

## Chapter 859 Psychiatric Security Review Board

### DIVISION 1

#### ADULT PSYCHIATRIC SECURITY REVIEW BOARD RULEMAKING PROCEDURES

- 859-001-0005 Notice  
859-001-0010 Cost of Administrative Rules

### DIVISION 10

#### ADULT PSYCHIATRIC SECURITY REVIEW BOARD DEFINITIONS

- 859-010-0005 Definitions

### DIVISION 20

#### ORGANIZATION OF THE ADULT PSYCHIATRIC SECURITY REVIEW BOARD

- 859-020-0005 Membership and Terms  
859-020-0010 Chair  
859-020-0015 Chair; Powers and Duties  
859-020-0020 Executive Director; Powers and Duties

### DIVISION 30

#### RESPONSIBILITIES OF THE ADULT PSYCHIATRIC SECURITY REVIEW BOARD

- 859-030-0005 Responsibilities, Function and Purpose of PSRB  
859-030-0010 Jurisdiction of Persons Under the PSRB

### DIVISION 40

#### ADULT PSYCHIATRIC SECURITY REVIEW BOARD HEARINGS AND MEETINGS

- 859-040-0005 Scheduling  
859-040-0010 Quorum and Decisions  
859-040-0015 Public Meetings Law  
859-040-0020 Records  
859-040-0025 Public Records Law; Confidentiality

### DIVISION 50

#### ADULT PSYCHIATRIC SECURITY REVIEW BOARD HEARINGS PROCEDURES

- 859-050-0005 Notice  
859-050-0010 Information Contained in Notice  
859-050-0015 Time of Hearings  
859-050-0020 Chairperson Conducting Hearing  
859-050-0025 Patients' Right to Review Record; Exceptions  
859-050-0030 Evidence Considered; Admissibility  
859-050-0035 Motion Practice  
859-050-0040 Objections to Evidence  
859-050-0045 Witnesses and Documents; Subpoena  
859-050-0050 Testimony Given on Oath  
859-050-0055 Standards and Burdens of Proof  
859-050-0060 Burden of Going Forward  
859-050-0065 Continuance of Hearing  
859-050-0070 Cancellation of Hearing  
859-050-0075 Use of Restraints  
859-050-0080 Decisions of the Board  
859-050-0085 Notification of Right to Appeal  
859-050-0090 Patient Appearing Pro Se  
859-050-0095 Examination of Patient  
859-050-0100 Use of Teleconferencing and Video  
Teleconferencing During Hearings  
859-050-0105 Protocol for Media at Hearings

### DIVISION 60

#### PRINCIPAL ISSUES BEFORE THE ADULT PSYCHIATRIC SECURITY REVIEW BOARD

- 859-060-0005 Issues  
859-060-0010 Primary Concern: Protection of Society  
859-060-0015 Initial Hearing  
859-060-0020 Revocation Hearing  
859-060-0025 Patient Request for Conditional Release  
859-060-0030 Patient Request for Discharge  
859-060-0035 Hospital Request for Conditional Release  
859-060-0040 Hospital or Outpatient Supervisor Request for Discharge  
859-060-0045 Mandatory Two-Year, Five-Year Hearings  
859-060-0050 Status Hearing

### DIVISION 70

#### CONDITIONAL RELEASE OF ADULTS

- 859-070-0005 Court Conditional Release  
859-070-0010 Board Order of Conditional Release  
859-070-0015 Elements of Conditional Release Order  
859-070-0020 Mental Health and Developmental Disability Services Division Responsibility to Prepare Plan  
859-070-0025 Modification or Termination of Conditional Release  
859-070-0030 Evaluation and Reports  
859-070-0035 Out-of-State Conditional Release Order  
859-070-0040 PSRB Conditional Release Plan Review of Tier Two Offenders

### DIVISION 80

#### ADULT PSYCHIATRIC SECURITY REVIEW BOARD ORDER OF REVOCATION

- 859-080-0005 Affidavit Recommending Revocation  
859-080-0010 Reasonable Grounds for Revocation  
859-080-0015 Procedure for Revocation

### DIVISION 90

#### RECONSIDERATION OF ADULT PSYCHIATRIC SECURITY REVIEW BOARD FINDINGS; JUDICIAL REVIEW; ENFORCEMENT

- 859-090-0005 Reconsideration  
859-090-0010 Judicial Review  
859-090-0015 Enforcement of Board Orders

### DIVISION 100

#### RESPONSIBILITY OF STATE AND COMMUNITY MENTAL HEALTH PROGRAMS FOR ADULTS

- 859-100-0005 Compliance  
859-100-0010 Custody of Person Who is a Substantial Danger to Others  
859-100-0015 Temporary Custody of Patient in State Hospital  
859-100-0020 Mental Health and Developmental Disability Services Division Rules for Assignment and Treatment  
859-100-0025 Discharge and Conditional Release Plans  
859-100-0030 Leaves and Passes

## Chapter 859 Psychiatric Security Review Board

### DIVISION 110

#### CONDITIONAL RELEASE AND DISCHARGE OF PERSONS WHOSE CRIMES WERE COMMITTED ON OR AFTER DECEMBER 5, 1996

**859-110-0010** Conditional Release and Discharge of Persons Placed Under the Board's Jurisdiction for Crimes Committed On or After December 5, 1996

### DIVISION 200

#### EXTREMELY DANGEROUS CIVIL COMMITMENT PROGRAM

**859-200-0005** Background and Purpose of Extremely Dangerous Civil Commitment Program  
**859-200-0010** Rules Applicability  
**859-200-0015** Copies; Cost of Administrative Rules  
**859-200-0020** Definitions  
**859-200-0025** Responsibilities of the PSRB regarding Extremely Dangerous Persons with Mental Illness Civil Commitments  
**859-200-0030** Jurisdiction of Persons under the PSRB; Jurisdictional Criteria  
**859-200-0035** Administrative Meetings  
**859-200-0040** Public Meetings Law  
**859-200-0045** Records

#### Hearings

**859-200-0050** Purpose of Hearings  
**859-200-0055** Notice of Hearings; Administrative Reviews  
**859-200-0060** Notification of State Representation Other Than the District Attorney from the County of Commitment  
**859-200-0065** Information Contained in Notice of Hearing  
**859-200-0070** Types of Hearings  
**859-200-0075** Chairperson Conducting Hearing  
**859-200-0080** Person's Right to Review Record; Exceptions  
**859-200-0085** Evidence Considered; Admissibility  
**859-200-0090** Motion Practice  
**859-200-0095** Objections to Evidence  
**859-200-0100** Testimony Given under Oath  
**859-200-0105** Standards and Burdens of Proof  
**859-200-0110** Continuance of Hearing  
**859-200-0115** Waiver of Appearance at Hearings  
**859-200-0120** Use of Restraints  
**859-200-0125** Quorum; Decisions; Board Member Conflicts  
**859-200-0130** Orders of the Board  
**859-200-0135** Notification of Right to Appeal  
**859-200-0140** Patient Appearing Pro Se  
**859-200-0145** Examination of Person  
**859-200-0150** Victims

#### Conditional Release

**859-200-0200** Court Conditional Release  
**859-200-0205** Board Order for Evaluation for Conditional Release  
**859-200-0210** Responsibility to Prepare a Summary of Conditional Release Plan  
**859-200-0215** Basis for a Finding of Conditional Release  
**859-200-0220** Elements of the Conditional Release Order  
**859-200-0225** Modification or Termination of Conditional Release  
**859-200-0230** Conditional Release Evaluation and Reports  
**859-200-0235** Monthly Reporting

#### Revocation of Conditional Release

**859-200-0300** Reasonable Grounds for Revocation

**859-200-0305** Order of Revocation; Emergency Order of Revocation; After Hours Revocation Process  
**859-200-0310** Procedure for Transporting a Revoked Person

### DIVISION 300

#### GUN RELIEF PROGRAM

**859-300-0001** Determination of Sufficient Funding  
**859-300-0010** Rulemaking Procedure; Notice  
**859-300-0020** Cost of Administrative Rules  
**859-300-0030** Definitions  
**859-300-0040** Background and Purpose of Gun Relief Program  
**859-300-0050** Petition for Relief  
**859-300-0060** Time Limits; Applying for Relief  
**859-300-0070** Timing of Relief Hearing  
**859-300-0080** Notice of Relief Hearing/Request for Continuance/Withdraw of Petition  
**859-300-0090** Principal Issue Before The Panel/Challenges to the Firearm Disqualification  
**859-300-0100** Quorum and Decisions of Panel  
**859-300-0110** Public Meetings Law  
**859-300-0120** Records  
**859-300-0130** Public Records Law; Confidentiality  
**859-300-0140** Evidence Considered; Admissibility  
**859-300-0150** Motion Practice  
**859-300-0160** Independent Examination of Petitioner  
**859-300-0170** Objections to Evidence  
**859-300-0180** Witnesses and Documents; Subpoena  
**859-300-0190** Testimony Given on Oath  
**859-300-0200** Standard and Burden of Proof  
**859-300-0210** Mandatory Personal Appearance  
**859-300-0220** Decisions of the Panel; Final Orders; Appeals  
**859-300-0230** Submission of Final Order of Relief to Oregon State Police

### DIVISION 400

#### SEX OFFENDER CLASSIFICATION/RELIEF FROM REGISTRATION/RECLASSIFICATION

**859-400-0001** Background/Purpose of Rules/Applicability  
**859-400-0005** Definitions  
**859-400-0010** Sex Offender Risk Assessment Methodology  
**859-400-0015** Classifying Agency/Sharing of Records  
**859-400-0020** Timelines for Classifying Registrants  
**859-400-0025** Failure of Registrant to Participate in the Risk Assessment/Failure to Provide Information for Assessment  
**859-400-0030** Procedures for Classifying and Notifying Adult Male Registrants  
**859-400-0035** Procedures for Classifying and Notifying Young Male Registrants, Female Registrants, and Category B Registrants  
**859-400-0040** Releasing Information to the Public and Law Enforcement  
**859-400-0045** Requests for Reclassification/Relief

### DIVISION 501

#### JUVENILE PSYCHIATRIC SECURITY REVIEW BOARD RULEMAKING PROCEDURES

**859-501-0005** Notice  
**859-501-0010** Cost of Administrative Rules

### DIVISION 510

#### JUVENILE PSYCHIATRIC SECURITY REVIEW BOARD DEFINITIONS

**859-510-0005** Definitions

## Chapter 859 Psychiatric Security Review Board

### DIVISION 520

#### ORGANIZATION OF THE JUVENILE PSYCHIATRIC SECURITY REVIEW BOARD

859-520-0005	Membership and Terms
859-520-0010	Chair
859-520-0020	Executive Director; Powers and Duties

### DIVISION 530

#### RESPONSIBILITIES OF JUVENILE PSYCHIATRIC SECURITY REVIEW BOARD

859-530-0010	Functions and Purpose of JPSRB
--------------	--------------------------------

### DIVISION 540

#### JUVENILE PSYCHIATRIC SECURITY REVIEW BOARD HEARINGS AND MEETINGS

859-540-0005	Hearings and Administrative Meetings
859-540-0010	Quorum and Decisions
859-540-0015	Public Meetings Law
859-540-0020	Records
859-540-0025	Public Records Law; Confidentiality

### DIVISION 550

#### JUVENILE PSYCHIATRIC SECURITY REVIEW BOARD GENERAL PROCEDURES

859-550-0005	Notice
859-550-0010	Information Contained in Notice
859-550-0015	Timing of Hearings
859-550-0020	Chairperson Conducting Hearing
859-550-0025	Youth's Right to Review Record; Exceptions
859-550-0030	Evidence Considered; Admissibility
859-550-0035	Motion Practice
859-550-0040	Objections to Evidence
859-550-0045	Witnesses and Documents; Subpoena
859-550-0050	Testimony Given on Oath
859-550-0055	Standards and Burdens of Proof
859-550-0060	Burden of Going Forward
859-550-0070	Cancellation of Hearing
859-550-0075	Use of Restraints
859-550-0080	Decisions of the Board
859-550-0085	Notification of Right to Appeal
859-550-0090	Youth Appearing Pro Se
859-550-0095	Examination of Youth

### DIVISION 560

#### HEARINGS BEFORE THE JUVENILE PSYCHIATRIC SECURITY REVIEW BOARD

859-560-0005	Issues
859-560-0010	Primary Concern: Protection of Society
859-560-0015	Issues and Findings to Be Addressed At Hearings
859-560-0045	Mandatory Hearings
859-560-0050	Status Hearing

### DIVISION 570

#### CONDITIONAL RELEASE OF YOUTHS

859-570-0005	Cases of Court Conditional Release
859-570-0010	Conditional Release Planning for Youths in Secure Facilities
859-570-0015	Board Order of Conditional Release
859-570-0020	Conditional Release Order
859-570-0025	Modification Of/Discharge From Conditional Release

859-570-0030	Evaluation and Reports
859-570-0035	Out-of-State Conditional Release Order

### DIVISION 580

#### JUVENILE PSYCHIATRIC SECURITY REVIEW BOARD ORDER OF REVOCATION

859-580-0005	Revocation of Conditional Release/Affidavit
859-580-0010	Reasonable Grounds for Revocation
859-580-0015	Post-Revocation Procedure

### DIVISION 590

#### RECONSIDERATION OF JUVENILE PSYCHIATRIC SECURITY REVIEW BOARD FINDINGS

859-590-0005	Reconsideration
--------------	-----------------

### DIVISION 600

#### RESPONSIBILITY OF STATE AND COMMUNITY MENTAL HEALTH YOUTH PROGRAMS AND DEVELOPMENTAL DISABILITIES YOUTH PROGRAMS

859-600-0005	Compliance
859-600-0020	Discharge
859-600-0025	Leaves and Passes

### DIVISION 1

#### ADULT PSYCHIATRIC SECURITY REVIEW BOARD RULEMAKING PROCEDURE

##### 859-001-0005

##### Notice

Prior to the adoption, amendment or repeal of any rule, the Psychiatric Security Review Board shall give notice of the intended action:

(1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days before the effective date of the rule;

(2) By mailing a copy of the notice to persons on the PSRB's mailing list established pursuant to ORS 183.335(8) at least 28 days before the rule takes effect;

(3) By mailing or furnishing a copy of the notice to Designated Legislators in accordance with ORS 183.335(15) at least 49 days before the rule takes effect;

(4) By mailing or furnishing a copy of the notice to:

- (a) Associated Press;
- (b) Attorney General;
- (c) Attorneys for Adult Clients;
- (d) DHS/AMH PSRB Liaisons;
- (e) Disability Rights Oregon (DRO);
- (f) Oregon Association of Chiefs of Police
- (g) Oregon Criminal Defense Lawyers Association;
- (h) Oregon District Attorneys Association;
- (i) Oregon Psychiatric Association
- (j) Oregon Psychological Association
- (k) Oregon State Sheriff's Association
- (l) OSH Consumer and Family Services;
- (m) PSRB Community Case Managers;

Stat. Auth.: ORS 161.387(1)

Stats. Implemented: ORS 161.387

Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85; PSRB 1-1995, f. & cert. ef. 1-11-95; PSRB 2-2014, f. & cert. ef. 12-18-14

##### 859-001-0010

##### Cost of Administrative Rules

Copies of administrative rules are available electronically at no charge on the Secretary of State's website: [http://sos.oregon.gov/archives/pages/oregon\\_administrative\\_rules.aspx](http://sos.oregon.gov/archives/pages/oregon_administrative_rules.aspx). PSRB staff can also email copies of proposed administrative rules to interested parties.

Stat. Auth.: ORS 161 & 183  
 Stats. Implemented: ORS 161.387  
 Hist.: PSRB 1-1987, f. & ef. 2-4-87; PSRB 1-1995, f. & cert. ef. 1-11-95; PSRB  
 2-2014, f. & cert. ef. 12-18-14

## DIVISION 10

### ADULT PSYCHIATRIC SECURITY REVIEW BOARD DEFINITIONS

#### 859-010-0005

##### Definitions

(1) “Abscond” means a client on conditional release has departed without permission from the case manager or Board and the client’s whereabouts are unknown.

(2) “Administrative Hearing” means a meeting of the Board where a quorum is present and a matter is reviewed (e.g. an outpatient supervisor request for modification to a client’s conditional release plan). The Board shall consider information in the written record only and no oral testimony shall be received; If an objection is made to the administrative hearing, the client or the state has the right to request a full hearing. On its own motion, the Board may require further information, testimony or the presence of the client and therefore, set the matter for a full hearing.

(3) “Administrative Meeting” is 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;

(4) “Case Managers” are individuals designated in the conditional release order who are responsible for ensuring clients on conditional release receive the services and support they need and reporting to the PSRB a client’s progress, activities and compliance with conditions of release or lack thereof.

(5) “Client” refers to any person under the jurisdiction of the Board and may be used interchangeably with person or patient or outpatient.

(6) “Conditional Release” is a grant by the court or the Board for a client, patient or defendant to reside outside a state hospital in the community under conditions mandated by the court or Board for monitoring and treatment of mental and physical health.

(7) “Danger”; “Substantial Danger”; or “Dangerousness” means a demonstration or previous demonstration of intentional, knowing, reckless or criminally negligent behavior which places others at risk of physical injury because of the person’s mental disease or defect.

(8) “Escape” means:

(a) A client committed to a state hospital:

(A) Leaves the supervision of hospital staff without permission;

(B) Leaves the hospital without permission; or

(C) Fails to return at the appointed time to the hospital.

(b) Any client who leaves the State of Oregon without authorization of the Board;

(c) Any client who fails to return to the State of Oregon as directed by the Board.

(9) “Full Hearing” is a meeting of the Board where parties are present, testimony is taken and written findings on the issue(s) before the Board are made.

(10) “Insanity Defense”, also known as “GEI”, refers to a plea or finding of “Guilty Except for Insanity”. Nomenclature. For offenses committed on or after January 1, 1984, a person is guilty except for insanity if, as a result of a mental disease or defect at the time of engaging in criminal conduct, the person lacked substantial capacity either to appreciate the criminality of the conduct or to conform the conduct to the requirements of law. The name of the insanity defense from January 1, 1978, through December 31, 1983, was “not responsible due to mental disease or defect.” From January 1, 1971, through December 31, 1977, the insanity defense was known as “not guilty by reason of mental disease or defect.”

The name of the insanity defense prior to 1971 was “not guilty by reason of insanity.”

(11) “Mental Disease or Defect”

(a) “Mental Defect” is defined as mental retardation, traumatic brain injury, brain damage or other biological dysfunction that is associated with distress or disability causing symptoms or impairment in at least one important area of an individual’s functioning and is defined in the current Diagnostic and Statistical Manual of Mental Disorders (DSM IV-TR) of the American Psychiatric Association.

(b) “Mental Disease” is defined as any diagnosis of a psychiatric condition 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 and is defined in the (c) Diagnostic and Statistical Manual of Mental Disorders (DSM IV-TR) of the American Psychiatric Association. \*\*Qualifying Mental Disease or Defect” or “Mental Disease or Defect” is defined as a mental disease or mental defect described in subsections (a) and (b), excluding those conditions described in subsection (d). A qualifying mental disease or defect includes:

(A) A mental disease or mental defect in a state of remission which could with reasonable medical probability occasionally become active; or

(B) A mental disease or mental defect that could become active as a result of a non-qualifying mental disease or defect.

(d) \*\*Non-Qualifying Mental Disease or Defect” is defined as a mental disease or defect where the condition is:

(A) A diagnosis solely constituting the ingestion of substances (e.g., chemicals or alcohol), including but not limited to alcohol-induced psychosis;

(B) An abnormality manifested solely by repeated criminal or otherwise antisocial conduct; or

(C) An abnormality constituting a personality disorder.

(12) “Party” means the State, which includes the Oregon Department of Justice or, if representing the State’s interest, the District Attorney from the county where the GEI was adjudicated, client and client’s counsel.

(13) “PSRB” or “Board” means the Oregon Psychiatric Security Review Board.

(14) “Quorum” means the presence of at least three members, in person or on the telephone, of the Adult Panel of the Board.

