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ARCHIVES DIVISION
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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 309
OREGON HEALTH AUTHORITY
HEALTH SYSTEMS DIVISION: BEHAVIORAL HEALTH SERVICES

FILED
06/26/2018 12:00 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Implementing SB 65 eliminates the Oregon Health Authority (OHA) State Hospital Review Panel (SHRP)

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 07/23/2018 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

CONTACT: Adina Canales	Oregon State Hospital Legal Affaris	Filed By:
503-945-0937	2600 Center St NE B01-242	Adina Canales
OSH.Rules@dhsosha.state.or.us	Salem ,OR 97301	Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 07/20/2018

TIME: 9:00 AM - 10:30 AM

OFFICER: Adina Canales

ADDRESS: Large Hearing Room

Oregon State Hospital

2600 Center St

Salem, OR 97301

SPECIAL INSTRUCTIONS:

OSH is a secure facility. Please come early to check in with security. You need to be signed up before 9:15 a.m. to present a public comment on the attached rule. Walking from the parking lot can take 5-10 minutes, and you'll need a few additional minutes to clear security. Please plan accordingly. We will not be able to have people sign up to present a public comment after 9:15 a.m., and you must be signed up to comment on the rule.

NEED FOR THE RULE(S):

SB 65 eliminates the Oregon Health Authority (OHA) State Hospital Review Panel (SHRP) in July 2018 and transfers its duties to the Psychiatric Security Review Board (PSRB)

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

<https://olis.leg.state.or.us/liz/2017R1/Measures/Overview/SB65>

<https://olis.leg.state.or.us/liz/2017R1/Downloads/MeasureDocument/SB65/Enrolled>

FISCAL AND ECONOMIC IMPACT:

Because SHRP operates under the same statutes and under similar rules as the PSRB, patients should not be affected by the change. The only difference is that patients who currently appear before SHRP will appear before the PSRB after July 1, 2018. The Legislature expects the rate of GEI commitments to OSH and releases to the community to remain the same.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

Because SHRP operates under the same statutes and under similar rules as the PSRB, patients should not be affected by the change. The only difference is that patients who currently appear before SHRP will appear before the PSRB after July 1, 2018. The Legislature expects the rate of GEI commitments to OSH and releases to the community to remain the same.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Because SHRP operates under the same statutes and under similar rules as the PSRB, patients should not be affected by the change. The only difference is that patients who currently appear before SHRP will appear before the PSRB after July 1, 2018. The Legislature expects the rate of GEI commitments to OSH and releases to the community to remain the same.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

no, SB 65 has been signed by the Governor and takes effect on July 1, 2018. A RAC would have no barring on the change

RULES PROPOSED:

309-092-0000, 309-092-0005, 309-092-0010, 309-092-0015, 309-092-0020, 309-092-0025, 309-092-0030, 309-092-0035, 309-092-0040, 309-092-0045, 309-092-0050, 309-092-0055, 309-092-0060, 309-092-0065, 309-092-0070, 309-092-0075, 309-092-0080, 309-092-0085, 309-092-0090, 309-092-0095, 309-092-0100, 309-092-0105, 309-092-0110, 309-092-0115, 309-092-0120, 309-092-0125, 309-092-0130, 309-092-0135, 309-092-0140, 309-092-0145, 309-092-0150, 309-092-0155, 309-092-0160, 309-092-0165, 309-092-0170, 309-092-0175, 309-092-0178, 309-092-0180, 309-092-0185, 309-092-0190, 309-092-0195, 309-092-0200, 309-092-0205, 309-092-0210, 309-092-0215, 309-092-0220, 309-092-0225, 309-092-0230, 309-092-0235, 309-092-0240

REPEAL: 309-092-0000

RULE SUMMARY: After July 1, 2018, all people who have been found guilty except for insanity (GEI) who have been under SHRP jurisdiction will be placed under the jurisdiction of the PSRB. The references to Oregon Health Authority (OHA) jurisdiction in the GEI statutes will be eliminated.

CHANGES TO RULE:

~~309-092-0000~~

Purpose and Scope

Oregon Laws 2011, chapter 708, Senate Bill 420 (SB 420) went into effect on January 1, 2012. The law created two tiers of offenders who are found guilty except for insanity and are affected by a mental disease or defect presenting a substantial danger to others. Under SB 420, tier one offenders (i.e., Measure 11 offenders) remain exclusively under the jurisdiction of the Psychiatric Security Review Board (PSRB), but the Oregon Health Authority (OHA) acquires jurisdiction over tier two offenders (i.e., non-Measure 11 offenders) while they are in the Oregon State Hospital. OHA is responsible for determining when tier two offenders may be conditionally released or discharged into the community. As with the PSRB, OHA must have as its primary concern the protection of society. In order to implement SB 420, via these rules OHA establishes the Oregon State Hospital Review Panel (SHRP) and the processes applicable to the SHRP.

Statutory/Other Authority: ORS 413.042 & 161.341, SB 420.

Statutes/Other Implemented: ORS 161.295 – 161.400, SB 420

REPEAL: 309-092-0005

RULE SUMMARY: After July 1, 2018, all people who have been found guilty except for insanity (GEI) who have been under SHRP jurisdiction will be placed under the jurisdiction of the PSRB. The references to Oregon Health Authority (OHA) jurisdiction in the GEI statutes will be eliminated.

CHANGES TO RULE:

~~309-092-0005~~

~~Definitions~~

- ~~(1) "Administrative Hearing" means a meeting of the SHRP where a quorum is present and a conditional release plan is reviewed or reviewed and modified.¶¶~~
- ~~(2) "Administrative Meeting" means any meeting of the SHRP where a quorum is present for the purpose of considering matters relating to SHRP policy and administration.¶¶~~
- ~~(3) "Authority" means the Oregon Health Authority.¶¶~~
- ~~(4) "Conditional Release" means a grant by the court, PSRB or SHRP for an individual to reside outside a state hospital in the community under conditions for monitoring and treatment of mental and physical health.¶¶~~
- ~~(5) "Director" means the Director of the Authority.¶¶~~
- ~~(6) "Division" means the Addictions and Mental Health (AMH) Division of the Authority.¶¶~~
- ~~(7) "Hospital Pass" means any time an individual will be off hospital grounds for any length of time not accompanied by hospital staff.¶¶~~
- ~~(8) "Individual" means any person under the jurisdiction of the SHRP.¶¶~~
- ~~(9) "Insanity Defense" means the following: For offenses committed on or after January 1, 1984, an individual is guilty except for insanity if, as a result of a mental disease or defect at the time of engaging in criminal conduct, the individual lacked substantial capacity either to appreciate the criminality of the conduct or to conform the conduct to the requirements of law. The name of the insanity defense from January 1, 1978, through December 31, 1983, was "not responsible due to mental disease or defect." From January 1, 1971, through December 31, 1977, the insanity defense was known as "not guilty by reason of mental disease or defect." The name of the insanity defense prior to 1971 was "not guilty by reason of insanity."¶¶~~
- ~~(10) "Mental Disease" means any diagnosis of mental disorder which is a significant behavioral or psychological syndrome or pattern that is associated with distress or disability causing symptoms or impairment in at least one important area of an individual's functioning, as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM) of the American Psychiatric Association.¶¶~~
- ~~(11) "Mental Defect" is defined as mental retardation, brain damage or other biological dysfunction that is associated with distress or disability causing symptoms or impairment in at least one important area of an individual's functioning, as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM) of the American Psychiatric Association. "Mental disease or defect" does not include an abnormality manifested solely by repeated or criminal or otherwise antisocial conduct. For offenses committed on or after January 1, 1984, the term "mental disease or defect" does not include any abnormality constituting solely a personality disorder.¶¶~~
- ~~(12) "Proof of Dangerousness" means any evidence regarding whether the individual's mental disease or defect may, with reasonable medical probability, occasionally become active, and when active, render the individual a substantial danger to others.¶¶~~
- ~~(13) "PSRB" refers to the Psychiatric Security Review Board.¶¶~~
- ~~(14) "Quorum" is the presence of at least three members of the SHRP.¶¶~~
- ~~(15) "Review Panel" or "SHRP" refers to the Oregon State Hospital Review Panel established by the Authority.¶¶~~
- ~~(16) "Review Panel's Office" and "Review Panel Staff" means the office and staff of the Legal Affairs office at a state hospital.¶¶~~
- ~~(17) "SB 420" means OR Laws 2011, chapter 708, Senate Bill 420 that takes effect on January 1, 2012.¶¶~~
- ~~(18) "State Hospital" means a state institution as defined in ORS 179.010 and operated by the Authority.¶¶~~
- ~~(19) "Statutory Hearing" is a meeting of the SHRP where a quorum is present and an application is made for~~

