

[Psychiatric Security Review Board](#)

[Chapter 859](#)

[Division 200](#)

[PSRB CIVIL COMMITMENT PROGRAM](#)

[859-200-0005](#)

[Background and Purpose of Extremely Dangerous Civil Commitment Program](#)

The Extremely Dangerous Person with Qualifying Mental Disorder statute, enacted by SB 421 in 2013, establishes a legislative framework designed to balance the rights of individuals with qualifying mental disorders with the imperative to protect society from those who pose an extreme risk of serious harm if not committed. The statute justifies commitment for individuals whose qualifying mental disorders are treatment resistant, significantly impairing their decision-making, insight, and impulse control. Such individuals may be deemed extremely dangerous as evidenced by a qualifying prior act, if not committed.

This type of commitment is distinct from civil commitments initiated pursuant to ORS 426.070, which has been deemed inadequate to address the type of extreme risk this group poses to the public. This commitment was created to address cases where individuals cannot be adjudicated for alleged criminal acts yet still pose an extreme risk to public safety. By allowing for commitment in these circumstances, the statute provides a means to manage individuals who cannot be held criminally accountable due to their qualifying mental disorder. It can also be applied to persons who have been previously convicted or found guilty except for insanity of a qualifying prior act where they are exhibiting symptoms or behaviors of a qualifying mental disorder substantially similar to those that preceded that act.

The administrative rules in this section were developed in alignment with the following principles and legislative intent:

1. **Public Safety is Fundamental.** At its core, the statute seeks to enhance public safety by identifying and committing individuals deemed extremely dangerous due to qualifying mental disorders that are resistant to treatment. The legislative intent of this statute aligns with the principles articulated in civil commitment caselaw which underscore that due process requires the nature and duration of commitment to have a reasonable relationship to the purpose for which the individual is committed. It aligns with broader civil commitment laws that aim to manage individuals with a history of clearly documented violent behavior attributable to qualifying mental health conditions. Recognizing that some individuals may be unable to be adjudicated due to their mental illness yet still pose a significant threat, the statute acts as a preventive measure. By committing these individuals, it addresses the risks posed by those who may not fully understand or control their actions, thus prioritizing public safety while acknowledging the complexities of their mental health challenges.

2. **Mental Health Rehabilitation is Key.** While the statute prioritizes public safety, it equally recognizes the critical role of mental health rehabilitation. It ensures that the commitment process is not merely punitive, but integrates essential therapeutic elements designed to promote recovery. By establishing a mechanism for conditional release, the statute recognizes that individuals with qualifying mental disorders can make significant progress, even while still meeting the criteria for this commitment due to ongoing treatment resistance and danger should the commitment be terminated. The framework further

Commented [AB1]: "Mental illness" needs to be replaced with "qualifying mental disorder"

Commented [AB2]: Plan to have a more robust background/purpose. For example, see statement for traditional civil commitment:
<https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=313009>

implies that treatment interventions extend beyond the competency restoration goals associated with the Oregon's fitness to proceed statutes contained in ORS 161.370. Rather, it focuses on equipping individuals with treatment to manage their qualifying mental disorders effectively in a supervised setting. By doing so, the statute aims to reduce the likelihood of them becoming an extreme risk to the safety of others. It fosters opportunities for meaningful advancements in their mental health and risk management, ultimately facilitating placement in the least restrictive level of care.

3. Treatment Resistance as a Legal Term. The term "treatment resistance" encompasses an individual's significant impairment in decision-making, insight, and impulse control, particularly in the context of their qualifying mental health condition. It refers to individuals who struggle to recognize and manage their dangerous behaviors towards others, despite having received adequate psychiatric care and exhausted reasonable treatment options. Unlike the psychiatric definition of treatment resistance (Correll & Howes, 2021), which focuses primarily on nonresponse to specific medication trials and symptom management, this statute emphasizes the broader implications for public safety and the individual's capacity to manage risks.

4. Distinction of Competence. This type of commitment originated from criminal cases in which individuals could not be adjudicated for alleged crimes due to being deemed unfit to proceed, yet still posed a significant threat to public safety. However, the term "competent" in this context goes beyond simply being able to assist in a criminal trial; it emphasizes the individual's capacity to make informed decisions about their mental health care and risk management. This distinction is further highlighted by the authority granted to district attorneys to request a fitness to proceed evaluation under specific conditions (ORS 426.701(10)). Additionally, it's important to note that the expert witnesses who testify at Board hearings are not necessarily certified forensic evaluators, and therefore lack the statutory authority to conduct formal fitness to proceed evaluations.

5. Foreseeability and Heightened Threshold for Commitment. The term "extreme risk" sets a heightened threshold for this type of commitment, justifying its two-year duration. Additionally, the statute emphasizes foreseeability, requiring decision-makers to evaluate an individual's potential danger in light of their historical behavior and outside of the confines of the commitment. This permits periods of recommitment even when symptoms have improved and progress in recovery is apparent. Given the severity of the known associated risks, the statute is structured to implement preventive interventions, ensuring that adequate monitoring is in place so that proactive measures are taken before crises develop.

6. Safeguards at Discharge for Public Safety. The statute implies that an individual may be recharged for the alleged prior act for which they were committed and allows for tolling (i.e., statute of limitations does not apply) during the period of commitment. The statute permits a district to request a circuit court order a fitness to proceed evaluation. It is critical to recognize that some individuals may no longer meet this commitment criteria yet remain unfit to proceed with a criminal case.

7. Affirmation of Due Process. The statute upholds due process for individuals through contested hearings at both the PSRB and circuit court levels. These hearings afford individuals the opportunity to challenge their commitment status and placement, with access to legal counsel at least twice during the 24-month period of commitment. This framework ensures a meaningful review of their circumstances, confirming that continued commitment is both appropriate and justified.

The circuit court is responsible for the initial commitment and any recommitment, applying the clear and convincing standard of proof as specified in the statute. In contrast, the PSRB evaluates whether there are grounds to shorten the commitment, applying the preponderance of the evidence standard of proof as specified in its rules. This distinction reinforces the separate roles and standards of proof involved in the commitment process, ensuring thorough oversight and protection of individual rights throughout.

~~(1) Senate Bill 421 (2013) created a new type of civil commitment where the person civilly committed is found by the court to be:~~

~~(a) Extremely dangerous:~~

~~(A) Because the person is at least 18 years old and is exhibiting symptoms or behaviors of a mental disorder substantially similar to those that preceded the act described in ORS 426.701(3)(a)(C); and~~

~~(B) Because of a qualifying mental disorder presents a serious danger to the safety of other persons by reason of an extreme risk that the person will inflict grave or potentially lethal physical injury on others; and~~

~~(C) Unless committed, will continue to represent an extreme risk to the safety of other persons in the foreseeable future.~~

~~(b) Suffers from a qualifying mental disorder that is resistant to treatment; and~~

~~(c) Because of the qualifying mental disorder that is resistant to treatment, the person committed one of the acts listed in ORS 426.701(3)(a)(C).~~

~~(2) Once committed, the court places the person under the Board for 24 months for supervision and monitoring while under the Board's jurisdiction. At the end of the 24-month commitment period, the court may recommit the person for additional 24-month commitment periods until such time the person meets the criteria for discharge.~~

~~(3) During the period(s) of commitment, persons can be placed at the state hospital, or on conditional release, or discharged.~~

Statutory/Other Authority: ORS 161.387 & ORS 426.701

Statutes/Other Implemented: ORS 161.387, ORS 426.701 & ORS 426.702

History:

[PSRB 1-2022, amend filed 01/13/2022, effective 01/13/2022](#)

PSRB 1-2014, f. & cert. ef. 3-5-14

[859-200-0010](#)

Rules Applicability

OAR 859-200-0005 through 859-200-0320 apply to a person who a court has civilly committed as an extremely dangerous person with mental illness under ORS 426.701 and who is placed under the jurisdiction of the Psychiatric Security Review Board (PSRB). No other PSRB administrative rules apply to the cases of those civilly committed and placed under the Board's jurisdiction.

Statutory/Other Authority: ORS 161.387 & ORS 426.701

Statutes/Other Implemented: ORS 161.387, ORS 426.701 & ORS 426.702

Commented [AB3]: This is the only place this phrase is used in the OARs.