(15) “SHRP” means the State Hospital Review Panel. It is an entity established by OHA that supervises Tier Two GEI patients while they reside at the state hospital.

(16) “State Hospital” means any state institution or facility operated by the Oregon Health Authority.

(17) “Tier One or Tier Two Offender” means an individual adjudicated guilty except for insanity of a crime as defined in ORS 161.332.

(18) “Victim” means the person or persons who have suffered financial, social, psychological or physical harm as a result of a crime that brought the client under the Board’s jurisdiction. In the case of a homicide or abuse of a corpse, 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 PSRB client be considered a victim of his/her own GEI case.

Stat. Auth.: ORS 161.387

Stats. Implemented: ORS 161.295 - 161.400

Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85; PSRB 1-1987, f. & ef. 2-4-87; PSRB 1-1995, f. & cert. ef. 1-11-95; PSRB 2-2014, f. & cert. ef. 12-18-14

## DIVISION 20

### ORGANIZATION OF THE ADULT PSYCHIATRIC SECURITY REVIEW BOARD

#### 859-020-0005

##### Membership and Terms

(1) The Psychiatric Security Review Board shall consist of five members, appointed by the Governor and subject to confirmation by the Senate and shall be composed of a psychiatrist, a



licensed psychologist, a member with substantial experience in probation and parole, a member of the general public and a lawyer with substantial experience in criminal trial practice. The psychiatrist and psychologist shall be experienced in the criminal justice system and not otherwise employed on a full-time basis by the Mental Health and Developmental Disability Services Division or a community mental health program.

(2) Members shall serve overlapping four-year terms commencing on July 1 of the appointment year. Vacancies occurring during a member's term shall be filled immediately for the remainder of the unexpired term. Members are eligible for reappointment.

Stat. Auth.: ORS 161

Stats. Implemented: ORS 161.385

Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85

### 859-020-0010

#### Chair

The Board shall elect one of its members as chairperson to serve for a one-year term, with the possibility of reelections.

Stat. Auth.: ORS 161

Stats. Implemented: ORS 161.385

Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85

### 859-020-0015

#### Chair; Powers and Duties

The chairperson shall have the powers and duties established by law and such other powers and duties necessary for the performance of the office. These shall include, but not be limited to:

(1) Presiding at hearings and meetings;

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

(3) Making rulings on procedural matters;

(4) Hiring and terminating the Executive Director with the approval of the majority of the Board.

Stat. Auth.: ORS 161.387

Stats. Implemented: ORS 161.385

Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85; PSRB 1-1995, f. & cert. ef. 1-11-95

### 859-020-0020

#### Executive Director; Powers and Duties

The executive director shall officially represent the Board and shall perform other duties including but not limited to:

(1) Supervising work operations of the Board's staff;

(2) Preparing the budget for approval by the Board;

(3) Implementing Board policies and decisions;

(4) Informing the Board of the status of persons under its jurisdiction;

(5) Presenting to the Board all matters requiring Board action;

(6) Performing other duties as authorized or requested by the Board.

(7) Hiring and terminating employees.

Stat. Auth.: ORS 161.385

Stats. Implemented: ORS 161.385

Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85; PSRB 1-1995, f. & cert. ef. 1-11-95

## DIVISION 30

### RESPONSIBILITIES OF THE ADULT PSYCHIATRIC SECURITY REVIEW BOARD

### 859-030-0005

#### Responsibilities, Function and Purpose of PSRB

The Board shall monitor the mental and physical health and treatment of any person placed under its jurisdiction as a result of a finding by a court of guilty except for insanity or any subsequent transfer of jurisdiction of an individual from the Oregon Health Authority. 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 status of persons under its jurisdiction;

(2) Providing the State Hospital Review Panel with conditions of release the Board finds advisable to be included in the Panel's order of conditional release of a Tier Two Offender;

(3) Overseeing the supervision of persons placed on conditional release in the community;

(4) Modifying or terminating conditional release plans;

(5) Maintaining and keeping current medical, social and criminal histories of all persons under the Board's jurisdiction;

(6) Observing the confidentiality of records as required by law.

Stat. Auth.: ORS 161.387, Or Law 2011, ch 708, § 33(2) (SB 420)

Stats. Implemented: ORS 161.315 - ORS 161.351, Or Law 2011, ch 708, §§ 5, 33, 41 (SB 420)

Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85; PSRB 1-1995, f. & cert. ef. 1-11-95; PSRB 1-2012(Temp), f. & cert. ef. 2-3-12 thru 7-31-12; PSRB 2-2012, f. & cert. ef. 4-16-12

### 859-030-0010

#### Jurisdiction of Persons Under the PSRB

The Board shall take jurisdiction over persons adjudged by the court to be guilty except for insanity and presenting a substantial danger to others:

(1) The court must find that the person would have been guilty of a felony, or if adjudged guilty except for insanity prior to January 1, 2012 of a misdemeanor during a criminal episode in the course of which the person caused physical injury or risk of physical injury to another.

(2) The period of jurisdiction of the Board shall be equal to the maximum sentence the court finds the person could have received had the person been found guilty. The Board does not consider time spent on unauthorized leave from the custody of the Oregon Health Authority as part of the jurisdictional time.

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

(4) The Board shall maintain jurisdiction over persons who are legally placed under its jurisdiction by any court of the State of Oregon or transferred from the jurisdiction of the Oregon Health Authority.

(5) The Board shall 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. The person must be placed under the Board's jurisdiction for the initial offense.

(6) The Board shall not accept jurisdiction of juveniles found guilty except for insanity unless remanded to adult court.

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

(a) Time spent in any correctional facility for the offense for which the person was placed under the Board's jurisdiction; and

(b) Time spent in custody of the Oregon Health Authority at a state mental hospital for determination of the defendant's fitness to proceed or for treatment until fit to proceed under a detainer for the criminal charges for which the person ultimately was found guilty except for insanity as well as a result of being committed by a court after being found guilty except for insanity of a charge.

Stat. Auth.: ORS 161.387, Or Law 2011, ch 708, §33(2) (SB 420)

Stats. Implemented: ORS 161.315 - ORS 161.351, Or Law 2011, ch 708, §§5, 33, 41 (SB 420)

Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85; PSRB 2-1987, f. 9-30-87, ef. 10-1-87; PSRB 1-1995, f. & cert. ef. 1-11-95; PSRB 1-2012(Temp), f. & cert. ef. 2-3-12 thru 7-31-12; PSRB 2-2012, f. & cert. ef. 4-16-12

DIVISION 40

ADULT PSYCHIATRIC SECURITY REVIEW BOARD  
HEARINGS AND MEETINGS

859-040-0005

**Scheduling**

The Board shall meet at least twice every month unless the chairperson determines that there is not sufficient business before the Board to warrant a meeting at the scheduled time:

(1) The Board shall hold administrative meetings to consider matters relating to Board policy and administration.

(2) The agenda for administrative meetings shall be developed by the executive director and the chairperson prior to the meeting. Public notice shall be given in accordance with the Public Meetings Law.

(3) The Board shall hold administrative hearings to expedite such matters as approving modifications of conditional release orders, reviewing plans for conditional release and approving or disapproving them.

Stat. Auth.: ORS 161

Stats. Implemented: ORS 161.385 & 161.387

Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85

859-040-0010

**Quorum and Decisions**

The presence of at least three members of the Board constitutes a quorum:

(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 no longer than 60 days and the tape of the hearing and the exhibits shall be reviewed by the remaining member(s) and a decision by the majority of the members shall be the finding and order of the 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.

Stat. Auth.: ORS 161.387

Stats. Implemented: ORS 161.385

Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85; PSRB 1-1995, f. & cert. ef. 1-11-95; PSRB 1-2008(Temp), f. & cert. ef. 12-17-08 thru 6-2-09; PSRB 1-2009, f. & cert. ef. 5-5-09

859-040-0015

**Public Meetings Law**

All 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 this rule, the term "public" does not include employees of the PSRB.

Stat. Auth.: ORS 161

Stats. Implemented: ORS 161.387

Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85; PSRB 1-2008(Temp), f. & cert. ef. 12-17-08 thru 6-2-09; PSRB 1-2009, f. & cert. ef. 5-5-09

859-040-0020

**Records**

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

(2) All Board hearings, except Board deliberations, shall be recorded by manual or electronic means which can be transcribed. No other record of Board hearings shall be made. All documents

considered at hearings shall be included as exhibits and kept as part of the record:

(a) Audio tapes capable of being transcribed shall be kept by the Board for a minimum period of two years from the hearing date;

(b) The Board hearings shall be transcribed from the recording for appeal purposes. Once transcribed, the transcript may be substituted for the original record;

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

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

Stat. Auth.: ORS 161

Stats. Implemented: ORS 161.345 & 161.346

Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85

859-040-0025

**Public Records Law; Confidentiality**

The attorneys for the parties shall have the right to review any records to be considered at the hearing. Statutory requirements shall be observed with respect to the other requests to inspect patient records:

(1) Other requests shall be reviewed to determine whether the record is exempt under the following provisions:

(a) Communications within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual material and are preliminary to any final agency determination of policy or action;

(b) Information of a personal nature such as that kept in personal, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance.

(2) Medical record falling within ORS 192.525 shall be withheld from public inspection if the Board determines that the disclosure would interfere with the rehabilitation of the person and if the public interest in confidentiality clearly outweighs the public interest in disclosure.

(3) Public records, Board orders and information within the Public Records Law shall be made available upon request. All requests shall be made in writing and final determination on disclosure shall be made by the Board. A reasonable charge may be made for copying of material. Appeals of determinations on disclosure shall be made by petition to the Attorney General in accordance with statutory requirements.

Stat. Auth.: ORS 161.385, 161.387, 192.450, 192.500, 192.525 & 192.690

Stats. Implemented: ORS 161.336

Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85; PSRB 1-1995, f. & cert. ef. 1-11-95

DIVISION 50

ADULT PSYCHIATRIC SECURITY REVIEW BOARD  
HEARING PROCEDURES

859-050-0005

**Notice**

Written notice shall be given to the following persons or agencies within a reasonable time:

(1) Attorney representing the person.

(2) District attorney.

(3) Community supervisor or case monitor.

(4) Court or department of the county from which the person was committed.

(5) The victim, if the court or Board finds the victim requests notification.

(6) Any other interested person requesting notification.

(7) Forensic unit of Oregon State Hospital.

Stat. Auth.: ORS 161

Stats. Implemented: ORS 161.332 & 161.346

Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85

**859-050-0010**

**Information Contained in Notice**

Written notice shall contain the following:

- (1) Time, place and location of the hearing.
- (2) The issues to be considered, reference to statutes and rules involved, authority and jurisdiction.
- (3) Statement of rights of the patient at the hearing, including the following:
  - (a) Right to appear at all proceedings, except Board deliberations;
  - (b) Right to cross-examine all witnesses appearing to testify at the hearing;
  - (c) Right to subpoena witness and documents as provided in ORS 161.395;
  - (d) Right to legal counsel and, if indigent as defined by the indigency standard set forth by the State Court Administrator's office, to have counsel provided without cost;
  - (e) Right to examine all information, documents and reports under consideration.

Stat. Auth.: ORS 161.387

Stats. Implemented: ORS 161.346

Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85; PSRB 1-1988, f. & cert. ef. 4-1-88;

PSRB 1-1995, f. & cert. ef. 1-11-95

**859-050-0015**

**Time of Hearings**

Hearings shall be held within the following times:

- (1) Initial hearing under ORS 161.341(7)(a). After a person has been placed under the Board's jurisdiction and committed to a state hospital designated by the Mental Health and Developmental Disability Services Division — 90 days.
- (2) Revocation hearing, ORS 161.336(5). After return to the state hospital as a result of an Order of Revocation for violation of the conditional release — 20 days.
- (3) Patient request for conditional release or discharge, ORS 161.341(4)(5)(6). A patient is eligible to request a hearing six months after last hearing. Hearing to be held within 60 days after filing request.
- (4) Hospital request, ORS 161.341(2), or outpatient supervisor request, 161.336(7)(b), for conditional release, modification of conditional release or discharge. Request may be made at any time. The hearing is to be held within 60 days of receipt of request.
- (5) Outpatient request for modification of conditional release or discharge, ORS 161.336(7)(a). Patients on conditional release are eligible to request a hearing six months after last hearing — priority will be given to the requests of patients in the hospital.
- (6) Two-year hearing, ORS 161.341(7)(b). A hearing is mandatory for persons committed to a state hospital when no other hearing has been held within two years.
- (7) Five-year hearing, ORS 161.351(3). Any person who is under the jurisdiction of the Board and who has spent five years on conditional release shall be brought before the Board for a hearing within 30 days of the expiration of the five year period.

Stat. Auth.: ORS 161.387

Stats. Implemented: ORS 161.336, 161.341 & 161.351

Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85; PSRB 2-1988, f. & cert. ef. 11-16-88; PSRB 1-1989, f. & cert. ef. 10-20-89; PSRB 1-1995, f. & cert. ef. 1-11-95

**859-050-0020**

**Chairperson Conducting Hearing**

During 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 unresponsive answers.

Stat. Auth.: ORS 161

Stats. Implemented: ORS 161.385

Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85

**859-050-0025**

**Patient's Right to Review Record; Exceptions**

Patients shall receive written notice of the hearing and directly, or through their attorney, a statement of their rights in accordance with ORS 161.346. All exhibits to be considered by the

Board shall be disclosed to the patient's attorney or the patient, if proceeding pro se, as soon as they are available:

- (1) Exhibits not available prior to the hearing shall be made available to the patient's attorney or the patient, if not represented, at the hearing.
- (2) All material relevant and pertinent to the patient 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.

Stat. Auth.: ORS 161

Stats. Implemented: ORS 161.346

Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85

**859-050-0030**

**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 trial.
- (2) Information supplied by the state's attorney or any interested party, including the person.
- (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 ordered by the Board under ORS 161.346(2).
- (6) Psychiatric and psychological reports under ORS 161.341(3), written by a person chosen by the state or the patient to examine the patient.
- (7) Testimony of witnesses.

Stat. Auth.: ORS 161

Stats. Implemented: ORS 161.336, 161.341 & 161.346

Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85

**859-050-0035**

**Motion Practice**

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

Stat. Auth.: ORS 161

Stats. Implemented: ORS 161.346

Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85

**859-050-0040**

**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 period of time not to exceed 60 days to allow a witness to appear or be subpoenaed to testify about the evidence under consideration.

Stat. Auth.: ORS 161

Stats. Implemented: ORS 161.346 & 161.385



Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85

#### 859-050-0045

##### Witnesses and Documents; Subpoena

Witnesses or documents may be subpoenaed as provided in ORS 161.395 upon request of any party to the hearing or on the Board's own motion, upon a proper showing of the general relevance and reasonable scope of the documentary of physical evidence sought:

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

(2) The Legislature has provided that a judge of the Circuit Court of the county in which the hearing is held shall compel obedience by proceeding for contempt for failure of any person to comply with the subpoena issued.

Stat. Auth.: ORS 161.387

Stats. Implemented: ORS 161.346 & 161.395

Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85; PSRB 1-1995, f. & cert. ef. 1-11-95

#### 859-050-0050

##### Testimony Given on 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.

Stat. Auth.: ORS 161

Stats. Implemented: ORS 161.346 & 161.385

Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85

#### 859-050-0055

##### Standards and Burdens of Proof

The standard of proof on all issues at hearings of the Board shall be the preponderance of the evidence. The burden of proof shall depend on the type of hearing:

(1) Initial 90-day hearing under ORS 161.341(7)(a): The state has the burden to show the person continues to be affected by a mental disease or defect and continues to be a substantial danger to others.

(2) Revocation hearing under ORS 161.336(5): The state has the burden to show that the revocation of conditional release was appropriate and that jurisdiction of the Board should continue.

(3) Conditionally released person's request for modification of a conditional release or discharge under ORS 161.336(7)(a): The person has the burden of proving his or her fitness for modification of a conditional release or discharge.

(4) Hospital patient's request for conditional release or discharge under ORS 161.341(4): The person has the burden of proving his or her fitness for conditional release or discharge unless it has been more than 2 years since the State had the burden of proof in which case the burden is on the State.

(5) Request for conditional release or discharge of the patient by the Mental Health and Developmental Disability Services Division under ORS 161.341(2) or by outpatient supervisor under 161.336(7)(b): The state must prove the person is not appropriate for conditional release or discharge.

(6) At a status review hearing under ORS 161.336(2): The state has the burden of proving that the current conditional release, modification of conditional release, or a proposed plan is appropriate.

(7) In all other cases (two-, five-, ten-year hearings): The state bears the burden of proof.

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

Stat. Auth.: ORS 161.387

Stats. Implemented: ORS 161.336, 161.341 & 161.346

Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85; PSRB 1-1995, f. & cert. ef. 1-11-95

#### 859-050-0060

##### Burden of Going Forward

The party that has the burden of proof shall also have the burden of going forward with the evidence (call and examine witnesses, propose conditions of release, etc.).

Stat. Auth.: ORS 161.387

Stats. Implemented: ORS 161.346

Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85; PSRB 1-1995, f. & cert. ef. 1-11-95

#### 859-050-0065

##### 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 not to exceed 60 days to obtain additional information or testimony.

Stat. Auth.: ORS 161

Stats. Implemented: ORS 161.346

Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85

#### 859-050-0070

##### Cancellation of Hearing

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

Stat. Auth.: ORS 161

Stats. Implemented: ORS 161.346

Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85

#### 859-050-0075

##### Use of Restraints

(1) The Board prefers to have patients appear at hearings without physical restraints. If, in the judgement of the patient'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.

Stat. Auth.: ORS 161

Stats. Implemented: ORS 161.346

Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85

#### 859-050-0080

##### Decisions of the Board

Within 15 days following the conclusion of a hearing, the Board shall provide the person, the attorney representing the person, the district attorney representing the state, the committing court and, where applicable, the Mental Health and Developmental Disability Services Division and local mental health agency or supervisor written notice of the Board's decision:

(1) The order of the PSRB shall be signed by a member present at the hearing.

(2) The board may issue its decision orally on the record at the hearing.

(3) The formal order of the Board shall contain the findings of facts, conclusions of law, reasons for the decision and notice of the right to appeal under ORS 161.385(8).

(4) An order of revocation shall be signed by the chairperson or, if not available, by an acting chairperson or the Executive Director.

Stat. Auth.: ORS 161.387

Stats. Implemented: ORS 161.346

Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85; PSRB 1-1995, f. & cert. ef. 1-11-95

#### 859-050-0085

##### Notification of Right to Appeal

At the conclusion of a Board hearing, the chair or acting chair 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 and the right to an attorney is indigent.

Stat. Auth.: ORS 161

Stats. Implemented: ORS 161.385



Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85

**859-050-0090****Patient Appearing Pro Se**

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

Stat. Auth.: ORS 161

Stats. Implemented: ORS 161.346

Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85

**859-050-0095****Examination of Patient**

The Board may appoint a psychiatrist or licensed psychologist to examine the person and submit a report to the Board, including an opinion as to the mental condition of the person, whether the person presents a substantial danger to others and whether the person could be adequately controlled on conditional release with treatment and supervision:

(1) 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 licensed psychologist to examine the person. The report shall include a written opinion as to the mental condition of the person, whether the person presents a substantial danger to others and whether the person could be adequately controlled on conditional release with treatment and supervision.

(3) The attorney for the state shall file a written notice of intent to conduct an examination.

(4) The attorney for the patient may file a written request for the Board to appoint a psychiatrist or licensed psychologist to examine the patient. The Board shall approve or deny the request, taking into consideration the budget of the Board available for such examinations and the reasons for the request.

Stat. Auth.: ORS 161

Stats. Implemented: ORS 161.346

Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85

**859-050-0100****Use of Teleconferencing and Video Teleconferencing During Hearings**

(1) The Board recognizes that in-person attendance at hearings is preferable yet is not always practicable. Therefore, teleconferencing and video teleconferencing may be permitted.

(2) Telephonic participation via telephone is permitted at PSRB Hearings.