~~discharge, conditional release, commitment or modification filed pursuant to ORS 161.336, 161.341 or 161.351 or as otherwise required by ORS 161.337 to 161.351.~~¶

~~(20) "Substantial Danger to Others" means an individual is a substantial danger to others if the individual is demonstrating or previously has demonstrated intentional, knowing, reckless or criminally negligent behavior which places others at risk of physical injury.~~¶

~~(21) "Superintendent" means the superintendent of a state hospital.~~¶

~~(22) "Tier One Offender" means an individual who has been found guilty except for insanity of a tier one offense as defined in ORS 161.332 as amended by SB 420.~~¶

~~(23) "Tier Two Offender" means an individual who has been found guilty except or insanity only of offenses that are not tier one offenses.~~

~~Statutory/Other Authority: ORS 413.042 & 161.341, SB 420.~~

~~Statutes/Other Implemented: ORS 161.295 – 161.400, SB 420~~

REPEAL: 309-092-0010

RULE SUMMARY: After July 1, 2018, all people who have been found guilty except for insanity (GEI) who have been under SHRP jurisdiction will be placed under the jurisdiction of the PSRB. The references to Oregon Health Authority (OHA) jurisdiction in the GEI statutes will be eliminated.

CHANGES TO RULE:

~~309-092-0010~~

~~Membership and Terms~~

~~(1) The SHRP shall consist of five members appointed by the Director of the Authority. The SHRP shall be composed of a psychiatrist, a psychologist, a member with substantial experience in probation and parole, a member of the general public and a lawyer. If the Director of the Authority determines that it is necessary, the psychiatrist position of the SHRP may be filled by a psychologist.¶~~

~~(2) Members shall initially serve one-year terms, but after January 2013 they shall serve overlapping four-year terms commencing on the date of their appointment. Vacancies occurring during a member's term shall be filled immediately by appointment of the Director.¶~~

~~(3) Review Panel Members serve at the discretion of the Director.¶~~

~~(4) Review Panel Members are eligible for reappointment.~~

~~Statutory/Other Authority: ORS 413.042 & 161.341, SB 420.~~

~~Statutes/Other Implemented: ORS 161.295 - 161.400, SB 420~~

REPEAL: 309-092-0015

RULE SUMMARY: After July 1, 2018, all people who have been found guilty except for insanity (GEI) who have been under SHRP jurisdiction will be placed under the jurisdiction of the PSRB. The references to Oregon Health Authority (OHA) jurisdiction in the GEI statutes will be eliminated.

CHANGES TO RULE:

~~309-092-0015~~

~~Chair; Powers and Duties~~

~~(1) In January of each year, the SHRP shall elect by a majority of Review Panel Members votes one of its members as chairperson to serve for a one-year term with the possibility of reelection.~~

~~(2) The chairperson shall have the powers and duties necessary for the performance of the office. These shall include, but not be limited to:~~

~~(a) Presiding at hearings and meetings;~~

~~(b) Assigning members to panels and designating an acting chairperson when appropriate; and~~

~~(c) Making rulings on procedural matters.~~

~~Statutory/Other Authority: ORS 413.042 & 161.341, SB 420.~~

~~Statutes/Other Implemented: ORS 161.295 – 161.400, SB 420~~

REPEAL: 309-092-0020

RULE SUMMARY: After July 1, 2018, all people who have been found guilty except for insanity (GEI) who have been under SHRP jurisdiction will be placed under the jurisdiction of the PSRB. The references to Oregon Health Authority (OHA) jurisdiction in the GEI statutes will be eliminated.

CHANGES TO RULE:

~~309-092-0020~~

~~Responsibilities, Function and Purpose of Review Panel~~

- ~~(1) The SHRP shall monitor the mental and physical health and treatment of any individual placed under its jurisdiction as a result of a finding by a court of guilty except for insanity. The SHRP shall have as its primary concern the protection of society. In addition, the SHRP's responsibilities shall include, but not be limited to:~~
- ~~(a) Holding hearings as required by law to determine the appropriate status of individuals under its jurisdiction;~~
 - ~~(b) Modifying or terminating conditional release plans while individuals under its jurisdiction are in the hospital;~~
 - ~~(c) Maintaining and keeping current medical, social and criminal histories of all individuals under the SHRP's jurisdiction; and~~
 - ~~(d) Observing the confidentiality of records as required by law.~~

~~(2) The SHRP shall be supported by and the SHRP process and procedures shall be administered by the Legal Affairs Director and Legal Affairs Staff at the state hospital.~~

~~Statutory/Other Authority: ORS 413.042 & 161.341, SB 420.~~

~~Statutes/Other Implemented: ORS 161.295 – 161.400, SB 420~~

REPEAL: 309-092-0025

RULE SUMMARY: After July 1, 2018, all people who have been found guilty except for insanity (GEI) who have been under SHRP jurisdiction will be placed under the jurisdiction of the PSRB. The references to Oregon Health Authority (OHA) jurisdiction in the GEI statutes will be eliminated.

CHANGES TO RULE:

~~309-092-0025~~

~~Jurisdiction of Individuals Under The SHRP~~

~~The SHRP shall have jurisdiction as set forth in ORS Chapter 161 over tier two offenders—while they are in the state hospital—who are adjudged by a court to be guilty except for insanity and presenting a substantial danger to others:¶~~

~~(1) The court must find that the individual would have been guilty of a tier two offense during a criminal episode in the course of which the individual caused physical injury or risk of physical injury to another.¶~~

~~(2) The period of jurisdiction of the SHRP, in addition to time spent under jurisdiction of the PRSB while on conditional release, shall be equal to the maximum sentence the court finds the individual could have received had the person been found guilty.¶~~

~~(3) The SHRP and the PSRB do not consider time spent on unauthorized leave from the custody of the Authority as part of the jurisdictional time.¶~~

~~(4) The SHRP has jurisdiction over all tier two individuals who used the insanity defense successfully and were placed on conditional release or committed to a state mental hospital by the court prior to January 1, 1978. The period of jurisdiction in these cases shall be equal to the maximum sentence the person could have received if found guilty and shall be measured from the date of judgment.¶~~

~~(5) The SHRP shall maintain jurisdiction over individuals who are legally placed under its jurisdiction by any court of the State of Oregon and who are housed in a state hospital.¶~~

~~(6) The Juvenile Psychiatric Security Review Board will have jurisdiction over juveniles found guilty except for insanity.¶~~

~~(7) Upon receipt of verified information of time spent in custody, individuals placed under the SHRP's jurisdiction shall receive credit for:¶~~

~~(a) Time spent in any correctional facility for the offense for which the individual was placed under the SHRP's jurisdiction; and¶~~

~~(b) Time spent in custody of the Authority at a state hospital for determination of the defendant's fitness to proceed or under a detainer for the criminal charges for which the individual ultimately was placed under the SHRP's jurisdiction.~~

~~Statutory/Other Authority: ORS 413.042, 161.327, 161.332, 161.336, 161.346, 161.351, 161.385, SB 420.~~

~~Statutes/Other Implemented: ORS 161.295–161.400, SB 420~~

REPEAL: 309-092-0030

RULE SUMMARY: After July 1, 2018, all people who have been found guilty except for insanity (GEI) who have been under SHRP jurisdiction will be placed under the jurisdiction of the PSRB. The references to Oregon Health Authority (OHA) jurisdiction in the GEI statutes will be eliminated.

CHANGES TO RULE:

~~309-092-0030~~

~~Scheduling Review Panel Hearings and Meetings~~

- ~~(1) The SHRP shall meet at least twice every two months unless the chairperson determines that there is not sufficient business before the SHRP to warrant a meeting at the scheduled time.¶¶~~
- ~~(2) The SHRP shall hold administrative meetings as necessary to consider matters relating to SHRP policy and administration.¶¶~~
- ~~(3) Public notice shall be given in accordance with the Public Meetings Law.¶¶~~
- ~~(4) The SHRP may hold administrative hearings to expedite such matters as approving modifications of conditional release orders, reviewing plans for conditional release and approving or disapproving them.~~

~~Statutory/Other Authority: ORS 413.042 & 161.341, SB 420.~~

~~Statutes/Other Implemented: ORS 161.295 – 161.400, SB 420~~

REPEAL: 309-092-0035

RULE SUMMARY: After July 1, 2018, all people who have been found guilty except for insanity (GEI) who have been under SHRP jurisdiction will be placed under the jurisdiction of the PSRB. The references to Oregon Health Authority (OHA) jurisdiction in the GEI statutes will be eliminated.

