



## PERMANENT ADMINISTRATIVE ORDER

### PSRB 1-2022

CHAPTER 859

PSYCHIATRIC SECURITY REVIEW BOARD

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CONTACT: Mandy Standiford

503-709-8861

mandy.standiford@psrb.oregon.gov

610 SW Alder St

Suite 420

Portland, OR 97205

Filed By:

Mandy Standiford

Rules Coordinator

#### RULES:

859-010-0005, 859-030-0010, 859-030-0015, 859-030-0020, 859-040-0025, 859-050-0005, 859-050-0015, 859-050-0030, 859-050-0045, 859-050-0050, 859-050-0055, 859-050-0095, 859-050-0100, 859-060-0015, 859-060-0025, 859-060-0030, 859-060-0035, 859-060-0040, 859-060-0045, 859-070-0005, 859-070-0030, 859-080-0015, 859-100-0035, 859-200-0005, 859-200-0010, 859-200-0020, 859-200-0046, 859-200-0060, 859-200-0070, 859-200-0071, 859-200-0072, 859-200-0080, 859-200-0085, 859-200-0115, 859-200-0150, 859-200-0230, 859-200-0235, 859-200-0300, 859-200-0310, 859-200-0315, 859-200-0320, 859-300-0210, 859-400-0210, 859-510-0005, 859-530-0015, 859-530-0020, 859-550-0005, 859-550-0030, 859-550-0095, 859-550-0100, 859-570-0010, 859-570-0025, 859-570-0030, 859-600-0025, 859-600-0030

AMEND: 859-010-0005

RULE TITLE: Definitions

NOTICE FILED DATE: 11/28/2021

RULE SUMMARY: This rule was amended to update definitions and comply with SB 206 (2021).

#### RULE TEXT:

- (1) "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.
- (2) "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;
- (3) "Case Monitors" 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.
- (4) "Client" refers to any person under the jurisdiction of the Board and may be used interchangeably with "person,"

"patient," or "outpatient."

(5) "Community Evaluation" is a written report ordered by the Board or other court and conducted by a qualified mental health professional from a local mental health program designated by the Board to determine if an individual can be adequately controlled with supervision and treatment if conditionally released and that appropriate supervision and treatment are available.

(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) "Consultation" is a screening completed on a PSRB template, ordered by a court and conducted by a qualified mental health professional from a local mental health program designated by the Board, to determine whether the necessary supervision and treatment for the individual are available in the community and appropriate for the individual and informs the court as to whether a community evaluation is necessary to determine whether the person can be adequately controlled with supervision and treatment if conditionally released.

(8) "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 qualifying mental disorder.

(9) "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.

(10) "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.

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

(a) A description of incident;

(b) A summary of the interventions that were used by community mental health provider staff;

(c) A summary of the debrief with the individual or a summary of why a debrief did not occur; and

(d) Any recommendations on how to mitigate future incidents, including but not limited to modifications to the individual's conditional release plan.

(12) "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 qualifying mental disorder (formerly "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."

(13) "Jurisdictional Report" means a report completed by a psychiatrist, psychiatric mental health nurse practitioner, or licensed psychologist that assists the Board in making the determinations described in ORS 161.341(1), ORS 161.346(1), or ORS 161.336(5)(a) and includes an analysis of the following information:

(a) An opinion as to the mental condition of the person;

