

Senate Bill 66

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor Kate Brown for Psychiatric Security Review Board)

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**.

Requires court to notify person found guilty except for insanity of sex crime of obligation to report as sex offender.

Requires court to notify person found to be person with mental illness when state or federal law prohibits person from purchasing or possessing firearm unless person obtains relief from prohibition.

Requires court to notify person determined to lack fitness to proceed that federal law prohibits person from purchasing or possessing firearm unless person obtains relief from prohibition.

A BILL FOR AN ACT

1
2 Relating to notifications provided to persons with mental illness; amending ORS 161.370, 163A.050
3 and 426.130.

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

5 **SECTION 1.** ORS 163A.050 is amended to read:

6 163A.050. (1) When the court imposes sentence upon a person convicted of a sex crime **or finds**
7 **a person guilty except for insanity of a sex crime**, the court shall notify the person of the obli-
8 gation to report as a sex offender under ORS 163A.010 and 163A.015.

9 (2) At the initial intake for incarceration or release on any type of supervised release, the sex
10 offender shall complete a form that documents the offender's obligation to report under ORS
11 163A.010 or 163A.015 and the effect described in ORS 163A.115 of failing to submit to a sex offender
12 risk assessment. The Department of State Police shall develop and provide the form. No later than
13 three working days after the sex offender completes the form, the person responsible for the intake
14 process shall send the form to the Department of State Police.

15 **SECTION 2.** ORS 426.130 is amended to read:

16 426.130. (1) After hearing all of the evidence, and reviewing the findings of the examiners, the
17 court shall determine whether the person has a mental illness and is in need of treatment. If, in the
18 opinion of the court, the person:

19 (a) Is a person with mental illness based upon clear and convincing evidence, the court:

20 (A) Shall order the release of the person and dismiss the case if:

21 (i) The person is willing and able to participate in treatment on a voluntary basis; and

22 (ii) The court finds that the person will probably do so.

23 (B) May order conditional release under this subparagraph subject to the qualifications and re-
24 quirements under ORS 426.125. If the court orders conditional release under this subparagraph, the
25 court shall establish a period of commitment for the conditional release.

26 (C) May order commitment of the person with mental illness to the Oregon Health Authority for
27 treatment if, in the opinion of the court, subparagraph (A) or (B) of this paragraph is not in the best
28 interest of the person. If the court orders commitment under this subparagraph:

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

1 (i) The court shall establish a period of commitment.

2 (ii) The authority may place the committed person in outpatient commitment under ORS 426.127.

3 (D) Shall order that the person be prohibited from purchasing or possessing a firearm if, in the
 4 opinion of the court, there is a reasonable likelihood the person would constitute a danger to self
 5 or others or to the community at large as a result of the person's mental or psychological state as
 6 demonstrated by past behavior or participation in incidents involving unlawful violence or threats
 7 of unlawful violence, or by reason of a single incident of extreme, violent, unlawful conduct. When
 8 a court makes an order under this subparagraph, the court shall cause a copy of the order to be
 9 delivered to the sheriff of the county who will enter the information into the Law Enforcement Data
 10 System.

11 (b) Is not a person with mental illness, the court shall release the person from custody if the
 12 person has been detained under ORS 426.070, 426.180, 426.228, 426.232 or 426.233 and:

13 (A) Dismiss the case; or

14 (B) Order the person to participate in assisted outpatient treatment in accordance with ORS
 15 426.133. The court may continue the proceeding for no more than seven days to allow time for the
 16 community mental health program director to develop the person's assisted outpatient treatment
 17 plan.

18 (2) A court that orders a conditional release, a commitment or assisted outpatient treatment
 19 under this section shall establish a period of commitment or treatment for the person subject to the
 20 order. Any period of commitment ordered for commitment or conditional release under this section
 21 shall be for a period of time not to exceed 180 days. A period of assisted outpatient treatment shall
 22 be for a period of time not to exceed 12 months.

23 (3) If the commitment proceeding was initiated under ORS 426.070 (1)(a) and if the notice in-
 24 cluded a request under ORS 426.070 (2)(d)(B), the court shall notify the two persons of the court's
 25 determination under subsection (1) of this section.