CHANGES TO RULE:

~~309-092-0035~~

~~Quorum and Decisions~~

~~(1) The presence of at least three members of the SHRP constitutes a quorum.¶¶~~

~~(2) Three concurring votes (affirmative or negative) are required to make a SHRP decision.¶¶~~

~~(3) When three members cannot agree on a decision, the hearing may be continued, for no longer than 60 days. The tape of the hearing and the exhibits shall be reviewed by the remaining member(s) and a decision by the majority of the members shall be the finding and order of the SHRP.¶¶~~

~~(4) If the attorney for an individual or a pro se individual objects to the remaining member's or members' review as set forth in section (2) of this rule, the SHRP may reschedule the matter for a hearing before the entire SHRP.¶¶~~

~~(5) If an objection for good cause is made to a specific member of the SHRP sitting on the panel considering a specific case, that member shall withdraw and, if necessary, the hearing shall be postponed and rescheduled.¶¶~~

~~(6) If an objection for good cause is made to a specific staff member of the SHRP being present during the panel's deliberations in a specific case, and if the SHRP determines that good cause exists, that staff member shall not be present during deliberations in that case.~~

~~Statutory/Other Authority: ORS 413.042 & 161.341, SB 420.~~

~~Statutes/Other Implemented: ORS 161.295 - 161.400, SB 420~~

REPEAL: 309-092-0040

RULE SUMMARY: After July 1, 2018, all people who have been found guilty except for insanity (GEI) who have been under SHRP jurisdiction will be placed under the jurisdiction of the PSRB. The references to Oregon Health Authority (OHA) jurisdiction in the GEI statutes will be eliminated.

CHANGES TO RULE:

~~309-092-0040~~

~~Public Meetings Law~~

~~(1) All meetings of the SHRP are open to the public in accordance with the Public Meetings Law.¶~~

~~(2) Deliberations of the SHRP are not open to the public.¶~~

~~(3) For the purposes of this rule, the term "public" does not include staff of the SHRP.~~

~~Statutory/Other Authority: ORS 413.042 & 161.341, SB 420.~~

~~Statutes/Other Implemented: ORS 161.295 - 161.400, SB 420~~

REPEAL: 309-092-0045

RULE SUMMARY: After July 1, 2018, all people who have been found guilty except for insanity (GEI) who have been under SHRP jurisdiction will be placed under the jurisdiction of the PSRB. The references to Oregon Health Authority (OHA) jurisdiction in the GEI statutes will be eliminated.

CHANGES TO RULE:

~~309-092-0045~~

~~Records~~

~~(1) A record shall be kept of SHRP action taken at an administrative meeting and any decision made at an administrative hearing of the SHRP.¶¶~~

~~(2) All SHRP hearings, except SHRP deliberations, shall be recorded by manual or electronic means which can be transcribed. No other record of SHRP hearings shall be made. All documents considered at hearings shall be included as exhibits and kept as part of the record.¶¶~~

~~(a) Audio recordings capable of being transcribed shall be kept by the SHRP for a minimum period of two years from the hearing date.¶¶~~

~~(b) SHRP hearings may be transcribed from the recording for appeal purposes. If transcribed, the transcript may be substituted for the original record. ORS 161.348(2) authorizes the SHRP to submit to the appellate 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.¶¶~~

~~(c) Any material to which an objection is sustained shall be removed from the record; the objection and ruling of the SHRP shall be noted on the record.¶¶~~

~~(d) The audio tape or transcript of the proceedings shall be made available at cost to a party to the proceedings upon request.~~

~~Statutory/Other Authority: ORS 413.042 & 161.341, SB 420.~~

~~Statutes/Other Implemented: ORS 161.295 - 161.400, SB 420~~

REPEAL: 309-092-0050

RULE SUMMARY: After July 1, 2018, all people who have been found guilty except for insanity (GEI) who have been under SHRP jurisdiction will be placed under the jurisdiction of the PSRB. The references to Oregon Health Authority (OHA) jurisdiction in the GEI statutes will be eliminated.

CHANGES TO RULE:

~~309-092-0050~~

~~Public Records Law; Confidentiality~~

~~The attorneys for an individual or a pro se individual shall have the right to review any records to be considered at the hearing. Applicable federal and state confidentiality laws, such as the Health Insurance Portability and Accountability Act (HIPAA) and ORS 179.505 shall be observed with respect to other requests to inspect an individual's records.~~

~~Statutory/Other Authority: ORS 413.042, 161.385, 161.387, 192.450, 192.500, 192.525; & 192.690, SB 420.~~

~~Statutes/Other Implemented: ORS 161.295 - 161.400, SB 420~~

REPEAL: 309-092-0055

RULE SUMMARY: After July 1, 2018, all people who have been found guilty except for insanity (GEI) who have been under SHRP jurisdiction will be placed under the jurisdiction of the PSRB. The references to Oregon Health Authority (OHA) jurisdiction in the GEI statutes will be eliminated.

CHANGES TO RULE:

~~309-092-0055~~

~~Hearing Notices~~

~~The SHRP shall provide written notice of SHRP hearings to the following persons or agencies within a reasonable time:¶¶~~

~~(1) The individual;¶¶~~

~~(2) The attorney representing the individual;¶¶~~

~~(3) The District Attorney;¶¶~~

~~(4) The community supervisor or case monitor;¶¶~~

~~(5) The Court or department of the county from which the individual was committed;¶¶~~

~~(6) The victim, if the court finds that the victim requests notification;¶¶~~

~~(7) The victim, if subsequent to the disposition of the criminal case, the victim asks either the PSRB or SHRP for notification.¶¶~~

~~(8) Any other interested person requesting notification ; (9) A state hospital unit in which the individual resides; and (10) The PSRB in the case of conditional release hearings.~~

~~Statutory/Other Authority: ORS 413.042 & 161.341, SB 420.~~

~~Statutes/Other Implemented: ORS 161.295 - 161.400, SB 420~~

REPEAL: 309-092-0060

RULE SUMMARY: After July 1, 2018, all people who have been found guilty except for insanity (GEI) who have been under SHRP jurisdiction will be placed under the jurisdiction of the PSRB. The references to Oregon Health Authority (OHA) jurisdiction in the GEI statutes will be eliminated.

CHANGES TO RULE:

~~309-092-0060~~

~~Information Contained in Notice~~

~~Written notice shall contain the following:~~

- ~~(1) Time, place and location of the hearing;~~
- ~~(2) The issues to be considered, reference to statutes and rules involved, authority and jurisdiction;~~
- ~~(3) A statement of individual's rights, including the following:~~
- ~~(4) The right to appear at all proceedings, except SHRP deliberations;~~
- ~~(5) The right to cross-examine all witnesses appearing to testify at the hearing;~~
- ~~(6) The right to subpoena witness and documents as provided in ORS 161.395;~~
- ~~(7) The right to legal counsel and, if indigent as defined by the indigency standard set forth by the State Court Administrator's office, to have counsel provided without cost; and~~
- ~~(8) The Right to examine all information, documents and reports under consideration.~~

~~Statutory/Other Authority: ORS 413.042 & 161.341, SB 420.~~

~~Statutes/Other Implemented: ORS 161.295 - 161.400, SB 420~~

REPEAL: 309-092-0065

RULE SUMMARY: After July 1, 2018, all people who have been found guilty except for insanity (GEI) who have been under SHRP jurisdiction will be placed under the jurisdiction of the PSRB. The references to Oregon Health Authority (OHA) jurisdiction in the GEI statutes will be eliminated.