Commented [AB4]: Not defined in the OARs. This concern was raised during initial rulemaking. This term is not used in any other section of the OARs.

History:

[PSRB 1-2022, amend filed 01/13/2022, effective 01/13/2022](#)

PSRB 1-2014, f. & cert. ef. 3-5-14

[859-200-0015](#)

Copies; Cost of Administrative Rules

State employees may receive a printed copy of Oregon Administrative Rules on request at no cost. Any person not employed by the State of Oregon shall pay \$0.25 per page for a printed copy of the Extremely Dangerous Civil Commitments Program Administrative Rules. Oregon Administrative Rules are available electronically at no charge from the Oregon Secretary of State website or from the Psychiatric Security Review Board's website.

Statutory/Other Authority: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

Statutes/Other Implemented: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

History:

PSRB 1-2014, f. & cert. ef. 3-5-14

[859-200-0020](#)

Definitions

(1) "Administrative review" means a meeting of the Board where a quorum is present and where the Board considers requests for conditional release, requests for community evaluations or modifications to a person's current conditional release plan. At these hearings, parties are not present and testimony is not taken.

(2) "Administrative meeting" means any meeting of the Board where a quorum is present for the purpose of considering matters relating to Board policy and administration. Minutes shall be taken during an administrative meeting and distributed to Board members and interested persons. Minutes shall be voted on and approved at subsequent administrative meetings.

(3) "Community evaluation" is an assessment by a community mental health provider who determines if a person is appropriate for conditional release and if so, under what conditional release plan.

(4) "Commitment county" means the county in which the district attorney filed the initial petition. This is the same as the county in which the person is initially committed as an extremely dangerous person with mental illness under the jurisdiction of the Board.

(5) "Conditional release" means a grant by the court or by the Board for the person to reside outside the state hospital in the community under conditions for monitoring and treatment of the mental disorder resistant to treatment and the mental and physical health of the person.

(6) "Discharge" means that the person is no longer under the jurisdiction of the Board because any of the following occurs:

(a) The Board or Court determines, after a hearing, that the person no longer suffers from a mental disorder that is resistant to treatment or is no longer extremely dangerous; or

(b) The maximum 24-month period of commitment has expired, and the Board has not certified the person for continued treatment.

(7) "Examination" refers to the professional evaluation submitted to a Circuit Court judge by the appointed examiner to aid the court in determining whether an individual meets the criteria of being an extremely dangerous person with qualifying mental disorder, based on clear and convincing evidence. The examination shall be made part of the Board's official record.

(8) "Examiner" refers to the qualified professional appointed by a Circuit Court judge at the commencement of a petition to initiate commitment proceedings under ORS 426.701.

(a) The examiner is responsible for conducting an examination to assist the court or the Board in determining whether an individual meets the criteria of being an extremely dangerous person with a qualifying mental disorder, based on clear and convincing evidence.

(b) The examiner shall conduct the examination consistent with the definitions contained in these rules.

(9) "Extremely Dangerous" means because of the qualifying mental disorder that is resistant to treatment:

(a) The person presents a serious danger to the safety of other persons by reason of an extreme risk that the person will inflict grave or potentially lethal physical injury on other persons; and

(b) Unless committed, the person will continue to represent an extreme risk to the safety of other persons in the foreseeable future.

Commented [BA*P5]: 1.Is the consensus that an examination is required for each new period of commitment?
2.Should this be a definition or separate rule? See section—Contents of Examination.
1.Traditional Civil Commitment provides the following requirements for an [examination](#).

(10) "Extreme Risk of Serious Danger" means a high likelihood the person will revert to exhibiting the symptoms or behaviors associated with their qualifying mental disorder, at a severity comparable to that observed at the time of the commission of the qualifying prior act, if they are not committed. The assessment of extreme risk of serious danger accounts for the person's potential for future dangerousness in the context of the circumstances and under the conditions surrounding the prior qualifying act. It considers the elements of the commit that will effectively mitigate a person's risk. In consideration of certification or recommitment, it evaluates whether the progress made while committed can be sustained or replicated for a reasonable period after the commitment ends.

- *We assume extreme risk is a higher standard than traditional civil commitment (cf. dangerousness to others). Extreme risk has been associated with SVP statutes (e.g., Kansas v. Hendricks, Washington's SVP)—although, nothing in the legislative history of SB 421 indicates why the drafters chose this phrase or specified its meaning.*
- *Initial RAC conducted in 2014 identified need to better define "extreme risk."*
- *Research literature does not delineate the risk for more severe acts/Measure 11 crimes versus an assault/other felonies. Extreme risk is not vernacular used in the risk assessment literature; rather, low, moderate, high are the common labels. There is some indication that extreme risk was not intended to be determined solely as a function of risk tools, but rather based on other factors. For example, there was representation that there are appeals decisions indicating that a risk assessment is not necessary (Is this with respect to traditional civil commits or the EDPMI?).*
- *Is there a way to incorporate who a person who is no longer an extreme risk if the commitment is terminated into this definition, even if they remain resistant to treatment?*

Here is the danger analysis in the administrative rules for traditional [Civil Commitment](#):

(b) An assessment of dangerousness to others shall consider the following areas:

(A) History of thoughts, plans, attempts or acts of assaultiveness or violence;

(B) Presence of thoughts, plans, attempts or acts of assaultiveness or violence;

(C) Means and ability to carry out the plans for assaultiveness or violence;

(D) The potential lethality of the plan;

(E) The probable imminence of an attempt at assault or violence; and

(F) Available support systems which may prevent the person from attempting an assault or an act of violence.

(11) "Foreseeable Future" refers to a time frame following the end of a commitment in which extreme risk or serious danger can be anticipated with reasonable medical probability.

Commented [AB6]: Should there be a more specific timeframe. What is reasonable?

(7) "Extremely dangerous person with ~~qualifying mental disorder~~ mental illness" or "person" refers to an extremely dangerous person with ~~a qualifying mental disorder~~ mental illness who is civilly committed to the jurisdiction of the Board by a court.

Commented [AB7]: Is this necessary?

(128) "Full Hearing" means a hearing before the Board to consider any legal matter under its jurisdiction. The parties are provided with an opportunity to be heard, including the submission of evidence and the testimony of witnesses.

Commented [AB8]: Modify to include full or administrative proceedings?

(9) "Incident Report" means a report completed by the PSRB case monitor that describes any significant behavioral or mental health changes, serious violations of conditional release requirements, psychotropic medication refusals, or any other information that is relevant to an individual's ability to be safely managed in a community setting. The incident report should contain the following information:

- (a) A description of incident;
- (b) A summary of the interventions that were used by community mental health provider staff;
- (c) A summary of the debrief with the individual or a summary of why a debrief did not occur; and
- (d) Any recommendations on how to mitigate future incidents, including but not limited to modifications to the individual's conditional release plan.

(1310) "Resistant to Treatment" is a legal term rather than a medical one. In this context, treatment resistance refers to an individual's significant impairment in making competent decisions and managing extremely dangerous behavior, despite receiving adequate psychiatric care and exhausting reasonable treatment options or refusing such care. This distinct legal definition highlights the broader implications for public safety and the individual's ability to manage their own risks. Collectively, all three components—competent decision-making ability, awareness of dangerous behavior, and control over impulses—are required for maintaining the commitment.

Commented [BA*P9]: Correll's definition was brought up during the RAC. The (Correll & Howes, 2021) definition focuses more on nonresponse to specific medication trials, primarily assessing symptom management and adherence.

(a) Competent decision-making refers to an individual's ability to comprehend the nature of their qualifying mental disorder and make informed decisions to effectively manage it. A person demonstrating competent decision-making can identify and implement strategies that mitigate extreme risk to the safety of others in the foreseeable future if not committed. This includes the ability to understand relevant information about their condition and associated risks, appreciate the potential outcomes of their decisions, and communicate a choice that reflects this understanding. A demonstration of this ability could include but is not limited to recognizing active symptoms, assessing treatment options, implementing effective strategies, and actively participating in their care.

Commented [BA*P10]: Defining what competency means under this statute is the Board's central question as to whether the person should be discharged from this commitment type. RAC discussed that competence is defined in a variety of ways. Relevant to the statute is the concept of competency as it relates to one's ability to aid and assist in defense (aka fitness to proceed, competency to stand trial)—which is the primary way that individuals come under this commitment type. The Board's position is that competency under this statute encompasses a broader understanding of competency that includes, but is not limited to, the ability to aid and assist in one's defense.

