal; [and]

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

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

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

22 (A) The reason the participation is sought;

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

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

26 (D) What specific relief is being sought.

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

29 (c) Persons petitioning for rights of limited participation are not entitled to court-appointed
30 counsel.

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

35 **SECTION 8.** ORS 419C.285, as amended by section 85, chapter 962, Oregon Laws 2001, is
36 amended to read:

37 419C.285. (1) At the adjudication stage of a delinquency proceeding, the parties to the proceed-
38 ing are the youth and the state, represented by the district attorney or the juvenile department. At
39 the dispositional stage of a delinquency proceeding, the following are also parties:

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

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

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

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

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

- (a) The right to notice of the proceeding and copies of the pleadings;
- (b) The right to appear with counsel and to have counsel appointed if otherwise provided by law;
- (c) The right to call witnesses, cross-examine witnesses and participate in hearings;
- (d) The right to appeal; *[and]*
- (e) The right to request a hearing; **and**

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

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

(A) The reason the participation is sought;

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

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

(D) What specific relief is being sought.

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

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

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

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

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

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

(3) If the youth files written notice of intent to rely on the mental disease or defect defense set forth in section 3 of this 2003 Act, the youth has the burden of proving the defense by a preponderance of the evidence.

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

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

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

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

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

(a) The youth asserted mental disease or defect as a defense as provided in section 4 of this 2003 Act; and

(b) The court determined by a preponderance of the evidence that, as a result of mental disease or defect at the time the youth committed the act alleged in the petition, the youth lacked substantial capacity either to appreciate the nature, unlawfulness and quality of the

1 **act or to conform the youth's conduct to the requirements of law.**

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

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

6 (b) Whether the manner in which the youth engaged in the conduct was aggressive, violent,
 7 premeditated or willful;

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

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

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

14 [(3)] (4) In addition to the factors listed in subsection [(2)] (3) of this section, the court may
 15 consider the following:

16 (a) Whether the youth has made any efforts toward reform or rehabilitation or making
 17 restitution;

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

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

20 (d) The disposition proposed by the youth;

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

23 (f) The youth's mental, emotional and physical health and the results of the mental health or
 24 substance abuse treatment; and

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

26 [(4)] (5) The court's consideration of matters under this section may be addressed on appeal only
 27 if raised by a party at a dispositional hearing or by a motion to modify or set aside under ORS
 28 419C.610.

29 **(6) When a youth is found responsible except for insanity, the court shall order a dispo-**
 30 **sition under section 13 of this 2003 Act if the court finds by a preponderance of the evidence**
 31 **that, at the time of disposition, the youth:**

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

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

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

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

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

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

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

42 419C.501. (1) **The court shall fix** the duration of any disposition made pursuant to this chapter
 43 [*shall be fixed by the court*] and **the duration** may be for an indefinite period. Any placement in the
 44 legal custody of the Department of Human Services or the Oregon Youth Authority under ORS
 45 419C.478 **or placement under the jurisdiction of the Psychiatric Security Review Board** shall

1 be for an indefinite period. However, [*in cases under ORS 419C.005,*] the period of
 2 institutionalization or commitment may not exceed:

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

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

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

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

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

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

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

11 (2) **Except as otherwise provided in subsection (3) of this section**, the period of any dispo-
 12 sition may not extend beyond the date on which the **young person or the** youth offender becomes
 13 25 years of age.

14 (3) **If a young person was found to be within the court's jurisdiction for having committed**
 15 **an act that, if committed by an adult, would constitute murder or any aggravated form of**
 16 **murder under ORS 163.095 or 163.115, disposition is for life.**

17 **SECTION 12.** Sections 13 to 20 of this 2003 Act are added to and made a part of ORS
 18 chapter 419C.

19 **SECTION 13.** (1) After the entry of a jurisdictional order under ORS 419C.411 (2), if the
 20 court finds by a preponderance of the evidence that the young person, at the time of dispo-
 21 sition, has a serious mental condition or has a mental disease or defect other than a serious
 22 mental condition and presents a substantial danger to others, requiring conditional release
 23 or commitment to a hospital or facility designated by the Department of Human Services,
 24 the court shall order the young person placed under the jurisdiction of the Psychiatric Se-
 25 curity Review Board.

26 (2) The court shall determine whether the young person should be committed to a hos-
 27 pital or facility designated by the department or conditionally released pending a hearing
 28 before the board as follows:

29 (a) If the court finds that the young person is not a proper subject for conditional re-
 30 lease, the court shall order the young person committed to a hospital or facility designated
 31 by the department for custody, supervision and treatment pending a hearing before the board
 32 in accordance with sections 15, 16, 17, 18 and 19 of this 2003 Act and shall order the young
 33 person placed under the jurisdiction of the board.

34 (b) If the court finds that the young person can be adequately controlled with supervision
 35 and treatment services if conditionally released and that necessary supervision and treat-
 36 ment services are available, the court may order the young person conditionally released,
 37 subject to those supervisory orders of the court that are in the best interests of justice and
 38 the young person. The court shall designate a qualified mental health or developmental dis-
 39 abilities treatment provider or state, county or local agency to supervise the young person
 40 on release, subject to those conditions as the court directs in the order for conditional re-
 41 lease. Prior to the designation, the court shall notify the qualified mental health or develop-
 42 mental disabilities treatment provider or agency to whom conditional release is contemplated
 43 and provide the qualified mental health or developmental disabilities treatment provider or
 44 agency an opportunity to be heard before the court. After receiving an order entered under
 45 this paragraph, the qualified mental health or developmental disabilities treatment provider

1 or agency designated shall assume supervision of the young person subject to the direction
 2 of the board. The qualified mental health or developmental disabilities treatment provider
 3 or agency designated as supervisor shall report in writing no less than once per month to
 4 the board concerning the supervised young person's compliance with the conditions of re-
 5 lease.