CHANGES TO RULE:

~~309-092-0065~~

~~Time Frame of Hearings~~

~~Hearings shall be held within the following time frames:¶~~

- ~~(1) The initial hearing under ORS 161.341(6)(a) shall occur within 90 days following the individual's placement under the SHRP's jurisdiction and commitment to a state hospital.¶~~
- ~~(2) The revocation hearing under ORS 161.336(4)(c) shall occur within 20 days following the individual's return to OSH for violation of the individual's conditional release requirements.¶~~
- ~~(3) An individual's request for conditional release or discharge under ORS 161.341(3) shall be heard within 60 days of receipt of the request, except for initial requests for conditional release under ORS 161.341(5).¶~~
- ~~(4) An individual is eligible to request a hearing six months after last hearing, and the hearing must be held within 60 days after filing the request pursuant to ORS 161.341(4).¶~~
- ~~(5) A request for conditional release by the state hospital, under ORS 161.341(1) may be made at any time and shall be heard within 60 days of receipt of the request.¶~~
- ~~(6) A request by the outpatient supervisor under ORS 161.336(7)(b) for conditional release, modification of conditional release or discharge may be made at any time and shall be heard within 60 days of receipt of request.¶~~
- ~~(7) Two-year hearings under ORS 161.341(6)(b) are mandatory for individuals committed to a state hospital when no other hearing has been held within two years.~~

~~Statutory/Other Authority: ORS 413.042 & 161.341, SB 420.~~

~~Statutes/Other Implemented: ORS 161.336, 161.341, 161.351, SB 420~~

REPEAL: 309-092-0070

RULE SUMMARY: After July 1, 2018, all people who have been found guilty except for insanity (GEI) who have been under SHRP jurisdiction will be placed under the jurisdiction of the PSRB. The references to Oregon Health Authority (OHA) jurisdiction in the GEI statutes will be eliminated.

CHANGES TO RULE:

~~309-092-0070~~

~~Chairperson Conducting Hearing~~

~~The chairperson or acting chairperson shall preside over hearings and shall have the authority to:~~

~~(1) Designate the order of presentation and questioning; and~~

~~(2) Determine the scope of questioning; and~~

~~(3) Set time limits and cut off irrelevant questions and irrelevant or unresponsive answers.~~

~~Statutory/Other Authority: ORS 413.042 & 161, SB 420.~~

~~Statutes/Other Implemented: ORS 161.385, SB 420~~

REPEAL: 309-092-0075

RULE SUMMARY: After July 1, 2018, all people who have been found guilty except for insanity (GEI) who have been under SHRP jurisdiction will be placed under the jurisdiction of the PSRB. The references to Oregon Health Authority (OHA) jurisdiction in the GEI statutes will be eliminated. v

CHANGES TO RULE:

~~309-092-0075~~

~~Patient's Right to Review Record; Exceptions-~~

~~(1) Individuals shall receive directly, or through their attorney, written notice of the hearing and a statement of their rights in accordance with ORS 161.346.¶¶~~

~~(2) All exhibits to be considered by the SHRP shall be disclosed to the individual's attorney or the individual if proceeding pro se, as soon as they are available.¶¶~~

~~(3) Exhibits not available prior to the hearing shall be made available to the individual's attorney or the patient, if not represented, at the hearing.¶¶~~

~~(4) All material relevant and pertinent to the individual and issues before the SHRP shall be made a part of the record.¶¶~~

~~(5) Any material not made part of the record shall be separated and a statement to that effect shall be placed in the record.~~

~~Statutory/Other Authority: ORS 413.042 & 161.327, SB 420~~

~~Statutes/Other Implemented: ORS 161.346, SB 420~~

REPEAL: 309-092-0080

RULE SUMMARY: After July 1, 2018, all people who have been found guilty except for insanity (GEI) who have been under SHRP jurisdiction will be placed under the jurisdiction of the PSRB. The references to Oregon Health Authority (OHA) jurisdiction in the GEI statutes will be eliminated.

CHANGES TO RULE:

~~309-092-0080~~

~~Evidence Considered; Admissibility~~

~~The SHRP shall consider all evidence available to it which is material, relevant and reliable. All evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible, including but not limited to the following:¶¶~~

~~(1) The record of trial;¶¶~~

~~(2) Information supplied by the state's attorney or any interested party including the individual;¶¶~~

~~(3) Information concerning the individual's mental condition;¶¶~~

~~(4) The entire psychiatric and criminal history of the individual including motor vehicle records;¶¶~~

~~(5) Psychiatric or psychological reports ordered by the SHRP under ORS 161.346(3);¶¶~~

~~(6) Psychiatric and psychological reports under ORS 161.341(2) written by a person chosen by the state or the individual to examine the individual; and¶¶~~

~~(7) Testimony of witnesses.~~

~~Statutory/Other Authority: ORS 413.042 & 161, SB 420~~

~~Statutes/Other Implemented: ORS 161.336, 161.341 & 161.346, SB 420~~

REPEAL: 309-092-0085

RULE SUMMARY: After July 1, 2018, all people who have been found guilty except for insanity (GEI) who have been under SHRP jurisdiction will be placed under the jurisdiction of the PSRB. The references to Oregon Health Authority (OHA) jurisdiction in the GEI statutes will be eliminated.

CHANGES TO RULE:

~~309-092-0085~~

~~Motion Practice~~

~~Any party bringing a motion before the SHRP shall submit the motion and memorandum of law to the SHRP and the opposing party one week prior to the hearing date in which the motion will be heard.~~

~~Statutory/Other Authority: ORS 413.042 & 161.327, SB 420~~

~~Statutes/Other Implemented: ORS 161.346, SB 420~~

REPEAL: 309-092-0090

RULE SUMMARY: After July 1, 2018, all people who have been found guilty except for insanity (GEI) who have been under SHRP jurisdiction will be placed under the jurisdiction of the PSRB. The references to Oregon Health Authority (OHA) jurisdiction in the GEI statutes will be eliminated.

CHANGES TO RULE:

~~309-092-0090~~

~~Objections to Evidence~~

~~The chairperson or acting chairperson shall rule on questions of evidence. Hearsay evidence shall not be excluded unless the chairperson or acting chairperson determines the evidence is not material, relevant or reliable.~~

~~(1) In determining whether the evidence is material, relevant or reliable, the SHRP shall consider the following:~~

~~(a) The age and source of the documents;~~

~~(b) The ability of the witness to have observed and had personal knowledge of the incidents; and~~

~~(c) The credibility of the witness and whether the witness has bias or interest in the matter.~~

~~(2) The individual, the individual's attorney or attorney representing the state may object to any evidence. The SHRP may decide the following:~~

~~(a) To sustain the objection and deny the admission and consideration of the evidence on the grounds that it is not material, relevant or reliable;~~

~~(b) To overrule the objection and admit the evidence;~~

~~(c) In considering the weight given to that evidence, consider the reason for the objection; or~~

~~(d) To grant a continuance for a period of time, not to exceed 60 days, to allow a witness to appear or be subpoenaed to testify about the evidence under consideration.~~

~~Statutory/Other Authority: ORS 413.042 & 161.327, SB 420.~~

~~Statutes/Other Implemented: ORS 161.346 & 161.385, SB 420~~

REPEAL: 309-092-0095

RULE SUMMARY: After July 1, 2018, all people who have been found guilty except for insanity (GEI) who have been under SHRP jurisdiction will be placed under the jurisdiction of the PSRB. The references to Oregon Health Authority (OHA) jurisdiction in the GEI statutes will be eliminated.

CHANGES TO RULE:

~~309-092-0095~~

~~Witnesses and Documents; Subpoena~~

~~(1) Witnesses or documents may be subpoenaed as provided in ORS 161.395 upon request of any party to the hearing or on the Review Panel's own motion, upon a proper showing of the general relevance and reasonable scope of the documentary or physical evidence sought.¶~~

~~(2) Witnesses with a subpoena other than parties or state officers or employees shall receive fees and mileage as prescribed by law.¶~~

~~(3) A judge of the Circuit Court of the county in which the hearing is held may compel obedience by proceeding for contempt for failure of any person to comply with the subpoena issued.~~

~~Statutory/Other Authority: ORS 413.042, 161.387; SB 420~~

~~Statutes/Other Implemented: ORS 161.346, ORS 161.395, SB 420~~

REPEAL: 309-092-0100

RULE SUMMARY: After July 1, 2018, all people who have been found guilty except for insanity (GEI) who have been under SHRP jurisdiction will be placed under the jurisdiction of the PSRB. The references to Oregon Health Authority (OHA) jurisdiction in the GEI statutes will be eliminated.

CHANGES TO RULE:

~~309-092-0100~~

~~Testimony Given on Oath~~

~~The SHRP shall take testimony of a witness upon oath or affirmation of the witness administered by the chairperson or acting chairperson at the hearing.~~

~~Statutory/Other Authority: ORS 413.042 & 161.327, SB 420.~~

~~Statutes/Other Implemented: ORS 161.346 & 161.385, SB 420~~

REPEAL: 309-092-0105

RULE SUMMARY: After July 1, 2018, all people who have been found guilty except for insanity (GEI) who have been under SHRP jurisdiction will be placed under the jurisdiction of the PSRB. The references to Oregon Health Authority (OHA) jurisdiction in the GEI statutes will be eliminated.

