

OFFICE OF THE SECRETARY OF STATE

TOBIAS READ
SECRETARY OF STATE

MICHAEL KAPLAN
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION

STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

PSRB 1-2025

CHAPTER 859

PSYCHIATRIC SECURITY REVIEW BOARD

FILED

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ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Temporary rule to clarify jurisdictional criteria to maintain PSRB jurisdiction.

EFFECTIVE DATE: 03/10/2025 THROUGH 09/05/2025

AGENCY APPROVED DATE: 03/10/2025

CONTACT: Alison Bort
503-229-5596
alison.bort@psrb.oregon.gov

6400 SE Lake Road
Suite 375
Portland, OR 97222

Filed By:
Alison Bort
Rules Coordinator

NEED FOR THE RULE(S):

In 2024, the Court of Appeals issued *Rinne v. PSRB*, 326 Or App 777, which appeared to require a direct cause-and-effect relationship between a person's qualifying mental disorder and their dangerousness. The Board believed this interpretation conflicted with both its understanding of the law and its longstanding practices, prompting the amendment of its definition of dangerousness. The Board also planned to clarify this relationship further in future rulemaking.

However, shortly after this new rule was permanently adopted, the Oregon Supreme Court issued *State v. Meiser*, 372 Or 438, which appeared to reverse key aspects of *Rinne* (2023), aligning more closely with the Board's interpretation of the necessary connection between a qualifying mental disorder and dangerousness. Yet, *Meiser* (2024) established a lower threshold for utilizing the insanity defense, while *Rinne* (2023)—which arguably was overturned by *Meiser* (2024)—lowered the threshold for discharge from PSRB jurisdiction. This created a logical disjunction and confusion. Specifically, a defendant who successfully asserts a defense of guilty except for insanity (GEI) under *Meiser* (2024) could potentially qualify for discharge under *Rinne's* (2023) independent sufficiency or sole cause standard. Regardless of the threshold for entering the PSRB's jurisdiction, the threshold for discharge cannot be lower, or this logical disconnect would result in improper discharges, which would jeopardize public safety, waste valuable resources, and undermine the PSRB's intended function.

Further complicating matters, a lawsuit has been filed challenging the validity of the PSRB's newly adopted definition of dangerousness. The combined effect of the evolving case law and ongoing legal challenges has created substantial uncertainty regarding the PSRB's jurisdictional criteria. Given these complexities, there is an urgent need for a temporary rule to provide clarity on these critical jurisdictional issues, ensuring that the PSRB's decision-making remains consistent, legally sound, and aligned with the current state of the law.

JUSTIFICATION OF TEMPORARY FILING:

(1) Describe the specific consequences that result from the failure to immediately adopt, amend or suspend the rule(s):

Failure to immediately amend this rule would create significant confusion and legal uncertainty surrounding the PSRB's

jurisdictional criteria. Without a clear understanding of the relationship between a qualifying mental disorder and dangerousness, the Board's decisions could become inconsistent and legally vulnerable, opening the door to costly litigation. The PSRB may face allegations of either improperly retaining jurisdiction over individuals who no longer meet the criteria or unjustly discharging individuals who still pose a danger. Attorneys representing clients and the State could enter stipulations or negotiate agreements based on a misinterpretation or misunderstanding of the law due to the existing ambiguity. This could lead to flawed or unjust legal outcomes, where agreements fail to align with the current legal standards and case law. Ultimately, unjust discharges could result in individuals who remain dangerous being released, thereby jeopardizing public safety and undermining the core purpose of the PSRB's jurisdiction.

(2) who would suffer these consequences:

The primary parties who would suffer from these uncertainties are individuals under the PSRB's jurisdiction, who may face improper discharges or prolonged confinement due to the ambiguity in decision-making. Victims of past crimes, as well as those at risk of future harm, would also suffer as improper discharge decisions could lead to dangerous individuals being released. The public would be negatively affected by the perception that dangerous individuals are "getting away with it" due to the confusion and lack of clarity in the law. This perception could erode public trust in the legal and mental health systems, foster insecurity, and diminish confidence in PSRB decisions. Legal professionals, too, could be impacted as they base stipulations and legal strategies on an evolving and unclear legal standard, leading to unfair or legally unsound outcomes. Lastly, the PSRB itself could suffer reputational harm, with its decisions facing legal challenges, further exacerbating the uncertainty and delaying proper resolutions.

3. Why or how failure to immediately take rulemaking action would cause these consequences?

Failure to take immediate rulemaking action would leave the PSRB without the necessary legal clarity to address the confusion arising from the conflicting legal standards established in Rinne (2023) and Meiser (2024). The disparity between these two decisions, combined with the ongoing lawsuit, leaves critical jurisdictional criteria unclear, particularly regarding the relationship between a qualifying mental disorder and dangerousness. Without immediate action to clarify these standards, the PSRB would continue to operate under ambiguous guidelines, risking inconsistent application of the law. This inconsistency could lead to decisions that either contradict the current state of the law or leave the Board vulnerable to costly legal challenges. The Board has recently encountered its first new case where Meiser's (2024) combination theory was applied to assert jurisdiction. Meanwhile, Rinne (2023) is being argued as justification for discharges, even after the Board amended its dangerousness rule. This legal confusion creates a situation where decisions made by the Board could fail to reflect the evolving case law, and such decisions would likely be seen as legally questionable, leading to a greater risk of improper discharges and an overall lack of alignment with the law. By failing to take immediate action to clarify these issues, the PSRB would essentially be allowing legal ambiguity to persist, jeopardizing public safety, increasing the risk of litigation, and undermining public trust in the PSRB's decision-making process.