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

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

10 (4) Upon placing a young person on conditional release and ordering the young person
 11 placed under the jurisdiction of the board, the court shall notify the board in writing of the
 12 court's conditional release order, the supervisor designated and all other conditions of re-
 13 lease pending a hearing before the board in accordance with sections 15, 16, 17, 18 and 19 of
 14 this 2003 Act.

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

16 (a) Determine whether the parent or guardian of the young person is able and willing to
 17 assist the young person in obtaining necessary mental health or developmental disabilities
 18 services and is willing to acquiesce in the decisions of the board. If the court finds that the
 19 parent or guardian:

20 (A) Is able and willing to do so, the court shall order the parent or guardian to sign an
 21 irrevocable consent form in which the parent agrees to any placement decision made by the
 22 board.

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

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

29 (c) Include in the order a list of the parties who wish to be notified of any board hearing
 30 concerning the young person.

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

33 **SECTION 14.** As used in sections 13, 15, 17, 18 and 19 of this 2003 Act, "conditional
 34 release" includes but is not limited to, the monitoring of mental and physical health treat-
 35 ment.

36 **SECTION 15.** (1) The Psychiatric Security Review Board shall conduct hearings on an
 37 application for discharge, conditional release, commitment or modification filed under or re-
 38 quired by section 17, 18 or 19 of this 2003 Act, and shall make findings on the issues before
 39 the board.

40 (2) In every hearing before the board, the board shall determine whether the young per-
 41 son:

42 (a) Has a serious mental condition; or

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

45 (3) The board shall order a young person discharged from commitment or conditional

1 release if the board finds that the young person:

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

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

5 (4) The board shall order a young person conditionally released subject to section 17 of
6 this 2003 Act if the board finds that:

7 (a) The young person:

8 (A) Has a serious mental condition; or

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

11 (b) The young person can be controlled adequately if conditionally released with treat-
12 ment services as a condition of release; and

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

14 (5) The board shall order a young person committed to, or retained in, a hospital or fa-
15 cility designated by the Department of Human Services for custody, supervision and treat-
16 ment subject to section 18 of this 2003 Act if the board finds that the young person:

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

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

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

21 (6) In determining whether a young person should be committed to or retained in a hos-
22 pital or facility, conditionally released or discharged, the primary concern of the board is the
23 protection of society.

24 (7) In a hearing before the board, a young person who has a serious mental condition in
25 a state of remission is considered to have a serious mental condition requiring supervision
26 if the serious mental condition may, with reasonable medical probability, occasionally become
27 active.

28 (8) At any time, the Psychiatric Security Review Board may appoint a psychiatrist cer-
29 tified, or eligible to be certified, by the Board of Medical Examiners in child psychiatry or a
30 licensed psychologist with expertise in child psychology to examine the young person and
31 submit a report to the Psychiatric Security Review Board. Reports filed with the board pur-
32 suant to the examination must include, but need not be limited to, an opinion as to whether
33 the young person:

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

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

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

38 (9) The board may make a determination regarding discharge or conditional release based
39 upon the written reports submitted under subsection (8) of this section or section 18 (3) of
40 this 2003 Act. If a member of the board desires further information from the examining
41 psychiatrist or licensed psychologist who submitted the report, the board shall summon the
42 psychiatrist or psychologist to give testimony.

43 (10) The board shall consider all available evidence that is material, relevant and reliable
44 regarding the issues before the board. Evidence may include, but is not limited to, the record
45 of the juvenile court adjudication, information supplied by the attorney representing the

1 state or by any other interested party, including the young person, information concerning
 2 the young person's mental condition and the entire psychiatric and juvenile court history of
 3 the young person. All evidence of a type commonly relied upon by reasonably prudent per-
 4 sons in the conduct of their serious affairs is admissible at the hearings. Testimony must
 5 be taken upon oath or affirmation of the witness from whom received. The officer presiding
 6 at the hearing shall administer oaths and affirmations to witnesses.

7 (11) The standard of proof on all issues at a hearing of the board is by a preponderance
 8 of the evidence.

9 (12)(a) The board shall furnish written notice of any hearing pending under this section
 10 within a reasonable time prior to the hearing to:

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

12 (B) The attorney representing the young person;

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

14 (D) The Attorney General; and

15 (E) The district attorney and the court or juvenile department of the county in which the
 16 young person was adjudicated.

17 (b) The board shall include in the notice required by paragraph (a) of this subsection:

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

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

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

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

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

26 (a) To appear at all proceedings held under this section, except board deliberations.

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

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

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

32 (e) To examine all information, documents and reports that the board considers and, if
 33 the information, documents and reports are available to the board before the hearing, to
 34 examine them prior to the hearing.

35 (14) Except for deliberations of the board, the board shall keep a record of all hearings
 36 before the board.

37 (15) Upon request of a party before the board or on its own motion, the board may con-
 38 tinue a hearing for a reasonable period not to exceed 60 days to obtain additional information
 39 or testimony or for other good cause shown.

40 (16) Within 15 days after the conclusion of the hearing, the board shall provide written
 41 notice of the board's decision to the young person, the attorney representing the young
 42 person, the young person's parents or guardians, if known, the district attorney of the
 43 county in which the young person was adjudicated and the Attorney General or other at-
 44 torney representing the state, if any.

45 (17) The board shall maintain and keep current the medical, social and delinquency his-

1 tory of all young persons. The board shall determine the confidentiality of records main-
 2 tained by the board pursuant to ORS 192.501 to 192.505.

3 **SECTION 16.** (1) If the Psychiatric Security Review Board determines that a young per-
 4 son about whom a hearing under section 15 of this 2003 Act is being held is financially eligi-
 5 ble, the board shall appoint suitable counsel to represent the young person. Counsel
 6 appointed must be an attorney who satisfies the professional qualification standards estab-
 7 lished by the Public Defense Services Commission under ORS 151.216. The public defense
 8 services executive director shall determine and allow fair compensation for counsel appointed
 9 under this subsection and the reasonable expenses of the young person in respect to the
 10 hearing. Compensation payable to appointed counsel may not be less than the applicable
 11 compensation level established under ORS 151.216. The public defense services executive di-
 12 rector shall pay compensation and expenses allowed from funds available for that purpose.