(b) Whether the person presents a substantial danger to others; and

- (c) Whether the person could be adequately controlled with treatment as a condition of release.
- (14) "Monthly Progress Report" means a template report available on the PSRB's website that is required to be completed for all individuals who are on conditional release by the individual's case monitor each month that includes the following information attached, if applicable:
- (a) Prescriber and specialty progress notes that occurred within the reporting month of the monthly progress report; and
  - (b) Any incident reports that that occurred within the reporting month of the monthly progress report.
- (15) "Qualifying Mental Disorder" (formerly "Mental disease or defect") means:
- (a) a developmental or intellectual disability, 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 5) of the American Psychiatric Association; or
  - (b) 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 Diagnostic and Statistical Manual of Mental Disorders (DSM 5) of the American Psychiatric Association.
- (c) "Qualifying Mental Disorder," described in subsections (a) and (b), excluding those conditions described in subsection (d) includes:
- (A) A disorder in a state of remission which could with reasonable medical probability occasionally become active; or
  - (B) A disorder that could become active as a result of a non-qualifying mental disorder.
- (d) "Non-Qualifying Mental Disorder" is defined as a mental disorder in which 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.
- (16) "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.
- (17) "PSRB" or "Board" means the Oregon Psychiatric Security Review Board.
- (18) "Quorum" means the presence of at least three members, in person or on the telephone, of the Adult Panel of the Board.
- (19) "State Hospital" means any state institution or facility operated by the Oregon Health Authority.
- (20) "Unauthorized Departure" means a person who is under the jurisdiction of the Board who is conditionally released to the community that:
- (a) Leaves the supervision of the community mental health program staff without permission;
  - (b) Leaves the authorized placement listed on the conditional release order without permission;
  - (c) Fails to return to the authorized placement listed on the conditional release order at the appointed time;
  - (d) Leaves the State of Oregon without authorization of the Board; or
  - (e) Fails to return to the State of Oregon as directed by the Board.
- (21) "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.

STATUTORY/OTHER AUTHORITY: ORS 161.387

STATUTES/OTHER IMPLEMENTED: ORS 161.387, ORS 161.295 - 161.400

AMEND: 859-030-0010

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

NOTICE FILED DATE: 11/28/2021

RULE SUMMARY: This rule was amended to update rule and statutory references, and clarify current Board policies regarding time that a client under the jurisdiction of the Board spends while on escape from the state hospital or on unauthorized departure while on conditional release in the community.

RULE TEXT:

- (1) In accordance with ORS 161.325, the Board will take jurisdiction over persons adjudged by the court to be guilty except for insanity and who present a substantial danger to others.
- (2) The period of jurisdiction of under the Board will be that sentence ordered by the court that places the person under PSRB jurisdiction.
- (3) The Board will maintain jurisdiction over persons who are legally placed under its jurisdiction by any court of the State of Oregon or transferred from the jurisdiction of the Oregon Health Authority.
- (4) Judgment orders placing individuals under Board jurisdiction must:
  - (a) Indicate whether the court finds the individual is a proper subject for conditional release, and if so, that the procedures outlined in OAR 859-070-0005 and ORS 161.327 have been completed.
  - (b) Identify the length of Board jurisdiction over the individual;
  - (c) Any supervisory or other special orders the court delivered with its judgment.
- (5) If the court's order is unclear or is missing information required by ORS 161.325 or ORS 161.327, the Board may seek clarification on the matter from the court.
- (6) The Board will not retain jurisdiction over persons if the court order places the person under the Board only because of a judgment of guilty except for insanity for a probation violation. In order for the Board to retain jurisdiction, the person must be placed under the Board's jurisdiction for the initial offense.
- (7) The Board's Adult Panel will accept jurisdiction of remanded youth who are found Guilty Except for Insanity (GEI) in adult court and placed under the Board's Adult Panel Jurisdiction. For rules regarding adjudicated youth who are found Responsible Except for Insanity (REI) in juvenile court and placed under the Board's Juvenile Panel, see OAR 859, Divisions 501 through 600.
- (8) Upon receipt of verified information regarding time spent in custody, persons placed under the Board's jurisdiction will receive credit for:
  - (a) Time spent in any correctional facility or jail for the offense or conduct for which the person was placed under the Board's jurisdiction; 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.
- (9) Escape from the state hospital or unauthorized departure while on conditional release.
  - (a) The Board does not consider time that a client under the Board's jurisdiction spent while on escape from the Oregon State Hospital as part of the person's jurisdictional time and will add that time to the end of jurisdiction date.
  - (b) Time spent on unauthorized departure while on conditional release will be tolled and added to the end of the person's end of jurisdiction date.
  - (c) Persons may contest having time tolled and added to their end of jurisdiction date at any full hearing before the Board.

STATUTORY/OTHER AUTHORITY: ORS 161.387

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

ADOPT: 859-030-0015

RULE TITLE: Victim's Rights

NOTICE FILED DATE: 11/28/2021

RULE SUMMARY: This rule was adopted to ensure that victims and victim advocates are able to find all rights pertaining to a victim under a single rule.