(a) All participants on the phone, even if solely listening in, are expected to identify who they are or have a designated person, such as the Victim Advocate or client family member, identify they are participating by phone.

(b) Participants on the phone 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 telephonic participant 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.

(3) Video teleconferencing may be used by clients, witnesses or victims when the hearings recording equipment allows for its use.

(a) If the client is appearing via video teleconference, Board staff will ensure that the defense counsel has the ability to consult with the client at any time during the hearing in a setting where the attorney-client privilege is not compromised.

(b) All clients who reside at Oregon Department of Corrections will appear for PSRB hearings via video teleconferencing.

(c) All clients who reside at Junction City State Hospital will appear for hearings via video teleconferencing, unless there is a

basis for in-person attendance that cannot be accommodated by teleconferencing and the State Hospital can arrange for transportation.

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

(B) In-person requests shall contain a basis for the request and some description as to why video teleconferencing is not appropriate for the particular hearing.

(d) Clients or attorneys may request that participants appear via video teleconference when in-person participating is not feasible, such as a client who has difficulty traveling to the hearing location or weather conditions that make travel dangerous.

(3) Any party may request the Board order in-person attendance of a witness or client if the written request is made at least 3 days prior to notice of the hearing. Parties need to give notice to the Board if the party wants in-person presence rather than video presence of other parties or witnesses. The request shall include the basis or reason for in-person attendance that cannot otherwise be achieved via telephone or video teleconferencing.

(4) PSRB Board members may appear by telephone or video teleconferencing when in-person attendance is not practicable.

Stat. Auth.: ORS 161.387

Stats. Implemented: ORS 161.295 - 161.400

Hist.: PSRB 2-2014, f. & cert. ef. 12-18-14

**859-050-0105****Protocol for Media at Hearings**

(1) Public Access Coverage Defined. As used in this rule:

(a) "Public access coverage" means coverage by means of any public access coverage equipment.

(b) "Public access coverage equipment" means any of the following in the possession of persons other than the PSRB or the PSRB staff: television equipment; still photographer equipment; audio, video, or other electronic recording equipment.

(2) Notification to Record Hearings. The news media must notify the PSRB of their request to record video, still photography, or audio of a PSRB proceeding by submitting a request for media or other public access coverage of PSRB at least one business day (24 hours) prior to the scheduled hearing day. Notice of media or public access coverage requests given to the PSRB less than twenty-four (24) hours prior to a scheduled hearing will be taken under advisement by the Board and may result in coverage access being denied directly in the hearings room. PSRB rules require that an original be filed with the PSRB. Submissions shall be emailed to PSRB at: psrb@psrb.org.

(3) Equipment and Operators

(a) Only one television camera and/or one still camera each with a single camera operator will be permitted in the PSRB proceeding. Cameras and operators must be in designated locations. Interviews may only be conducted in the area designated by the Board, or AMH, if hearings are conducted at OSH.

(b) It is up to the PSRB Board Chair, or Acting Chair, typically through its staff, to decide where cameras and microphones may be placed in the hearings room. Each hearings room is different and PSRB Board members may differ on this so operators must ask for assistance to determine camera placement on the day of the hearing.

(c) Equipment and camera operators must be in place prior to the PSRB hearing. Equipment must not be installed, moved or removed from the hearings room while the PSRB hearing is in session. Camera operators may not move around the hearings room while hearings are in session.

(d) News media must arrange any pooling of footage, photographs or audio among themselves. Typically, the first camera to arrive at the hearings room will be allowed to set-up in the hearings room. The PSRB will not participate in any pooling agreement. The PSRB will not mediate in the event of disagreements about pooling arrangements. Disagreements about pooling arrangements will not result in additional media equipment being allowed into the hearings room and they will not cause a delay in the hearing start time. In the absence of agreement on pooling issues by

persons seeking public access coverage, the PSRB Chair or Acting Chair may exclude any or all public access coverage.

(e) No public access coverage device shall be operated by more than one person.

(f) No person shall use public access coverage equipment that interferes or distracts from proceedings in the hearings room.

(g) The video camera must be mounted on a tripod or other device or installed in the hearings room. The tripod or other device must not be moved while the proceedings are in session. Video equipment must be screened where practicable or located and operated as directed by the Board Chair.

(h) No artificial lighting devices of any kind shall be allowed.

(4) Limitations on Access/Media shall not record:

(a) Any notes or conversations intended to be private including, but not limited to counsel, victims, Board members and members of the public attending hearings.

(b) Portions of the hearing that would interfere with the rights of the parties to a fair hearing or would affect the presentation of evidence or outcome of the hearing. This may include if public access coverage affects the PSRB clients ability to effectively participate in his/her hearing.

(c) Any portion of the hearing that would interfere with a victim's entitlement 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.

(d) Any cost or increased burden resulting from the public access coverage would interfere with the efficient administration of justice.

(e) Recording equipment may not be used in the visitor area.

(5) A Board Chair may summarily prohibit public access coverage of particular hearing attendees or witnesses, if the attendee or witness so requests.

(6) Violations. Any violation of this rule may result in sanctions including but not limited to the termination of media coverage privileges.

Stat. Auth.: ORS 161.387

Stats. Implemented: ORS 161.295 - 161.400

Hist.: PSRB 2-2014, f. & cert. ef. 12-18-14

### DIVISION 60

#### PRINCIPAL ISSUES BEFORE THE ADULT PSYCHIATRIC SECURITY REVIEW BOARD

##### 859-060-0005

###### Issues

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

Stat. Auth.: ORS 161.387

Stats. Implemented: ORS 161.346

Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85; PSRB 1-1995, f. & cert. ef. 1-11-95

##### 859-060-0010

###### Primary Concern: Protection of Society

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

Stat. Auth.: ORS 161

Stats. Implemented: ORS 161.336, 161.341, 161.346 & 161.351

Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85

##### 859-060-0015

###### Initial Hearing

After being placed under the jurisdiction of the Board and committed to a state hospital, the person shall have an initial hearing before the Board to determine whether the person should be committed, conditionally released or discharged:

(1) At an initial hearing, the Board shall make a finding on the issue of presence of mental disease or defect and dangerousness and may base it on the court's findings and any additional information received.

(2) If the Board finds at its initial hearing that the person is affected by a mental disease or defect, presents a substantial danger to others and is not a proper subject for conditional release, the Board shall order the person committed to, or retained in, a state hospital designated by the Mental Health and Developmental Disability Services Division for custody, care and treatment.

(3) If the Board finds the person is still affected by a mental disease or defect and is a substantial danger to others but can be adequately controlled with treatment and supervision if conditionally released, the Board shall find the person appropriate for conditional release and shall follow procedures set forth in division 070.

(4) If the Board makes a finding that the person is no longer affected by a mental disease or defect or is no longer a substantial danger to others, the Board shall order the discharge of the person from jurisdiction.

Stat. Auth.: ORS 161.387

Stats. Implemented: ORS 161.336, 161.341 & 161.346

Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85; PSRB 1-1995, f. & cert. ef. 1-11-95

##### 859-060-0020

###### Revocation Hearing

At a revocation hearing the Board shall consider whether the revocation was appropriate and whether the person can be continued on conditional release or should be committed to a state hospital designated by the Mental Health and Developmental Disability Services Division. The Board may consider a request for discharge at a revocation hearing or make that finding after considering the evidence before the Board:

(1) If the Board finds the person is affected by a mental disease or defect and presents a substantial danger to others and cannot be safely controlled in the community while on conditional release, the person shall be committed to a state hospital designated by the Mental Health and Developmental Disability Services Division.

(2) If the Board finds the person could be controlled in the community but no conditional release plan has been approved by the Board, the Board shall order the person committed but find the person appropriate for conditional release. The Board shall specify what conditions the plan should include and may approve the conditional release plan submitted by the staff of the hospital, by the patient or someone on the patient's behalf, at an administrative hearing.

(3) If the Board finds the person can be controlled in the community and a verified conditional release plan is approved by the Board, the Board shall order the person placed on conditional release in accordance with procedures set forth in division 070.

(4) If the person has been charged with a new crime or is serving time in the corrections system, the Board shall not hold a revocation hearing until such time as the person is returned to the Mental Health and Developmental Disability Services Division or upon an appropriate request to hold a hearing.

Stat. Auth.: ORS 161.387

Stats. Implemented: ORS 161.336

Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85; PSRB 1-1995, f. & cert. ef. 1-11-95

##### 859-060-0025

###### Patient Request for Conditional Release

In a hearing before the Board on a patient request for conditional release, the Board shall consider whether, although still affected by mental disease or defect, the patient can be adequately controlled in the community with treatment and supervision, and

shall determine whether the person is a proper subject for conditional release in accordance with procedures set forth in division 70.

Stat. Auth.: ORS 161

Stats. Implemented: ORS 161.341

Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85

### 859-060-0030

#### Patient Request for Discharge

In a hearing before the Board on a patient request for discharge, the Board shall determine whether the patient continues to be affected by a mental disease or defect and is a substantial danger to others:

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

(2) If the Board finds the person is not appropriate for discharge, the Board may consider whether the patient is appropriate for conditional release even if not requested previously by the patient.

Stat. Auth.: ORS 161

Stats. Implemented: ORS 161.341

Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85

### 859-060-0035

#### Hospital Request for Conditional Release

(1) At any time while a patient is committed to a state hospital designated by the Mental Health and Developmental Disability Services Division, the superintendent of the hospital or designee shall apply to the Board for conditional release if it is the opinion of the treating physician that the patient continues to be affected by mental disease or defect and continues to be a danger to others but can be controlled in the community with proper care, medication, supervision and treatment.

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

Stat. Auth.: ORS 161.387

Stats. Implemented: ORS 161.341

Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85; PSRB 1-1995, f. & cert. ef. 1-11-95

### 859-060-0040

#### Hospital or Outpatient Supervisor Request for Discharge

At any time while a patient is committed to a state hospital designated by the Mental Health and Developmental Disability Services Division, the superintendent of the hospital or designee, or while a patient is on conditional release, the outpatient supervisor, shall apply to the Board for discharge if, in the opinion of the hospital physician or outpatient supervisor, the person is no longer affected by mental disease or defect or, if so affected, the person no longer presents a substantial danger to others. The application shall be accompanied by a report setting forth the facts supporting the opinion.

Stat. Auth.: ORS 161.387

Stats. Implemented: ORS 161.341

Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85; PSRB 1-1995, f. & cert. ef. 1-11-95

### 859-060-0045

#### Mandatory Two-Year, Five-Year Hearings

The Board shall have periodic mandatory hearings for all patients:

(1) Two-year hearing:

(a) In no case shall a person be committed and held in a state hospital under the Board's jurisdiction for a period of time exceeding two years without a hearing before the Board to determine whether the person should be conditionally released or discharged;

(b) The Board shall consider whether the person continues to be affected by mental disease or defect, whether the person presents a substantial danger to others, and if the person is affected by mental disease or defect and is a substantial danger to others,

whether the person could be adequately controlled if conditionally released.

(2) Five-year hearing. Any person who has been under the

jurisdiction of the Board and who has resided in the community on

conditional release status for five years shall be brought before the

Board for a hearing within 30 days of the expiration of the five-

year period:

(a) The hearing shall be set as close to the five-year date as

possible and shall be combined with any other scheduled hearing

for the person;

(b) The Board shall consider whether the person continues to

be affected by mental disease or defect, whether the person

presents a substantial danger to others, and if the person is affected

by mental disease or defect and is a substantial danger to others,

whether the person shall be continued on conditional release.

Stat. Auth.: ORS 161.387

Stats. Implemented: ORS 161.341 & 161.351

Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85; PSRB 1-1990, f. & cert. ef. 1-16-90;

PSRB 1-1995, f. & cert. ef. 1-11-95

### 859-060-0050

#### Status Hearing

The Board may hold a hearing at any time to review the status

of the patient to determine whether modification of a conditional

release order is appropriate, whether a revocation is appropriate or

any other change in status as allowed by law.

Stat. Auth.: ORS 161

Stats. Implemented: ORS 161.336

Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85



**DIVISION 70****CONDITIONAL RELEASE OF ADULTS****859-070-0005****Court Conditional Release**

If the court finds the person presents a substantial danger to others but may be adequately controlled with supervision and treatment if conditionally released, and that necessary supervision and treatment are available, the court, instead of ordering the person committed to a state hospital, may order the person conditionally released, subject to supervisory orders of the court, and may further order that the person or agency assuming supervision report in writing no less than once per month to the Board concerning the person's compliance with the condition of release:

(1) The Board shall review each court conditional release file at an administrative hearing. The Board may issue an order continuing the court order of conditional release when all the elements of the conditional release plan are in accordance with procedures set forth in division 70.

(2) 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.

(3) The Board may issue an order of revocation in accordance with provisions set forth in division 080.

(4) The Board may order the person to appear at a status hearing.

Stat. Auth.: ORS 161

Stats. Implemented: ORS 161.327

Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85

**859-070-0010****Board Order of Conditional Release**

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 patient's behavior in the hospital including the patient's progress, insight and responsibility taken for the patient's own behavior:

(1) 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. If a person has a DOC detainer, the Board may order conditional release to that agency if the Board finds that the patient no longer needs a hospital level of care and that the patient could be adequately controlled and treated and the supervision and treatment necessary are available in that DOC setting.

(2) If the Board finds the person could be controlled in the community or DOC but no conditional release plan has been approved by the Board, the Board may order the person committed but find the person appropriate for conditional release pending submission of a conditional release plan signed by either a mental health community provider or DOC. The Board may specify what conditions the plan should include and may approve the conditional release plan submitted by the staff of the hospital, by the patient or someone on the patient's behalf at an administrative hearing.

(3) If a verified conditional release plan has not been approved and the conditions need further examination and approval of the Board, the Board may commit the patient, find the patient appropriate for conditional release or continue the hearing.

Stat. Auth.: ORS 161.387

Stats. Implemented: ORS 161.336 & 161.646

Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85; PSRB 1-1995, f. & cert. ef. 1-11-95; PSRB 1-2013(Temp), f. 2-22-13, cert. ef. 3-1-13 thru 8-26-13; PSRB 2-2013, f. & cert. ef. 6-20-13

**859-070-0015****Elements of 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 insure the safety of the public:

(1) Housing: Housing must be available for the patient. The Board may require 24-hour supervised housing, a supervised group home, foster care, housing with relatives or independent housing.

(2) Mental health treatment: Mental health treatment must be available in the community or at DOC. 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 Board shall not require an evaluation be performed by DOC staff prior to consideration of conditional release due to the nature of that state agency, its security and its resources for the provision of mental health services. 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: 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 unless the patient is housed at DOC in which case progress reports will be submitted upon request of the Board;

(b) Notify the Board promptly of any grounds for revocation under OAR 859-080-0010;

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

(5) Parole and probation: Parole and probation supervision may be ordered.

(6) Agreement to conditional release: Patients 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. The conditions shall include notice that if the person leaves the state without authorization of the Board, the person may be charged with a new crime of escape. This subsection does not apply to a patient who is conditionally released to DOC.

Stat. Auth.: ORS 161.387

Stats. Implemented: ORS 161.336 & 161.646

Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85; PSRB 1-1995, f. & cert. ef. 1-11-95; PSRB 1-2013(Temp), f. 2-22-13, cert. ef. 3-1-13 thru 8-26-13; PSRB 2-2013, f. & cert. ef. 6-20-13

**859-070-0020****Mental Health and Developmental Disability Services Division Responsibility to Prepare Plan**

(1) When the state hospital staff feels that a patient may be ready for conditional release, the staff may request that the Board order an evaluation for community placement.

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

Stat. Auth.: ORS 161.387

Stats. Implemented: ORS 161.336 & 161.390

Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85; PSRB 1-1995, f. & cert. ef. 1-11-95

**859-070-0025****Modification or Termination of Conditional Release**

Modification or termination of an order of conditional release may be proposed by the patient, supervising person, mental health facility or any other interested party, or by the staff or the Board on its own motion upon a review of the status of the patient:

(1) Modifications of conditional release may be considered by the Board at any time.

(2) As an alternative to termination of conditional release, a patient may return voluntarily to a state hospital.

(3) Termination of conditional release may be effected by preparation of a revocation order in accordance with procedures set forth in Division 80.

(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 the Board hearing.

Stat. Auth.: ORS 161

Stats. Implemented: ORS 161.336

Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85

### 859-070-0030

#### Evaluation and Reports

All reports and evaluations received on the person's fitness for conditional release, modification of conditional release or termination, and monthly progress shall be made a part of the record.

Stat. Auth.: ORS 161

Stats. Implemented: ORS 161.336

Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85

### 859-070-0035

#### Out-of-State Conditional Release Order

The Board may consider and approve a conditional release plan to have the patient reside out of state.

Stat. Auth.: ORS 161

Stats. Implemented: ORS 161.336

Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85

### 859-070-0040

#### PSRB Conditional Release Plan Review of Tier Two Offenders

(1) As used in this section, "Condition" is defined as an event or circumstance that should occur or action that the individual should take for the individual to be eligible for release from the Oregon State Hospital. Conditions may include, but are not limited to, the elements of conditional release listed in 859-070-0015(1) through (6), such as an individual's compliance with supervision, mental health treatment, or a particular level of residential placement.

(2) Upon receipt of notice from the State Hospital Review Panel (SHRP) that it intends to conduct a hearing under ORS 161.315 to 161.351 and the documents listed in (3)(a) through (e) of this rule, the Board shall conduct an administrative review of the conditions proposed in the summary of conditional release plan. After that review, the Board may provide SHRP with conditions of release to be included in SHRP's order of conditional release.

(3) The Board shall conduct the administrative review of the Tier Two offender's conditional release plan within 21 days of receiving all of the following documents from SHRP:

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

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

(c) The evaluation by the proposed community provider;

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

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

(4) Notwithstanding the 21-day timeframe defined in section (3) of this rule, the Board may postpone the administrative review of the offender's conditional release plan for good cause, including, but not limited to, delays in placement availability and need for updated information.

(5) The administrative review conducted by the Board under this rule is not a hearing.

(6) The sole issue in the Board's administrative review is whether the Board would eliminate, add to, or modify the proposed conditions for the Tier Two offender.

(7) The PSRB shall provide to SHRP a report of its review of the proposed conditions for the Tier Two offender including any conditions that the Board determines are advisable within two working days of the conclusion of that review. Conditions are "advisable" if those are the conditions that the Board would impose if SHRP orders the conditional release of the Tier Two offender and transfer of jurisdiction to the Board.

Stat. Auth.: ORS 161.387, Or Law 2011, ch 708, §33(2) (SB 420)

Stats. Implemented: ORS 161.315 - ORS 161.351, Or Law 2011, ch 708, §§5, 33, 41 (SB 420)

Hist.: PSRB 1-2012(Temp), f. & cert. ef. 2-3-12 thru 7-31-12; PSRB 2-2012, f. & cert. ef. 4-16-12

## DIVISION 80

### ADULT PSYCHIATRIC SECURITY REVIEW BOARD ORDER OF REVOCATION

#### 859-080-0005

##### Affidavit Recommending Revocation

(1) Affidavit Recommending Revocation. Upon the recommendation of the staff of the Psychiatric Security Review Board and receipt of an affidavit based on noncompliance with an order of the Board or a change in the patient'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) Emergency Revocation. 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 order of revocation subject to review by a Board member within 72 hours of the execution of the order.

Stat. Auth.: ORS 161.387

Stats. Implemented: ORS 161.336

Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85; PSRB 1-1987, f. & ef. 2-4-87; PSRB 1-1995, f. & cert. ef. 1-11-95

#### 859-080-0010

##### Reasonable Grounds for Revocation

Reasonable grounds for revocation of a conditional release include:

(1) The person has violated terms of the conditional release plan;

(2) The person's mental health has changed;

(3) The person has absconded from jurisdiction;

(4) The community resources required by the conditional release order are no longer available.

Stat. Auth.: ORS 161

Stats. Implemented: ORS 161.336

Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85

#### 859-080-0015

##### Procedure for Revocation

After an order of revocation has been signed by a Board member, the written order is sufficient warrant for any law enforcement officer to take the patient into custody and transport the patient as directed by the order. A sheriff, municipal police officer, constable, parole or probation officer, prison official or other peace officer shall execute the order.