(i) Competent decision making is the first jurisdictional element analyzed. When a person is found to demonstrate competent decision making, an analysis of their awareness of and control over their extremely dangerous behavior becomes moot.

Commented [BA*P11]: Definition strives to neither be overly concrete nor exhaustive, but rather provide examiners with some guidance.

(ii) Under these rules, "competent" is distinct from a person's competency to stand trial (i.e., fitness to proceed). An individual may be deemed competent to make decisions under this statute and not meet the criteria required to be fit to proceed in a criminal proceeding. Conversely, an individual deemed fit to proceed should not satisfy the requirements for this type of commitment.

(b) Awareness of extremely dangerous behavior refers to an individual's insight into their qualifying mental disorder and its influence on their actions. It entails a person's understanding of how their qualifying mental disorder contributed to the commission of the qualifying act associated with their commitment and how it may impact their behaviors to pose an extreme risk to the safety of others in the foreseeable future if not committed. It may also consider how the qualifying mental disorder

influences the individual's ability to process information and foresee the consequences of their behavior. A person with this awareness has an ability to recognize triggers or situations that could lead to future dangerous behavior and is better equipped to seek support when needed.

(c) Control of extremely dangerous behavior refers to a person's ability to exercise impulse control and regulate their responses to stressors. It involves maintaining a level of regulation that prevents the person from acting on thoughts or urges associated with their qualifying mental disorder that pose an extreme risk to the safety of others in the foreseeable future if not committed.

(d) Treatment resistance must persist notwithstanding one of the following conditions:

(i) After receiving care from a licensed psychiatrist and exhausting all reasonable psychiatric treatment.

(ii) After refusing psychiatric treatment

(10) "Qualifying Mental disorder" means a mental illness that is resistant to treatment. A "qualifying mental disorder" is resistant to treatment if, after receiving care from a licensed psychiatrist and exhausting all reasonable psychiatric treatment, or after refusing psychiatric treatment, the person continues to be significantly impaired in the person's ability to make competent decisions and to be aware of and control extremely dangerous behavior.

(11) "Mental illness Qualifying mental disorder" means:

(a) 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 that is resistant to treatment.

(b) The term "qualifying mental illness-disorder" does not include an abnormality manifested solely by repeated criminal or otherwise antisocial conduct. The term "mental illness" does not include a disorder constituting solely a personality disorder and excludes a diagnosis of an intellectual disability or developmental disability as defined in ORS 427.005.

(12) "Parties" includes the extremely dangerous person with mental illness and the State of Oregon.

(13) "Psychiatric Security Review Board (PSRB)" or "Board" refers to the Adult Panel of the PSRB.

(14) "Quorum" means the presence of at least three members of the Adult Panel of the Board.

(15) "Recommitment" means any consecutive civil commitment of the person as an extremely dangerous person with qualifying mental illness-disorder under ORS chapter 426 occurring after another commitment on these grounds.

(16) "Recommitment county" means the county in which the district attorney filed the initial petition. This is the same as the county in which the person was initially committed as an extremely dangerous person with mental illness under the jurisdiction of the Board.

(17) "Supervising individual"; or " PSRB case monitor" means the individual whom the Board has designated as supervising the person on conditional release and who is required to report to the Board regarding the person's status.

Commented [AB12]: Voluntary Treatment

Commented [AB13]: Involuntary treatment

Commented [AB14]: Change to "Resistant to treatment" means...

Commented [AB15]: Do we have the authority to expand this to licensed medical practitioner?

Commented [AB16]: From ORS 426.133 (AOT):

(a) The person's ability to access finances in order to get food or medicine.

(b) The person's ability to obtain treatment for the person's medical condition.

(c) The person's ability to access necessary resources in the community without assistance.

(d) The degree to which there are risks to the person's safety.

(e) The likelihood that the person will decompensate without immediate care or treatment.

(f) The person's previous attempts to inflict physical injury on self or others.

(g) The person's history of mental health treatment in the community.

(h) The person's patterns of decompensation in the past.

(i) The person's risk of being victimized or harmed by others.

(j) The person's access to the means to inflict harm on self or others.

Commented [AB17]: How to define insight and impulse control

Commented [AB18]: "Qualifying mental disorder" overlap with 10.

(1821) "State hospital; hospital" means a state hospital operated by the Oregon Health Authority.

(22) Substantially similar symptoms or behaviors are manifestations of a qualifying mental disorder that closely resemble those preceding the qualifying prior act for which the person is committed. This encompasses symptoms and behaviors that demonstrate a comparable level of threat, even if they are less severe than previous instances. A component of this criterion is the context in which these symptoms occur. External mandates associated with civil commitment can significantly influence the individual's behavior and their responses to stressors, potentially reducing their overall risk profile. Therefore, when evaluating substantial similarity, it is essential to consider the impact of these external mandates and to consider whether the termination of commitment could exacerbate those similar symptoms or behaviors.

Commented [AB19]: Possibly include in jurisdiction section instead.

(1923) "Victim" means the person or persons who have suffered financial, social, psychological or physical harm as a result of one of the acts articulated in ORS 426.701(3)(a)(C) and for whom the extremely dangerous person with qualifying mental illness disorder who is under the Board's jurisdiction. Victims include, in the case of a homicide or abuse of corpse in any degree, a member of the immediate family of the decedent and, in the case of a minor victim, the legal guardian of the minor. In no event shall the extremely dangerous mentally ill person be considered a victim.

Statutory/Other Authority: ORS 161.387 & ORS 426.701

Statutes/Other Implemented: ORS 161.387, ORS 426.701 & ORS 426.702

History:

[PSRB 1-2022, amend filed 01/13/2022, effective 01/13/2022](#)

[PSRB 3-2021, temporary amend filed 06/18/2021, effective 06/21/2021 through 12/17/2021](#)

[PSRB 1-2021, amend filed 02/22/2021, effective 02/22/2021](#)

PSRB 1-2014, f. & cert. ef. 3-5-14

[859-200-0025](#)

Responsibilities of the PSRB regarding Extremely Dangerous Persons with Mental Illness Qualifying Mental Disorder Civil Commitments

The Board shall have as its primary concern the protection of society. In addition, the Board's responsibilities shall include but not be limited to:

- (1) Holding hearings, as required by law, to determine the appropriate residential placement of persons under its jurisdiction;
- (2) Overseeing the supervision of persons placed on conditional release in the community, including approving conditional release and modifying conditional release plans, as appropriate; ~~and~~
- (3) Facilitating the certification process at the end of the civil commitment period; ~~and~~
- (4) Developing the criteria to certify qualified examiners appointed pursuant to ORS 426.110 to evaluate persons for potential commitment or certification under the Board pursuant to ORS 426.701 or 426.702.

Statutory/Other Authority: ORS 161.387(1) & ORS 426.110 ~~2013 OL Ch. 715 (SB 421)~~

Statutes/Other Implemented: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

History:

PSRB 1-2014, f. & cert. ef. 3-5-14

859-200-0030

Jurisdiction of Persons under the PSRB; Jurisdictional Criteria

(1) The Board has jurisdiction over persons committed by a circuit court as an extremely dangerous persons with a qualifying mental illness disorder that is resistant to treatment and who continues to meet jurisdictional criteria.

(2) Jurisdictional criteria are the criteria necessary for a person to remain under the Board's jurisdiction or be certified to a circuit court for another period of commitment and include the following:

(a) The person suffers from is affected by a qualifying mental disorder; that is resistant to treatment;

(b) The person is exhibiting symptoms or behaviors of that qualifying mental disorder substantially similar to those that preceded the qualifying prior act for which they were committed;

(c) The qualifying mental disorder is resistant to treatment;

(d) Because of the qualifying mental disorder that is resistant to treatment:

(i) The person committed one of the acts listed in ORS 426.701(3)(a)(C).

(ii) The person presents a serious danger to the safety of other persons by reason of an extreme risk that the person will inflict grave or potentially lethal physical injury on other persons; and

(iii) Unless committed, the person will continue to represent an extreme risk to the safety of other persons in the foreseeable future.