CHANGES TO RULE:

~~309-092-0105~~

~~Standards and Burdens of Proof~~

~~(1) The standard of proof on all issues at hearings of the SHRP shall be the preponderance of the evidence. The burden of proof shall depend on the type of hearing.¶¶~~

~~(a) In an initial 90-day hearing under ORS 161.341(6)(a), the state has the burden to show the individual continues to be affected by a mental disease or defect and continues to be a substantial danger to others.¶¶~~

~~(b) In a revocation hearing under ORS 161.336(4)(c), the state has the burden to show the individual's unfitness for conditional release and that jurisdiction of the SHRP should continue.¶¶~~

~~(c) In an individual's request for conditional release or discharge under ORS 161.341(3), the individual has the burden of proving his or her fitness for conditional release or discharge, unless it has been more than two years since the State had the burden of proof. In that case, the burden is on the State.¶¶~~

~~(d) In a request for conditional release or discharge of the individual by the Authority under ORS 161.341(1), the state must prove the individual is not appropriate for conditional release or discharge.¶¶~~

~~(e) In a status review hearing under ORS 161.346, the state has the burden of proving that the commitment, proposed conditional release plan or other current status of the patient is appropriate.¶¶~~

~~(f) In all other cases (such as two, five, and ten-year hearings), the state bears the burden of proof.¶¶~~

~~(2) If at any hearing state hospital staff agrees with the individual on the issue of mental disease or defect, dangerousness or fitness for conditional release, but no advance notice is given to the SHRP that the hospital requests discharge or conditional release, the burden of proof remains with the individual. The testimony of state hospital staff will be considered as evidence to assist the SHRP in deciding whether the individual has met his/her burden.~~

~~Statutory/Other Authority: ORS 413.042 & 161.387, SB 420~~

~~Statutes/Other Implemented: ORS 161.336, 161.341 & 161.346, SB 420~~

REPEAL: 309-092-0110

RULE SUMMARY: After July 1, 2018, all people who have been found guilty except for insanity (GEI) who have been under SHRP jurisdiction will be placed under the jurisdiction of the PSRB. The references to Oregon Health Authority (OHA) jurisdiction in the GEI statutes will be eliminated.

CHANGES TO RULE:

~~309-092-0110~~

~~Burden of Going Forward~~

~~The party that has the burden of proof shall also have the burden of going forward with the evidence (calling and examining witnesses, proposing conditions of release, etc.).~~

~~Statutory/Other Authority: ORS 413.042 & 161.387, SB 420~~

~~Statutes/Other Implemented: ORS 161.346, SB 420~~

REPEAL: 309-092-0115

RULE SUMMARY: After July 1, 2018, all people who have been found guilty except for insanity (GEI) who have been under SHRP jurisdiction will be placed under the jurisdiction of the PSRB. The references to Oregon Health Authority (OHA) jurisdiction in the GEI statutes will be eliminated.

CHANGES TO RULE:

~~309-092-0115~~

~~Continuance of Hearing~~

~~Upon the request of any party or on its own motion, the SHRP may for good cause continue a hearing for a reasonable period of time not to exceed 60 days to obtain additional information or testimony.~~

~~Statutory/Other Authority: ORS 413.042 & 161.387, SB 420~~

~~Statutes/Other Implemented: ORS 161.346, SB 420~~

REPEAL: 309-092-0120

RULE SUMMARY: After July 1, 2018, all people who have been found guilty except for insanity (GEI) who have been under SHRP jurisdiction will be placed under the jurisdiction of the PSRB. The references to Oregon Health Authority (OHA) jurisdiction in the GEI statutes will be eliminated.

CHANGES TO RULE:

~~309-092-0120~~

~~Cancellation of Hearing~~

~~Unless an individual asks for cancellation of a hearing for good cause, in writing, and with four weeks' advance notice, the individual shall not be eligible to request a hearing for six months from the date of the scheduled hearing.~~

~~Statutory/Other Authority: ORS 413.042 & 161.387, SB 420~~

~~Statutes/Other Implemented: ORS 161.346, SB 420~~

REPEAL: 309-092-0125

RULE SUMMARY: After July 1, 2018, all people who have been found guilty except for insanity (GEI) who have been under SHRP jurisdiction will be placed under the jurisdiction of the PSRB. The references to Oregon Health Authority (OHA) jurisdiction in the GEI statutes will be eliminated.

CHANGES TO RULE:

~~309-092-0125~~

~~Use of Restraints~~

~~(1) The SHRP prefers to have individuals appear at hearings without physical restraints. If, in the judgment of the individual's physician, the individual might need restraining, the SHRP prefers to have staff attending the hearing with the individual rather than use of physical restraints. However, the final decision on use of restraints lies with the physician.~~

~~(2) Any attorney objecting to the individual appearing with restraints at the hearing may raise the issue and ask for testimony from the physician.~~

~~Statutory/Other Authority: ORS 413.042 & 161.387, SB 420~~

~~Statutes/Other Implemented: ORS 161.346, SB 420~~

REPEAL: 309-092-0130

RULE SUMMARY: After July 1, 2018, all people who have been found guilty except for insanity (GEI) who have been under SHRP jurisdiction will be placed under the jurisdiction of the PSRB. The references to Oregon Health Authority (OHA) jurisdiction in the GEI statutes will be eliminated.

CHANGES TO RULE:

~~309-092-0130~~

~~Decisions of The SHRP~~

~~(1) Within 15 days following the conclusion of a hearing, the SHRP shall provide the individual, the attorney representing the individual, the district attorney representing the state, the committing court and, where applicable, the Authority and local mental health agency or supervisor written notice of the SHRP's decision.¶¶~~

~~(2) The order of the SHRP shall be signed by a member present at the hearing.¶¶~~

~~(3) The SHRP may issue its decision orally on the record at the hearing.¶¶~~

~~(4) The formal order of the SHRP shall contain the findings of facts, conclusions of law, reasons for the decision and notice of the right to appeal under ORS 161.348.~~

~~Statutory/Other Authority: ORS 413.042 & 161.387, SB 420~~

~~Statutes/Other Implemented: ORS 161.346, SB 420~~

REPEAL: 309-092-0135

RULE SUMMARY: After July 1, 2018, all people who have been found guilty except for insanity (GEI) who have been under SHRP jurisdiction will be placed under the jurisdiction of the PSRB. The references to Oregon Health Authority (OHA) jurisdiction in the GEI statutes will be eliminated.

CHANGES TO RULE:

~~309-092-0135~~

~~Notification of Right to Appeal~~

~~At the conclusion of a Review Panel hearing, the chair or acting chair shall provide the individual and attorney with written notification advising of the right to appeal on an adverse decision. Within 60 days from the date an order is signed and the right to an attorney if indigent.~~

~~Statutory/Other Authority: ORS 413.042 & 161.387, SB 420~~

~~Statutes/Other Implemented: ORS 161.346, SB 420~~

REPEAL: 309-092-0140

RULE SUMMARY: After July 1, 2018, all people who have been found guilty except for insanity (GEI) who have been under SHRP jurisdiction will be placed under the jurisdiction of the PSRB. The references to Oregon Health Authority (OHA) jurisdiction in the GEI statutes will be eliminated.

CHANGES TO RULE:

~~309-092-0140~~

~~Patient Appearing Pro Se~~

~~When an individual waives the right to be represented by an attorney, the SHRP shall take written or oral testimony and decide whether the individual is capable of understanding the proceedings.~~

~~Statutory/Other Authority: ORS 413.042 & 161.387, SB 420~~

~~Statutes/Other Implemented: ORS 161.346, SB 420~~

REPEAL: 309-092-0145

RULE SUMMARY: After July 1, 2018, all people who have been found guilty except for insanity (GEI) who have been under SHRP jurisdiction will be placed under the jurisdiction of the PSRB. The references to Oregon Health Authority (OHA) jurisdiction in the GEI statutes will be eliminated.