Stat. Auth.: ORS 161

Stats. Implemented: ORS 161.336

Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85

**DIVISION 90**

**RECONSIDERATION OF ADULT PSYCHIATRIC  
SECURITY REVIEW BOARD FINDINGS;  
JUDICIAL REVIEW; ENFORCEMENT**

**859-090-0005**

**Reconsideration**

A party to the hearing may request reconsideration of a Board finding in writing or, on its own motion, the Board can reconsider the finding:

(1) If an issue is appropriately raised, the matter shall be remanded to the Board for hearing on that issue. A reconsideration may be upheld if:

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

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

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

(d) The Board decision is contrary to the rules or statutes governing the Board.

(2) If the issues are not appropriately raised, the person shall receive written notification of the reasons for denial of reconsideration.

Stat. Auth.: ORS 161

Stats. Implemented: ORS 161.346

Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85

**859-090-0010**

**Judicial Review**

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

(2) The Board shall provide the attorney for the patient and the court with the record of proceedings.

Stat. Auth.: ORS 161.387

Stats. Implemented: ORS 161.385

Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85; PSRB 1-1995, f. & cert. ef. 1-11-95

**859-090-0015**

**Enforcement of Board Orders**

The Board may apply to the circuit court of the appropriate county for contempt proceedings under ORS 161.395(5) when its directive to an agency or person is not followed.

Stat. Auth.: ORS 161

Stats. Implemented: ORS 161.395

Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85

**DIVISION 100**

**RESPONSIBILITY OF STATE AND COMMUNITY  
MENTAL HEALTH PROGRAMS FOR ADULTS**

**859-100-0005**

**Compliance**

State or local mental health programs shall comply with any order of the Board.

Stat. Auth.: ORS 137, 161, 192 & 428

Stats. Implemented: ORS 161.336 & 161.346

Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85

**859-100-0010**

**Custody of Person Who is a Substantial Danger to Others**

The Legislature has provided that the community mental health program director, the director of the facility providing treatment to 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 a substantial danger to others because of mental disease or defect and the person is in need of immediate care,

custody or treatment. The person shall be transferred to the state hospital designated by the Mental Health and Developmental Disability Services Division.

Stat. Auth.: ORS 161.387

Stats. Implemented: ORS 161.346

Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85; PSRB 1-1995, f. & cert. ef. 1-11-95

**859-100-0015**

**Temporary Custody of Patient in State Hospital**

At any time, the Board may appoint a psychiatrist or licensed psychologist to examine the person and submit a report to the Board. In order to facilitate the examination, the person may be placed in the temporary custody of any state hospital or other facility.

Stat. Auth.: ORS 137, 161, 192 & 428

Stats. Implemented: ORS 161.346

Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85

**859-100-0020**

**Mental Health and Developmental Disability Services Division  
Rules for Assignment and Treatment**

The Legislature has provided that the Mental Health and Developmental Disability Services Division shall promulgate rules for assignment of persons to state mental hospitals under ORS 161.341, 161.365 and 161.370 and for establishing standards and methods for evaluation and treatment of persons committed to a state hospital designated by the division or ordered to a community mental health program under 137.540, 161.315 to 161.351, 192.690 and 428.210.

Stat. Auth.: ORS 161.387

Stats. Implemented: ORS 161.390

Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85; PSRB 1-1995, f. & cert. ef. 1-11-95

**859-100-0025**

**Discharge and Conditional Release Plans**

The Legislature has provided that the Mental Health and Developmental Disability Services Division is responsible for preparation of discharge or conditional release plans.

Stat. Auth.: ORS 161.387

Stats. Implemented: ORS 161.336 & 161.390

Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85; PSRB 1-1995, f. & cert. ef. 1-11-95

**859-100-0030**

**Leaves and Passes**

(1) Any overnight or out-of-town leave of absence or pass request for PSRB patients in a state hospital shall be signed by a physician and submitted to the PSRB on the Board's pass request form no less than three days prior to the proposed pass or leave of absence date.

(2) Emergency pass requests may be made by telephone to the PSRB office by the physician or social worker.

(3) Written confirmation should be submitted to the Board in each case:

(a) A leave of absence or pass may be requested when the physician is of the opinion that a leave of absence or pass from the hospital would pose no substantial danger to others and would be therapeutic for the person;

(b) Hospital staff will be contacted by the PSRB only if there are any reservations about the pass.

Stat. Auth.: ORS 137.540, 161.315, 161.327, 161.332, 161.341, 161.346, 161.351, 161.365, 161.370, 161.390, 161.400, 192.690 & 428.210

Stats. Implemented: ORS 161.400

Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85; PSRB 1-1995, f. & cert. ef. 1-11-95



**DIVISION 110****CONDITIONAL RELEASE AND DISCHARGE  
OF PERSONS WHOSE CRIMES WERE COMMITTED  
ON OR AFTER DECEMBER 5, 1996****859-110-0010****Conditional Release and Discharge of Persons Placed Under the Board's Jurisdiction for Crimes Committed On or After December 5, 1996**

(1) Based on advice of the Attorney General, the Board interprets ORS 137.750 as having no effect on the Board's statutory authority to order the conditional release or discharge of persons placed under the Board's jurisdiction by the courts for crimes committed on or after December 5, 1996.

(2) Consistent with the Board's interpretation of ORS 137.750 in subsection (1) of this rule, a person placed under the Board's jurisdiction for crimes committed on or after December 5, 1996 may be placed on conditional release or discharged by the Board from its jurisdiction, pursuant to applicable law and divisions 60 and 70 of these rules, notwithstanding the following:

(a) The judgment states that the person may not be considered for conditional release or discharge from jurisdiction; or

(b) The judgment is silent regarding whether the person may be considered for conditional release or discharge from jurisdiction.

Stat. Auth.: ORS 161.387

Stats. Implemented: ORS 161.325 - 161.400

Hist.: PSRB 1-1999, f. & cert. ef. 4-12-99

**DIVISION 200****EXTREMELY DANGEROUS  
CIVIL COMMITMENT PROGRAM****859-200-0005****Background and Purpose of Extremely Dangerous Civil Commitment Program**

(1) Oregon Laws 2013, Chapter 715 (SB 421) creates 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 SB 421, section 2, (3)(a)(C)(2013); and

(B) Because of a 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 mental disorder that is resistant to treatment; and

(c) Because of the mental disorder that is resistant to treatment, the person committed one of the acts listed in SB 421, section 2, (3)(a)(C).

(2) Once committed, the court places the person under the PSRB 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 OSH or on conditional release or discharged.

Stat. Auth.: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

Stats. Implemented: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

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

**859-200-0010****Rules Applicability**

OAR 859-200-0005 through 859-200-0300 apply to a person who a court has civilly committed as an extremely dangerous person with mental illness under ORS chapter 426 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.

Stat. Auth.: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

Stats. Implemented: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

Hist.: 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.

Stat. Auth.: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

Stats. Implemented: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

Hist.: 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) "Extremely dangerous person with mental illness" or "person" refers to an extremely dangerous person with mental illness who is civilly committed to the jurisdiction of the Board by a court.

(8) "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.

(9) "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 "mental disorder" does not include an abnormality manifested solely by repeated criminal or otherwise antisocial conduct. The term "mental disorder" does not include a disorder constituting solely a personality disorder and excludes a diagnosis of a developmental disability such as mental retardation, brain damage or other biological dysfunction that is associated with distress or disability causing symptoms or impairment in at least one important area of an individual's functioning.

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

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

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

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

(14) "Recommitment county" means the county in which state hospital or state or local mental health facility providing treatment to the person is located at the time of certification of the person by the Board.

(15) "SB 421" means Oregon Laws 2013, Chapter 715 (SB 421).

(16) "Supervising individual"; or "PSRB case manager" 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.

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

(18) "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 SB 421 and for whom the extremely dangerous mentally ill person 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.

Stat. Auth.: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

Stats. Implemented: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

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

### 859-200-0025

#### Responsibilities of the PSRB regarding Extremely Dangerous Persons with Mental Illness 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.

Stat. Auth.: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

Stats. Implemented: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

Hist.: 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 court as extremely dangerous persons with mental illness and who continue to meet jurisdictional criteria.

(2) Jurisdictional criteria are the criteria necessary for a person to remain under the Board's jurisdiction and include the following:

(a) The person suffers from a mental disorder that is resistant to treatment; and

(b) The person continues to be extremely dangerous.

Stat. Auth.: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

Stats. Implemented: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

Hist.: 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.

Stat. Auth.: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

Stats. Implemented: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

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

### 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.

Stat. Auth.: ORS 161.387, 192.690 & 2013 OL Ch. 715 (SB 421)

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

Hist.: 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.

Stat. Auth.: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

Stats. Implemented: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

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

#### Hearings

### 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.

Stat. Auth.: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

Stats. Implemented: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

Hist.: 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.

Stat. Auth.: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)  
 Stats. Implemented: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)  
 Hist.: 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**

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

Stat. Auth.: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)  
 Stats. Implemented: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)  
 Hist.: 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.

Stat. Auth.: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)  
 Stats. Implemented: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)  
 Hist.: PSRB 1-2014, f. & cert. ef. 3-5-14

**859-200-0070**

**Types of Hearings**

- (1) Initial 6-Month Hearings
  - (a) The Board shall hold a hearing within six months of a court ordering the civil commitment of an extremely dangerous person with mental illness.
  - (b) The Board shall 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 shall 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.
  - (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 shall 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.

(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

(a) At any time during the person's conditional release, a PSRB case manager 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 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 case manager'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.

(6) PSRB Case Manager Request for Discharge Hearings. At any time during the person's conditional release, the PSRB case manager 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.

(7) Certification Hearings

(a) The Board will hold a hearing on the status of an extremely dangerous person with mental illness within 60 days prior to the end of the 24-month commitment period in order to determine whether the Board will certify the person for recommitment.

(b) If the 24-month period of commitment expires and the Board does not certify the person for recommitment, the person must be discharged from the Board's jurisdiction.

(c) In order to certify a person for recommitment, the Board must determine that:

(A) The person still suffers from a mental disorder that is resistant to treatment; and

(B) The person is still extremely dangerous.

(d) The Board's notice of certification for recommitment must be served on the superintendent of the state hospital or director of the state or local health facility providing treatment to the person, who will provide the certification notice to the person.

(e) If the person protests further commitment within 14 days of service of the notice certification, then the recommitment court shall hold a hearing.

(f) If the person does not protest further commitment within 14 days of service of the certification, the Board shall notify the recommitment court so that an order for continued commitment may be issued.



Stat. Auth.: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)  
Stats. Implemented: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)  
Hist.: PSRB 1-2014, f. & cert. ef. 3-5-14

**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.

Stat. Auth.: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)  
Stats. Implemented: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)  
Hist.: 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 SB 421. 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.

Stat. Auth.: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)  
Stats. Implemented: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)  
Hist.: 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; or
- (6) Testimony of witnesses.

Stat. Auth.: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)  
Stats. Implemented: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)  
Hist.: 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.

Stat. Auth.: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)  
Stats. Implemented: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)  
Hist.: 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.

Stat. Auth.: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)  
Stats. Implemented: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)  
Hist.: 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.

Stat. Auth.: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)  
Stats. Implemented: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)  
Hist.: 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.

Stat. Auth.: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)  
Stats. Implemented: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)  
Hist.: 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.

Stat. Auth.: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)  
Stats. Implemented: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)  
Hist.: PSRB 1-2014, f. & cert. ef. 3-5-14

**859-200-0115****Waiver of Appearance at Hearings**

(1) A person may waive appearance at an initial hearing or certification hearing. The Board will still hold the hearing in the person's absence.

(2) A person may not waive appearance at a conditional release hearing. If a person refuses to attend a conditional release hearing, the Board will cancel the hearing and will not consider the conditional release.

Stat. Auth.: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)  
Stats. Implemented: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)  
Hist.: 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.

Stat. Auth.: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

Stats. Implemented: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

Hist.: 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.

Stat. Auth.: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

Stats. Implemented: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

Hist.: 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.

Stat. Auth.: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

Stats. Implemented: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

Hist.: 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.

Stat. Auth.: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

Stats. Implemented: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

Hist.: 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.

Stat. Auth.: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

Stats. Implemented: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

Hist.: 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.

Stat. Auth.: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

Stats. Implemented: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

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

#### **859-200-0150**

##### **Victims**

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

(a) Any order;

(b) Hearings;

(c) Conditional release;

(d) Discharge; and

(e) Escape or absconson of the extremely dangerous person with mental illness from a conditional release facility.

(2) Victims may request to be added to the notification list and provide updated contact information at any time by emailing PSRB staff: psrb@psrb.org. Staff will notify a victim of a person's escape or absconson by telephone or email if requested by the victim.

Stat. Auth.: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

Stats. Implemented: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)  
Hist.: PSRB 1-2014, f. & cert. ef. 3-5-14

### **Conditional Release**

#### **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.

Stat. Auth.: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

Stats. Implemented: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

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

#### **859-200-0205**

##### **Board Order for Evaluation for Conditional Release**

(1) All 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), ISURF (Interdisciplinary Substance Use Review Form), Risk Review Hearing report that addresses conditional release planning privileges and an updated M.D. Progress Note Update.

(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.

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

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

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

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

Stat. Auth.: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

Stats. Implemented: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

Hist.: 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.

Stat. Auth.: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

Stats. Implemented: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

Hist.: 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.

Stat. Auth.: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

Stats. Implemented: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

Hist.: 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 Manager): 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.

Stat. Auth.: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

Stats. Implemented: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)

Hist.: 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.

Stat. Auth.: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)  
Stats. Implemented: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)  
Hist.: PSRB 1-2014, f. & cert. ef. 3-5-14

### 859-200-0230

#### Conditional Release Evaluation and Reports

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

Stat. Auth.: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)  
Stats. Implemented: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)  
Hist.: PSRB 1-2014, f. & cert. ef. 3-5-14

### 859-200-0235

#### Monthly Reporting

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.

Stat. Auth.: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)  
Stats. Implemented: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)  
Hist.: PSRB 1-2014, f. & cert. ef. 3-5-14

### Revocation of Conditional Release

### 859-200-0300

#### Reasonable Grounds for Revocation

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. 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:

- (1) The person has violated terms of the conditional release plan or is noncompliant with the conditional release plan;
  - (2) The person's mental health has changed and the person can no longer be managed in the community setting;
  - (3) The person has absconded from jurisdiction or placement;
- or

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

Stat. Auth.: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)  
Stats. Implemented: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)  
Hist.: 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.

Stat. Auth.: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)  
Stats. Implemented: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)  
Hist.: PSRB 1-2014, f. & cert. ef. 3-5-14

### 859-200-0310

#### Procedure for Transporting a Revoked Person

(1) After an Order of Revocation has been signed by a Board member or the Board Executive Director, the written order is sufficient warrant for any law enforcement officer to take the person into custody and transport the person as directed by the order. 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. The person shall be returned to the state hospital as soon as practicable.

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

Stat. Auth.: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)  
Stats. Implemented: ORS 161.387(1) & 2013 OL Ch. 715 (SB 421)  
Hist.: PSRB 1-2014, f. & cert. ef. 3-5-14

## DIVISION 300

## GUN RELIEF PROGRAM

### 859-300-0001

#### Determination of Sufficient Funding

(1) The Psychiatric Security Review Board has determined that it has received sufficient legislative appropriation or other funding to carry out the provisions of Section One of Oregon Laws 2009, Chapter 826.

(2) The Psychiatric Security Review Board has determined that it has received sufficient legislative appropriation or other funding to carry out the provisions of Section Five of Oregon Laws 2009, Chapter 826.

Stat. Auth.: ORS 161.387(1); OL 2009, Ch. 826 (HB 2853)  
Stats. Implemented: ORS 161.387(1); OL 2009, Ch. 826 (HB 2853)  
Hist.: PSRB 1-2010(Temp), f. 8-19-10, cert. ef. 8-23-10 thru 2-18-11; PSRB 1-2011, f. 2-2-11, cert. ef. 2-15-11

### 859-300-0010

#### Rulemaking Procedure; Notice

Prior to the adoption, amendment or repeal of any rule related to the gun relief program, the Psychiatric Security Review Board shall give notice of the intended action:

(1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days before the effective date of the rule.

(2) By mailing a copy of the notice to persons on the PSRB's mailing list established pursuant to ORS 183.335(8) at least 28 days before the effective date of the rule.

(3) By mailing or furnishing a copy of the notice to:

- (a) The Associated Press;
- (b) Department of Human Services/Oregon Health Authority;
- (c) American Civil Liberties Union of Oregon;
- (d) Oregon District Attorneys Association;
- (e) Oregon Criminal Defense Lawyers Association;
- (f) Attorney General, including the Victim Advocate;
- (g) Friends of Forensics;
- (h) Disability Rights Oregon;
- (i) Capitol Press Room;
- (j) National Rifle Association, Oregon Consultant;
- (k) Oregon Firearms Federation;
- (l) Oregon Judicial Department;
- (m) Attorneys for Adult and Juvenile Indigent Clients
- (n) Oregon State Police;
- (o) Oregon Psychiatric Association;
- (p) Oregon Psychological Association;
- (q) Oregon State Sheriff's Association;
- (r) Oregon Association Chiefs of Police; and
- (s) Designated legislators in accordance with ORS 183.335(15)

## Chapter 859 Psychiatric Security Review Board

Stat. Auth.: ORS 161.387(1), 183.335(1), (8), OL 2009, Ch. 826 (HB 2853)  
Stats. Implemented: ORS 161.387(1), 183.335(1), (8), OL 2009, Ch. 826 (HB 2853)  
Hist.: PSRB 3-2010(Temp), f. 10-5-10, cert. ef. 10-8-10 thru 4-6-11; PSRB 1-2011, f. 2-2-11, cert. ef. 2-15-11

### 859-300-0020

#### 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 Gun Relief Program Administrative Rules. Oregon Administrative Rules are available electronically at no charge from the Internet Web site of the Oregon Secretary of State.

Stat. Auth.: ORS 161.387(1), OL 2009, Ch. 826 (HB 2853)  
Stats. Implemented: ORS 161.387(1), OL 2009, Ch. 826 (HB 2853)  
Hist.: PSRB 3-2010(Temp), f. 10-5-10, cert. ef. 10-8-10 thru 4-6-11; PSRB 1-2011, f. 2-2-11, cert. ef. 2-15-11

### 859-300-0030

#### Definitions

(1) “Dangerous”. A person is dangerous if the person is a threat to himself or others or is likely to inflict harm to self or others.

(2) “Gun Relief Panel” or “Panel”. A three member panel from either the Adult or Juvenile Panel who hears and considers petitions for relief from either a federal ban on transporting, shipping, possessing, or receiving a firearm that occurs as a result of a mental health determination, or a state ban on possessing or purchasing a firearm under ORS 166.250(1)(c)(D) or (E), or 166.470(1)(e) or (f).

(3) “Mental Health Determination”. Any of the following adjudicated mental health findings by a State of Oregon Court:

(a) A finding by a court that a person lacks fitness to proceed under ORS 161.370;

(b) A finding that a person is guilty except for insanity of a crime under ORS 161.295 or responsible except for insanity of an act under ORS 419C.411 or any determination by the Psychiatric Security Review Board thereafter; or

(c) A commitment by a court to the Oregon Health Authority or Department of Human Services, or an adjudication by a court that a person is mentally ill or mentally retarded, under ORS 426.130 or ORS 427.290.

(4) “NICS”. The National Instant Criminal Background Check System maintained by the Federal Bureau of Investigations (FBI) pursuant to the Brady Handgun Violence Prevention Act of 1993 (Pub. L. 103-159, 107 Stat. 1536).

(5) “PSRB” or “Board”. The Oregon Psychiatric Security Review Board, including the members of both the Adult and Juvenile Panels.

(6) “Party”. Includes the Department of Human Services/Oregon Health Authority, petitioner and district attorney from the county where the mental health determination was adjudicated.