26 **(4) If the court finds that the person is a person with mental illness and either orders**
 27 **commitment under subsection (1)(a)(B) or (C) of this section or enters an order under sub-**
 28 **section (1)(a)(D) of this section, the court shall notify the person that the person is prohib-**
 29 **ited from purchasing or possessing a firearm under state and federal law unless the person**
 30 **obtains relief from the prohibition from the Psychiatric Security Review Board under ORS**
 31 **166.273 or under federal law. The court shall cause a copy of the notification to be delivered**
 32 **to the sheriff of the county and to the Oregon Health Authority who shall enter the infor-**
 33 **mation into the Law Enforcement Data System.**

34 **SECTION 3.** ORS 161.370 is amended to read:

35 161.370. (1) When the defendant's fitness to proceed is drawn in question, the issue shall be de-
 36 termined by the court. If neither the prosecuting attorney nor counsel for the defendant contests the
 37 finding of the report filed under ORS 161.365, the court may make the determination on the basis
 38 of the report. If the finding is contested, the court shall hold a hearing on the issue. If the report
 39 is received in evidence in the hearing, the party who contests the finding has the right to summon
 40 and to cross-examine any psychiatrist or psychologist who submitted the report and to offer evidence
 41 upon the issue. Other evidence regarding the defendant's fitness to proceed may be introduced by
 42 either party.

43 (2) If the court determines that the defendant lacks fitness to proceed, the criminal proceeding
 44 against the defendant shall be suspended and:

45 (a) If the court finds that the defendant is dangerous to self or others as a result of mental

1 disease or defect, or that, based on the findings resulting from the consultation described in ORS
2 161.365 (1), the services and supervision necessary to restore the defendant's fitness to proceed are
3 not available in the community, the court shall commit the defendant to the custody of the super-
4 intendent of a state mental hospital or director of a facility, designated by the Oregon Health Au-
5 thority, if the defendant is at least 18 years of age, or to the custody of the director of a secure
6 intensive community inpatient facility designated by the authority if the defendant is under 18 years
7 of age; or

8 (b) If the court does not make a finding described in paragraph (a) of this subsection, or if the
9 court determines that care other than commitment for incapacity to stand trial would better serve
10 the defendant and the community, the court shall release the defendant on supervision for as long
11 as the unfitness endures.

12 (3) When a defendant is released on supervision under subsection (2)(b) of this section, the court
13 may place conditions that the court deems appropriate on the release, including the requirement
14 that the defendant regularly report to the authority or a community mental health program for ex-
15 amination to determine if the defendant has gained or regained capacity to stand trial.

16 (4) When the court, on its own motion or upon the application of the superintendent of the
17 hospital or director of the facility in which the defendant is committed, a person examining the de-
18 fendant as a condition of release on supervision, or either party, determines, after a hearing, if a
19 hearing is requested, that the defendant has gained or regained fitness to proceed, the criminal
20 proceeding shall be resumed. If, however, the court is of the view that so much time has elapsed
21 since the commitment or release of the defendant on supervision that it would be unjust to resume
22 the criminal proceeding, the court on motion of either party may dismiss the charge and may order
23 the defendant to be discharged or cause a proceeding to be commenced forthwith under ORS 426.070
24 to 426.170 or 427.235 to 427.290.

25 (5) The superintendent of a state hospital or director of a facility to which the defendant is
26 committed shall cause the defendant to be evaluated within 60 days from the defendant's delivery
27 into the superintendent's or director's custody, for the purpose of determining whether there is a
28 substantial probability that, in the foreseeable future, the defendant will have the capacity to stand
29 trial. In addition, the superintendent or director shall:

30 (a) Immediately notify the committing court if the defendant, at any time, gains or regains the
31 capacity to stand trial or will never have the capacity to stand trial.

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

34 (A) The defendant has the present capacity to stand trial;

35 (B) There is no substantial probability that, in the foreseeable future, the defendant will gain
36 or regain the capacity to stand trial; or

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

41 (6)(a) If the superintendent or director determines that there is a substantial probability that,
42 in the foreseeable future, the defendant will gain or regain the capacity to stand trial, unless the
43 court otherwise orders, the defendant shall remain in the superintendent's or director's custody
44 where the defendant shall receive treatment designed for the purpose of enabling the defendant to
45 gain or regain capacity. In keeping with the notice requirement under subsection (5)(b) of this sec-

1 tion, the superintendent or director shall, for the duration of the defendant's period of commitment,
2 submit a progress report to the committing court, concerning the defendant's capacity or incapacity,
3 at least once every 180 days as measured from the date of the defendant's delivery into the
4 superintendent's or director's custody.