CHANGES TO RULE:

~~309-092-0145~~

~~Issues Before The SHRP~~

~~At any hearing before the SHRP, issues considered shall be limited to those relevant to the purposes of the hearing. Notice of intent to raise new issues shall be given to the SHRP in writing prior to the hearing. If new issues are raised, the SHRP may continue the hearing to consider the issues and give the parties an opportunity to submit additional evidence.~~

~~Statutory/Other Authority: ORS 413.042 & 161.387, SB 420~~

~~Statutes/Other Implemented: ORS 161.346, SB 420~~

REPEAL: 309-092-0150

RULE SUMMARY: After July 1, 2018, all people who have been found guilty except for insanity (GEI) who have been under SHRP jurisdiction will be placed under the jurisdiction of the PSRB. The references to Oregon Health Authority (OHA) jurisdiction in the GEI statutes will be eliminated.

CHANGES TO RULE:

~~309-092-0150~~

~~Primary Concern: Protection of Society~~

~~In determining whether an individual should be conditionally released or discharged, the SHRP shall have as its primary concern the protection of society. The SHRP shall not discharge an individual whose mental disease or defect may, with reasonable medical probability occasionally become active, and when active, render the individual a danger to others.~~

~~Statutory/Other Authority: ORS 413.042 & 161.387, SB 420~~

~~Statutes/Other Implemented: ORS 161.336, 161.341, 161.346, 161.351, SB 420~~

REPEAL: 309-092-0155

RULE SUMMARY: After July 1, 2018, all people who have been found guilty except for insanity (GEI) who have been under SHRP jurisdiction will be placed under the jurisdiction of the PSRB. The references to Oregon Health Authority (OHA) jurisdiction in the GEI statutes will be eliminated.

CHANGES TO RULE:

~~309-092-0155~~

~~Initial Hearing~~

~~After being placed under the jurisdiction of the SHRP and committed to a state hospital, the individual shall have an initial hearing before the SHRP to determine whether the individual should be committed, conditionally released or discharged.¶~~

- ~~(1) At an initial hearing, the SHRP shall make a finding on the issue of presence of mental disease or defect and dangerousness and may base it on the court's findings and any additional information received.¶~~
- ~~(2) If the SHRP finds at its initial hearing that the individual is affected by a mental disease or defect, presents a substantial danger to others and is not a proper subject for conditional release, the SHRP shall order the individual committed to a state hospital designated by the Authority.¶~~
- ~~(3) If the SHRP finds the individual is still affected by a mental disease or defect and is a substantial danger to others but can be adequately controlled with treatment and supervision if conditionally released, the SHRP shall find the individual appropriate for conditional release and shall follow procedures set forth in 309-092-0190.¶~~
- ~~(4) If the SHRP makes a finding the individual is no longer affected by a mental disease or defect or is no longer a substantial danger to others, the SHRP shall order the discharge of the individual from jurisdiction.~~

~~Statutory/Other Authority: ORS 413.042 & 161.387, SB 420~~

~~Statutes/Other Implemented: ORS 161.336, ORS 161.341, ORS 161.346, SB 420~~

REPEAL: 309-092-0160

RULE SUMMARY: After July 1, 2018, all people who have been found guilty except for insanity (GEI) who have been under SHRP jurisdiction will be placed under the jurisdiction of the PSRB. The references to Oregon Health Authority (OHA) jurisdiction in the GEI statutes will be eliminated.

CHANGES TO RULE:

~~309-092-0160~~

~~Revocation Hearing~~

~~(1) Within 20 days following the return of a tier two individual to a state hospital the SHRP shall hold a hearing and consider whether the revocation was appropriate and whether the individual can be continued on conditional release or should be committed to a state hospital.¶¶~~

~~(2) The SHRP may consider a request for discharge at a revocation hearing or make that finding after considering the evidence before the SHRP.¶¶~~

~~(3) If the SHRP finds the individual is affected by a mental disease or defect and presents a substantial danger to others and cannot be safely controlled in the community while on conditional release, the individual shall be committed to a state hospital.¶¶~~

~~(4) If the SHRP finds the individual could be controlled in the community but no conditional release plan has been approved by the SHRP, the SHRP shall order the individual committed to a state hospital but find the individual appropriate for conditional release, and shall order a conditional release plan be created.¶¶~~

~~(a) The SHRP shall specify what conditions the plan should include.¶¶~~

~~(b) The SHRP may approve the conditional release plan submitted by the staff of the hospital, by the individual or someone on the individual's behalf, at an administrative hearing.¶¶~~

~~(c) If the PSRB submits conditions of release, the SHRP must order that those conditions be followed.¶¶~~

~~(5) If the SHRP finds the individual can be controlled in the community and a verified conditional release plan is approved by the SHRP, the SHRP shall order the individual placed on conditional release.¶¶~~

~~(6) If the individual has been charged with a new crime or is serving time in the corrections system, the SHRP shall not hold a revocation hearing until such time as jurisdiction of the individual is returned to the Authority or upon an appropriate request to hold a hearing.~~

~~Statutory/Other Authority: ORS 413.042 & 161.387, SB 420~~

~~Statutes/Other Implemented: ORS 161.336, SB 420~~

REPEAL: 309-092-0165

RULE SUMMARY: After July 1, 2018, all people who have been found guilty except for insanity (GEI) who have been under SHRP jurisdiction will be placed under the jurisdiction of the PSRB. The references to Oregon Health Authority (OHA) jurisdiction in the GEI statutes will be eliminated.

CHANGES TO RULE:

~~309-092-0165~~

~~Patient Request for Conditional Release~~

~~In a hearing before the SHRP on an individual request for conditional release, the SHRP shall consider whether, although still affected by mental disease or defect, the individual can be adequately controlled in the community with treatment and supervision, and shall determine whether the individual is a proper subject for conditional release in accordance with procedures set forth in Division 070.~~

~~Statutory/Other Authority: ORS 413.042 & 161.327, SB 420~~

~~Statutes/Other Implemented: ORS 161.341, SB 420~~

REPEAL: 309-092-0170

RULE SUMMARY: After July 1, 2018, all people who have been found guilty except for insanity (GEI) who have been under SHRP jurisdiction will be placed under the jurisdiction of the PSRB. The references to Oregon Health Authority (OHA) jurisdiction in the GEI statutes will be eliminated.

CHANGES TO RULE:

~~309-092-0170~~

~~Patient Request for Discharge~~

~~In a hearing before the SHRP on an individual's request for discharge, the SHRP shall determine whether the individual continues to be affected by a mental disease or defect and is a substantial danger to others:¶¶~~

~~(1) If the SHRP finds the individual is no longer affected by mental disease or defect or if so affected, no longer presents a substantial danger to others, the individual shall be discharged.¶¶~~

~~(2) If the SHRP finds the individual is not appropriate for discharge, the SHRP may consider whether the individual is appropriate for conditional release even if not requested previously by the individual.~~

~~Statutory/Other Authority: ORS 413.042 & 161.327, SB 420~~

~~Statutes/Other Implemented: ORS 161.341, SB 420~~

REPEAL: 309-092-0175

RULE SUMMARY: After July 1, 2018, all people who have been found guilty except for insanity (GEI) who have been under SHRP jurisdiction will be placed under the jurisdiction of the PSRB. The references to Oregon Health Authority (OHA) jurisdiction in the GEI statutes will be eliminated.

CHANGES TO RULE:

~~309-092-0175~~

~~Hospital Request for Conditional Release~~

~~(1) At any time while an individual is committed to a state hospital the superintendent of the state hospital shall apply to the SHRP for conditional release if it is the opinion of the treating physician that the individual continues to be affected by mental disease or defect and continues to be a danger to others but can be controlled in the community with proper care, medication, supervision and treatment.¶~~

~~(2) The application shall be accompanied by an updated report setting forth facts supporting the state hospital staff's opinion and a plan for treatment and supervision in the community which includes observations and facts which support staff recommendations.~~

~~Statutory/Other Authority: ORS 413.042 & 161.387, SB 420~~

~~Statutes/Other Implemented: ORS 161.341, SB 420~~

REPEAL: 309-092-0178

RULE SUMMARY: After July 1, 2018, all people who have been found guilty except for insanity (GEI) who have been under SHRP jurisdiction will be placed under the jurisdiction of the PSRB. The references to Oregon Health Authority (OHA) jurisdiction in the GEI statutes will be eliminated.