13 (2) When the board appoints counsel to represent the young person, the board may order
 14 the young person, if able, parent, if able, or guardian of the estate, if the estate is able, to
 15 pay to the Public Defense Services Account in the General Fund, through the clerk of the
 16 court, in full or in part, the administrative costs of determining the ability of the young
 17 person, parent or estate to pay for legal services and the costs of the legal and other services
 18 that are related to the provision of appointed counsel. The board's order of payment may be
 19 entered in the County Clerk Lien Record and enforced as provided in ORS 205.126.

20 (3) The test of the young person's, parent's or estate's ability to pay costs under sub-
 21 section (2) of this section is the same test as applied to appointment of counsel for defend-
 22 ants under ORS 135.050 or under the rules adopted under ORS 151.216. If counsel is provided
 23 at state expense, the board shall apply this test in accordance with the guidelines adopted
 24 by the Public Defense Services Commission under ORS 151.485.

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

29 (5) The Attorney General may represent the state at contested hearings before the board
 30 unless the district attorney of the county in which the young person was adjudicated elects
 31 to represent the state. The district attorney of the county in which the young person was
 32 adjudicated shall cooperate with the Attorney General in securing the material necessary for
 33 presenting a contested hearing before the board. If the district attorney elects to represent
 34 the state, the district attorney shall give timely written notice to the Attorney General, the
 35 board and the attorney representing the young person.

36 **SECTION 17.** (1) When the Psychiatric Security Review Board orders a young person
 37 conditionally released under section 15 (4) of this 2003 Act, the board may designate a quali-
 38 fied mental health or developmental disabilities treatment provider or state, county or local
 39 agency to supervise the young person on release subject to those conditions as the board
 40 directs in the order for conditional release. Prior to the designation, the board shall notify
 41 the qualified mental health or developmental disabilities treatment provider or agency to
 42 whom conditional release is contemplated and provide the qualified mental health or devel-
 43 opmental disabilities treatment provider or agency an opportunity to be heard before the
 44 board. After receiving an order entered under section 15 (4) of this 2003 Act, the qualified
 45 mental health or developmental disabilities treatment provider or agency designated shall

1 assume supervision of the young person pursuant to the direction of the board.

2 (2) Conditions of release contained in orders entered under section 15 (4) of this 2003 Act
3 may be modified from time to time and conditional release may be terminated by order of
4 the board as provided in sections 15 and 19 of this 2003 Act.

5 (3)(a) As a condition of release, the board may require the young person to report to any
6 state, county or local mental health or developmental disabilities facility for evaluation.
7 Whenever medical, psychiatric or psychological treatment is recommended, the board may
8 order the young person, as a condition of release, to cooperate with and accept the treatment
9 of the facility.

10 (b) The facility to which the young person has been referred for evaluation shall perform
11 the evaluation and submit a written report of its findings to the board. If the facility finds
12 that treatment of the young person is appropriate, the facility shall include its recommen-
13 dations for treatment in the report to the board.

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

16 (d) The facility shall comply with any other conditions of release prescribed by order of
17 the board.

18 (4) If at any time it appears to the board or the chairperson of the juvenile panel of the
19 board that a young person has violated the terms of conditional release or that the mental
20 health of the young person has changed, the board or the chairperson of the juvenile panel
21 of the board may order the young person returned to a hospital or facility designated by the
22 Department of Human Services for evaluation and treatment. A written order of the board,
23 or the chairperson of the juvenile panel of the board on behalf of the board, is sufficient
24 warrant for any peace officer to take the young person into custody and transport the young
25 person accordingly. A peace officer shall execute the order, and the young person shall be
26 returned as soon as practicable to a facility designated by the department. Within 20 days
27 following the return of the young person to the facility designated by the department, the
28 board shall conduct a hearing. At a hearing required by this subsection, the state has the
29 burden of proving the young person's lack of fitness for conditional release.

30 (5) The community mental health and developmental disabilities program director, the
31 director of the facility providing treatment for the young person on conditional release, a
32 peace officer or a person responsible for the supervision of a young person on conditional
33 release may take a young person into custody or request that the young person be taken into
34 custody if there is reasonable cause to believe the young person presents a substantial dan-
35 ger to others and that the young person is in need of immediate custody, supervision and
36 treatment. A young person taken into custody under this subsection must immediately be
37 transported to a hospital or facility designated by the department. Within 20 days following
38 the return of the young person to the facility designated by the department, the board shall
39 conduct a hearing. At a hearing required by this subsection, the state has the burden of
40 proving the young person's lack of fitness for conditional release.

41 (6)(a) A young person conditionally released under section 15 (4) of this 2003 Act may
42 apply to the board for discharge from or modification of an order of conditional release on
43 the ground that the young person no longer has a serious mental condition or, if affected
44 by a mental disease or defect other than a serious mental condition, no longer presents a
45 substantial danger to others and no longer requires supervision or treatment services.

1 Within 60 days after receiving an application under this paragraph, the board shall conduct
 2 a hearing. At a hearing required by this paragraph, the young person has the burden of
 3 proving the young person's fitness for discharge or modification of the order of conditional
 4 release. A young person may not apply for discharge or modification of conditional release
 5 more often than once every six months.

6 (b) Upon application by any qualified mental health or developmental disabilities treat-
 7 ment provider or agency responsible for supervision or treatment services pursuant to an
 8 order of conditional release, the board shall conduct a hearing to determine if the conditions
 9 of release should be continued, modified or terminated. The application must be accompanied
 10 by a report setting forth the facts supporting the application. At a hearing required by this
 11 paragraph, the state has the burden of proving the young person's lack of fitness for dis-
 12 charge or modification of the order of conditional release.