~~(b) The person continues to be extremely dangerous.~~

(2) Once committed, the circuit court places the person under the Board's jurisdiction for 24 months. At the end of the 24-month commitment period, the Board may certify to the circuit court may recommit the person for additional 24-month commitment periods until such time the person meets the criteria for discharge.

(3) During the period(s) of commitment, persons can be placed at the state hospital, in the community on conditional release, or be discharged.

Statutory/Other Authority: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

Statutes/Other Implemented: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

History:

PSRB 1-2014, f. & cert. ef. 3-5-14

859-200-0035

Administrative meetings

Three concurring votes are needed to make any decision at an administrative meeting.

Statutory/Other Authority: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

Statutes/Other Implemented: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

History:

PSRB 1-2014, f. & cert. ef. 3-5-14

Commented [AB20]: Would it be better to include the terms in the definitions section here (e.g. extreme risk, treatment resistant, foreseeability)

[859-200-0040](#)

Public Meetings Law

(1) All hearings and administrative meetings of the PSRB are open to the public in accordance with the Public Meetings Law; the deliberations of the Board are not open to the public. For the purposes of deliberations of the Board, the term “public” does not include employees of the PSRB.

(2) Administrative reviews consist of deliberations only and are therefore not open to the public.

Statutory/Other Authority: ORS 161.387, 192.690 & 2013 OL Ch. 715 (SB 421)

Statutes/Other Implemented: ORS 161.387, 192.690 & 2013 OL Ch. 715 (SB 421)

History:

PSRB 1-2014, f. & cert. ef. 3-5-14

[859-200-0045](#)

Records

(1) A record shall be kept of all hearings conducted by the Board related to extremely dangerous persons with mental illness under its jurisdiction. The Board shall ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the Board.

(2) All PSRB hearings, except Panel deliberations, shall be recorded by manual and/or electronic means which can be transcribed. No other record of Panel hearings shall be made. All documents considered at hearings shall be included as exhibits and kept as part of the record. Any material to which an objection is sustained shall not be considered by the Panel. All objections, motions and rulings shall be noted on the record.

(3) Electronic recordings capable of being transcribed shall be kept by the Board for a minimum period of five years from the hearing date. Recordings shall be transcribed from the recording when an appeal is filed unless the Appeals Court authorizes submission of the hearing recording in lieu of a transcript. Once transcribed, the transcript may be substituted for the original record.

(4) Upon request by a party or a party's attorney, the copy of the electronic recording of the proceedings may be made available at a cost of \$5.00. The Board's Executive Director may waive this fee on a case-by-case basis.

(5) Electronic recordings of a hearing, exhibits, or other documents or other information related to the civil commitment of extremely dangerous persons with mental illness are subject to applicable state and federal confidentiality protections, including but not limited to ORS 192.501 through ORS 192.505.

Statutory/Other Authority: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

Statutes/Other Implemented: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

History:

PSRB 1-2014, f. & cert. ef. 3-5-14

[859-200-0046](#)

Appearance at Hearings by Remote Means

(1) Participation via telephone, other two-way electronic communication device, or simultaneous electronic transmission (collectively hereafter, "by remote means") is permitted at PSRB Hearings.

(a) All participants appearing by remote means, even if solely listening in, are expected to identify who they are or have a designated person, such as the Victim Advocate or patient family member, identify that they are participating. Victims who prefer to attend the hearing anonymously may do so but must contact the PSRB prior to the start of the hearing.

(b) Participants appearing by remote means will be recorded, even if they are muted, by the recording equipment. Therefore, participants are expected to listen to the hearings in a location that will minimize any noise interference, such as television, wind/rain/weather background noise, and conversations with others. When there are multiple participants on the conference line, it is expected that there will be professional decorum.

(c) If Board staff is given prior notice by a participant appearing by remote means with a hearing day contact phone number or e-mail, staff will call or email participants approximately fifteen (15) minutes prior to the start of the hearing if the hearing is not scheduled to occur in-person.

(2) Appearance at hearings by remote means may be used by the Board, persons under the jurisdiction of the PSRB, witnesses or victims when the hearings recording equipment allows for its use. All hearings before the Board will be conducted by remote means unless there is a basis for in-person attendance that cannot be accommodated by remote means.

(a) Either party must request in-person attendance in writing no later than ten (10) business days prior to the scheduled hearing.

(b) Requests for in-person attendance shall contain a basis for the request and some description as to why appearing by remote means is not appropriate for the hearing.

(4) If a hearing is scheduled to occur in-person any party may request the Board order in-person attendance of a witness or person under the jurisdiction of the Board if the written request is made at least 10 business days prior to notice of the hearing. A party needs to give notice to the Board if the party wants in-person presence rather than appearing by remote means of other parties or witnesses. The request shall include the basis or reason for in-person attendance that cannot otherwise be achieved through appearing by remote means.

(5) PSRB Board members may appear by remote means.

(6) Board staff shall ensure that defense counsel can consult with the individual person under the jurisdiction of the Board at any time during a remote hearing in a setting where the attorney-client privilege is not compromised.

(7) The Board will make reasonable accommodations for the known disability of any participant in Board hearings.

Statutory/Other Authority: ORS 161.387 & ORS 426.701

Statutes/Other Implemented: ORS 161.387, ORS 426.701 & ORS 426.702

History:

[PSRB 1-2022, adopt filed 01/13/2022, effective 01/13/2022](#)

[859-200-0050](#)

Purpose of Hearings

The Board conducts hearings for persons committed to its jurisdiction. For the Board to have jurisdiction over those persons, the Board must determine if jurisdictional criteria (see OAR 859-200-0030) exist. If, at the time of the hearing, the jurisdictional criteria are not proven by a preponderance of the evidence, the person must be discharged. If jurisdictional criteria exist at the time of the hearing, the Board then makes a determination about appropriate residential placement of the person based on the record as a whole.

Statutory/Other Authority: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

Statutes/Other Implemented: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

History:

PSRB 1-2014, f. & cert. ef. 3-5-14

[859-200-0055](#)

Notice of Hearings; Administrative Reviews

Written notice shall be given to the following persons or entities within a reasonable time prior to any hearing:

- (1) The person;
- (2) The person's attorney, if represented;
- (3) The office of the district attorney of the committing county, or its designee;
- (4) The community mental health provider or PSRB case manager, if the person is on conditional release or being proposed for conditional release;
- (5) The victim, if the court or Board finds the victim requests notification;
- (6) Hospital staff, if the person resides at an Oregon Health Authority hospital;
- (7) The county mental health agency in the county where the person resides if the person is on conditional release; and
- (8) The office of the district attorney of the county in which the person resides.

Statutory/Other Authority: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

Statutes/Other Implemented: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

History:

PSRB 1-2014, f. & cert. ef. 3-5-14

[859-200-0060](#)

Notification of state representation other than the District Attorney from the county of commitment

- (1) The Board presumes that the district attorney from the county of commitment will represent the State at all PSRB hearings. If another representative or agency is appointed or designated by the district attorney, such as an Assistant Attorney General or the district attorney in the county of current

Commented [AB21]: Differentiate hearing types (initial hearing, hospital request, certification, revocation). Board's position is that jurisdiction should not be an issue when the hospital requests a conditional release or revocation. Jurisdiction is an issue at the time of the initial hearing, a hospital/outpatient request for discharge, or certification hearing.

residence, the district attorney of the county of commitment shall notify the Board within 7 days of that appointment.

(2) The district attorney from the county of commitment, or their designee, shall provide the Board with all court orders.

Statutory/Other Authority: ORS 161.387 & ORS 426.701

Statutes/Other Implemented: ORS 161.387, ORS 426.701 & ORS 426.702

History:

[PSRB 1-2022, amend filed 01/13/2022, effective 01/13/2022](#)

PSRB 1-2014, f. & cert. ef. 3-5-14

[859-200-0065](#)

Information Contained in Notice of Hearing

Written notice shall contain the following:

- (1) The nature of the hearing and possible outcomes;
- (2) The right to appear at the hearing and present evidence;
- (3) The right to be represented by legal counsel and, if the person is without funds to retain legal counsel, the right to have the court appoint legal counsel;
- (4) The right to subpoena witnesses
- (5) The right to cross-examine witnesses who appear at the hearing; and
- (6) The right to examine all reports, documents and information that the board considers, including the right to examine the reports, documents and information prior to the hearing if available.