CHANGES TO RULE:

~~309-092-0178~~

~~SHRPs Procedure for Conditional Release of Tier Two Offenders~~

~~The SHRP has jurisdiction of Tier Two offenders while the individuals are in the Oregon State Hospital. The PSRB has jurisdiction of and supervision over Tier Two offenders conditionally released from the State Hospital. The SHRP is responsible for conducting the hearings for the Authority. To efficiently facilitate the issuance of conditional release orders with conditions provided by the PSRB, the following process will be utilized:¶¶~~

~~(1) When a Tier Two Offender ("the individual") is committed to the jurisdiction of SHRP, SHRP will send a copy of the commitment order to the PSRB upon receipt.¶¶~~

~~(2) Throughout the course of the conditional release planning process for Tier Two offenders in the State Hospital, SHRP shall continue to conduct the statutorily required hearings for the individual.¶¶~~

~~(3) Upon receipt of all of the following documents, SHRP shall forward all of the documents to the PSRB with notice that SHRP intends to conduct a conditional release hearing in order to allow the PSRB to conduct an administrative review as provided in OAR 859-070-0040:¶¶~~

~~(a) SHRP's order for evaluation of possible conditional release of a Tier Two offender;¶¶~~

~~(b) The Tier Two offender's current updated SHRP exhibit file;¶¶~~

~~(c) The evaluation by the proposed community provider;¶¶~~

~~(d) A summary of conditional release plan form which outlines the proposed conditions; and¶¶~~

~~(e) A Progress Note Update authored by the treating psychiatrist dated within 30 days of the signed summary of the conditional release plan form.¶¶~~

~~(4) The SHRP shall set the matter for either a full or administrative hearing for consideration of conditional release no sooner than 30 days after the PSRB has been provided the required documents. This will allow the time necessary for the SHRP to provide the statutorily required notice to the victims and other interested parties as well as for the PSRB to conduct its review of the proposed conditions of release.¶¶~~

~~(5) No less than 7 days prior to that hearing date, the SHRP shall provide a copy of the proposed conditions of release to the individual's attorney and the State's attorney at the Department of Justice for review and opportunity to request a full hearing regarding the proposed conditions before issuance of a final order by the SHRP.¶¶~~

~~(6) If either attorney submits a written request by fax or email for a full hearing, it must be received no less than 48 hours prior to the scheduled hearing date. If no request is received, the SHRP may proceed with an administrative hearing if it chooses.¶¶~~

~~(7) The SHRP must review the PSRB's report and recommended conditions of release. The SHRP may order the conditional release of the individual, including any applicable conditions, and the transfer of jurisdiction to the PSRB. The SHRP shall issue a final order within 15 days of its hearing.~~

~~Statutory/Other Authority: ORS 413.042 & 161.387, SB 420~~

~~Statutes/Other Implemented: ORS 161.341, SB 420~~

REPEAL: 309-092-0180

RULE SUMMARY: After July 1, 2018, all people who have been found guilty except for insanity (GEI) who have been under SHRP jurisdiction will be placed under the jurisdiction of the PSRB. The references to Oregon Health Authority (OHA) jurisdiction in the GEI statutes will be eliminated.

CHANGES TO RULE:

~~309-092-0180~~

~~Hospital or Outpatient Supervisor Request for Discharge~~

~~At any time while an individual is committed to a state hospital the superintendent of the state hospital or designee shall apply to the SHRP for discharge if, in the opinion of the hospital physician or outpatient supervisor, the individual is no longer affected by mental disease or defect or, if so affected, the person no longer presents a substantial danger to others. The application shall be accompanied by a report setting forth the facts supporting the opinion.~~

~~Statutory/Other Authority: ORS 413.042 & 161.387, SB 420~~

~~Statutes/Other Implemented: ORS 161.341, SB 420~~

REPEAL: 309-092-0185

RULE SUMMARY: After July 1, 2018, all people who have been found guilty except for insanity (GEI) who have been under SHRP jurisdiction will be placed under the jurisdiction of the PSRB. The references to Oregon Health Authority (OHA) jurisdiction in the GEI statutes will be eliminated.

CHANGES TO RULE:

~~309-092-0185~~

~~Mandatory Two-Year, Five-Year Hearings~~

~~(1) The SHRP shall have periodic mandatory hearings for all individuals.¶~~

~~(2) In no case shall an individual be committed and held in a state hospital under the SHRP's jurisdiction for a period of time exceeding two years without a hearing before the SHRP to determine whether the individual should be conditionally released or discharged.¶~~

~~(3) At mandatory two-year hearings, the SHRP shall consider:¶~~

~~(a) Whether the individual continues to be affected by mental disease or defect and whether the individual presents a substantial danger to others; and¶~~

~~(b) If the individual is affected by mental disease or defect and is a substantial danger to others, whether the individual could be adequately controlled if conditionally released.~~

~~Statutory/Other Authority: ORS 413.042, 161.387; SB 420~~

~~Statutes/Other Implemented: ORS 161.341, ORS 161.351, SB 420~~

REPEAL: 309-092-0190

RULE SUMMARY: After July 1, 2018, all people who have been found guilty except for insanity (GEI) who have been under SHRP jurisdiction will be placed under the jurisdiction of the PSRB. The references to Oregon Health Authority (OHA) jurisdiction in the GEI statutes will be eliminated.

CHANGES TO RULE:

~~309-092-0190~~

~~Status Hearing~~

~~The SHRP may hold a hearing at any time to review the status of the individual to determine whether a conditional release or discharge order is appropriate.~~

~~Statutory/Other Authority: ORS 413.042 & 161.327, SB 420~~

~~Statutes/Other Implemented: ORS 161.336, SB 420~~

REPEAL: 309-092-0195

RULE SUMMARY: After July 1, 2018, all people who have been found guilty except for insanity (GEI) who have been under SHRP jurisdiction will be placed under the jurisdiction of the PSRB. The references to Oregon Health Authority (OHA) jurisdiction in the GEI statutes will be eliminated.

CHANGES TO RULE:

~~309-092-0195~~

~~Review Panel Order of Conditional Release~~

- ~~(1) In determining whether an order of conditional release is appropriate, the SHRP shall have as its goals the protection of the public, the best interests of justice and the welfare of the individual. The SHRP may consider the testimony and exhibits at the hearing regarding the individual's behavior in the hospital including the individual's progress, insight and responsibility taken for his or her own behavior.¶¶~~
- ~~(2) If the SHRP finds the individual may be controlled in the community and a verified conditional release plan is approved by the SHRP, the SHRP may order the individual placed on conditional release.¶¶~~
- ~~(3) If the SHRP finds the individual could be controlled in the community but no conditional release plan has been approved by the SHRP, the SHRP may order the individual to remain in a state hospital but find the individual appropriate for conditional release pending submission of a conditional release plan approved by the SHRP.¶¶~~
- ~~(a) The SHRP shall specify what conditions the plan should include and may approve the conditional release plan submitted by the staff of the state hospital, by the individual or someone on the individual's behalf at an administrative hearing.¶¶~~
- ~~(b) Following the procedures set forth in OAR 309-092-0178, the PSRB may provide the SHRP with conditions of release that the PSRB determines are advisable. If the SHRP orders the individual conditionally released, the SHRP shall include the conditions of release in the order.¶¶~~
- ~~(4) If a verified conditional release plan has not been approved and the conditions need further examination and approval by the SHRP, the SHRP may commit the individual, find the individual appropriate for conditional release or continue the hearing.~~

~~Statutory/Other Authority: ORS 413.042 & 161.387, SB 420~~

~~Statutes/Other Implemented: ORS 161.336, SB 420~~

REPEAL: 309-092-0200

RULE SUMMARY: After July 1, 2018, all people who have been found guilty except for insanity (GEI) who have been under SHRP jurisdiction will be placed under the jurisdiction of the PSRB. The references to Oregon Health Authority (OHA) jurisdiction in the GEI statutes will be eliminated.