13 **SECTION 18.** (1) The director of a hospital or facility to which a young person was com-
 14 mitted under section 15 (5) of this 2003 Act shall apply to the Psychiatric Security Review
 15 Board for an order of discharge or conditional release of the young person if, at any time
 16 after the commitment, the director is of the opinion that the young person:

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

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

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

22 (2) The director shall include in an application under subsection (1) of this section a re-
 23 port setting forth the facts that support the opinion of the director. If the application is for
 24 conditional release, the director shall also include a verified conditional release plan. The
 25 board shall hold a hearing on an application under subsection (1) of this section within 30
 26 days of its receipt. Not less than 10 days prior to the hearing before the board, copies of the
 27 report must be sent to the Attorney General, the district attorney of the county in which
 28 the young person was adjudicated, the young person, the young person's attorney and, if
 29 known, the young person's parents or guardians.

30 (3) The attorney representing the state may choose a psychiatrist certified, or eligible to
 31 be certified, by the Board of Medical Examiners in child psychiatry or a licensed psychologist
 32 with expertise in child psychology to examine the young person prior to any decision of the
 33 board on discharge or conditional release. The results of the examination must be in writing
 34 and filed with the board and must include, but need not be limited to, an opinion as to
 35 whether the young person:

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

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

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

40 (4) A young person who has been committed to a hospital or facility under section 15 (5)
 41 of this 2003 Act or the young person's parents or guardians acting on the young person's
 42 behalf may apply to the board for an order of discharge or conditional release upon the
 43 grounds that the young person:

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

45 (b) Has a mental disease or defect other than a serious mental condition but no longer

1 presents a substantial danger to others; or

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

4 (5) When an application is made under subsection (4) of this section, the board shall re-
5 quire a report from the director of the hospital or facility. The director shall prepare and
6 transmit the report as provided in subsection (2) of this section.

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

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

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

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

15 (a) Sooner than 90 days after the initial board hearing concerning the young person.

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

18 (8) The board shall hold a hearing on an application under subsection (4) of this section
19 within 30 days after the application is filed.

20 **SECTION 19.** (1) A young person committed by the court under section 13 of this 2003
21 Act to a hospital or facility designated by the Department of Human Services may not be
22 held in the hospital or facility for more than 90 days from the date of the court's commit-
23 ment order without an initial hearing before the Psychiatric Security Review Board to de-
24 termine whether the young person should be discharged or conditionally released.

25 (2) A young person may not be held pursuant to an order under section 15 (5) of this 2003
26 Act for a period of time exceeding one year without a hearing before the board to determine
27 whether the young person should be discharged or conditionally released.

28 (3) When a young person has spent three years on conditional release, the board shall
29 bring the young person before the board no later than 30 days after the expiration of the
30 three-year period. The board shall review the young person's status and determine whether
31 the young person should be discharged from the jurisdiction of the board.

32 (4) Notwithstanding the fact that a young person who is brought before the board under
33 subsection (3) of this section continues to have a serious mental condition, the board may
34 discharge the young person if, during the period of conditional release, the young person did
35 not exhibit behaviors that presented a substantial danger to others and did demonstrate
36 mental health stability.

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

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

1 **person's case with the juvenile panel.**

2 **SECTION 21.** ORS 161.385 is amended to read:

3 161.385. (1) There is hereby created a Psychiatric Security Review Board consisting of *[five]* **10**
4 members appointed by the Governor and subject to confirmation by the Senate under section 4,
5 Article III of the Oregon Constitution.

6 (2) The membership of the board *[shall]* **may** not include any district attorney, deputy district
7 attorney or public defender. *[, but, the membership shall be composed of]* **The Governor shall ap-**
8 **point:**

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

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

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

16 *[(d) A member of the general public; and]*

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

18 **(e) A psychiatrist certified, or eligible to be certified, by the Board of Medical Examiners**
19 **in child psychiatry who is experienced in the juvenile justice system and not employed on a**
20 **full-time basis by the Department of Human Services or a community mental health and**
21 **developmental disabilities program;**

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

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

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

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

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

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

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

42 **(6) The board consists of two five-member panels. One panel is responsible for persons**
43 **placed under the board's jurisdiction under ORS 161.327 and section 20 of this 2003 Act and**
44 **consists of those members appointed under subsection (1)(a) to (d) of this section and one**
45 **of the public members. The other panel is responsible for young persons placed under the**

board's jurisdiction under section 13 of this 2003 Act and consists of those members appointed under subsection (1)(e) to (h) of this section and the other public member.

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

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

[(7)] (8) [The board] Each panel shall meet at least twice every month, unless the chairperson determines that there is not sufficient business before the [board] panel to warrant a meeting at the scheduled time. The [board] 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 [board] panel.

[(8)(a)] (9)(a) When a person over whom a panel of the board exercises its jurisdiction is adversely affected or aggrieved by a final order of the [board] panel, the person is entitled to judicial review of the final order. The person shall be entitled on judicial review to suitable counsel possessing skills and experience commensurate with the nature and complexity of the case. If the person is indigent, suitable counsel shall be appointed by the reviewing court in the manner provided in ORS 138.500 (1). If the person is indigent, the reviewing court shall determine and allow, 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.

(b) 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] panel 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] panel.

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

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

SECTION 22. ORS 161.385, as amended by section 70, chapter 962, Oregon Laws 2001, is amended to read:

161.385. (1) There is hereby created a Psychiatric Security Review Board consisting of [five] 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 [shall] may not include any district attorney, deputy district attorney or public defender. [, but the membership shall be composed of] **The Governor shall appoint:**

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

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

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

1 [(d) A member of the general public; and]

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

3 (e) A psychiatrist certified, or eligible to be certified, by the Board of Medical Examiners
4 in child psychiatry who is experienced in the juvenile justice system and not employed on a
5 full-time basis by the Department of Human Services or a community mental health and
6 developmental disabilities program;

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

10 (g) A member with substantial experience in the processes of juvenile parole and pro-
11 bation;

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

13 (i) Two members of the general public.