RULE TEXT:

- (1) The Board shall make reasonable efforts to notify victims identified in a jurisdictional order or victims who have requested to be notified of any of the following regarding a person under the Board's jurisdiction:
  - (a) Any order;
  - (b) Hearings;
  - (b) Conditional release;
  - (c) Discharge;
  - (d) Move to a temporary placement due to an emergency; and
  - (e) Escape or unauthorized departure of the person.
- (2) Victims may provide oral or written victim impact statements at a person's full hearing and written victim impact statements at a person's administrative hearing. Victim impact statements are not considered testimony and will not be taken under oath by the Board.
- (3) Victims may provide a written request for a copy of a person's recorded hearing on a removeable media storage device at no charge.
- (4) Victims are given priority seating at all in-person hearings.
  - (a) Victims are encouraged to notify Board staff immediately of hearings-day time constraints. The Board considers reasonable scheduling restrictions from victims.
  - (b) The Board may permit victims to appear by remote means for full hearings.
  - (c) Victims are entitled to due dignity and respect. This may include prohibiting the recording of a victim impact statement or other portions of the hearing that include graphic depictions of the instant offense.
- (5) Victims may request to be added to the notification list and provide updated contact information at any time by emailing PSRB staff: [psrb@psrb.oregon.gov](mailto:psrb@psrb.oregon.gov). The Board uses this notification list as its primary means to notify a victim of the circumstances outlines in section (1) of this rule.

STATUTORY/OTHER AUTHORITY: ORS 161.387

STATUTES/OTHER IMPLEMENTED: ORS 161.387, ORS 161.326

ADOPT: 859-030-0020

RULE TITLE: Diversity, Equity, and Inclusion

NOTICE FILED DATE: 11/28/2021

RULE SUMMARY: This rule is being adopted to clarify the Board's commitment to engaging in practices that value diversity, equity, and inclusion.

RULE TEXT:

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

STATUTORY/OTHER AUTHORITY: ORS 161.387

STATUTES/OTHER IMPLEMENTED: ORS 161.387

AMEND: 859-040-0025

RULE TITLE: Public Participation

NOTICE FILED DATE: 11/28/2021

RULE SUMMARY: This rule was amended to remove unnecessary language regarding the relocation of a previous rule to a new section and update statutory authority

RULE TEXT:

(1) The Adult Panel of the Board will allocate a public comment period during its Administrative meetings. The Adult Panel Chairperson or Acting Chairperson may set a time limit for participants electing to speak during that period.

(2) The public may not participate in the discussion during Administrative meetings unless invited by the Board Chairperson.

STATUTORY/OTHER AUTHORITY: ORS 161.387

STATUTES/OTHER IMPLEMENTED: ORS 161.385, ORS 192.630, ORS 192.690, ORS 192.672

AMEND: 859-050-0005

RULE TITLE: Notice

NOTICE FILED DATE: 11/28/2021

RULE SUMMARY: This rule was amended to update statutory authority.

RULE TEXT:

Written notice of hearings will be given to those indicated in ORS 161.346(5) and 161.326.

(1) Those given notice under ORS 161.346(5) and 161.326 include the:

- (a) Person about whom the hearing is being conducted;
- (b) Attorney representing the person under PSRB jurisdiction;
- (c) District attorney;
- (d) Community supervisor or case monitor;
- (e) Court or department of the county from which the person was committed;
- (f) The victim, if the court or Board finds the victim requests notification;
- (g) Any other interested person requesting notification;
- (h) Forensic unit of Oregon State Hospital;

(2) The written notice of hearings will contain the information specified in ORS 161.346, as follows:

- (a) The time, place, and location of the hearing;
  - (b) The nature of the hearing and the specific action for which a hearing has been requested, the issues to be considered at the hearing and a reference to the particular sections of the statutes and rules involved;
  - (c) A statement of the legal authority and jurisdiction under which the hearing is to be held; and
  - (d) A statement outlining the following additional rights:
    - (A) To appear at all proceedings held pursuant to this section, except for deliberations;
    - (B) To cross-examine all witnesses appearing to testify at the hearing;
    - (C) To subpoena witnesses and documents as provided in ORS 161.395;
    - (D) To be represented by suitable legal counsel possessing skills and experience commensurate with the nature and complexity of the case, to consult with counsel prior to the hearing and, if financially eligible, to have suitable counsel appointed at state expense; and
    - (E) To examine all information, documents and reports that the agency considers. If available to the agency at that time, the information, documents and reports will be disclosed to the person so as to allow examination prior to the hearing.
- (3) In order to reduce the waste associated with unnecessary paper use, the Board will deliver its hearings notices electronically. Those with a need for hard copies may request them from Board staff.

STATUTORY/OTHER AUTHORITY: ORS 161.387

STATUTES/OTHER IMPLEMENTED: ORS 161.346, ORS 161.326, ORS 161.336

AMEND: 859-050-0015

RULE TITLE: Time of Hearings

NOTICE FILED DATE: 11/28/2021

RULE SUMMARY: This rule was amended to clarify Board policies regarding hearing requests, removal of grammatical errors, and to comply with the passage of SB 205 (2021).

RULE TEXT:

Hearings will be held within the following time frames:

- (1) Initial hearing under ORS 161.341(6)(a). After a person has been placed under the Board's jurisdiction and committed to a state hospital designated by the Oregon Health Authority—90 days from the date of admission to the state hospital.
- (2) Initial review hearing for individual's conditionally released by the court under ORS 161.327(1)(b). After an individual has been placed under the Board's jurisdiction and conditionally released by the court – 90 days from the date listed on the court order.
- (3) Revocation hearing, ORS 161.336(4)(c). After return to the state hospital as a result of an Order of Revocation for violation of the conditional release—20 days.
- (4) Patient request for conditional release or discharge, ORS 161.341(3)(4)(5). A patient is eligible to request a hearing six months after last hearing. Hearing to be held within 60 days after filing request.
- (5) Hospital request, ORS 161.341(1), or outpatient supervisor request, ORS 161.336(5)(b), for conditional release, modification of conditional release or discharge. Request may be made at any time. Hospital requests will be scheduled within 60 days of receiving a completed application for hearing. Outpatient supervisor requests do not have statutory time frame.
- (6) Outpatient request for modification of conditional release or discharge, ORS 161.336(5)(a). Outpatients on conditional release are eligible to request a hearing six months after last hearing—scheduling priority will be given to the requests of patients in the hospital.
- (7) Two-year hearing, ORS 161.341(6)(b). A hearing is mandatory for persons committed to a state hospital when no other hearing has been held within two years.
- (8) Five-year hearing, ORS 161.336(6). Any person who is under the jurisdiction of the Board and who has spent five years on conditional release will be brought before the Board for a hearing within 30 days of the expiration of the five year period.
- (9) The Board will hold administrative hearings to expedite modifications of conditional release requests supported by the case monitor. Either party may request that the Board hold an administrative hearing. The Board may deny such a request if too limited by time or other resources to grant it.
- (10) Notice of administrative hearings is given to the parties and the district attorney in the county where the GEI was adjudicated, persons who have requested notice and known victims who have requested hearing notice and have a current address on file with the Board. For purposes of this rule, the parties will receive a complete exhibit file containing a minimum of:
  - (a) Recent monthly progress reports;
  - (b) A report or correspondence with the treatment provider; and
  - (c) If applicable, a community conditional release plan.
- (11) Either party may request a full hearing on the proposed modification up to the day prior to a scheduled administrative hearing.
- (12) When a patient or outpatient's mental health status has changed or he or she can no longer be safely managed under the existing conditional release order, the Board or community provider may issue modifications without notice.
  - (a) A copy of the new Board order will be distributed to those specified in ORS 161.346(10).
  - (b) If either party objects to the new order, that party may request a full hearing on the matter.
- (13) If a request for discharge will be made at a full hearing, the Board shall be notified of the request as soon as

practicable before the scheduled hearing to provide reasonable notice, per ORS 161.346(4) or ORS 161.336(5)(a). If a request for discharge is not made prior to this date, either party may request a continuance or the Board may, of its own motion, continue the matter.