CHANGES TO RULE:

~~309-092-0200~~

~~Elements of Conditional Release Order~~

~~(1) The SHRP may consider any or all of the following elements of a conditional release plan and determine which are appropriate and necessary to insure the safety of the public. Following the procedures set forth in OAR 309-092-0178, the PSRB may provide the SHRP with conditions of release that the PSRB determines are advisable. If the SHRP orders the individual conditionally released, the SHRP shall include the conditions of release in the order.~~

~~(a) Housing must be available for the individual. The SHRP may require 24-hour supervised housing, a supervised group home, foster care, housing with relatives or independent housing.~~

~~(b) Mental health treatment must be available in the community. The SHRP-approved provider of the treatment must have had an opportunity to evaluate the patient and the proposed conditional release plan and to be heard before the SHRP.~~

~~(A) The provider must have agreed to provide the necessary mental health treatment to the individual.~~

~~(B) The treatment may include individual counseling, group counseling, home visits, prescription of medication or any other treatment recommended by the provider(s) and approved by the SHRP.~~

~~(C) Reporting responsibility: An individual must be available to be designated by the PSRB as having primary reporting responsibility.~~

~~(2) Special conditions may be imposed, including but not limited to, the following: no consumption of alcohol, taking of antabuse, observation by designated individual of each ingestion of medication; submitting to drug screen tests; no driving; vocational activities; day treatment; attending school; working; or sex offender assessment and treatment.~~

~~(3) Parole and probation supervision may be ordered.~~

~~Statutory/Other Authority: ORS 413.042 & 161.387, SB 420~~

~~Statutes/Other Implemented: ORS 161.336, SB 420~~

REPEAL: 309-092-0205

RULE SUMMARY: After July 1, 2018, all people who have been found guilty except for insanity (GEI) who have been under SHRP jurisdiction will be placed under the jurisdiction of the PSRB. The references to Oregon Health Authority (OHA) jurisdiction in the GEI statutes will be eliminated.

CHANGES TO RULE:

~~309-092-0205~~

~~The Authority's Responsibility to Prepare Plan~~

~~(1) When a state hospital determines an individual may be ready for conditional release, the state hospital staff may request that the SHRP order an evaluation for community placement.~~

~~(2) The Division is responsible for and shall prepare the conditional release plan. In order to carry out the conditional release plan, the Division may contract with a community mental health program, other public agency, or Private Corporation or an individual to provide evaluations for community placement, supervision and treatment.~~

~~Statutory/Other Authority: ORS 413.042 & 161.387, SB 420~~

~~Statutes/Other Implemented: ORS 161.336, SB 420~~

REPEAL: 309-092-0210

RULE SUMMARY: After July 1, 2018, all people who have been found guilty except for insanity (GEI) who have been under SHRP jurisdiction will be placed under the jurisdiction of the PSRB. The references to Oregon Health Authority (OHA) jurisdiction in the GEI statutes will be eliminated.

CHANGES TO RULE:

~~309-092-0210~~

~~Out-of-State Conditional Release Order~~

~~The SHRP may consider and approve a conditional release plan to have the individual reside out of state.~~

~~Statutory/Other Authority: ORS 413.042 & 161, SB 420.~~

~~Statutes/Other Implemented: ORS 161.336, SB 420~~

REPEAL: 309-092-0215

RULE SUMMARY: After July 1, 2018, all people who have been found guilty except for insanity (GEI) who have been under SHRP jurisdiction will be placed under the jurisdiction of the PSRB. The references to Oregon Health Authority (OHA) jurisdiction in the GEI statutes will be eliminated.

CHANGES TO RULE:

~~309-092-0215~~

~~Reconsideration~~

~~(1) A party to the hearing may request reconsideration of a Review Panel finding in writing. Also, on its own motion, the SHRP may reconsider the finding.¶¶~~

~~(2) If an issue is appropriately raised, the matter shall be remanded to the SHRP for hearing on that issue.~~

~~Reconsideration may be upheld if:¶¶~~

~~(a) The written findings are found to be inaccurate or do not support the action taken by the SHRP;¶¶~~

~~(b) Substantial information material to the issues which was not known or which could not have been known at the time of the hearing is received;¶¶~~

~~(c) A material misrepresentation of facts or concealment of facts occurred; or¶¶~~

~~(d) The SHRP decision is contrary to the rules or statutes governing the SHRP.¶¶~~

~~(3) If the issues are not appropriately raised, the individual shall receive written notification of the reasons for denial of reconsideration.¶¶~~

~~(4) If good cause exists, a party to the hearing may request reconsideration by the Director. Subject to the Director's discretion and determination of good cause, the Director may reconsider the SHRP's findings by listening to the audio of the hearing and reviewing the exhibits from the hearing. The Director may overrule or sustain the SHRP's findings. The Director may also remand the matter to the SHRP for further consideration.~~

~~Statutory/Other Authority: ORS 413.042 & 161.327, SB 420~~

~~Statutes/Other Implemented: ORS 161.346, SB 420~~

REPEAL: 309-092-0220

RULE SUMMARY: After July 1, 2018, all people who have been found guilty except for insanity (GEI) who have been under SHRP jurisdiction will be placed under the jurisdiction of the PSRB. The references to Oregon Health Authority (OHA) jurisdiction in the GEI statutes will be eliminated.

CHANGES TO RULE:

~~309-092-0220~~

~~Judicial Review~~

~~(1) The Legislature has provided that a final Review Panel order shall be subject to review by the Court of Appeals upon petition to the court within 60 days of the issuance of the order in accordance with ORS 161.385(8).¶~~

~~(2) The SHRP shall provide the attorney for the individual and the court with the record of proceedings.~~

~~Statutory/Other Authority: ORS 413.042 & 161.387, SB 420~~

~~Statutes/Other Implemented: ORS 161.385, SB 420~~

REPEAL: 309-092-0225

RULE SUMMARY: After July 1, 2018, all people who have been found guilty except for insanity (GEI) who have been under SHRP jurisdiction will be placed under the jurisdiction of the PSRB. The references to Oregon Health Authority (OHA) jurisdiction in the GEI statutes will be eliminated.

CHANGES TO RULE:

~~309-092-0225~~

~~Enforcement of Review Panel Orders~~

~~The SHRP may apply to the circuit court of the appropriate county for contempt proceedings under ORS 161.395 when its directive to an agency or person is not followed.~~

~~Statutory/Other Authority: ORS 413.042 & 161.327, SB 420~~

~~Statutes/Other Implemented: ORS 161.395, SB 420~~

REPEAL: 309-092-0230

RULE SUMMARY: After July 1, 2018, all people who have been found guilty except for insanity (GEI) who have been under SHRP jurisdiction will be placed under the jurisdiction of the PSRB. The references to Oregon Health Authority (OHA) jurisdiction in the GEI statutes will be eliminated.

CHANGES TO RULE:

~~309-092-0230~~

~~Compliance~~

~~State or local community mental health programs shall comply with any order of the SHRP.~~

~~Statutory/Other Authority: ORS 413.042, 137.540, 161.327, 192.620, 430.630, SB 420~~

~~Statutes/Other Implemented: ORS 161.336, 161.346, SB 420~~

REPEAL: 309-092-0235

RULE SUMMARY: After July 1, 2018, all people who have been found guilty except for insanity (GEI) who have been under SHRP jurisdiction will be placed under the jurisdiction of the PSRB. The references to Oregon Health Authority (OHA) jurisdiction in the GEI statutes will be eliminated.

CHANGES TO RULE:

~~309-092-0235~~

~~Custody of An Individual Who is a Substantial Danger to Others~~

~~The Legislature has provided that the community mental health program director, the director of the facility providing treatment to an individual on conditional release, any peace officer or any individual responsible for the supervision of the individual on conditional release may take or request that an individual on conditional release be taken into custody if there is reasonable cause to believe the individual is a substantial danger to others because of mental disease or defect and the person is in need of immediate care, custody or treatment. The individual shall be transferred to a state hospital designated by the Authority.~~

~~Statutory/Other Authority: ORS 413.042 & 161.387, SB 420~~

~~Statutes/Other Implemented: ORS 161.346, SB 420~~

REPEAL: 309-092-0240

RULE SUMMARY: After July 1, 2018, all people who have been found guilty except for insanity (GEI) who have been under SHRP jurisdiction will be placed under the jurisdiction of the PSRB. The references to Oregon Health Authority (OHA) jurisdiction in the GEI statutes will be eliminated.

CHANGES TO RULE:

~~309-092-0240~~

~~Leaves and Passes~~

~~(1) Any overnight or out-of-town leave of absence or pass request for SHRP individuals in a state hospital shall be signed by a physician and submitted to the hospital Risk Review Committee for initial consideration. A leave of absence or pass may be requested when the physician is of the opinion that a leave of absence or pass from the hospital would pose no substantial danger to others and would be therapeutic for the individual.~~

~~(2) If the hospital's Risk Review Committee approves the request, the request and recommendation of the Risk Review Committee shall be presented to the SHRP for the purposes of ORS 161.326 (Notice to victim).~~

~~Statutory/Other Authority: ORS 413.042, 137.540, 161.315, 161.327, 161.332, 161.341, 161.346, 161.351, 161.365, 161.370, 161.390, 161.400, 192.690, 428.210, SB 420~~

~~Statutes/Other Implemented: ORS 161.400, SB 420~~