4. How the temporary action will avoid or mitigate these consequences:

The temporary rule will resolve the logical disconnect between the criteria for entering PSRB jurisdiction and the standards for maintaining it. The rule explicitly clarifies that dangerousness can be rendered by a combination of factors—both qualifying and non-qualifying conditions—rather than being solely attributable to a qualifying mental disorder, which is consistent with the Oregon Supreme Court's decision in Meiser (2024). Without the rule change, there is a potential argument that although a combination of factors, including a qualifying mental disorder and other non-qualifying conditions, may have contributed to the offense for which an individual qualified for the insanity defense, the person could later argue that their dangerousness is not solely caused by the qualifying mental disorder. By

clarifying that dangerousness may be attributed to a combination of factors, the temporary rule effectively closes this potential loophole. Importantly, the rule also preserves the PSRB's longstanding practice of maintaining jurisdiction over individuals affected by both qualifying and non-qualifying conditions. However, it does not allow the Board to maintain jurisdiction over individuals whose dangerousness is solely caused by non-qualifying conditions, thereby ensuring that the rule does not overreach.

In addition, the temporary rule directly addresses concerns raised in the lawsuit regarding the perceived removal of the connection between a qualifying mental disorder and dangerousness. By re-establishing a clear framework for assessing this critical relationship, the rule resolves this legal challenge, providing clarity and reducing the risk of costly litigation. This proactive step helps mitigate the financial and procedural burdens associated with the lawsuit, ensuring that the PSRB's decisions remain legally sound, consistent with case law, and aligned with its mission to protect public safety while safeguarding individual rights.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

State v. Meiser, 372 Or 438 (2024)

Rinne v. PSRB, 326 Or App 777 (2023)

AMEND: 859-030-0010

RULE TITLE: Jurisdiction of Persons under the PSRB/Length of Jurisdiction

RULE SUMMARY: This rule removes language no longer relevant since the sunset of the State Hospital Review Panel. This rule clarifies criteria the Board applies to maintain jurisdiction over clients adjudicated guilty except for insanity. This rule applies State v. Meiser, 372 Or 438, 440 (2024).

RULE TEXT:

- (1) In accordance with ORS 161.325, the Board will take jurisdiction over persons adjudged by the court to be guilty except for insanity and who present a substantial danger to others.
- (2) The period of jurisdiction of under the Board will be that sentence ordered by the court that places the person under PSRB jurisdiction.
- (3) The Board will maintain jurisdiction over persons who are legally placed under its jurisdiction by any court of the State of Oregon and who continue to meet the following jurisdictional criteria:
 - (a) The person is affected by a qualifying mental disorder, which may include one that is not currently active, but with reasonable medical probability, may occasionally become active.
 - (b) The person's qualifying mental disorder, when active, renders them a substantial danger to others.
- (A) A qualifying mental disorder may be the sole factor that renders a person a substantial danger to others; or
- (B) A qualifying mental disorder may combine with another condition to render the person a substantial danger to others and need not be sufficient on its own to render the person a substantial danger to others.
- (4) Judgment orders placing individuals under Board jurisdiction must:
 - (a) Indicate whether the court finds the individual is a proper subject for conditional release, and if so, that the procedures outlined in OAR 859-070-0005 and ORS 161.327 have been completed.
 - (b) Identify the length of Board jurisdiction over the individual;
 - (c) Any supervisory or other special orders the court delivered with its judgment.
- (5) If the court's order is unclear or is missing information required by ORS 161.325 or ORS 161.327, the Board may seek clarification on the matter from the court.
- (6) The Board will not retain jurisdiction over persons if the court order places the person under the Board only because of a judgment of guilty except for insanity for a probation violation. In order for the Board to retain jurisdiction, the person must be placed under the Board's jurisdiction for the initial offense.
- (7) The Board's Adult Panel will accept jurisdiction of remanded youth who are found Guilty Except for Insanity (GEI) in

adult court and placed under the Board's Adult Panel Jurisdiction. For rules regarding adjudicated youth who are found Responsible Except for Insanity (REI) in juvenile court and placed under the Board's Juvenile Panel, see OAR 859, Divisions 501 through 600.

(8) Upon receipt of the judgment order placing individuals under Board jurisdiction the individual shall have their end of jurisdiction date calculated by Board staff within 30 days of receipt of the judgment order.

(a) Board staff shall apply any credit for time served that is indicated in the judgment order.

(b) If the judgment order states that credit for time served shall be applied but does not indicate the amount, Board staff shall apply credit for time served for:

(A) Time spent in any correctional facility or jail for the offense or conduct for which the person was placed under the Board's jurisdiction, verified by a law enforcement agency; and

(B) Time spent in custody of the Oregon Health Authority at a state mental hospital or on a mental health hold at a secure facility.

STATUTORY/OTHER AUTHORITY: ORS 161.387

STATUTES/OTHER IMPLEMENTED: ORS 161.387, ORS 161.325 - ORS 161.351