(7) “Petitioner”. Any person who petitions for relief from either a federal prohibition from transporting, shipping, possessing, or receiving a firearm due to a mental health determination or a state prohibition on purchasing or possessing a firearm under ORS 166.250(1)(c)(D) or (E), or 166.470(1)(e) or (f).

(8) “Public Interest”. The interest in protecting society from harm and an individual from self-harm. “Public interest” also includes reducing the impact of crime on victims’ lives. “Public interest” does not include generalized fear of crime and fear of people with mental illness.

(9) “Relief Hearing”. A hearing for petitioners who request relief under Oregon Laws 2009, Chapter 826 from a federal ban on transporting, shipping, possessing, or receiving a firearm that occurs as a result of a mental health determination, or a state ban on possessing or purchasing a firearm under ORS 166.250(1)(c)(D) or (E), or 166.470(1)(e) or (f).

(10) “Victim”. The person or persons who have suffered financial, social, psychological or physical harm as a result of a crime and includes, 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 petitioner be considered a victim.

Stat. Auth.: ORS 161.387(1), OL 2009, Ch. 826 (HB 2853)  
Stats. Implemented: ORS 161.387(1), OL 2009, Ch. 826 (HB 2853)  
Hist.: PSRB 3-2010(Temp), f. 10-5-10, cert. ef. 10-8-10 thru 4-6-11; PSRB 1-2011, f. 2-2-11, cert. ef. 2-15-11

### 859-300-0040

#### Background and Purpose of Gun Relief Program

(1) The federal Brady Handgun Violence Prevention Act of 1993 (“Brady Act”) prohibits any person from selling or otherwise disposing of any firearm or ammunition to any person who has been involuntarily “committed to a mental institution” (18 U.S.C. Section 922 (d)(4)), or a person that has a mental health determination, and further prohibits any person who has been involuntarily “committed to a mental institution”, or a person that has a mental health determination, from shipping or transporting in interstate or foreign commerce, or possessing in or affecting commerce, any firearm or ammunition; or receiving any firearm or ammunition which has been shipped or transported in interstate or foreign commerce (18 U.S.C. Section 922 (g)(4)).

(2) Oregon Laws 2009, Ch. 826 (HB 2853) requires the PSRB, the Judicial Department, and Oregon Health Authority to locate and transmit the names of people that have a mental health determination to the Department of State Police for inclusion in NICS for the purpose of responding to the NICS queries regarding attempts to purchase or otherwise take possession of firearms, as defined in 18 U.S.C. 921(a)(3).

(3) Oregon Laws 2009, Ch. 826 requires the PSRB to administer a “relief from disabilities” process for persons who are disqualified from transporting, shipping, possessing, or receiving a firearm under federal and certain state laws. If relief is granted, and a petitioner was barred from transporting, shipping, possessing, or receiving a firearm under federal law, the record of relief will be transmitted to the Oregon State Police, who in turn will transmit the record of relief to the federal government for inclusion in the NICS database. If relief is granted, and a petitioner was barred from purchasing or possessing a firearm under either ORS 166.250(1)(c)(D) or (E), or 166.470(1)(e) or (f), the record of relief will be transmitted to the Oregon State Police for inclusion and maintenance in its state databases. The purpose of these administrative rules is to establish the required administrative “relief” process for petitioners to request relief from their respective mental health firearm disqualifiers.

Stat. Auth.: ORS 161.387(1), OL 2009, Ch. 826 (HB 2853)  
Stats. Implemented: ORS 161.387(1), OL 2009, Ch. 826 (HB 2853)  
Hist.: PSRB 3-2010(Temp), f. 10-5-10, cert. ef. 10-8-10 thru 4-6-11; PSRB 1-2011, f. 2-2-11, cert. ef. 2-15-11

### 859-300-0050

#### Petition for Relief

(1) An individual who is barred from transporting, shipping, possessing, or receiving a firearm under federal law due to a State of Oregon mental health determination may petition for relief of the firearm bar to the PSRB for the limited purpose of having his or her federal gun rights restored as it pertains only to the mental health determination firearm disqualification.

(2) An individual who is barred from possessing or purchasing a firearm under ORS 166.250(1)(c)(D) or (E), or 166.470(1)(e) or (f), may petition for relief of the firearm bar to the PSRB for the purpose of having his or her state gun rights restored as it pertains only to the firearm disqualification as a result of either a commitment to the Oregon Health Authority or the Department of Human Services under ORS 426.130 or 427.290, or an order of a court under 426.130 after a finding of mental illness that the petitioner is prohibited from purchasing or possessing a firearm as a result of petitioner’s mental illness.

(3) A petition for relief shall be made on forms developed by the PSRB, which shall be available on the PSRB’s public website, e-mail, or through U.S. Mail. The petition for relief shall be submitted in its entirety before a hearing will be scheduled. In addition to the forms provided, the petitioner shall submit:

## Chapter 859 Psychiatric Security Review Board

(a) A certified copy of all mental health records pertaining to the disqualifying mental health determination;

(b) A certified copy of all court records related to the circumstances surrounding the firearms disability. If the county courthouse is unable to locate petitioner's records, petitioner must obtain a letter from the courthouse records department stating that it is unable to locate the court records related to petitioner's mental health determination;

(c) A certified copy of petitioner's national criminal history, including juvenile adjudications;

(d) An independent forensic mental health assessment performed no more than 90 calendar days prior to submission of the petition for relief to the PSRB. This assessment may not be performed by petitioner's current or previous mental health provider. The assessment shall be performed by a licensed psychiatrist or psychologist. The assessment shall include, at a minimum, an opinion and a basis for that opinion, of petitioner's interpersonal violence and self-harm risk. If petitioner has previously been granted judicial gun relief under ORS 166.274, for his or her civil commitment mental health determination prior to August 3, 2009, this independent forensic mental health assessment is not required as a prerequisite for scheduling a hearing. Proof of judicial relief shall be submitted with the petition. This waiver does not bar the Board from later ordering an assessment if deemed appropriate under OAR 859-300-0160.

(4) In addition to the required forms and documents in subsection (3), the petitioner may submit additional information in support of the petition for relief including, but not limited to:

(a) A certified copy of all mental health records detailing the petitioner's psychiatric history.

(b) A certified copy of medical records from all of the petitioner's current and former mental health treatment providers, including alcohol/substance abuse providers if the petitioner is receiving or has received such treatment. The records may also include a letter from petitioner's current treating mental health practitioner, if any. The letter may contain the petitioner's current medical health diagnosis, a list of psychiatric medicines and dosage, if any, the petitioner is currently prescribed, history of compliance with the medication, and any other information the practitioner deems relevant to petitioner possessing a firearm.

(c) If petitioner is currently on probation/parole for a criminal offense, a letter from the petitioner's probation/parole officer providing a history of petitioner's compliance with terms of probation/parole and any other relevant information he or she deems relevant to petitioner's risk for harm if granted a firearm.

(d) Written evidence of the petitioner's reputation, such as notarized letters of reference from current and past employers, family members or personal friends or other character evidence.

(5) In addition to submitting a petition and required documents to the PSRB, petitioner shall serve a copy of the petition and required documents on the Department of Human Services/Oregon Health Authority and the district attorney in the county in which the court made the mental health determination.

(6) The petitioner shall ensure that all required information accompanies the petition for relief at the time it is submitted to the PSRB and served on the Department of Human Services/Oregon Health Authority and the district attorney in the county in which the court made the mental health determination.

(7) Failure to provide truthful information in the petition and application materials shall result in denial of the petition.

Stat. Auth.: ORS 161.387(1), OL 2009, Ch. 826 (HB 2853)  
Stats. Implemented: ORS 161.387(1), OL 2009, Ch. 826 (HB 2853)  
Hist.: PSRB 3-2010(Temp), f. 10-5-10, cert. ef. 10-8-10 thru 4-6-11; PSRB 1-2011, f. 2-2-11, cert. ef. 2-15-11; PSRB 2-2011(Temp), f. & cert. ef. 7-5-11 thru 12-27-11; PSRB 3-2011, f. & cert. ef. 12-13-11

### 859-300-0060

#### Time Limits; Applying for Relief

Subject to OAR 859-300-0080(3), a petition for relief may not be filed with the Board more than once every two years.

Stat. Auth.: ORS 161.387(1), OL 2009, Ch. 826 (HB 2853)  
Stats. Implemented: ORS 161.387(1), OL 2009, Ch. 826 (HB 2853))

Hist.: PSRB 3-2010(Temp), f. 10-5-10, cert. ef. 10-8-10 thru 4-6-11; PSRB 1-2011, f. 2-2-11, cert. ef. 2-15-11

### 859-300-0070

#### Timing of Relief Hearing

(1) Following receipt of a completed Petition for Relief and all required supporting documents, the Gun Relief Panel shall conduct a relief hearing on the petition within a reasonable time.

(2) The Board will schedule relief hearings at least one day per month unless the Panel determines that there is not sufficient business before the Panel to warrant a hearing at the scheduled time.

Stat. Auth.: ORS 161.387(1), OL 2009, Ch. 826 (HB 2853)  
Stats. Implemented: ORS 161.387(1), OL 2009, Ch. 826 (HB 2853))  
Hist.: PSRB 3-2010(Temp), f. 10-5-10, cert. ef. 10-8-10 thru 4-6-11; PSRB 1-2011, f. 2-2-11, cert. ef. 2-15-11

### 859-300-0080

#### Notice of Relief Hearing/Request for Continuance/Withdrawal of Petition

(1) Following receipt of the petition, the Board shall provide written notice of the relief hearing to the following persons or agencies within a reasonable time:

(a) Attorney representing the petitioner, if any;

(b) District attorney in which the petitioner resides and the district attorney in the county where petitioner's mental health determination was adjudicated;

(c) The victim, identified after a reasonable effort is made, associated with the criminal offense that led to the mental health determination, if the court or Panel finds that the victim requests notification;

(d) Department of Human Services/Oregon Health Authority;

(e) The sheriff of the county in which petitioner resides and in the county where petitioner's mental health determination was adjudicated;

(f) The chief of police where petitioner resides and where petitioner's mental health determination was adjudicated, if applicable; and

(g) Any other person requesting notification.

(2) Upon the request of any party or on its own motion, the Board may, in its sole discretion, continue a relief hearing to allow the Board or any party to further prepare or obtain additional information or testimony.

(3) If a petitioner withdraws a petition for relief, the notice of withdrawal shall be served in writing on the Board no later than three weeks prior to the scheduled relief hearing date. A petitioner who timely submits a notice of withdrawal may re-submit the petition any time after withdrawal.

(4) The Board shall issue a final order by default denying the petition if a petitioner fails to timely serve the Board with a notice of withdrawal, or if the petitioner fails to appear at a relief hearing.

Stat. Auth.: ORS 161.387(1), OL 2009, Ch. 826 (HB 2853)  
Stats. Implemented: ORS 161.387(1), OL 2009, Ch. 826 (HB 2853))  
Hist.: PSRB 3-2010(Temp), f. 10-5-10, cert. ef. 10-8-10 thru 4-6-11; PSRB 1-2011, f. 2-2-11, cert. ef. 2-15-11

### 859-300-0090

#### Principal Issue Before The Panel/Challenges to the Firearm Disqualification

(1) The sole issue at any Gun Relief hearing shall be whether the petitioner has demonstrated that he or she will not be likely to act in a manner that is dangerous to public safety and that granting the relief would not be contrary to the public interest.

(2) Petitions asserting other grounds for relief, including, but not limited to, erroneously entered mental health determination disqualifications into the NICS database, shall not be heard by the PSRB. Record correction challenges should be directed to the agency that submitted petitioner's name to the Oregon State Police for entry into the firearm disqualification databases or the Oregon State Police Records Unit or the Federal Bureau of Investigation, Criminal Justice Information Services Division NICS Section.

Stat. Auth.: ORS 161.387(1), OL 2009, Ch. 826 (HB 2853)  
Stats. Implemented: ORS 161.387(1), OL 2009, Ch. 826 (HB 2853))



Hist.: PSRB 3-2010(Temp), f. 10-5-10, cert. ef. 10-8-10 thru 4-6-11; PSRB 1-2011, f. 2-2-11, cert. ef. 2-15-11

**859-300-0100****Quorum and Decisions of Panel**

(1) The presence of at least three members of the same Panel constitutes a quorum. Members of both the Juvenile Panel and the Adult Panel may serve as the Gun Relief Panel. Three concurring votes (affirmative or negative) are required to make a Panel decision. When three members cannot agree on the decision, the hearing shall be continued for no longer than 60 days and the recording of the hearing and the exhibits shall be reviewed by the remaining Panel member(s) and a decision by the majority of the members shall be the finding and order of the Panel.

(2) At the outset of each relief hearing, the Panel members shall select one member to be the presiding officer of the relief hearing. The relief hearing shall be conducted by and under the control of the presiding officer. The presiding officer shall designate the order of presentation and questioning, determine the scope of questioning, and may set time limits and terminate irrelevant questions and irrelevant or unresponsive answers. The officer presiding at the hearing 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 presiding officer in the case and the correct application of the law to those facts. The presiding officer also may limit repetitious and cumulative evidence.

Stat. Auth.: ORS 161.387(1), OL 2009, Ch. 826 (HB 2853)  
Stats. Implemented: ORS 161.387(1), OL 2009, Ch. 826 (HB 2853))  
Hist.: PSRB 3-2010(Temp), f. 10-5-10, cert. ef. 10-8-10 thru 4-6-11; PSRB 1-2011, f. 2-2-11, cert. ef. 2-15-11

**859-300-0110****Public Meetings Law**

(1) All gun relief hearings shall be open to the public in accordance with the Public Meetings Law.

(2) Deliberations of the Panel shall not be open to the public. For the purposes of this subsection, the term “public” does not include PSRB employees or staff.

Stat. Auth.: ORS 161.387(1), OL 2009, Ch. 826 (HB 2853)  
Stats. Implemented: ORS 161.387(1), OL 2009, Ch. 826 (HB 2853))  
Hist.: PSRB 3-2010(Temp), f. 10-5-10, cert. ef. 10-8-10 thru 4-6-11; PSRB 1-2011, f. 2-2-11, cert. ef. 2-15-11

**859-300-0120****Records**

(1) A record shall be kept of all gun relief hearings. The hearing 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 presiding officer in the case and the correct application of the law to those facts.

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

(a) Electronic recording capable of being transcribed shall be kept by the Board for a minimum period of two years from the relief hearing date;

(b) The gun relief hearings shall be transcribed from the recording when an appeal is filed. Once transcribed, the transcript may be substituted for the original record;

(c) Any material to which an objection is sustained shall not be considered by the Panel. All objections and all rulings of the gun relief panel on objections and motions shall be noted on the record; and

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

Stat. Auth.: ORS 161.387(1), OL 2009, Ch. 826 (HB 2853)  
Stats. Implemented: ORS 161.387(1), OL 2009, Ch. 826 (HB 2853))  
Hist.: PSRB 3-2010(Temp), f. 10-5-10, cert. ef. 10-8-10 thru 4-6-11; PSRB 1-2011, f. 2-2-11, cert. ef. 2-15-11

**859-300-0130****Public Records Law; Confidentiality**

The parties shall have the right to review any records to be considered at the relief hearing. All parties and their representative attorneys shall sign confidentiality agreements, as necessary, prior to inspecting or reviewing any records that are made confidential under either state or federal law, including but not limited to medical records, drug and alcohol records, and criminal history information records.

Stat. Auth.: ORS 161.387(1), OL 2009, Ch. 826 (HB 2853)  
Stats. Implemented: ORS 161.387(1), OL 2009, Ch. 826 (HB 2853))  
Hist.: PSRB 3-2010(Temp), f. 10-5-10, cert. ef. 10-8-10 thru 4-6-11; PSRB 1-2011, f. 2-2-11, cert. ef. 2-15-11

**859-300-0140****Evidence Considered; Admissibility**

The Panel 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) All materials or witness testimony submitted by petitioner, including materials or testimony regarding petitioner’s reputation. All witness names must be submitted to the Board at least 10 days prior to the hearing.

(2) Information submitted by the district attorney, Department of Human Services/Oregon Health Authority or interested persons, including victims or elicited by the Panel in the course of hearing.

Stat. Auth.: ORS 161.387(1), OL 2009, Ch. 826 (HB 2853)  
Stats. Implemented: ORS 161.387(1), OL 2009, Ch. 826 (HB 2853))  
Hist.: PSRB 3-2010(Temp), f. 10-5-10, cert. ef. 10-8-10 thru 4-6-11; PSRB 1-2011, f. 2-2-11, cert. ef. 2-15-11

**859-300-0150****Motion Practice**

Any party bringing a motion before the Panel shall submit five copies of the motion and memorandum of law to the Panel at least 10 days prior to the date of the hearing in which the motion will be heard.

Stat. Auth.: ORS 161.387(1), OL 2009, Ch. 826 (HB 2853)  
Stats. Implemented: ORS 161.387(1), OL 2009, Ch. 826 (HB 2853))  
Hist.: PSRB 3-2010(Temp), f. 10-5-10, cert. ef. 10-8-10 thru 4-6-11; PSRB 1-2011, f. 2-2-11, cert. ef. 2-15-11

**859-300-0160****Independent Examination of Petitioner**

(1) The PSRB may require that the petitioner undergo an independent forensic mental health assessment in addition to the one submitted by petitioner. The assessment shall include at a minimum, an opinion and a basis for that opinion, of petitioner’s interpersonal violence and self-harm risk. The petitioner shall bear the costs of any independent evaluation and assessment. Failure of petitioner to undergo an assessment ordered by the PSRB will result in denial of the petition for relief.

(2) An attorney representing the state or county may request that the Board require the petitioner to submit to a forensic mental health assessment by a psychiatrist or psychologist. The party requesting this assessment shall bear the costs of the assessment.

(a) The attorney for the state or county shall file a written notice of intent to request an assessment within 10 days from receipt of the petition for relief. The notice shall be served on the Board, petitioner and Department of Human Services/Oregon Health Authority.

(b) The examination shall include an opinion, and a basis for that opinion, as to whether or not the petitioner would be likely to act in a manner dangerous to public safety if relief was granted, including an evaluation of self-harm risk.

Stat. Auth.: ORS 161.387(1), OL 2009, Ch. 826 (HB 2853)  
Stats. Implemented: ORS 161.387(1), OL 2009, Ch. 826 (HB 2853))  
Hist.: PSRB 3-2010(Temp), f. 10-5-10, cert. ef. 10-8-10 thru 4-6-11; PSRB 1-2011, f. 2-2-11, cert. ef. 2-15-11

**859-300-0170**

**Objections to Evidence**

The presiding officer shall rule on questions of evidence. All evidence shall be admitted unless the presiding officer determines the evidence is not material, relevant or reliable.

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

(a) Whether the evidence is of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs;

(b) The age and source of the documents;

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

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

(2) Hearsay evidence shall be admissible unless the presiding officer determines that the hearsay evidence is not reliable based upon the quantity and quality of supporting and opposing evidence and on the entire circumstantial setting in which the hearsay evidence is offered. In determining the admissibility of hearsay evidence, the presiding officer shall consider the following factors, including, but not limited to:

(a) The alternative to relying on the hearsay evidence;

(b) The importance of the facts sought to be proved by the hearsay statements to the outcome of the proceeding;

(c) The economy and necessity to the proceeding in using the hearsay evidence;

(d) The ability of the party to cross-examine the particular hearsay statements or evidence; and

(e) The consequences to either the party or the Panel of admitting the hearsay evidence.

(3) A party may object to any evidence offered at the relief hearing. The presiding officer shall rule on an objection in the following manner:

(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 period of time not to exceed 60 days to allow a witness to appear or be subpoenaed to testify about the evidence under consideration.

Stat. Auth.: ORS 161.387(1), OL 2009, Ch. 826 (HB 2853)

Stats. Implemented: ORS 161.387(1), OL 2009, Ch. 826 (HB 2853)

Hist.: PSRB 3-2010(Temp), f. 10-5-10, cert. ef. 10-8-10 thru 4-6-11; PSRB 1-2011, f. 2-2-11, cert. ef. 2-15-11

**859-300-0180**

**Witnesses and Documents; Subpoena**

(1) Witnesses or documents may be subpoenaed either by a party or upon the Board's own motion.