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

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

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

27 (6) **The board consists of two five-member panels. One panel is responsible for persons**
28 **placed under the board's jurisdiction under ORS 161.327 and section 20 of this 2003 Act and**
29 **consists of those members appointed under subsection (1)(a) to (d) of this section and one**
30 **of the public members. The other panel is responsible for young persons placed under the**
31 **board's jurisdiction under section 13 of this 2003 Act and consists of those members ap-**
32 **pointed under subsection (1)(e) to (h) of this section and the other public member.**

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

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

37 [(7)] (8) [The board] **Each panel** shall meet at least twice every month, unless the chairperson
38 determines that there is not sufficient business before the [board] **panel** to warrant a meeting at the
39 scheduled time. The [board] **panel** shall also meet at other times and places specified by the call of
40 the chairperson or of a majority of the members of the [board] **panel**.

41 [(8)(a)] (9)(a) When a person over whom **a panel of** the board exercises its jurisdiction is ad-
42 versely affected or aggrieved by a final order of the [board] **panel**, the person is entitled to judicial
43 review of the final order. The person is entitled on judicial review to suitable counsel possessing
44 skills and experience commensurate with the nature and complexity of the case. If the person is fi-
45 nancially eligible, suitable counsel shall be appointed by the reviewing court in the manner provided

1 in ORS 138.500 (1). If the person is financially eligible, the public defense services executive director
 2 shall determine and pay, as provided in ORS 138.500, the cost of briefs, any other expenses of the
 3 person necessary to the review and compensation for counsel appointed for the person. The costs,
 4 expenses and compensation so allowed shall be paid as provided in ORS 138.500.

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

11 (c) The court may affirm, reverse or remand the order on the same basis as provided in ORS
 12 183.482 (8).

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

16 **SECTION 23.** ORS 137.290 is amended to read:

17 137.290. (1) In all cases of conviction for the commission of a crime or violation, excluding
 18 parking violations, the trial court, whether a circuit, justice or municipal court, shall impose upon
 19 the defendant, in addition to any other monetary obligation imposed, a unitary assessment under this
 20 section. **Except when the person successfully asserts the affirmative defense set forth in**
 21 **section 3 of this 2003 Act,** the unitary assessment shall also be imposed by the circuit court and
 22 county court in juvenile cases under ORS 419C.005 (1). The unitary assessment is a penal obligation
 23 in the nature of a fine and shall be in an amount as follows:

24 (a) \$105 in the case of a felony.

25 (b) \$65 in the case of a misdemeanor.

26 (c) \$95 in the case of a conviction for driving under the influence of intoxicants.

27 (d) \$35 in the case of a violation as described in ORS 153.008.

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

30 (a) \$40 if the defendant was driving a vehicle that requires a commercial driver license to op-
 31 erate and the conviction was for violating:

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

34 (B) ORS 811.115 by driving at least 65 miles per hour; and

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

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

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

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

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

SECTION 24. ORS 137.712 is amended to read:

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

(b) In order to make a dispositional departure under this section, the court must make the following additional findings on the record:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (a) A crime listed in ORS 137.700 (2) or 137.707 (4);
 - 2 (b) Escape in the first degree, as defined in ORS 162.165;
 - 3 (c) Aggravated murder, as defined in ORS 163.095;
 - 4 (d) Criminally negligent homicide, as defined in ORS 163.145;
 - 5 (e) Assault in the third degree, as defined in ORS 163.165;
 - 6 (f) Criminal mistreatment in the first degree, as defined in ORS 163.205 (1)(b)(A);
 - 7 (g) Rape in the third degree, as defined in ORS 163.355;
 - 8 (h) Sodomy in the third degree, as defined in ORS 163.385;
 - 9 (i) Sexual abuse in the second degree, as defined in ORS 163.425;
 - 10 (j) Stalking, as defined in ORS 163.732;
 - 11 (k) Burglary in the first degree, as defined in ORS 164.225, when it is classified as a person
 - 12 felony under the rules of the Oregon Criminal Justice Commission;
 - 13 (L) Arson in the first degree, as defined in ORS 164.325;
 - 14 (m) Robbery in the third degree, as defined in ORS 164.395;
 - 15 (n) Intimidation in the first degree, as defined in ORS 166.165;
 - 16 (o) Promoting prostitution, as defined in ORS 167.012; and
 - 17 (p) An attempt or solicitation to commit any Class A or B felony listed in paragraphs (a) to (L)
 - 18 of this subsection.
- 19 (5) Notwithstanding ORS 137.545 (5)(b), if a person sentenced to probation under this section
- 20 violates a condition of probation by committing a new crime, the court shall revoke the probation
- 21 and impose the presumptive sentence of imprisonment under the rules of the Oregon Criminal Jus-
- 22 tice Commission.
- 23 (6) As used in this section:
- 24 (a) "Conviction" includes, but is not limited to:
- 25 (A) A juvenile court adjudication finding a person within the court's jurisdiction under ORS
- 26 419C.005, if the person was at least 15 years of age at the time the person committed the offense
- 27 that brought the person within the jurisdiction of the juvenile court. **"Conviction" does not include**
- 28 **a juvenile court adjudication described in this subparagraph if the person successfully as-**
- 29 **serted the affirmative defense set forth in section 3 of this 2003 Act.**
- 30 (B) A conviction in another jurisdiction for a crime that if committed in this state would con-
- 31 stitute a crime listed in subsection (4) of this section.
- 32 (b) "Previous conviction" means a conviction that was entered prior to imposing sentence on the
- 33 current crime provided that the prior conviction is based on a crime committed in a separate crim-
- 34 inal episode. "Previous conviction" does not include a conviction for a Class C felony, including an
- 35 attempt or solicitation to commit a Class B felony, or a misdemeanor, unless the conviction was
- 36 entered within the 10-year period immediately preceding the date on which the current crime was
- 37 committed.
- 38 (c) "Significant physical injury" means a physical injury that:
- 39 (A) Creates a risk of death that is not a remote risk;
- 40 (B) Causes a serious and temporary disfigurement;
- 41 (C) Causes a protracted disfigurement; or
- 42 (D) Causes a prolonged impairment of health or the function of any bodily organ.
- 43 **SECTION 25.** ORS 151.216, as amended by section 106, chapter 962, Oregon Laws 2001, is
- 44 amended to read:
- 45 151.216. (1) The Public Defense Services Commission shall:

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

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

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

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

12 (e) Adopt a compensation plan for the office of public defense services that is commensurate
13 with other state agencies.