Statutory/Other Authority: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

Statutes/Other Implemented: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

History:

PSRB 1-2014, f. & cert. ef. 3-5-14

[859-200-0070](#)

Types of Hearings/Certification Procedure

(1) Initial 6-Month Hearings

(a) The Board will hold a hearing **no less than six months** after a court ordering the civil commitment of an extremely dangerous person with mental illness.

(b) The Board will make a finding on the issue of whether or not the person meets jurisdictional criteria. If jurisdiction is not found, the person will be discharged. If jurisdiction is found, the Board will consider whether the person should remain at the hospital, whether the person is appropriate for conditional release, or if a community evaluation should be ordered.

(2) Revocation Hearings.

Commented [AB22]: Change to be consistent with law. Refine timeframe so that it is clearer to parties. Current practice is to hold these within a 30-60 day window after the commitment has started.

Commented [AB23]: Rules exclude jxn issues at this hearing type.

(a) A revocation hearing will be held within thirty days of a person's return to the state hospital as a result of a PSRB Order of Revocation.

(b) At a revocation hearing the Board will consider whether the revocation was appropriate and decide whether the person can be continued on conditional release or should be committed to the state hospital. The Board may also consider a request for evaluation at a revocation hearing.

(3) Hospital Request for Conditional Release Hearings. At any time while an extremely dangerous person with mental illness is committed to the state hospital, the hospital may apply to the Board for conditional release if it is the hospital's opinion that the person continues to be affected by a mental disorder that is resistant to treatment that makes the person extremely dangerous but that the person can be controlled in the community with proper care, medication, supervision and treatment. The hospital request for the person's discharge should be accompanied by a hospital report prepared by a member of the person's treatment team setting forth the facts supporting the request, and a verified conditional release plan.

Commented [AB24]: Rules exclude jxn issues at this hearing type.

(a) Should the hospital request a conditional release within six months of the initial hearing, the hearing will focus solely on the person's placement. However, if both parties agree, the initial hearing can be scheduled earlier than the six-month timeframe to include a review of jurisdictional criteria in addition to the person's placement.

(4) Hospital Request for Discharge Hearings. At any time while an extremely dangerous person with mental illness is committed to the state hospital, the hospital may apply to the Board for the person's discharge if it is the hospital's position that the person no longer meets jurisdictional criteria. The hospital request for the person's discharge should be accompanied by a report setting forth the facts supporting the request.

(5) Outpatient Supervisor Request for Conditional Release Modification Hearings/Administrative Review

Commented [AB25]: If this hearing is full by request of the State, then scope remains on conditional release.

(a) At any time during the person's conditional release, a PSRB case monitor may request a status hearing to amend or modify the person's conditions of release. The request for the hearing should be accompanied by a **Board Modification request** and proposed Summary of Conditional Release Plan that reflects the requested modifications.

(b) Modifications to a person's conditional release plan includes: adding conditions to the plan, removing conditions from the plan, and changing existing conditions in the plan.

(c) If there is no objection to the PSRB case monitor's requested modifications, such requests for modifications may be handled by administrative review.

(d) At any time, if either the person or the State objects to requested conditional release plan modifications, the person or the State may request a full hearing regarding the requested modifications rather than having the modifications considered at an administrative review. **In such cases, the hearing will focus solely on the person's conditions of release and exclude jurisdictional issues.**

(6) PSRB Case Monitor Request for Discharge Hearings. At any time during the person's conditional release, the PSRB case monitor may request a hearing for discharge if the treating physician or **certified mental health examiner** believes the person no longer suffers from a mental disorder that is resistant to treatment or is no longer extremely dangerous. **The request for discharge of the person from the Board's**

jurisdiction should be accompanied by a report setting forth the facts and evidence upon which the request is based.

Commented [AB26]: This is referring to an "examination"

(7) Certification at end of commitment period. One hundred-twenty (120) days prior to the end of each commitment period, the Board will request that the Oregon State Hospital or local mental health facility providing treatment to a person on conditional release provide a written opinion on whether the person is still extremely dangerous and suffers from a mental disorder that is resistant to treatment. The treatment team has 20 days from the Board's request to complete the evaluation and provide the written opinion.

Commented [AB27]: examination

Commented [AB28]: examination

(a) The Board will provide the parties the treatment team's written opinion 90 days prior to the end of the commitment period.

(b) If the treatment team opines that the person continues to meet jurisdictional criteria, the Board will review the matter administratively and determine whether to certify the person for a further period of commitment.

(c) If the treatment team does not opine that the person continues to meet jurisdictional criteria, the Board will take one of the following actions when determining whether certification is appropriate:

(A) If both parties stipulate to the treatment team's opinion that recommitment is not appropriate, take no further action; or

(B) At the request of the District Attorney in the commitment county, schedule a full hearing and take testimony regarding the issue of certification.

(C) If neither action taken in A or B, the Board will review the matter administratively and determine whether to certify the person for a further period of commitment.

(d) The Board retains the ultimate decision-making authority as to whether or not to certify the person for a further period of commitment.

(A) In a case where the treatment team recommends, and the Board decides not to certify the person for a further period of commitment, the PSRB will notify the parties without unreasonable delay.

(B) A person who is not certified for another period of commitment will nonetheless complete their current period of commitment.

(e) Following the outcome of an administrative or full hearing on the issue of certification, the Board will write a final certification order and the certification shall be served upon the person without unreasonable delay by the superintendent of the state hospital or the director of the state or local mental health facility providing treatment to the person.

(A) The person serving the certification shall read and deliver the certification to the person and ask whether the person protests a further period of commitment.

(B) Within 14 days, the person may protest a further period of commitment and request a hearing either orally or by signing the Board's protest form to be given to the superintendent or director who served the certification. The person has the right to consult with legal counsel when deciding whether to

protest the further commitment. **The Board will process the certification paperwork as a protest in the absence of any response from the person's counsel within 14 days.**

(C) The superintendent or director who served the certification and protest form shall immediately submit the signed protest form to the Board.

(f) If the person protests a further period of commitment:

(A) Upon receiving the signed protest form that the person protests a further period of commitment, the Board shall send the certification and signed protest form to the court in the original commitment county.

(B) Upon receiving the certification and signed protest form indicating the person protests a further period of commitment, the court in the original commitment county shall follow the provisions set forth in ORS 426.702(5) through ORS 426.702(6).

(g) If the person does not protest a further period of commitment:

(A) Upon receiving the certification and signed protest form indicating the person does not protest a further period of commitment, the Board shall send the certification and signed protest form to the court in the original commitment county.

Statutory/Other Authority: ORS 161.387 & ORS 426.701

Statutes/Other Implemented: ORS 161.387, ORS 426.701 & ORS 426.702

History:

[PSRB 1-2022, amend filed 01/13/2022, effective 01/13/2022](#)

PSRB 7-2016, f. & cert. ef 3-17-16

PSRB 1-2014, f. & cert. ef. 3-5-14

[859-200-0071](#)

Discharge Recommendations from the State Hospital or Local Mental Health Facility

(1) If the person had unadjudicated criminal charges at the time of the person's initial commitment under this section and the state hospital or the state or local mental health facility providing treatment to the person intends to recommend discharge of the person at an upcoming hearing, the superintendent of the state hospital or the director of the facility shall:

(a) Submit an application for hearing requesting a discharge from Board jurisdiction.

(b) The notice shall be accompanied by a written report describing how the person's qualifying mental disorder is no longer resistant to treatment as defined ORS 426.701(1)(c).

(2) Upon notice to the district attorney of the commitment county that a discharge is being requested, the district attorney may request an order from the court in the commitment county for an evaluation to determine if the person is fit to proceed in the criminal proceeding.

(a) The court may order the state hospital or the state or local mental health facility providing treatment to the person to perform the evaluation. The hospital or facility shall provide copies of the evaluation to the district attorney, the person and the person's legal counsel, if applicable.

Commented [AB29]: Examination

Commented [AB30]: This is problematic because the professionals providing treatment cannot perform these types of evaluations.

(b) The person committed under this section may not waive an evaluation ordered by the court to determine if the person is fit to proceed with the criminal proceeding.

(3) The Board shall set a full hearing to determine the status of the person's commitment under the jurisdiction of the Board.