5 (b) Notwithstanding paragraph (a) of this subsection, if the superintendent or director deter-
6 mines that a defendant committed under this section is no longer dangerous to self or others as a
7 result of mental disease or defect, or that the services and supervision necessary to restore the
8 defendant's fitness to proceed are available in the community, the superintendent or director shall
9 file notice of that determination with the court. Upon receipt of the notice, the court shall order
10 the person released on supervision as described in subsection (3) of this section.

11 (7)(a) A defendant who remains committed under subsection (6) of this section shall be dis-
12 charged within a period of time that is reasonable for making a determination concerning whether
13 or not, and when, the defendant may gain or regain capacity. However, regardless of the number
14 of charges with which the defendant is accused, in no event shall the defendant be committed for
15 longer than whichever of the following, measured from the defendant's initial custody date, is
16 shorter:

17 (A) Three years; or

18 (B) A period of time equal to the maximum sentence the court could have imposed if the de-
19 fendant had been convicted.

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

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

24 (B) The defendant shall be given credit against each charge alleged in the accusatory instrument
25 for each day the defendant is committed under this section, whether the days are consecutive or are
26 interrupted by a period of time during which the defendant has gained or regained fitness to pro-
27 ceed.

28 (8) The superintendent or director shall notify the committing court of the defendant's impending
29 discharge 30 days before the date on which the superintendent or director is required to discharge
30 the defendant under subsection (7) of this section.

31 (9) When the committing court receives a notice from the superintendent or director under
32 subsection (5) or (8) of this section concerning the defendant's progress or lack thereof, the com-
33 mitting court shall determine, after a hearing, if a hearing is requested, whether the defendant
34 presently has the capacity to stand trial.

35 (10) If at any time the court determines that the defendant lacks the capacity to stand trial, the
36 court shall further determine whether there is a substantial probability that the defendant, in the
37 foreseeable future, will gain or regain the capacity to stand trial and whether the defendant is en-
38 titled to discharge under subsection (7) of this section. If the court determines that there is no
39 substantial probability that the defendant, in the foreseeable future, will gain or regain the capacity
40 to stand trial or that the defendant is entitled to discharge under subsection (7) of this section, the
41 court shall dismiss, without prejudice, all charges against the defendant and:

42 (a) Order that the defendant be discharged; or

43 (b) Initiate commitment proceedings under ORS 426.070 or 427.235 to 427.290.

44 (11) All notices required under this section shall be filed with the clerk of the court and deliv-
45 ered to both the district attorney and the counsel for the defendant.

1 (12) If the defendant gains or regains fitness to proceed, the term of any sentence received by
2 the defendant for conviction of the crime charged shall be reduced by the amount of time the de-
3 fendant was committed under this section to the custody of a state mental hospital, or to the custody
4 of a secure intensive community inpatient facility, designated by the Oregon Health Authority.

5 (13) Notwithstanding the suspension of the criminal proceeding under subsection (2) of this
6 section, the fact that the defendant is unfit to proceed does not preclude any objection through
7 counsel and without the personal participation of the defendant on the grounds that the indictment
8 is insufficient, that the statute of limitations has run, that double jeopardy principles apply or upon
9 any other ground at the discretion of the court which the court deems susceptible of fair determi-
10 nation prior to trial.

11 **(14)(a) At the time that the court determines that the defendant lacks fitness to proceed**
12 **under subsection (2) of this section, the court shall notify the defendant that federal law**
13 **prohibits the defendant from purchasing or possessing a firearm unless the person obtains**
14 **relief from the prohibition under federal law. The court shall again notify the defendant of**
15 **the prohibition if the court finds that the defendant has gained or regained fitness to proceed**
16 **under subsection (4) of this section.**

17 **(b) The court shall cause a copy of each notification described in paragraph (a) of this**
18 **subsection to be delivered to the sheriff of the county and to the Oregon Health Authority,**
19 **who shall enter the information into the Law Enforcement Data System.**

20