(2) A party may request the Board issue a subpoena upon a proper showing of the general relevance and reasonable scope of the documentary, physical, or witness evidence sought. The party requesting that a subpoena be issued by the Board shall be responsible for all costs associated with witness fees and service of the subpoena.

(3) Upon failure of any person, agency or facility to comply with a subpoena issued by the Board, the petitioner, counsel, the Board, or its designated representative may apply to the judge of a circuit court of any county to compel obedience to the subpoena.

Stat. Auth.: ORS 183.445, 161.395, 161.387(1), OL 2009, Ch. 826 (HB 2853)

Stats. Implemented: ORS 161.387(1), OL 2009, Ch. 826 (HB 2853)

Hist.: PSRB 3-2010(Temp), f. 10-5-10, cert. ef. 10-8-10 thru 4-6-11; PSRB 1-2011, f. 2-2-11, cert. ef. 2-15-11

**859-300-0190**

**Testimony Given on Oath**

The Panel shall take testimony of a witness upon oath or affirmation of the witness administered by the presiding officer at the relief hearing.

Stat. Auth.: ORS 161.387(1); OL 2009, Ch. 826 (HB 2853)

Stats. Implemented: ORS 161.387(1); OL 2009, Ch. 826 (HB 2853)

Hist.: PSRB 3-2010(Temp), f. 10-5-10, cert. ef. 10-8-10 thru 4-6-11; PSRB 1-2011, f. 2-2-11, cert. ef. 2-15-11

**859-300-0200**

**Standard and Burden of Proof**

(1) The standard of proof at the relief hearing shall be whether petitioner has demonstrated by clear and convincing evidence that the petitioner will not be likely to act in a manner that is dangerous to public safety and that granting the relief would not be contrary to the public interest.

(2) The burden of proof shall be on the petitioner.

Stat. Auth.: ORS 161.387(1); OL 2009, Ch. 826 (HB 2853)

Stats. Implemented: ORS 161.387(1); OL 2009, Ch. 826 (HB 2853)

Hist.: PSRB 3-2010(Temp), f. 10-5-10, cert. ef. 10-8-10 thru 4-6-11; PSRB 1-2011, f. 2-2-11, cert. ef. 2-15-11

**859-300-0210**

**Mandatory Personal Appearance**

Personal appearance by petitioner is required at all stages of a relief hearing. An appearance by an attorney or personal representative on behalf of a petitioner shall not constitute personal appearance.

Stat. Auth.: ORS 161, 183, 419C

Stats. Implemented: ORS 161.387(1), OL 2007, Ch. 889 § 6 (SB 328)

Hist.: PSRB 3-2010(Temp), f. 10-5-10, cert. ef. 10-8-10 thru 4-6-11; PSRB 1-2011, f. 2-2-11, cert. ef. 2-15-11

**859-300-0220**

**Decisions of the Panel; Final Orders; Appeals**

Within 30-days following the conclusion of the relief hearing, or within 30-days of the scheduled date of a relief hearing in the case of default, the Board shall issue a final order or final order by default to the petitioner, the attorney representing the petitioner, the district attorney representing the state, interested persons and the Department of Human Services. Final orders and Final orders by default:

(1) Shall be in writing and signed by a panel member of the relief hearing;

(2) Shall contain the findings of facts, conclusions of law, and the reasons for the decision;

(3) If the relief is granted, shall contain a notice to petitioner that substantially provides:

(a) In cases where a state mental health determination resulted in a ban from transporting, shipping, possessing, or receiving a firearm under federal law, the relief granted only removes the firearm disability imposed under 18 U.S.C. §§ 922(d)(4) and (g)(4), and that the relief granted does not otherwise qualify the petitioner to purchase or possess a firearm, and does not fulfill the requirements of the background check pursuant to the Brady Act (Pub. L. 103-159); or

(b) In cases where the petitioner was barred from purchasing or possessing a firearm under either ORS 166.250(1)(c)(D) or (E), or 166.470(1)(e) or (f), the relief granted does not otherwise qualify the petitioner to purchase or possess a firearm under state law; and

(4) Shall advise the petitioner of the right to appeal an adverse decision to the circuit court of the county that originally made the determination that led to the firearm prohibition and that the petitioner may then take an appeal from the circuit court to the Court of Appeals in accordance with ORS 183.500.

Stat. Auth.: ORS 161, 183, 419C

Stats. Implemented: ORS 161.387(1), OL 2007, Ch. 889 § 6 (SB 328)

Hist.: PSRB 3-2010(Temp), f. 10-5-10, cert. ef. 10-8-10 thru 4-6-11; PSRB 1-2011, f. 2-2-11, cert. ef. 2-15-11

**859-300-0230**

**Submission of Final Order of Relief to Oregon State Police**

No later than ten days after the date the Board issues a written final order granting relief from the firearms prohibition, the PSRB shall notify the Department of State Police to either transmit the record of the relief granted by the Board to the federal government as required under federal law, or to update or modify its state

database(s), as provided by the Department of State Police's administrative rules.

Stat. Auth.: ORS 161, 183, 419C

Stats. Implemented: ORS 161.387(1), OL 2007, Ch.r 889 § 6 (SB 328)

Hist.: PSRB 3-2010(Temp), f. 10-5-10, cert. ef. 10-8-10 thru 4-6-11; PSRB 1-2011, f. 2-2-11, cert. ef. 2-15-11

### DIVISON 400

#### SEX OFFENDER CLASSIFICATION/RELIEF FROM REGISTRATION/RECLASSIFICATION

##### 859-400-0001

###### Background/Purpose of Rules/Applicability

(1) 2013 Oregon Laws, Chapter 708 (HB 2549) as amended by 2015 Oregon Laws, Chapter 820 (HB 2320) creates a new statewide system that classifies most registered sex offenders in the State of Oregon. After completion of a risk assessment, each registrant will be classified as a 3, 2 or 1. A classification of "3" is considered the highest risk while a classification of "1" is considered the lowest risk. Effective August 12, 2015, the PSRB has new responsibilities under these laws. First, the PSRB or the Board of Parole & Post-Prison Supervision will be classifying all registrants who have been found GEI (guilty except for insanity) and submitting their classification to Oregon State Police. Depending on a registrant's risk, the PSRB may release information necessary to protect the public concerning the sex offender and Oregon State Police may release information to the public as well. Finally, registrants who meet the eligibility requirements to apply to the PSRB for relief from registration or request reclassification to a lower level may do so beginning December 1, 2018. Division 400 rules will clarify the PSRB's implementation of these programs.

(2) Division 400 administrative rules do not apply to those found responsible except for insanity (REI) who must register as a sex offender due to that finding.

Stat. Auth: ORS 161.387(1), 181.801-181.812, 2015 Oregon Laws, Chapter 820 (HB 2320), 2013 Oregon Laws, Chapter 708 (HB 2549)

Stat. Implemented: ORS 181.801-181.812, 2015 Oregon Laws, Chapter 820 (HB 2320), 2013 Oregon Laws, Chapter 708 (HB 2549)

Hist.: PSRB 1-2015(Temp), f. 10-28-15, cert. ef. 10-29-15 thru 4-25-16

##### 859-400-0005

###### Definitions

(1) "Adult male registrant" means a male who was convicted of a sex crime and required to register as a sex offender or who was found guilty except for insanity of a sex crime and required to register as a sex offender, and was at least 18 years of age when he committed the offense.

(2) "BOPPPS" means the Oregon Board of Parole and Post-Prison Supervision.

(3) "Category B registrant" means a person of either gender or any age at the time of crime commission who is required to register as a sex offender based only on a conviction for a Category B sex crime.

(4) "Category B sex crime" means any type of criminal offense within the scope of "Category B offenses" listed in the Static-99R Coding Rules (Revised 2003). These include: consensual sex with other adults in public places, crimes relating to child pornography, indecent behavior without a sexual motive (urinating in public), offering prostitution services, pimping/pandering, seeking/hiring prostitutes and solicitation of a prostitute.

(5) "Conditional Release" means an individual found GEI is under supervision of the PSRB living in the community under a Conditional Release order.

(6) "Discharged" means an individual found GEI is no longer under the supervision of the PSRB or OHA.

(7) "Hearings Officer" means a person designated by the Board to consider objections to a registrant's risk assessment score and forward those recommendations to the Board.

(8) "OHA" means the Oregon Health Authority.

(9) "PSRB" or "Board" means the Psychiatric Security Review Board.

(10) "Registrant" means a person for whom the event triggering the obligation to make an initial report under ORS 181.806(3)(a)(A), 181.807(4)(a)(A), 181.808(1)(a)(A), 2(a)(A) or (3)(a)(A) has occurred.

(11) "Female registrant" means a female who was convicted of a sex crime and required to register as a sex offender or who was found guilty except for insanity of a sex crime and required to register as a sex offender, regardless of her age when she committed the offense.

(12) "Sex crime" has the definition contained in ORS 181.805(5).

(13) "Young male registrant" means an offender who was convicted of a sex crime and required to register as a sex offender or who was found guilty except for insanity of a sex crime and required to register as a sex offender, and who was 17 years of age or younger when he committed the offense. Young male registrant does not mean a person solely found responsible except for insanity as a youth.

Stat. Auth: ORS 161.387(1), 181.801-181.812, 161.387(1); 2015 Oregon Laws, Chapter 820 (HB 2320), 2013 Oregon Laws, Chapter 708 (HB 2549)

Stat. Implemented: ORS 161.387(1), 181.801-181.812, 161.387(1); 2015 Oregon Laws, Chapter 820 (HB 2320), 2013 Oregon Laws, Chapter 708 (HB 2549)

Hist.: PSRB 1-2015(Temp), f. 10-28-15, cert. ef. 10-29-15 thru 4-25-16

##### 859-400-0010

###### Sex Offender Risk Assessment Methodology

(1) Except for the provisions in subsections (3) and (4) of this rule, the PSRB will classify adult male registrants under its jurisdiction or previously under its jurisdiction by the Static-99R. The PSRB will score and place the registrant into one of the following levels:

(a) Level I: Low (Static-99R score of -3 to 3);

(b) Level II: Moderate (Static-99R score of 4 to 5); or

(c) Level III: High (Static-99R score of 6 or higher).

(2) For classification of adult female registrants, category B registrants, and young male registrants, the PSRB will classify using the Level of Services/Case

(a) Management Inventory (LS/CMI) as supplemented by an independent sexual offense-specific evaluation report. Based on the score, these registrants will be designated into one of the following levels:

(b) Level I: Low (Score 0 to 10; LS/CMI as supplemented by an independent sexual offense-specific evaluation);

(c) Level II: Moderate (Score 11 to 19; LS/CMI as supplemented by an independent sexual offense-specific evaluation); or

(d) Level III: High (Score 20 or higher; LS/CMI as supplemented by an independent sexual offense-specific evaluation).

(3) If a person found GEI has previously been designated as a sexually violent dangerous offender under ORS 137.765, it will classify that person as a Level III sex offender.

(4) If a person found GEI has previously been designated as a predatory sex offender between February 10, 2005 and December 31, 2013, the Board will classify the registrant as a Level III sex offender.

(5) The PSRB will classify a registrant who refuses or fails to participate in a sex offender risk assessment as a Level III sex offender unless the assessment can effectively be completed without the registrant's participation.

Stat. Auth: ORS 161.387(1) & 181.800 - 181.803

Stat. Implemented: ORS 181.800 & 181.803

Hist.: PSRB 1-2015(Temp), f. 10-28-15, cert. ef. 10-29-15 thru 4-25-16

##### 859-400-0015

###### Classifying Agency/Sharing of Records

(1) The PSRB will complete the risk assessment for PSRB GEI registrants who are required to register for the first time any date after August 12, 2015. For registrants prior to this date, the PSRB may complete the assessment and notification process or assist BOPPPS with its classification process.

(2) The PSRB will work collaboratively with BOPPPS to ensure that GEI registrants who do not fall under subsection (1) of



this rule are classified. If needed, the PSRB will provide BOPPPS the PSRB records necessary to complete the assessment.

Stat. Auth: ORS 161.387(1), 181.801-181.812, 161.387(1); 2015 Oregon Laws, Chapter 820 (HB 2320), 2013 Oregon Laws, Chapter 708 (HB 2549)  
Stat. Implemented: ORS 161.387(1), 181.801-181.812, 161.387(1); 2015 Oregon Laws, Chapter 820 (HB 2320), 2013 Oregon Laws, Chapter 708 (HB 2549)  
Hist.: PSRB 1-2015(Temp), f. 10-28-15, cert. ef. 10-29-15 thru 4-25-16

#### 859-400-0020

##### Timelines for Classifying Registrants

(1) When a person found GEI of a crime described in ORS 163.355 to 163.427 is committed to a hospital designated by the Oregon Health Authority and placed under PSRB jurisdiction, the PSRB will conduct the risk assessment of the person using the risk assessment methodology in 859-400-0010 for those who are discharged or placed on conditional release after August 12, 2015 within 60 days of their discharge or conditional release.

(2) For a person described in ORS 181.801 who was found GEI of a crime described in ORS 163.355 to 163.427 and whose initial obligation to register occurred between January 1, 2014 and August 12, 2015, the PSRB will consult and assist BOPPPS to ensure the risk assessment of the person using the risk assessment methodology in 859-400-0010 is completed as soon as practicable.

(3) For a person described in ORS 181.801 who was found GEI of a crime described in ORS 163.355 to 163.427 and whose initial obligation to register occurred prior to January 1, 2014, the PSRB will consult and assist BOPPPS to ensure the risk assessment of the person utilizing the risk assessment methodology in 859-400-0010 is completed as soon as practicable.

Stat. Auth: ORS 161.387(1), 181.801-181.812, 161.387(1); 2015 Oregon Laws, Chapter 820 (HB 2320), 2013 Oregon Laws, Chapter 708 (HB 2549)  
Stat. Implemented: ORS 161.387(1), 181.801-181.812, 161.387(1); 2015 Oregon Laws, Chapter 820 (HB 2320), 2013 Oregon Laws, Chapter 708 (HB 2549)  
Hist.: PSRB 1-2015(Temp), f. 10-28-15, cert. ef. 10-29-15 thru 4-25-16

#### 859-400-0025

##### Failure of Registrant to Participate in the Risk Assessment/ Failure to Provide Information for Assessment

(1) If the PSRB cannot complete the risk assessment using its written exhibit file, it may request in writing that the registrant provide additional information to aid in the completion of the assessment.

(2) The PSRB will use the registrant's current address located in the Oregon State Police Sex Offender Registry or PSRB's records — if the registrant is under the PSRB's jurisdiction — to communicate with the registrant when seeking additional information.

(3) Failure to participate in the assessment or respond to PSRB's request for information may cause the registrant to be classified at a higher level if the PSRB cannot confirm the information through another source or if the missing information is critical to determining a final score.

Stat. Auth:  
Stat. Implemented:  
Hist.: PSRB 1-2015(Temp), f. 10-28-15, cert. ef. 10-29-15 thru 4-25-16

#### 859-400-0030

##### Procedures for Classifying and Notifying Adult Male Registrants

(1) The procedures contained in this administrative rule apply to all male offenders who are required to register as sex offenders and who were at least 18 years of age when they committed the offense that created the obligation to register.

(2) The assessing agency will provide the registrant the Static-99R score, the completed Static-99R assessment, a Notice of Rights form and a Written Objections form.

(3) Following the notification in subsection (2), the following applies if the registrant waives objections to the Static-99R score:

(a) If the registrant's obligation to register occurred on or after January 1, 2014, the registrant will forward the Notice of Rights form indicating the registrant's waiver to the PSRB within 3 (three) business days of receiving the Notice of Rights.

(b) If the registrant's obligation to register occurred before January 1, 2014, the registrant will forward the Notice of Rights form indicating the registrant's waiver to the PSRB within 60 days after the mailing date on the Notice of Rights.

(c) The PSRB will review the submission by the registrant and determine a final classification.

(d) The PSRB will notify the Department of State Police of the results of the risk assessment and final classification within three business days of the date of the final classification.

(4) Following the notification in subsection (2), the following applies if a registrant submits written objections to the Static-99R score:

(a) If the registrant's obligation to register occurred on or after January 1, 2014, the registrant must submit his Static-99R assessment, the Notice of Rights form and any Written Objections to the Static-99R score within 3 (three) business days after receiving the Notice of Rights.

(b) If the registrant's obligation to register occurred before January 1, 2014, the registrant must submit his Static-99R assessment, the Notice of Rights form and any Written Objections to the Static-99R score to the PSRB within 60 (sixty) days after the mailing date on the Notice of Rights.

(c) Objections that are not submitted within these timelines will not be reviewed and the PSRB will proceed to final classification.

(d) Verbal objections will not be considered by the PSRB or Hearings Officer.

(e) Upon receipt of any timely submitted written objections, a Hearings Officer will conduct a review of the Static-99R score and supporting documents. The Hearings Officer will verify the accuracy of each point awarded on the Static-99R and prepare a memo that responds to the registrant's written objections. The Hearing Officer's review will detail the finding of the Static-99R and make a determination as to whether the registrant's Static-99R score is accurate or should be changed. Upon completing the review, the Hearings Officer will submit to the PSRB, a memo detailing the review, as well as any information considered by the Hearings Officer.

(f) The PSRB will review the Hearings Officer's memo and will order the final classification level based on the Static-99R score and notify the Department of State Police of the results of the risk assessment within 3 (three) business days of the date of the final classification.

(5)(a) A registrant who refuses to participate in the notice of rights process shall be considered to have waived objections to the Static-99R score. Refusal to participate includes failure to submit a waiver or written objection.

(b) If, following the notification in subsection (2) the registrant's response time has lapsed, the PSRB will notify the Department of State Police of the results of the risk assessment and final classification within three business days of the date of the final classification.

(6) The PSRB's classification decision shall be final. The PSRB's classification decision is not subject to review under ORS 161.327(7).

Stat. Auth: ORS 161.387(1), 181.801-181.812, 2015 Oregon Laws, Chapter 820 (HB 2320), 2013 Oregon Laws, Chapter 708 (HB 2549)  
Stat. Implemented: ORS 161.387(1), 181.801-181.812, 161.387(1); 2015 Oregon Laws, Chapter 820 (HB 2320), 2013 Oregon Laws, Chapter 708 (HB 2549)  
Hist.: PSRB 1-2015(Temp), f. 10-28-15, cert. ef. 10-29-15 thru 4-25-16

#### 859-400-0035

##### Procedures for Classifying and Notifying Young Male Registrants, Female Registrants, and Category B Registrants

(1) These procedures apply to registrants for whom the Static-99R is not an appropriate assessment methodology as outlined in OAR 859-400-0010.

(2) With the cooperation of the Oregon State Hospital and community mental health agencies, the PSRB will identify young male registrants, female registrants, and Category B registrants

found guilty except for insanity. This may include discharged PSRB clients.

(3) The Board will notify young male registrants, female registrants, and Category B registrants of the registrant's obligation to participate in the assessment and evaluation processes, the registrant's option to request a review of the assessment and evaluation, and the Board's final review of the review and evaluation report.

(4) Subject to the risk assessment methodology set forth in these administrative rules, the Board will classify young male registrants, female registrants, and Category B registrants based on the LS/CMI and findings from an independent sexual offense-specific evaluation performed by a qualified provider who is certified by the Oregon Sex Offender Treatment Board to conduct sexual offense risk assessments. The independent evaluator will provide the Board with a written report stating the recommended sex offender classification and notification level, and will provide information regarding the registrant's risk for sexual re-offense. The evaluator should weigh the LS/CMI score when recommending a sex offender classification and notification level based on the sexual offense-specific evaluation.

(5) The Board will provide the registrant with a copy of the completed LS/CMI assessment, the independent sexual offense-specific evaluation report, the Notice of Rights form and the Written Objections form.