Statutory/Other Authority: ORS 161.387 & ORS 426.701

Statutes/Other Implemented: ORS 161.387, ORS 426.701 & ORS 426.702

History:

[PSRB 1-2022, adopt filed 01/13/2022, effective 01/13/2022](#)

859-200-0072

Further Periods of Commitment

(1) For each subsequent period of commitment, the Board shall hold an initial hearing six months after the expiration of the previous period of commitment.

(2) A new order signed by the court in the commitment is required for the Board to hold that the person is still extremely dangerous and suffers from a qualifying mental disorder that is resistant to treatment.

Commented [AB31]: Add more specific as recommended in above section.

Commented [AB32]: Clean up—add that it is necessary for the Board to hold its hearings.

Statutory/Other Authority: ORS 161.387 & ORS 426.701

Statutes/Other Implemented: ORS 161.387, ORS 426.701 & ORS 426.702

History:

[PSRB 1-2022, adopt filed 01/13/2022, effective 01/13/2022](#)

859-200-0075

Chairperson Conducting Hearing

During all hearings of the Board, the chairperson or acting chairperson shall preside. The chairperson shall designate the order of presentation and questioning. The chairperson shall also determine the scope of questioning and may set time limits and cut off irrelevant questions and irrelevant or nonresponsive answers.

Statutory/Other Authority: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

Statutes/Other Implemented: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

History:

PSRB 1-2014, f. & cert. ef. 3-5-14

859-200-0080

Person's Right to Review Record; Exceptions

Persons shall receive written notice of the hearing and directly, or through their attorney, a statement of their rights in accordance with ORS 426.701(6)(a). All exhibits to be considered by the Board shall be disclosed to the person's attorney or the person, if proceeding pro se, as soon as they are available:

(1) Exhibits not available prior to the hearing shall be made available to the person's attorney or the person, if not represented, at the hearing.

(2) All material relevant and pertinent to the person and issues before the Board shall be made a part of the record.

(3) 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 161.387 & ORS 426.701

Statutes/Other Implemented: ORS 161.387, ORS 426.701 & ORS 426.702

History:

[PSRB 1-2022, amend filed 01/13/2022, effective 01/13/2022](#)

PSRB 1-2014, f. & cert. ef. 3-5-14

[859-200-0085](#)

Evidence Considered; Admissibility

The Board 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 civil commitment;
- (2) Information supplied by the state's attorney or any interested party, including the person. This may include police reports;
- (3) Information concerning the person's **mental condition**;
- (4) The entire psychiatric and criminal history of the person, including motor vehicle records;
- (5) Psychiatric or psychological reports;
- (6) **Jurisdictional reports**; or
- (7) Testimony of witnesses.

Commented [AB33]: Qualifying mental disorder

Commented [AB34]: Examination

Statutory/Other Authority: ORS 161.387 & ORS 426.701

Statutes/Other Implemented: ORS 161.387, ORS 426.701 & ORS 426.702

History:

[PSRB 1-2022, amend filed 01/13/2022, effective 01/13/2022](#)

PSRB 1-2014, f. & cert. ef. 3-5-14

[859-200-0090](#)

Motion Practice

(1) Prehearing motion practice. Any party bringing a motion before the Board shall submit the motion and memorandum of law to the Board and the opposing party 14 days prior to the hearing date in which the motion will be heard,

(2) During a Board hearing, either party may bring forth a motion to be ruled upon by the Board chairperson or his/her designee.

Statutory/Other Authority: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

Statutes/Other Implemented: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

History:

PSRB 1-2014, f. & cert. ef. 3-5-14

[859-200-0095](#)

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

(2) The person, the person's attorney or attorney representing the State may object to any evidence. The Board 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 and in considering the weight given to that evidence, consider the reason for the objection; or
- (c) To grant a continuance for a reasonable period of time to allow a witness to appear or be subpoenaed to testify about the evidence under consideration.

Statutory/Other Authority: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

Statutes/Other Implemented: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

History:

PSRB 1-2014, f. & cert. ef. 3-5-14

[859-200-0100](#)

Testimony Given under Oath

The Board shall take testimony of a witness upon oath or affirmation of the witness administered by the chairperson or acting chairperson at the hearing. Victims who wish to give a victim impact statement at a hearing do not need to be sworn in.

Statutory/Other Authority: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

Statutes/Other Implemented: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

History:

PSRB 1-2014, f. & cert. ef. 3-5-14

[859-200-0105](#)

Standards and Burdens of Proof

(1) The standard of proof on all issues at all hearings of the Board under Division 200 shall be preponderance of the evidence.

(2) The State always has the burden of proof for all PSRB hearings and the State has the burden of going forward with the evidence.

Statutory/Other Authority: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

Statutes/Other Implemented: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

History:

PSRB 1-2014, f. & cert. ef. 3-5-14

[859-200-0110](#)

Continuance of Hearing

Upon the request of any party or on its own motion, the Board may, for good cause, continue a hearing for a reasonable period of time. When either party requests a continuance, it shall be in writing. The request should also include the other party's position on the request for continuance.

Statutory/Other Authority: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

Statutes/Other Implemented: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

History:

PSRB 1-2014, f. & cert. ef. 3-5-14

[859-200-0115](#)

Waiver of Appearance at Hearings

(1) An extremely dangerous person with mental illness may waive appearance at an initial hearing or certification hearing. The Board will still hold the hearing in the person's absence.

(2) An extremely dangerous person with mental illness may not waive appearance at a conditional release hearing. If a person does not attend a conditional release hearing, the Board will cancel the hearing and will not consider the conditional release.

Statutory/Other Authority: ORS 161.387 & ORS 426.701

Statutes/Other Implemented: ORS 161.387, ORS 426.701 & ORS 426.702

History:

[PSRB 1-2022, amend filed 01/13/2022, effective 01/13/2022](#)

PSRB 1-2014, f. & cert. ef. 3-5-14

[859-200-0120](#)

Use of Restraints

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

(2) Any attorney objecting to the patient appearing with restraints at the hearing may raise the issue and ask for testimony from the physician regarding the necessity for use of restraints.

Statutory/Other Authority: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

Statutes/Other Implemented: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

History:

PSRB 1-2014, f. & cert. ef. 3-5-14

[859-200-0125](#)**Quorum; Decisions; Board Member Conflicts**

For any Board hearing:

- (1) Three concurring votes (affirmative or negative) are required to make a Board decision.
- (2) When three members cannot agree on the decision, the hearing may be continued for a reasonable time and the recording 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 Board.
- (3) If the attorney for the person objects to the remaining member's or members' review as set forth in section (2) of this rule, the Board may reschedule the matter for a hearing before the entire Board.
- (4) If an objection for good cause is made to a specific member of the Board sitting on the panel considering a specific case, that member shall withdraw and, if necessary, the hearing shall be postponed and rescheduled.
- (5) If an objection for good cause is made to a specific staff member of the Board being present during the panel's deliberations in a specific case, and if the Board determines that good cause exists, that staff member shall not be present during deliberations in that case. The Board may, on its own motion, identify a Board member conflict with a case and exclude the Board member from considering any matter related to that case.

Statutory/Other Authority: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

Statutes/Other Implemented: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

History:

PSRB 1-2014, f. & cert. ef. 3-5-14

[859-200-0130](#)**Orders of the Board**

- (1) The Board shall provide a copy of any Board order to those persons listed in OAR 859-200-0055 within 30 days of the conclusion of the hearing or administrative review;
- (2) The order of the Board shall be signed by a member of the panel present at the hearing or administrative review;
- (3) At full hearings, the Board may issue its decision orally on the record at the hearing;
- (4) At full hearings, the formal order of the Board shall contain the findings of fact, conclusions of law, reasons for the decision and notice of the right to appeal under ORS 426.135;
- (5) All state, county and local mental health facilities providing treatment to the persons shall comply with Board orders.

Statutory/Other Authority: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

Statutes/Other Implemented: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

History:

PSRB 1-2014, f. & cert. ef. 3-5-14

[859-200-0135](#)**Notification of Right to Appeal**

At the conclusion of a Board hearing, the chairperson or acting chairperson shall provide the person 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.