14 (f) Adopt rules regarding:

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

17 (B) The appointment of counsel;

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

20 (D) Appointed counsel compensation disputes;

21 (E) Any other costs associated with the representation of a person by appointed counsel in the
22 state courts that are required to be paid by the state under ORS 34.355, 135.055, 138.500, 138.590,
23 161.365, 419A.211, 419B.201, 419B.208, 419B.518, 419B.908, 419C.206, 419C.209, 419C.408, 426.100,
24 426.135, 426.250, 426.307, 427.265, 427.295, 436.265 or 436.315 **or section 16 of this 2003 Act** or any
25 other provision of law that expressly provides for payment of such compensation, costs or expenses
26 by the commission;

27 (F) Professional qualification standards for counsel appointed to represent public defense clients;

28 (G) Performance standards for legal representation;

29 (H) Procedures for the contracting of public defense services; and

30 (I) Any other matters necessary to carry out the duties of the commission.

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

34 (2) Rules adopted by the commission supersede any conflicting rules, policies or procedures of
35 the Public Defender Committee, State Court Administrator, circuit courts, the Court of Appeals, the
36 Supreme Court and the Psychiatric Security Review Board related to the exercise of the commis-
37 sion's administrative responsibilities under this section and transferred duties, functions and powers
38 as they occur.

39 (3) The commission may accept gifts, grants or contributions from any source, whether public
40 or private. However, the commission may not accept a gift, grant or contribution if acceptance
41 would create a conflict of interest. Moneys accepted under this subsection shall be deposited in the
42 Public Defense Services Account created in ORS 151.225 and expended for the purposes for which
43 given or granted.

44 (4) The commission may not:

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

(b) Have access to any case file; or

(c) Interfere with the director or any member of the staff of the director in carrying out professional duties involving the legal representation of public defense clients.

SECTION 26. ORS 161.375 is amended to read:

161.375. (1) When a patient, who has been placed at the Oregon State Hospital for evaluation, care, custody and treatment under the jurisdiction of the Psychiatric Security Review Board or by court order under ORS 161.315, 161.365 or 161.370 **or section 5 of this 2003 Act**, has escaped or is absent without authorization from the Oregon State 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) The superintendent may issue an order under this section based upon a reasonable belief that grounds exist for issuing the order. When reasonable, the superintendent shall investigate to ascertain whether such grounds exist.

(3) Any order issued by the superintendent 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 under this section expires 72 hours after being signed by the superintendent.

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

SECTION 27. ORS 162.135 is amended to read:

162.135. As used in ORS 162.135 to 162.205, unless the context requires otherwise:

(1)(a) "Contraband" means:

(A) Controlled substances as defined in ORS 475.005;

(B) Drug paraphernalia as defined in ORS 475.525;

(C) Except as otherwise provided in paragraph (b) of this subsection, currency possessed by or in the control of an inmate confined in a correctional facility; or

(D) Any article or thing which a person confined in a correctional facility, youth correction facility or state hospital is prohibited by statute, rule or order from obtaining or possessing, and whose use would endanger the safety or security of such institution or any person therein.

(b) "Contraband" does not include authorized currency possessed by an inmate in a work release facility.

(2) "Correctional facility" means any place used for the confinement of persons charged with or convicted of a crime or otherwise confined under a court order and includes but is not limited to a youth correction facility. "Correctional facility" applies to a state hospital only as to persons detained *[therein]* **in the hospital:**

(a) **Who are** charged with or convicted of a crime; *[or detained therein]*

(b) After acquittal of a crime by reason of mental disease or defect under ORS 161.290 to 161.370; **or**

(c) **After being placed under the jurisdiction of the Psychiatric Security Review Board under section 13 of this 2003 Act.**

(3) "Currency" means paper money and coins that are within the correctional institution.

(4) "Custody" means the imposition of actual or constructive restraint by a peace officer pursuant to an arrest or court order, but does not include detention in a correctional facility, youth correction facility or a state hospital.

(5) "Escape" means the unlawful departure of a person from custody or a correctional facility.

1 “Escape” includes the unauthorized departure or absence from this state or failure to return to this
 2 state by a person who is under the jurisdiction of the Psychiatric Security Review Board.
 3 “Escape” does not include failure to comply with provisions of a conditional release in ORS 135.245.

4 (6) “Youth correction facility” means:

5 (a) A youth correction facility as defined in ORS 420.005; and

6 (b) A detention facility as defined in ORS 419A.004.

7 (7) “State hospital” means the Oregon State Hospital, Eastern Oregon Psychiatric Center,
 8 Eastern Oregon Training Center and any other hospital established by law for similar purposes.

9 (8) “Unauthorized departure” means the unauthorized departure of a person confined by court
 10 order in a youth correction facility or a state hospital that, because of the nature of the court order,
 11 is not a correctional facility as defined in this section, or the failure to return to custody after any
 12 form of temporary release or transitional leave from a correctional facility.