(6) Following notification in subsection (5), the following timelines apply for a registrant to waive objections:

(a) If the registrant's obligation to register occurred on or after January 1, 2014 and the registrant waives the right to submit written objections to the LS/CMI score and evaluation report, the registrant will forward the Notice of Rights form indicating the registrant's waiver to the Board within 3 (three) business days of receiving the notice of rights.

(b) If the registrant's obligation to register occurred before January 1, 2014 and the registrant waives the right to submit Written Objections to the LS/CMI score and evaluation report, the registrant will forward the Notice of Rights form indicating the registrant's waiver to the Board within 60 (sixty) days after the mailing date on the Notice of Rights.

(c) The PSRB will review the submission by the registrant and determine a final classification.

(d) The PSRB will notify the Department of State Police of the results of the risk assessment and final classification within three business days after the final classification.

(7) Following the notification in subsection (5), the following timelines apply for a registrant to submit written objections:

(a) If the registrant's obligation to register occurred on or after January 1, 2014, the registrant must submit the LS/CMI, evaluation report, Notice of Rights and any written objections to the assessment and evaluation findings to the Board within 3 (three) business days after receiving the Notice of Rights.

(b) If the registrant's obligation to register occurred before January 1, 2014, the registrant must submit any written objections to the assessment and evaluation findings within 60 (sixty) days after the mailing date on the Notice of Rights.

(c) Objections that are not submitted within these timelines will not be reviewed, and the Board will proceed to final classification.

(d) Upon the PSRB's receipt of the written objections, a Hearings Officer will complete a review of the LS/CMI score, evaluation, and supporting documents. The review will verify the information, and the Hearings Officer will prepare a memo responding to the written objections, detail the finding of the evaluator, and make a determination as to whether the registrant's LS/CMI score is accurate or should be changed.

(e) If the score places the registrant in Level I or Level II, the Hearings Officer will provide this memo to the PSRB along with any information considered.

(f) If the score places the registrant in Level III, the Hearings Officer will schedule a hearing with the registrant. The following procedures shall apply:

(A) The Hearings Officer will provide the registrant with the documentation submitted for review 14 days before the hearing.

(B) At the hearing, the registrant may present additional evidence or information regarding the LS/CMI score and evaluator's report.

(C) The Hearings Officer will write a supplement to the memo and will provide the supplement to the Board.

(D) A registrant's refusal to participate in the hearing shall be considered a waiver.

(E) The PSRB will review the Hearings Officer's memo. The Board will order the classification level based on the LS/CMI score, evaluator's report, and any additional findings and memorandum made by Hearings Officer, and will notify the Department of State Police of the registrant's final classification within three business days of the date the Board makes its final classification.

(8)(a) A registrant who refuses to participate in the notice of rights process shall be considered to have waived objections to the LS/CMI score and evaluation report. Refusal to participate includes failure to submit one of the following a waiver or written objection.

(b) If, following notification in subsection (3), the registrant's response time has lapsed, the PSRB will notify the Department of State Police of the results of the risk assessment and final classification within three business days of the date of the final classification.

(9) The PSRB's classification decision shall be final. The PSRB's classification decision is not subject to review under ORS 161.327(7).

Stat. Auth: ORS 161.387(1), 181.801-181.812, 2015 Oregon Laws, Chapter 820 (HB 2320), 2013 Oregon Laws, Chapter 708 (HB 2549)

Stat. Implemented: ORS 161.387(1), 181.801-181.812, 161.387(1); 2015 Oregon Laws, Chapter 820 (HB 2320), 2013 Oregon Laws, Chapter 708 (HB 2549)

Hist.: PSRB 1-2015(Temp), f. 10-28-15, cert. ef. 10-29-15 thru 4-25-16

## **859-400-0040**

### **Releasing Information to the Public and Law Enforcement**

(1) The PSRB will review all requests for information concerning a specific sex offender or sex offenders who reside in a specific area on a case by case basis to determine what, if any, information is in the public interest to release.

(2) The PSRB has the authority to release any information to law enforcement and the public it deems necessary to protect the public in accordance with ORS 161.835. The Board will release information on a case by case basis and release the minimum information necessary to achieve the goal of reasonable public safety.

(3) When the PSRB discharges a registrant who has been determined to be at a Level III, the Board will notify the Department of State Police and request that if the person was not already on the public website maintained by the department, that they be added in accordance with ORS 181.835(3).

(4) When the PSRB discharges any level registrant, the Board or its designee will evaluate whether notification of those listed in ORS 181.835(2)(b) is appropriate. This may include requesting that a registrant be included on the public website regardless of their classification level.

Stat. Auth: ORS 161.387(1) & 181.835

Stat. Implemented: ORS 181.835

Hist.: PSRB 1-2015(Temp), f. 10-28-15, cert. ef. 10-29-15 thru 4-25-16

## **859-400-0045**

### **Requests for Reclassification/Relief**

(1) Beginning on December 1, 2018, registrants who meet certain criteria may petition the PSRB to reclassify them to a lower classification level and/or request relief from the obligation to report as a sex offender as provided in ORS 181.821.

(2) The PSRB will develop administrative rules in preparation for implementation of a reclassification and relief program no later than 2018.

Stat. Auth: ORS 161.387(1) & 181.801 - 181.821

Stat. Implemented: ORS 181.821

Hist.: PSRB 1-2015(Temp), f. 10-28-15, cert. ef. 10-29-15 thru 4-25-16

**DIVISION 501****JUVENILE PSYCHIATRIC SECURITY REVIEW BOARD  
RULEMAKING PROCEDURES****859-501-0005****Notice**

Prior to the adoption, amendment or repeal of any rule, the Psychiatric Security Review Board shall give notice of the intended action:

- (1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days before the effective date of the rule;
  - (2) By mailing a copy of the notice to persons on the PSRB's mailing list established pursuant to ORS 183.335(8) at least 28 days before the effective date of the rule;
  - (3) By mailing or furnishing a copy of the notice to:
    - (a) The Associated Press;
    - (b) Department of Human Services and Oregon Health Authority;
    - (c) Secure Adolescent In-patient Program (SAIP) at Children's Farm Home;
    - (d) Secure Children's In-patient Program (SCIP) at Albertina Kerr;
    - (e) Intensive Treatment Services (ITS) at Albertina Kerr;
    - (f) Oregon District Attorneys Association;
    - (g) Oregon Criminal Defense Lawyers Association;
    - (h) Attorney General;
    - (i) Attorney for indigent JPSRB youth;
    - (j) Friends of Forensics, a voluntary association affiliated with Oregon State Hospital;
    - (k) Disability Rights Oregon; and
    - (l) Capitol Press Room
- Stat. Auth.: ORS 161.387(1), 183.335(1), (8), OL 2007, Ch. 889 § 6 (SB 328)  
Stats. Implemented: ORS 161.387(1), 183.335(1) (8), OL 2007, Ch. 889 § 6 (SB 328)  
Hist.: PSRB 2-2010 f. & cert ef. 9-28-10

**859-501-0010****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 Juvenile PSRB Administrative Rules. Oregon Administrative Rules are available electronically at no charge from the website of the Oregon Secretary of State.

Stat. Auth.: ORS 161.183, 419C  
Stats. Implemented: ORS 161.387(1), OL 2007, Ch. 889 § 6 (SB 328)  
Hist.: PSRB 2-2010 f. & cert ef. 9-28-10

**DIVISION 510****JUVENILE PSYCHIATRIC SECURITY  
REVIEW BOARD DEFINITIONS****859-510-0005****Definitions**

- (1) "Administrative Hearing" means a meeting of the Board at which a quorum is present but the youth is not for the purpose of deliberating about a youth's status or conditional release plan based upon the written record before the Board.
- (2) "Administrative Meeting" means any meeting of the Board at which a quorum is present for the purpose of considering matters relating to Board policy and administration, at which minutes are taken, and approved at a subsequent administrative meeting by a majority of members present.
- (3) "Board" means the juvenile panel of Oregon Psychiatric Security Review Board as constituted under ORS 161.385.
- (4) "Burden of proof" means the responsibility of the youth or the state to convince the Board of the truth of its version or interpretation of facts or issues in dispute.
- (5) "Commit" means order of placement in a secure facility.
- (6) "Conditional Release" means an order by the court or Board authorizing a youth to reside outside a Secure Adolescent

In-patient Program (SAIP), Secure Children's In-patient Program (SCIP), or Intensive Treatment Services (ITS), in the community under conditions established for the monitoring and treatment of the youth's mental and physical health.

(7) "Department of Human Services" and "Department" mean the Oregon Department of Human Services as constituted under ORS 409.010.

(8) "Discharge" means the termination of a youth's jurisdiction under the Board because the youth is either no longer affected by a serious mental condition or no longer affected by a mental disease or defect that presents a substantial danger to others and requires regular medical care, medication, supervision or treatment; or term of jurisdiction has lapsed.

(9) "Full Hearing" means a meeting of the Board at which a quorum is present, the youth is present, evidence is received, a youth's status is reviewed pursuant to Chapter 419C and at the conclusion of which the Board makes findings of fact and conclusions of law as required by law from which written orders will issue.

(10) "Mental Defect" means that which is manifested by mental retardation or developmental disability if a mental deficiency exists concurrently with qualitative deficits in activities of daily living and is not otherwise attributable to mental illness or substance abuse or influenced by current situational trauma.

(11) "Mental Disease" is defined as 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 and is defined in the current Diagnostic and Statistical Manual of Mental Disorders (DSM IV) of the American Psychiatric Association

(12) The term "mental disease or defect" does not include an abnormality manifested solely by repeated criminal or otherwise antisocial conduct; nor constituting solely a conduct or a personality disorder; nor solely an alcohol or drug abuse or dependence diagnosis.

(13) "Mental status" is defined as the mental, emotional, and behavioral functioning of a youth.

(14) "Patient" means any youth under the jurisdiction of the JPSRB, residing in a SAIP or SCIP.

(15) "Proof" means the achievement of a designated legal standard for persuading the trier of fact that a proposition is true. The standard of proof on all issues at hearings of the Board is by the preponderance of the evidence.

(16) "Quorum" means the presence at a hearing or meeting of at least three members of the Board.

(17) "Reasonable medical probability" means the finding by a physician or other qualified health professional that a given condition or illness is more likely than not to exist.

(18) "Responsible Except for Insanity" means the affirmative defense one must successfully assert in order to be placed under the jurisdiction of the JPSRB; or a finding by a judge that a youth, as a result of a mental disease or defect at the time the youth committed the act(s) alleged in the petition, lacked substantial capacity either to appreciate the nature and quality of the act or to conform the youth's conduct to the requirements of law.

(19) "Revocation" means the return to a secure residential adolescent or children's treatment facility of a youth pursuant to an order of the Board when the youth has violated the terms of a conditional release order or has experienced a change in mental status giving reasonable cause to believe that the youth may present a danger to others and cannot be controlled by appropriate interventions.

(20) "SAIP" means secure adolescent in-patient treatment program designated by the Oregon Health Authority.

(21) "SCIP" means secure child in-patient treatment program designated by the Oregon Health Authority.

(22) "SITP" means a secure child and adolescent Seniors and People with Disabilities (SPD) in-patient treatment program designated by Department of Human Services.

(23) "Secure" means that the doors to the facility are locked at all times. Ingress and egress are controlled by staff.



(24) “Secure In-patient Program Pass”, means any time a youth is authorized to be away from a secure child or adolescent facility’s grounds for any length of time unaccompanied by facility staff.

(25) “Serious mental condition” is one of the three specifically delineated diagnoses listed in 419C.520 (3).

(26) “Substantial danger” means the level of danger exhibited by threats of or engagement in acts of intentional, knowing, reckless or negligent behavior which places another person at risk of physical injury.

Stat. Auth.: ORS 161.387, OL 2007, Ch. 889 § 6 (SB 328)

Stats. Implemented: ORS 161.295 - 161.400, 419C.411(2), 419C.520 - 419C.544

Hist.: PSRB 2-2010, f. & cert. ef. 9-28-10

### DIVISION 520

#### ORGANIZATION OF THE JUVENILE PSYCHIATRIC SECURITY REVIEW BOARD

##### 859-520-0005

###### Membership and Terms

The Juvenile panel of the Psychiatric Security Review Board shall consist of five members as constituted in ORS chapter 419C.

Stat. Auth.: ORS 161.385, 161.387; OL 2007, Ch. 889 § 6 (SB 328)

Stats. Implemented: ORS 161.385(1)-(7), 161.387(1)

Hist.: PSRB 2-2010, f. & cert. ef. 9-28-10

##### 859-520-0010

###### Chair

The Board shall elect one of its members as chairperson to serve for a term of one year, with the possibility of re-election.

Stat. Auth.: ORS 161.385, 161.387; OL 2007, Ch. 889 § 6 (SB 328)

Stats. Implemented: ORS 161.385(1)-(7), 161.387(1)

Hist.: PSRB 2-2010, f. & cert. ef. 9-28-10

##### 859-520-0020

###### Executive Director; Powers and Duties

The executive director shall oversee the daily operations of the Board and officially represent the Board and shall perform other duties including but not limited to:

- (1) Hiring and terminating employees.
- (2) Supervising work of the Board’s staff;
- (3) Preparing the budget for approval by the Board;
- (4) Implementing Board policies and decisions;
- (5) Informing the Board of the status of youths under its jurisdiction;
- (6) Presenting to the Board all matters requiring Board action; and
- (7) Performing other duties as authorized or requested by the Board.

Stat. Auth.: ORS 161.385, 161.387; OL 2007, Ch. 889 § 6 (SB 328)

Stats. Implemented: ORS 161.385(1)-(7), 161.387(1)

Hist.: PSRB 2-2010, f. & cert. ef. 9-28-10

### DIVISION 530

#### RESPONSIBILITIES OF JUVENILE PSYCHIATRIC SECURITY REVIEW BOARD

##### 859-530-0010

###### Functions and Purpose of JPSRB

The Board shall assume jurisdiction over youths adjudged by the court to be “responsible except for insanity” for a period not to exceed the maximum sentence the court finds the youth could have received had the youth been adjudicated except in murder cases where the maximum is life.

(1) The Board shall maintain jurisdiction over youths who are legally placed under its jurisdiction by any court of the State of Oregon.

(2) The Board shall not consider time spent on unauthorized leave from the custody of a Department of Human Services or Oregon Health Authority contracted facility as part of the youth’s jurisdictional period.

(3) Upon receipt of verified information of time spent in custody, youths placed under the Board’s jurisdiction shall receive credit for:

(a) Time spent in any youth correctional facility for the offense for which the youth was placed under the Board’s jurisdiction; and

(b) Time spent in custody of the Department of Human Services or Oregon Health Authority at a state designated facility for determination of the defendant’s fitness to proceed or under a detainer for the criminal charges for which the youth ultimately was placed under the Board’s jurisdiction.

Stat. Auth.: ORS 161.385; ORS 161.387, Oregon Laws 2007, Chapter 889 § 6 (SB 328)

Stats. Implemented: ORS 161.327, 161.336, 161.341, 161.346, 161.351, 161.385, 161.387, 419C.529, 419C.532, 419C.538, 419C.540, 419C.544; OL 2007, Ch. 889 § 2 (SB 328)

Hist.: PSRB 2-2010, f. & cert. ef. 9-28-10

### DIVISION 540

#### JUVENILE PSYCHIATRIC SECURITY REVIEW BOARD HEARINGS AND MEETINGS

##### 859-540-0005

###### Hearings and Administrative Meetings

(1) The Board shall hold full hearings at least twice every month unless the chairperson determines that there is not sufficient business before the Board to warrant a hearing at the scheduled time.

(2) The Board may hold administrative hearings to review court conditional releases, secure facility requests’ for conditional release and case manager or client requests for modifications of conditional release orders. Notice for proceeding via an administrative — rather than a full — hearing shall be provided in a similar manner but with less than 10 days notice. The Board shall consider information on the written record only and no oral testimony shall be received.

(a) If an objection is made to the approval, disapproval or modification of the conditional release plan, the youth, qualified mental health or developmental disabilities treatment provider, or the state has the right to request a hearing;

(b) On its own motion, the Board may require further information, testimony or the presence of the youth and therefore, set the matter for a full hearing.

(3) The Board shall hold administrative meetings to consider matters relating to Board policy and administration as often as necessary.

(4) The agenda for administrative meetings shall be developed by the executive director and the chairperson prior to the meeting. Public notice shall be given in accordance with the Public Meetings Law.

Stat. Auth.: ORS 161.385, 161.387, OL 2007, Ch. 889 § 6 (SB 328)

Stats. Implemented: ORS 161.385(1)-(7), 161.387(1) 419C.538

Hist.: PSRB 2-2010, f. & cert. ef. 9-28-10

##### 859-540-0010

###### Quorum and Decisions

The presence of at least three members of the Board constitutes a quorum:

(1) Three concurring votes (affirmative or negative) are required for a Board decision.

(2) When three members cannot agree on a decision, the hearing shall be continued for no longer than 60 days. A 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 youth objects to the remaining member’s or members’ review as set forth in section (2) of this rule and if good cause is shown, the Board may reschedule the matter for a full hearing before the entire Board.

(4) Prior to commencing a hearing, if an objection for good cause is made to a specific member of the Board sitting on the panel considering a specific case and the Board sustains it, that

## Chapter 859 Psychiatric Security Review Board

member shall withdraw and, if necessary, the hearing shall be continued and rescheduled.

Stat. Auth.: ORS 161.385, 161.387, OL 2007, Ch. 889 § 6 (SB 328)  
Stats. Implemented: ORS 161.385(1)-(7), 161.387(1)  
Hist.: PSRB 2-2010, f. & cert. ef. 9-28-10

### 859-540-0015

#### Public Meetings Law

All hearings and administrative meetings of the JPSRB are open to the public in accordance with the Public Meetings Law. The deliberations of the Board at hearings are not open to the public, nor are Executive sessions. For purposes of this rule, PSRB staff and employees are not considered members of the “public”.

Stat. Auth.: ORS 161.385, 161.387OL 2007, Ch. 889 § 6 (SB 328)  
Stats. Implemented: ORS 161.385(1)-(7), 161.387(1)-(2)  
Hist.: PSRB 2-2010, f. & cert. ef. 9-28-10

### 859-540-0020

#### Records

(1) A record shall be kept of Board action taken at an administrative meeting by minutes and any decision made at an administrative hearing of the Board by written findings.

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

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

(b) The recording of the Board hearings shall be transcribed for appeal purposes when a notice of appeal is filed. If transcribed, the transcript may be substituted for the original record.

(c) Any material to which an objection is sustained shall be removed from the record. The objection and ruling of the Board shall be noted on the record.

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

Stat. Auth.: ORS 161.385, 161.387, OL 2007, Chapter 889 § 6 (SB 328)  
Stats. Implemented: ORS 161.346(7), 419C.532(14)  
Hist.: PSRB 2-2010, f. & cert. ef. 9-28-10

### 859-540-0025

#### Public Records Law; Confidentiality

(1) The attorneys for the youth shall have the right to review any exhibit to be considered at the hearing. Statutory requirements shall be observed with respect to requests by any other individual/entity to inspect youth records.

(2) Other requests shall be reviewed to determine whether the record is exempt under a specific exception to the public records law, including but not limited to:

(a) Communications within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual material and are preliminary to any final agency determination of policy or action;

(b) Information of a personal nature such as that kept in personal, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance.

(c) Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential by federal or state law.

(3) A medical record shall be withheld from public inspection if the Board determines that the disclosure would interfere with the rehabilitation of the youth and if the public interest in confidentiality clearly outweighs the public interest in disclosure.

(4) Public records, Board orders and information within the Public Records Law shall be made available upon request. All requests shall be made in writing and final determination on disclosure shall be made by the Board. A reasonable charge may be made for copying of material. Appeals of determinations on disclosure

shall be made by petition to the Attorney General in accordance with statutory requirements.