Statutory/Other Authority: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

Statutes/Other Implemented: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

History:

PSRB 1-2014, f. & cert. ef. 3-5-14

[859-200-0140](#)**Patient Appearing Pro Se**

(1) When a patient waives the right to be represented by an attorney, the Board may approve an individual's appearance, pro se, after a record is established that the person is competent to represent himself/herself pro se.

(2) If the Board chair determines the person is not competent, the Board chair or his/her designee shall appoint an attorney to represent the person.

Statutory/Other Authority: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

Statutes/Other Implemented: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

History:

PSRB 1-2014, f. & cert. ef. 3-5-14

[859-200-0145](#)**Examination of Person**

(1) The Board may appoint a psychiatrist or licensed psychologist to examine the person and submit a report to the Board, including an opinion about whether the person continues to meet jurisdictional criteria and whether the person could be adequately controlled on conditional release with proper care, medication, supervision and treatment. The Board may order the person placed in temporary custody of any state hospital or suitable facility for purposes of examination.

(2) The attorney representing the state may choose, at the state's expense, a psychiatrist or psychologist to examine a person regarding the commitment proceedings.

Statutory/Other Authority: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

Statutes/Other Implemented: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

History:

PSRB 1-2014, f. & cert. ef. 3-5-14

859-200-XXXX

Contents of Examination

Examination refers to the professional evaluation submitted to a Circuit Court judge by the appointed examiner to aid the court in determining whether an individual meets the criteria of being an extremely dangerous person with qualifying mental disorder, based on clear and convincing evidence. The examination shall be made part of the Board's official record.

(b) An examination shall contain

- An examination requires a blending of clinical and law, and examiners should have understanding. Also, there should be data to justify the constitutionality of the commitment.

859-200-0150

Victim's Rights

(1) The Board shall make reasonable efforts to notify victims identified in the commitment order or victims who have requested to be notified of any of the following regarding the extremely dangerous person with mental illness:

- (a) Any order;
- (b) Hearings;
- (c) Conditional release;
- (d) Discharge;
- (e) Move to a temporary placement due to an emergency; and
- (f) Escape or unauthorized departure of the extremely dangerous person with mental illness.

(2) Victims may provide oral or written victim impact statements at an individual's full hearing and written victim impact statements at an individual's administrative hearing.

(a) Victim impact statements are not considered testimony and will not be taken under oath by the Board.

(b) Victim impact statement are not considered evidence.

(3) Victims may provide a written request for a copy of a person's recorded hearing on a removeable media storage device at no charge.

(4) Victims are given priority seating at all in-person hearings.

(a) Victims are encouraged to notify Board staff immediately of hearings-day time constraints. The Board considers reasonable scheduling restrictions from victims.

(b) The Board may permit victims to appear by remote means for full hearings.

(c) Victims are entitled to due dignity and respect. This may include prohibiting the recording of a victim impact statement or other portions of the hearing that include graphic depictions of the instant offense.

Commented [AB35]: Traditional Civil Commitment spells this out thoroughly.
<https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=313098>

Commented [BA*P36]: 1.Is the consensus that an examination is required for each new period of commitment?
2.Should this be a definition or separate rule?
3.Traditional Civil Commitment provides the following requirements for an [examination](#).

(5) Victims may request to be added to the notification list and provide updated contact information at any time by emailing PSRB staff: psrb@psrb.oregon.gov. The Board uses this notification list as its primary means to notify a victim of the circumstances outlined in section (1) of this rule.

Statutory/Other Authority: ORS 161.387 & ORS 426.701

Statutes/Other Implemented: ORS 161.387, ORS 426.701 & ORS 426.702

History:

[PSRB 1-2022, amend filed 01/13/2022, effective 01/13/2022](#)

PSRB 1-2014, f. & cert. ef. 3-5-14

859-200-0200

Court Conditional Release

(1) If a court orders the conditional release of a person it is called a court conditional release.

(2) The Board may review a Court Conditional Release Order at an administrative review. The possible results of the hearing are as follows:

(a) The Board may issue an order continuing the Court Order of Conditional Release;

(b) The Board may issue a modification of the Court Order of Conditional Release when, upon review, elements of the plan have changed, have not been set out in sufficient detail or additional conditions are needed;

(c) The Board may issue an Order of Revocation in accordance with provisions set forth in the revocation rules subsequent hereto; or

(d) The Board may order the person to appear at a full hearing.

Statutory/Other Authority: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

Statutes/Other Implemented: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

History:

PSRB 1-2014, f. & cert. ef. 3-5-14

859-200-0205

Board Order for Evaluation for Conditional Release

(1) All inpatient and outpatient community evaluations must be approved by the Board.

(2) At any time the state hospital may request a community evaluation for community placement of the person. Prior to any such request, hospital staff shall consult with the Board's Executive Director to discuss current bed vacancies. Unlike other civil commitments, the community mental health agency of the commitment county does not identify and approve conditional release placements. All community placements are approved by the Board and its Executive Director.

(3) The request for community placement should identify the community provider and should be accompanied by an updated VRA (Violence Risk Assessment), START (Short Term Assessment of Risk and Treatability), Risk Review Hearing report that addresses conditional release planning privileges, and an updated M.D. Progress Note Update.

Commented [AB37]: Likely need to clean up this section. Should be consistent for GEIs too.

Commented [AB38]: Orders for evaluation. Build in an exception for ED review for orders the board has already approved?

(4) If a person is already on conditional release, the PSRB case manager may request that another community provider evaluate the person for possible transfer.

(5) The Board may then consider the request and issue an Order of Evaluation at an administrative review.

(6) Once the Order for Evaluation is signed, PSRB staff will send an exhibit file to the community provider conducting the evaluation within 10 business days; and

(7) The community evaluation report shall be completed within 30 days of the community evaluation interview; and

(8) The community evaluation shall be completed and submitted to the Board within 45 days of receipt of the signed Order for Evaluation.

Statutory/Other Authority: ORS 161.387(1) & ORS 426.701

Statutes/Other Implemented: ORS 161.387(1) & 426.701

History:

[PSRB 6-2017, amend filed 12/07/2017, effective 12/07/2017](#)

PSRB 1-2014, f. & cert. ef. 3-5-14

[859-200-0210](#)

Responsibility to Prepare a Summary of Conditional Release Plan

(1) When the hospital determines that a person may be ready for conditional release, the hospital staff and the community provider will jointly prepare the conditional release plan and submit it to the Board.

(2) When a person is already on conditional release and there is a request to transfer the person, the receiving PSRB case manager shall prepare and submit the conditional release plan.

Statutory/Other Authority: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

Statutes/Other Implemented: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

History:

PSRB 1-2014, f. & cert. ef. 3-5-14

[859-200-0215](#)

Basis for a Finding of Conditional Release

(1) In determining whether an Order of Conditional Release is appropriate, the Board shall have as its goals the protection of the public, the best interests of justice, and the welfare of the individual. The Board may consider the testimony and exhibits at the hearing regarding the person's behavior in the hospital including the person's progress, insight and responsibility taken for the person's own behavior.

(2) If the Board finds the person may be controlled in the community and a verified conditional release plan is approved by the Board, the Board may order the person placed on conditional release.

Statutory/Other Authority: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

Statutes/Other Implemented: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

History:

PSRB 1-2014, f. & cert. ef. 3-5-14

[859-200-0220](#)

Elements of the Conditional Release Order

The Board shall consider any or all of the following elements of a conditional release plan and determine which are appropriate and necessary to ensure the safety of the public:

- (1) **Housing:** Housing must be available for the person. The Board may require any type of housing it deems appropriate.
- (2) **Mental health treatment:** Mental health treatment must be available in the community. The Board-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 Board. The provider must have agreed to provide the necessary mental health treatment to the patient. 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 Board.
- (3) **Reporting responsibility (PSRB Case Manger):** An individual must be available to be designated by the Board as having primary reporting responsibility and must have agreed to:
 - (a) Notify the Board in writing of the patient's progress at least once a month;
 - (b) Notify the Board promptly of any grounds for revocation;
 - (c) Notify the Board promptly of any significant changes in the implementation of the conditional release plan;
 - (d) Coordinate and monitor all elements of the conditional release plan.
- (4) **Special conditions:** Special conditions may be imposed upon recommendation by the individual having primary reporting responsibility and/or recommendation by the parties.
- (5) **Agreement to conditional release:** The person shall agree to and sign a form promising to comply with the general conditions of release. This signed form shall be made a part of the conditional release plan.