13 **SECTION 28.** ORS 40.015 is amended to read:

14 40.015. (1) The Oregon Evidence Code applies to all courts in this state except for:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

40 **SECTION 29.** ORS 419C.626 is amended to read:

41 419C.626. (1) Upon receiving any report required by ORS 419C.620, the court may hold a hearing
 42 to review the youth offender’s condition and circumstances and to determine if the court should
 43 continue jurisdiction over the youth offender or order modifications in the care, placement and
 44 supervision of the youth offender. The court shall hold a hearing if requested by the youth offender,
 45 the attorney for the youth offender, if any, the parents or the public or private agency having

guardianship or legal custody of the youth offender within 30 days of receipt of the notice provided in ORS 419C.629.

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

(a) Why continued care is necessary as opposed to returning the youth offender to the youth offender's home or prompt action to secure another permanent placement; or

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

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

SECTION 30. ORS 419C.656 is amended to read:

419C.656. (1) The court shall enter an order within 20 days after the review hearing. Where the youth is in substitute care, the order shall include a determination of:

(a) Whether or not the youth should be returned to the parent;

(b) Whether or not the youth should be placed for adoption;

(c) Whether the youth should continue in substitute care for a specified period; or

(d) Whether, because of special needs or circumstances, the youth should be placed in the permanent custody or guardianship of a responsible relative or other individual or should continue in substitute care on a permanent or long-term basis.

(2) If the court determines that the youth shall be placed or continued in substitute care or placed in the custody or guardianship of a relative or other responsible individual, the court shall enter written findings specifying why neither placement with parents nor adoption is appropriate. If the current placement is not expected to be permanent, the court shall specify a projected timetable for return home or another permanent placement. If the timetable set forth by the court is not met, the Oregon Youth Authority shall promptly notify the court and parties.

(3) In the course of the dispositional review hearing, the court may determine the adequacy of and compliance with the case plan and case progress report. In addition to other orders, the court may:

(a) Order the youth authority to develop or expand a case plan or case progress report which must be submitted within 10 days after the hearing;

(b) Set a court hearing at a specific later time;

(c) Direct the local citizen review board to review the status of the youth prior to its next review under ORS 419A.106, 419A.108, 419A.110, 419A.112, 419A.116 and 419A.118;

(d) Order the youth authority or other agency directly responsible for the youth to modify the care, placement and supervision of the youth; and

(e) Determine whether the youth authority or other agency directly responsible for the youth has made reasonable efforts to reunify the family.

(4) The dispositional review hearing shall be conducted in the manner provided in ORS 419C.400 (1), 419C.405 and 419C.408, except that the court may receive testimony and reports as provided in ORS 419C.400 [(3)] (4).

(5) Any final decision of the court made pursuant to the dispositional review hearing is appealable under ORS 419A.200.

SECTION 31. Section 32 of this 2003 Act is added to and made a part of ORS chapter

1 **419A.**

2 **SECTION 32.** (1)(a) Once each month, the Department of Human Services shall provide
3 to each school district a list of all young persons enrolled in a school in the school district
4 who are on conditional release. The department shall include in the list the name and busi-
5 ness telephone number of the caseworker assigned to each case.

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

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

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

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

19 (b) May notify the school district of the specific offense if the act that brought the young
20 person within the jurisdiction of the juvenile court involved a violation of ORS 163.355 to
21 163.445 or 163.465 or any other offense if the department believes the young person repres-
22 ents a risk to other students or school staff.

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

25 **SECTION 33.** ORS 181.607 is amended to read:

26 181.607. (1)(a) No later than 90 days after the termination of juvenile court jurisdiction or, if
27 the person was placed under the jurisdiction of the Psychiatric Security Review Board under
28 section 13 of this 2003 Act, board jurisdiction over a person required to report under ORS 181.595,
29 181.596 or 181.597, the person may file a petition for relief from the duty to report. The person must
30 file the petition in the juvenile court in which the person was adjudicated for the act that requires
31 reporting.

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

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

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

38 (2) When a person files a petition under this section, the state has the burden of proving by
39 clear and convincing evidence that the person is not rehabilitated and continues to pose a threat
40 to the safety of the public. In determining whether the state has met its burden of proof, the juvenile
41 court may consider but need not be limited to considering:

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

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

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

45 (d) Whether the act was premeditated;

- 1 (e) Whether the person took advantage of a position of authority or trust in committing the act;
- 2 (f) The age of any victim at the time of the act, the age difference between any victim and the
- 3 person and the number of victims;
- 4 (g) The vulnerability of the victim;
- 5 (h) Other acts committed by the person that would be crimes if committed by an adult and
- 6 criminal activities engaged in by the person before and after the adjudication;
- 7 (i) Statements, documents and recommendations by or on behalf of the victim or the parents of
- 8 the victim;
- 9 (j) The person's willingness to accept personal responsibility for the act and personal account-
- 10 ability for the consequences of the act;
- 11 (k) The person's ability and efforts to pay the victim's expenses for counseling and other
- 12 trauma-related expenses or other efforts to mitigate the effects of the act;
- 13 (L) Whether the person has participated in and satisfactorily completed a sex offender treatment
- 14 program or any other intervention, and if so the juvenile court may also consider:
- 15 (A) The availability, duration and extent of the treatment activities;
- 16 (B) Reports and recommendations from the providers of the treatment;
- 17 (C) The person's compliance with court, **board** or supervision requirements regarding treatment;
- 18 and
- 19 (D) The quality and thoroughness of the treatment program;
- 20 (m) The person's academic and employment history;
- 21 (n) The person's use of drugs or alcohol before and after the adjudication;
- 22 (o) The person's history of public or private indecency;
- 23 (p) The person's compliance with and success in completing the terms of supervision;
- 24 (q) The results of psychological examinations of the person;
- 25 (r) The protection afforded the public by the continued existence of the records; and
- 26 (s) Any other relevant factors.
- 27 (3) If the person or, if the person is less than 18 years of age, the parent or guardian of the
- 28 person requests counsel for the person but is without sufficient financial means to employ suitable
- 29 counsel possessing skills and experience commensurate with the nature of the petition, the court
- 30 may appoint suitable counsel to represent the person. Appointment of counsel under this subsection
- 31 is subject to ORS 419C.200, 419C.203, 419C.206 and 419C.209.
- 32 (4) When a petition is filed under this section, the state has the right to have a psychosexual
- 33 evaluation of the person conducted. The state shall file notice with the juvenile court of its intention
- 34 to have the person evaluated. If the person objects to the evaluator chosen by the state, the juvenile
- 35 court for good cause shown may direct the state to select a different evaluator.
- 36 (5) As soon as practicable after a petition has been filed under this section, the district attorney
- 37 shall make a reasonable effort to notify the victim of the crime that the person has filed a petition
- 38 seeking relief under this section.
- 39 (6) When a juvenile court enters an order relieving a person of the requirement to report under
- 40 ORS 181.595, 181.596 or 181.597, the person is responsible for sending a certified copy of the juvenile
- 41 court order to the Department of State Police.
- 42 **SECTION 34.** ORS 419B.100 is amended to read:
- 43 419B.100. (1) Except as otherwise provided in subsection (6) of this section and ORS 107.726, the
- 44 juvenile court has exclusive original jurisdiction in any case involving a person who is under 18
- 45 years of age and:

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

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

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

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

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

9 (A) Abandoned the person;

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

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

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

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

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

16 **(h) For whom an order has been entered under ORS 419C.411 (7)(a).**

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

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

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

25 (5) The court shall have no further jurisdiction as provided in subsection (1) of this section after
26 a minor has been emancipated pursuant to ORS 419B.550 to 419B.558.

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

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

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

39 **SECTION 35.** ORS 21.010 is amended to read:

40 21.010. (1) Except as provided in subsection (2) of this section, the appellant in an appeal or the
41 petitioner in a judicial review in the Supreme Court or the Court of Appeals shall pay a filing fee
42 of \$140 in the manner prescribed by ORS 19.265. The respondent in such case, upon entering first
43 appearance or filing first brief in the court, shall pay to the State Court Administrator the sum of
44 \$84. The party entitled to costs and disbursements on such appeal shall recover from the opponent
45 the amount so paid.

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

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

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

SECTION 36. ORS 181.594 is amended to read:

181.594. As used in ORS 181.595, 181.596, 181.597 and 181.603:

(1)(a) "Correctional facility" means any place used for the confinement of persons:

(A) Charged with or convicted of a crime or otherwise confined under a court order.

(B) Found to be within the jurisdiction of the juvenile court for having committed an act that if committed by an adult would constitute a crime.

(b) "Correctional facility" applies to a state hospital only as to persons detained *[therein]* **in the hospital:**

(A) Who are charged with or convicted of a crime; *[or detained therein]*

(B) After being found guilty except for insanity under ORS 161.290 to 161.370; or

(C) After being placed under the jurisdiction of the Psychiatric Security Review Board under section 13 of this 2003 Act.

(2) "Sex crime" means:

(a) Rape in any degree;

(b) Sodomy in any degree;

(c) Unlawful sexual penetration in any degree;

(d) Sexual abuse in any degree;

(e) Incest with a child victim;

(f) Using a child in a display of sexually explicit conduct;

(g) Encouraging child sexual abuse in any degree;

(h) Transporting child pornography into the state (1993 Edition);

(i) Paying for viewing a child's sexually explicit conduct (1993 Edition);

(j) Compelling prostitution;

(k) Promoting prostitution;

(L) Kidnapping in the first degree if the victim was under 18 years of age;

(m) Contributing to the sexual delinquency of a minor;

(n) Sexual misconduct if the offender is at least 18 years of age;

(o) Possession of materials depicting sexually explicit conduct of a child in the first degree;

(p) Kidnapping in the second degree if the victim was under 18 years of age, except by a parent or by a person found to be within the jurisdiction of the juvenile court;

(q) Any attempt to commit any of the crimes set forth in paragraphs (a) to (p) of this subsection;

(r) Burglary, when committed with intent to commit any of the offenses listed in paragraphs (a) to (p) or (s) of this subsection; or

(s) Public indecency or private indecency, if the person has a prior conviction for a crime listed in paragraphs (a) to (r) of this subsection.

(3) "Sex offender" means a person who:

(a) Has been convicted of a sex crime;

(b) Has been found guilty except for insanity of a sex crime;

(c) Has been found to be within the jurisdiction of the juvenile court for having committed an act that if committed by an adult would constitute a sex crime; or

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

SECTION 37. (1) The Governor shall appoint the five members of the Psychiatric Security Review Board added to the board by the amendments to ORS 161.385 by sections 21 and 22 of this 2003 Act before the operative date of section 3 of this 2003 Act.

(2) Notwithstanding the terms of office specified in ORS 161.385, of the members appointed to the board under subsection (1) of this section:

(a) One serves a term ending July 1, 2004.

(b) One serves a term ending July 1, 2005.

(c) One serves a term ending July 1, 2006.

(d) Two serve terms ending July 1, 2007.

SECTION 38. There is appropriated to the Psychiatric Security Review Board, for the biennium beginning July 1, 2003, out of the General Fund, the amount of \$_____ for the purpose of carrying out the duties, functions and powers of the board relating to persons found responsible except for insanity under ORS 419C.411.

SECTION 39. The dispositions described in section 13 of this 2003 Act apply to any proceeding initiated by a petition alleging jurisdiction under ORS 419C.005 for which the court has not entered an order directing disposition of the case before the operative date of section 3 of this 2003 Act.

SECTION 40. Sections 2 to 5, 12 to 20, 31 and 32 of this 2003 Act and the amendments to ORS 40.015, 137.290, 137.712, 151.216, 161.375, 162.135, 181.607, 419A.004, 419B.100, 419C.005, 419C.285, 419C.400, 419C.411, 419C.501, 419C.626 and 419C.656 by sections 1, 6 to 11, 23 to 30 and 33 to 36 of this 2003 Act become operative January 1, 2004.

SECTION 41. This 2003 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2003 Act takes effect July 1, 2003.