Stat. Auth.: ORS 161.385, 161.387, 192.450, 192.500, 192.525, 192.690; OLs 2007, Ch. 889 § 6 (SB 328)  
Stats. Implemented: ORS 161.336, 161.346, 419C.532  
Hist.: PSRB 2-2010, f. & cert. ef. 9-28-10

## DIVISION 550

### JUVENILE PSYCHIATRIC SECURITY REVIEW BOARD GENERAL PROCEDURES

### 859-550-0005

#### Notice

Written notice of a hearing shall be given to the persons or agencies listed in ORS 419C.532(12)(a) no less than 10 days prior to the hearing date.

Stat. Auth.: ORS 161.387, OL 2007, Ch. 889 § 6 (SB 328)  
Stats. Implemented: ORS 161.346(4), 419C.532(12)  
Hist.: PSRB 2-2010, f. & cert. ef. 9-28-10

### 859-550-0010

#### Information Contained in Notice

Written notice shall contain the information required in ORS 419C.532(12)(b):

(1) Time, place and location of the hearing.

(2) The issues to be considered, reference to statutes and rules involved, and the authority and jurisdiction under which the hearing is to be held.

(3) Statement of rights of the youth at the hearing, including the following:

(a) Right to appear at all proceedings, except Board deliberations;

(b) Right to cross-examine all witnesses appearing to testify at the hearing;

(c) Right to subpoena witnesses and documents as provided in ORS 161.395;

(d) Right to legal counsel and, if indigent as defined by the indigence standard set forth by the State Office of Public Defense Services, to have counsel provided without cost; and

(e) Right to examine all information, documents and reports under consideration.

Stat. Auth.: ORS 161.387, OL 2007, 889 § 6 (SB 328)  
Stats. Implemented: ORS 161.346(4), 419C.532(12)  
Hist.: PSRB 2-2010, f. & cert. ef. 9-28-10

### 859-550-0015

#### Timing of Hearings

The Board shall hold hearings for all youth under its jurisdiction within the timeframes set forth in its statutes in ORS chapter 419C.

Stat. Auth.: ORS 161.387, OL 2007 889 § 6 (SB 328)  
Stats. Implemented: ORS 419C.532, 419C.538, 419C.540 - ORS 419C.544  
Hist.: PSRB 2-2010, f. & cert. ef. 9-28-10

### 859-550-0020

#### Chairperson Conducting Hearing

During hearings of the Board, the chairperson or acting chairperson shall preside. The chairperson shall designate the order of presentation and the order of questioning and scope of questioning. The chairperson may set time limits and interrupt or terminate irrelevant questions or unresponsive answers.

Stat. Auth.: ORS 161.387, OL 2007, Ch. 889 § 6 (SB 328)  
Stats. Implemented: ORS 161.385(1)-(7)  
Hist.: PSRB 2-2010, f. & cert. ef. 9-28-10

### 859-550-0025

#### Youth's Right to Review Record; Exceptions

Youths shall receive written notice of the hearing directly, or through their attorneys, with a statement of their rights in accordance with ORS 419C.532(12). All exhibits to be considered by the Board shall be disclosed to the youth's attorney as soon as they are available:

(1) Exhibits not available prior to the hearing shall be made available to the youth's attorney at the hearing.

(2) All material relevant and pertinent to the youth 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.

Stat. Auth.: ORS 161.387, OL 2007, Ch. 889 § 6 (SB 328)

Stats. Implemented: ORS 161.346, 419C.532

Hist.: PSRB 2-2010, f. & cert. ef. 9-28-10

#### **859-550-0030**

##### **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 trial;

(2) Information supplied by the state's attorney or any interested party, including the youth;

(3) Information concerning the youth's mental condition;

(4) The entire psychiatric and criminal history of the youth, including motor vehicle records;

(5) Psychiatric or psychological reports ordered by the Board under ORS 419C.532, 419C.538 and 419C.540;

(6) Psychiatric and psychological reports under ORS 419C.529, 419C.532, 419C.538 and 419C.540, written by a person chosen by the state or the youth to examine the youth; and

(7) Testimony of witnesses.

Stat. Auth.: ORS 161.387, OL 2007, Ch. 889 § 6 (SB 328)

Stats. Implemented: ORS 161.336, 161.341, 161.346; ORS 419C.529; ORS 419C.532; ORS 419C.538, 419C.540

Hist.: PSRB 2-2010, f. & cert. ef. 9-28-10

#### **859-550-0035**

##### **Motion Practice**

Any party bringing a motion before the Board shall submit five copies of the motion and supporting memorandum of law to the Board and one to the opposing party no later than 10 days prior to the hearing date in which the motion will be heard.

Stat. Auth.: ORS 161.387, OL 2007, Ch. 889 § 6 (SB 328)

Stats. Implemented: ORS 161.346, 419C.532

Hist.: PSRB 2-2010, f. & cert. ef. 9-28-10

#### **859-550-0040**

##### **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 documents;

(b) The ability of a witness to have observed and have personal knowledge of an incident;

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

(2) The youth, the youth's attorney or attorney representing the state may object to any evidence. The Board shall then decide to do one of the following:

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

(b) Overrule the objection and admit the evidence and in considering the weight given to that evidence, consider the reason for the objection; or

(c) Grant a continuance for a period of time not to exceed 60 days to allow a witness to appear or be subpoenaed to testify about the evidence under consideration.

Stat. Auth.: ORS 161.387, OL 2007, Ch. 889 § 6 (SB 328)

Stats. Implemented: ORS 161.346, 161.395, 419C.532

Hist.: PSRB 2-2010, f. & cert. ef. 9-28-10

#### **859-550-0045**

##### **Witnesses and Documents; Subpoena**

Witnesses or documents may be subpoenaed as provided in ORS 161.395.

Stat. Auth.: ORS 161.387, OL 2007, Ch. 889 § 6 (SB 328)

Stats. Implemented: ORS 161.346, 161.395, 419C.532

Hist.: PSRB 2-2010, f. & cert. ef. 9-28-10

#### **859-550-0050**

##### **Testimony Given on 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.

Stat. Auth.: ORS 161.385, 161.387; OL 2007, Ch. 889 § 6 (SB 328)

Stats. Implemented: ORS 161.346, 161.385, 419C.532

Hist.: PSRB 2-2010, f. & cert. ef. 9-28-10

#### **859-550-0055**

##### **Standards and Burdens of Proof**

(1) The standard of proof on all facts and issues at hearings of the Board shall be by the preponderance of the evidence.

(2) The burden of proof shall depend on the type of hearing. State has the burden at all hearings except at a youth-requested hearing or conditionally released youth requested hearings unless it has been more than two years since the State has had the burden of proof.

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

Stat. Auth.: ORS 161.387, OL 2007, Ch. 889 § 6 (SB 328)

Stats. Implemented: ORS 161.336, 161.341, 161.346, 419C.532, 419C.538, 419C.540, 419C.542

Hist.: PSRB 2-2010, f. & cert. ef. 9-28-10

#### **859-550-0060**

##### **Burden of Going Forward**

The party that has the burden of proof shall also have the burden of going forward with the evidence by calling and examining witnesses, proposing conditions of release or bringing other matters before the Board.

Stat. Auth.: ORS 161.387, OL 2007, Ch. 889 § 6 (SB 328)

Stats. Implemented: ORS 161.346, 419C.532, 419C.538, 419C.540, 419C.542

Hist.: PSRB 2-2010, f. & cert. ef. 9-28-10

#### **859-550-0070**

##### **Cancellation of Hearing**

(1) A youth may request to cancel a youth-requested hearing. However, unless a youth makes such a request in writing and with at least 3 weeks' advance notice, the youth shall not be eligible to request another hearing for six months from the date of the originally scheduled hearing.

(2) The Board shall not allow cancellation of any other type of hearing required by law.

Stat. Auth.: ORS 161.387, OL 2007, Ch. 889 § 6 (SB 328)

Stats. Implemented: ORS 161.346, 419C.532, 419C.538

Hist.: PSRB 2-2010, f. & cert. ef. 9-28-10

#### **859-550-0075**

##### **Use of Restraints**

(1) It is the Board's preference to have a youth appear at hearing without physical restraints. If, in the judgment of the youth's physician, the youth might need restraint, the Board would request that additional secure facility staff attend the hearing with the youth rather than use mechanical restraints. However, the final decision on use of restraints shall lie with the physician.

(2) Any attorney objecting to the youth appearing in restraints at the hearing may raise the issue and ask the Board to take testimony from the physician to justify the use of restraints.

Stat. Auth.: ORS 161.387, OL 2007, Ch. 889 § 6 (SB 328)

Stats. Implemented: ORS 161.346, 419C.532

Hist.: PSRB 2-2010, f. & cert. ef. 9-28-10



**859-550-0080**

**Decisions of the Board**

(1) The Board may issue its decision orally on the record at the hearing.

(2) Within 15 days following the conclusion of a hearing, the Board shall provide the youth, the attorney representing the youth, the youth's parents or guardians, if known, the person having legal custody of the youth, the district attorney of the county in which the youth was adjudicated, the attorney representing the state, the committing court and all others required by statute, written notice of the Board's decision:

(a) The order of the Board shall be signed by a member present at the hearing.

(b) The formal order of the Board shall contain the findings of facts, conclusions of law, reasons for the decision and notice of the right to appeal under ORS 161.385(8).

Stat. Auth.: ORS 161.387, OL 2007, Ch. 889 § 6 (SB 328)

Stats. Implemented: ORS 161.346, 161.385, 419C.532

Hist.: PSRB 2-2010, f. & cert. ef. 9-28-10

**859-550-0085**

**Notification of Right to Appeal**

At the conclusion of a Board hearing, the chair or acting chair shall provide the youth and attorney with written notification of the right to appeal an adverse decision within 60 days from the date an order is signed and the right to an attorney for that purpose, if indigent.

Stat. Auth.: ORS 161.387, OL 2007, Ch. 889 § 6 (SB 328)

Stats. Implemented: ORS 161.385

Hist.: PSRB 2-2010, f. & cert. ef. 9-28-10

**859-550-0090**

**Youth Appearing Pro Se**

The Board shall not allow a youth to represent himself or herself.

Stat. Auth.: ORS 161.387, OL 2007, Ch. 889 § 6 (SB 328)

Stats. Implemented: ORS 161.346, 419C.532

Hist.: PSRB 2-2010, f. & cert. ef. 9-28-10

**859-550-0095**

**Examination of Youth**

(1) The Board may, on its own motion, appoint a psychiatrist or psychologist to conduct a forensic mental health assessment and to submit a report to the Board, including an opinion as to the mental condition of the youth, whether the youth presents a substantial danger to others and whether the youth could be adequately controlled on conditional release with treatment and supervision. The Board may order the youth placed in temporary custody of any state secure facility or suitable facility for purposes of this examination.

(2) The attorney representing the state may choose, at the state's expense, a psychiatrist or psychologist to conduct a forensic mental health assessment. If that report is offered into evidence, the report shall include a written opinion as to the mental condition of the youth, whether the youth presents a substantial danger to others and whether the youth could be adequately controlled on conditional release with treatment and supervision. The attorney for the state shall file a written notice of intent to conduct such an examination.

(3) The attorney for the youth may file a written request for the Board to appoint a psychiatrist or psychologist to conduct a forensic mental health assessment. The Board shall approve or deny the request, taking into consideration the budget of the Board available for such examinations and the reasons for the request.

Stat. Auth.: ORS 161.387, OL 2007, Ch. 889 § 6 (SB 328)

Stats. Implemented: ORS 161.346, 419C.532, 419C.538, 419C.540

Hist.: PSRB 2-2010, f. & cert. ef. 9-28-10

**DIVISION 560**

**HEARINGS BEFORE THE JUVENILE PSYCHIATRIC  
SECURITY REVIEW BOARD**

**859-560-0005**

**Issues**

At any hearing before the Board, the issues considered shall be limited to those relevant to the purposes of the hearing. Notice of intent to raise new issues shall be given to the Board in writing at least 10 days prior to the hearing. If new issues are raised, the Board may continue the hearing to consider the issues and give the parties an opportunity to submit legal memoranda and/or additional evidence.

Stat. Auth.: ORS 161.387, OL 2007, Ch. 889 § 6 (SB 328)

Stats. Implemented: ORS 161.346, 419C.532, 419C.538, 419C.540

Hist.: PSRB 2-2010, f. & cert. ef. 9-28-10

**859-560-0010**

**Primary Concern: Protection of Society**

In determining whether a youth should be committed to a state secure facility, conditionally released or discharged, the Board shall have as its primary concern the protection of society. In considering the issue of dangerousness, the Board may hear testimony on whether the youth's mental disease or defect may, with reasonable medical probability, occasionally become active, and when active, render the youth a danger to others. The Board shall not discharge a youth for whom there is a finding of dangerousness.

Stat. Auth.: ORS 161.387, OL 2007, Ch. 889 § 6 (SB 328)

Stats. Implemented: ORS 161.336, 161.341, 161.346, 161.351, 419C.532, 419C.538, 419C.540

Hist.: PSRB 2-2010, f. & cert. ef. 9-28-10

**859-560-0015**

**Issues and Findings to Be Addressed At Hearings**

(1) Issues To Be Addressed At Hearings:

(a) At each and every hearing before the Board, the Board shall determine whether the youth is affected by a serious mental condition or a mental disease or defect and presents a substantial danger to others, whether the youth can be adequately controlled in the community with treatment and supervision, and whether the necessary supervision and treatment services are available.

(b) At a revocation hearing, the Board shall determine whether the revocation was appropriate based on the reasonable grounds listed in OAR 859-580-0010 and whether the youth may be continued on conditional release or should be committed to a secure facility.

(2) Findings at a hearing: At each statutory hearing before the Board, the Board shall make findings regarding the requisite jurisdictional elements. In addition:

(a) If the Board finds the youth is properly under its jurisdiction and not a proper subject for conditional release, the Board shall order the youth committed to, or retained in, a secure in-patient facility for custody, care and treatment.

(b) If the Board finds the youth is properly under its jurisdiction but can be adequately controlled with treatment and supervision if conditionally released yet a verified conditional release plan has not been developed, the Board shall find the youth appropriate for conditional release.

(c) If the Board finds the youth is properly under its jurisdiction but can be adequately controlled with treatment and supervision and that treatment and supervision are currently available and the Board approves of the plan and proposed conditions, the Board shall order the youth placed on conditional release.

(d) If the Board finds that the youth no longer meets the legal criteria for jurisdiction, the Board shall order the discharge of the youth from jurisdiction.

Stat. Auth.: ORS 161.387, OL 2007, Ch. 889 § 6 (SB 328)

Stats. Implemented: ORS 161.346, 419C.532, 419C.538, 419C.540

Hist.: PSRB 2-2010, f. & cert. ef. 9-28-10

**859-560-0045**

**Mandatory Hearings**

The Board shall have periodic mandatory hearings for all youth pursuant to ORS chapter 419C; annually for youth residing in a secure child or adolescent inpatient program and every 3 years for a youth on conditional release.

(1) In both of these types of hearings:

(a) Youth shall not be allowed to waive this hearing;

(b) If the youth refuses to attend, the Board shall proceed with the hearing in the youth's absence after ascertaining that the youth has received proper notice and is knowingly absenting himself or herself.

(2) The three year hearing shall be set as close to the three-year date as possible, but shall be held no later than 30 days after the expiration of the three-year period, and shall be combined with any other scheduled hearing for the youth.

Stat. Auth.: ORS 161.387, OL 2007, Ch. 889 § 6 (SB 328)

Stats. Implemented: ORS 161.336, 419C.542

Hist.: PSRB 2-2010, f. & cert. ef. 9-28-10

**859-560-0050**

**Status Hearing**

(1) The Board may hold a hearing on its own motion at any time to review the status of a youth to determine whether modification, revocation, any other change in conditional release or a status is warranted.

(2) The Board may order the youth to appear at a status hearing.

Stat. Auth.: ORS 161.387, OL 2007, Ch. 889 § 6 (SB 328)

Stats. Implemented: ORS 161.336, 161.346, 419C.532, 419C.538, 419C.540, 419C.542, 419C.544

Hist.: PSRB 2-2010, f. & cert. ef. 9-28-10

**DIVISION 570**

**CONDITIONAL RELEASE OF YOUTHS**

**859-570-0005**

**Cases of Court Conditional Release**

Upon receipt of the judgment order where the court has placed the youth on conditional release, the Board shall review each court conditional release file at a full hearing. In those cases the Board may:

(1) Issue an order continuing the court order of conditional release when all the elements of the conditional release plan are in accordance with procedures set forth in Division 570.

(2) Issue a modification of the court order of conditional release when, upon review, the conditional release plan has changed, has not been set out in sufficient detail or requires additional conditions.

(3) Issue an order of revocation in accordance with provisions set forth in Division 580.

Stat. Auth.: ORS 161.387, OL 2007, Ch. 889 § 6 (SB 328)

Stats. Implemented: ORS 161.327, 161.332, 161.336, 161.346, 419C.520, 419C.529, 419C.532, 419C.538, 419C.540

Hist.: PSRB 2-2010, f. & cert. ef. 9-28-10

**859-570-0010**

**Conditional Release Planning for Youths in Secure Facilities**

(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 youth. The Department of Human Services or Oregon Health Authority is responsible for and shall prepare the conditional release plan. In order to carry out the conditional release plan, the Department may contract with a community mental health program, other public agency or Private Corporation, or an individual to provide evaluations for community placement, supervision and treatment.

(2) Conditional Release Evaluation.

(a) If the Board finds the youth may be treated and controlled in the community, the Board shall order an evaluation of the youth by a community mental health or development disabilities agency for community placement.

(b) If staff of the designated secure facility determines that a youth may be ready for conditional release, the staff may request that the Board order an evaluation for community placement. That request shall be accompanied by a current treatment note update signed by the youth's treating psychiatrist.

(c) If the Board orders an evaluation for community placement, the designated evaluator shall review the youth's exhibit file and evaluate the youth in person to determine if the youth is appropriate for conditional release. The evaluator shall provide a written report to the board with its findings.

(A) If the community agency agrees that the youth is appropriate for conditional release and that it has the necessary treatment and is willing to accept supervision for the youth, the evaluation shall include proposed conditions of release. The treatment plan may include, but is not limited to, individual counseling, group counseling, home visits, prescription of medication, and any other treatment for any co-morbid condition such as substance abuse recommended by the provider(s) and approved by the Board. The provider must agree to have a designated individual that will have primary reporting responsibility to the Board, including the following responsibilities:

(i) Notify the Board in writing of the youth's progress at least once a month;

(ii) Notify the Board promptly of any grounds for revocation under OAR 859-080-0010;

(iii) Notify the Board promptly of any significant changes in the youth's mental status;

(iv) Notify the Board promptly of any significant changes in the implementation of the conditional release plan; and

(v) Coordinate and monitor all elements of the conditional release plan. The youth shall sign a form agreeing to comply with the proposed conditions of release. This signed form shall be submitted with the request for conditional release. The conditions shall include notice that if the youth leaves the state without authorization of the Board, the youth may be charged with a new crime of Escape II.

(B) If the community agency does not find that community placement is appropriate for the youth, the evaluator's written report shall outline the reasons for its findings and any recommendations for future treatment.

Stat. Auth.: ORS 161.387, OL 2007, Ch. 889 § 6 (SB 328)

Stats. Implemented: ORS 161.332, 161.336, 161.341, 161.346 161.390, 419C.520

Hist.: PSRB 2-2010, f. & cert. ef. 9-28-10

**859-570-0015**

**Board Order of Conditional Release**

If the Board finds the youth may be treated and controlled in the community and a verified conditional release plan is approved by the Board, the Board may order the youth placed on conditional release. In making that determination, the Board may consider the testimony and exhibits at the hearing regarding the youth's behavior in the secure facility including the youth's progress, insight and responsibility taken for the youth's own behavior.

Stat. Auth.: ORS 161.387, OL 2007, Ch. 889 § 6 (SB 328)

Stats. Implemented: ORS 161.332, 161.336, 161.346, 161.390, 419C.520, 419C.532, 419C.538, 419C.540

Hist.: PSRB 2-2010, f. & cert. ef. 9-28-10