Statutory/Other Authority: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

Statutes/Other Implemented: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

History:

PSRB 1-2014, f. & cert. ef. 3-5-14

[859-200-0225](#)

Modification or Termination of Conditional Release

- (1) Modification or termination of an Order of Conditional Release may be proposed by the state hospital or state or local facility providing treatment to the person, PSRB case manager or his/her designee, a party, or by the Board on its own motion upon a review of the status of the person.
- (2) Modifications that add conditions to the current Board order can be made by the PSRB case manager, if necessary, to adequately treat and control the person. The Board shall be notified of modifications that add conditions to the current Board order within one business day of those conditions being imposed on the person so that a modification order can be issued.

(3) The case manager or supervising person does not have the authority to lessen the conditions of release without Board approval.

(4) The individual designated as having primary reporting responsibility shall provide the Board with a written summary of the person's progress, recommendations on future action to be taken and, if possible, shall be present to testify on these issues at a Board full hearing.

Statutory/Other Authority: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

Statutes/Other Implemented: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

History:

PSRB 1-2014, f. & cert. ef. 3-5-14

[859-200-0230](#)

Conditional Release Evaluation and Reports

(1) All reports and evaluations received on the person's fitness for conditional release, modification of conditional release or revocation, and monthly progress shall be made a part of the record in the hearing.

(2) All **serious incidents** must be communicated through an immediate phone call to the PSRB executive director or designee and followed-up with a written incident report. A serious incident includes, but is not limited to:

(a) Unauthorized departure;

(b) Arrest;

(c) Positive urine or oral drug screen or other substance use testing;

(d) Repeated refusals to take psychotropic medications or other medications prescribed to manage the person's mental health;

(e) Psychiatric or medical hospitalization;

(f) Violent or dangerous behaviors; or

(g) Other circumstances deemed to be serious by the reporting party.

Statutory/Other Authority: ORS 161.387 & ORS 426.701

Statutes/Other Implemented: ORS 161.387, ORS 426.701 & ORS 426.702

History:

[PSRB 1-2022, amend filed 01/13/2022, effective 01/13/2022](#)

PSRB 1-2014, f. & cert. ef. 3-5-14

[859-200-0235](#)

Monthly Reporting

Commented [AB39]: Is this consistent with definitions section

(1) The person designated by the Board as having primary reporting responsibility shall submit monthly progress reports no later than the 10th day of the month for the previous month's progress. These reports shall be submitted on the form provided by and prepared by Board staff.

(2) All serious incidents must be communicated as soon as possible via a phone call to the PSRB's office during business hours or the PSRB emergency phone after business hours. Serious incidents must be followed-up with a written incident report. A serious incident includes, but is not limited to:

(a) Unauthorized leave;

(b) Arrest;

(c) Positive urine or oral drug screen or other substance use testing;

(d) Repeated refusals to take psychotropic medications or other medications prescribed to manage the person's mental health;

(e) Psychiatric or medical hospitalization;

(f) Violent or dangerous behaviors; or

(g) Other circumstances deemed to be serious by the reporting party.

Statutory/Other Authority: ORS 161.387(1) & ORS 426.701

Statutes/Other Implemented: ORS 161.387(1), ORS 426.701 & ORS 426.702

History:

[PSRB 1-2022, amend filed 01/13/2022, effective 01/13/2022](#)

PSRB 1-2014, f. & cert. ef. 3-5-14

[859-200-0300](#)

Reasonable Grounds for Revocation

(1) If at any time while a person is conditionally released it appears that hospitalization is required, the Board may order the person returned to the state hospital for evaluation or treatment.

(2) The Board will explore all available treatment and supervision options in the community prior to ordering revocation. Reasonable grounds for revocation of a conditional release include, but are not limited to:

(a) The person has violated terms of the conditional release plan or is noncompliant with the conditional release plan;

(b) The person's mental health has changed and the person can no longer be managed in the community setting;

(c) The person has escaped or taken an unauthorized departure from jurisdiction or placement;

(d) The safety of the person or the public can no longer be managed in the community setting; or

(e) The community resources required by the Conditional Release Order are no longer available.

Statutory/Other Authority: ORS 161.387 & ORS 426.701

Statutes/Other Implemented: ORS 161.387, ORS 426.701 & ORS 426.702

History:

[PSRB 1-2022, amend filed 01/13/2022, effective 01/13/2022](#)

PSRB 1-2014, f. & cert. ef. 3-5-14

[859-200-0305](#)

Order of Revocation; Emergency Order of Revocation; After Hours Revocation Process

(1) Upon the recommendation of the staff of the Psychiatric Security Review Board and receipt of an affidavit recommending revocation based on noncompliance with an order of the Board or a change in the person's conditions of release or mental status, a Board member may order the person returned to a state hospital for evaluation and treatment through an Order of Revocation.

(2) When a Board member is not available and time is of the essence, the executive director of the Psychiatric Security Review Board may issue and execute an emergency Order of Revocation subject to review by a Board member within 72 hours of the execution of the signed order.

(3) If the Board is unavailable to consider a revocation request, the community mental health program director, the director of the facility providing treatment to a person on conditional release, any peace officer, or any individual responsible for the supervision of the person on conditional release may take or request that a person on conditional release be taken into custody if there is reasonable cause to believe the person is an extremely dangerous person with mental illness and presents a serious danger to others because of a mental disorder that is resistant to treatment and the person is in need of immediate care, custody or treatment. The person shall be transferred to the state hospital.

Statutory/Other Authority: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

Statutes/Other Implemented: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

History:

PSRB 1-2014, f. & cert. ef. 3-5-14

[859-200-0310](#)

Procedure for Transporting a Revoked Person

(1) After a written or electronic Order of Revocation has been signed by a Board member, the Board Executive Director, or the community mental health program director if the person has absconded from conditional release, the written or electronic order is sufficient warrant for any law enforcement officer to take the person into custody to transport the person as directed by the order.

(a) The written order is not required to be provided to the law enforcement officer taking the person into custody. In the alternative, a LEDS communication by Board staff is sufficient warrant for a law enforcement officer to return the person to the state hospital.

(b) The person shall be returned to the state hospital without undue delay.

(2) A sheriff, municipal police officer, constable, parole or probation officer, prison official or other peace officer shall execute the order.

Statutory/Other Authority: ORS 161.387(1) & ORS 426.701

Statutes/Other Implemented: ORS 161.387(1), ORS 426.701 & ORS 426.702

History:

[PSRB 1-2022, amend filed 01/13/2022, effective 01/13/2022](#)

PSRB 1-2014, f. & cert. ef. 3-5-14

859-200-0315

Emergency Move Exceptions

(1) Nothing in Division 200 prohibits the Board, the community placement, and the Oregon Health Authority from entering into a mutually satisfactory agreement regarding the patient's temporary placement in the community during an emergency.

(a) If the person is temporarily placed in a more restrictive setting during an emergency, they are not required to obtain a mental health evaluation before returning to the placement they had before the emergency temporary move occurred unless otherwise recommended by the PSRB case monitor.

(b) For the purposes of this rule, an emergency is defined as circumstances that could not be reasonably foreseen that create a substantial risk to the health and safety of the patient, including, but not limited to, a natural disaster, fire, or the unexpected closure of the patient's residence.

(2) In the event of a person's move to a temporary placement due to an emergency, the PSRB will notify the any victims and the district attorney of the commitment county of the person's move as soon as practicable.

Statutory/Other Authority: ORS 161.387 & ORS 426.701

Statutes/Other Implemented: ORS 161.387, ORS 426.701 & ORS 426.702

History:

[PSRB 1-2022, adopt filed 01/13/2022, effective 01/13/2022](#)

859-200-0320

Diversity, Equity, and Inclusion

The PSRB will engage in rulemaking and hearing processes consistent with the priorities of the Governor and the policies implemented by the Oregon Office of Diversity, Equity, and Inclusion/Affirmative Action.

Statutory/Other Authority: ORS 161.387 & ORS 426.701

Statutes/Other Implemented: ORS 161.387, ORS 426.701 & ORS 426.702

History:

[PSRB 1-2022, adopt filed 01/13/2022, effective 01/13/2022](#)