STATUTORY/OTHER AUTHORITY: ORS 161.387

STATUTES/OTHER IMPLEMENTED: ORS 161.336, ORS 161.341, ORS 161.351, ORS 161.327, ORS 161.346, ORS 161.326, ORS 161.327

AMEND: 859-050-0030

RULE TITLE: Evidence Considered; Admissibility

NOTICE FILED DATE: 11/28/2021

RULE SUMMARY: This rule was amended to update language to be consistent with new definitions under OAR 859-010-0005.

RULE TEXT:

The Board will consider all material, relevant, and reliable evidence available to it. All evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs will 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 patient.
- (3) Information concerning the patient's mental condition, incident reports and monthly progress reports.
- (4) The patient's entire psychiatric and criminal history, including motor vehicle records.
- (5) Jurisdictional reports ordered by the Board under ORS 161.346(3).
- (6) Jurisdictional reports under ORS 161.341(2), written by a person chosen by the state or the patient to examine the patient.
- (7) Testimony of witnesses.

STATUTORY/OTHER AUTHORITY: ORS 161.387

STATUTES/OTHER IMPLEMENTED: ORS 161.336, ORS 161.341, ORS 161.346

AMEND: 859-050-0045

RULE TITLE: Witnesses and Documents; Subpoena

NOTICE FILED DATE: 11/28/2021

RULE SUMMARY: This rule was amended to add subpoenas that Board staff will prepare.

RULE TEXT:

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 or physical evidence sought:

- (1) Witnesses with a subpoena other than parties or state officers or employees will 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 will compel obedience by proceeding for contempt for failure of any person to comply with the subpoena issued.
- (3) Board staff will prepare subpoenas duces tecum and subpoenas for testimony requested by either party. However, the party requesting the subpoena is responsible for serving the subpoena.

STATUTORY/OTHER AUTHORITY: ORS 161.387

STATUTES/OTHER IMPLEMENTED: ORS 161.346, ORS 161.395

AMEND: 859-050-0050

RULE TITLE: Testimony Given on Oath

NOTICE FILED DATE: 11/28/2021

RULE SUMMARY: This rule was amended to remove references to victim impact statements, as this language has been moved to OAR 859-030-0015.

RULE TEXT:

The Board will take testimony of a witness upon oath or affirmation of the witness administered by the Chairperson or acting Chairperson at the hearing.

STATUTORY/OTHER AUTHORITY: ORS 161.387

STATUTES/OTHER IMPLEMENTED: ORS 161.346, ORS 161.385

AMEND: 859-050-0055

RULE TITLE: Burdens

NOTICE FILED DATE: 11/28/2021

RULE SUMMARY: This rule was amended to comply with SB 206 (2021).

RULE TEXT:

- (1) The standard of proof on all issues at hearings of the Board will be the preponderance of the evidence.
- (2) The party with the burden of proof will also have the burden of going forward with the evidence (call and examine witnesses, propose conditions of release, etc.).
- (3) The burden of proof will depend on the type of hearing, as follows:
  - (a) Initial 90-day hearing under ORS 161.341(6)(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.
  - (b) Initial review hearing under ORS 161.327(10): The state has the burden of proving that the current court conditional release, modification of conditional release, or a proposed plan is appropriate.
  - (c) Revocation hearing under ORS 161.336(4)(c): The state has the burden to show that the revocation of conditional release was appropriate and that jurisdiction of the Board should continue.
  - (d) Conditionally released outpatient's request for modification of a conditional release or discharge under ORS 161.336(5)(a): The patient has the burden of proving his or her fitness for modification of a conditional release or discharge.
  - (e) Hospital patient's request for conditional release or discharge under ORS 161.341(3): 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.
  - (f) Request for conditional release or discharge of the patient by the State Hospital under ORS 161.341(1): the state must prove the person is not appropriate for conditional release or discharge.
  - (g) Request for conditional release or discharge of the outpatient by an outpatient supervisor under ORS 161.336(5)(b): the State has the burden.
  - (h) At a status review hearing (5 year hearing) under ORS 161.336(6): The state has the burden of proving that the current conditional release, modification of conditional release, or a proposed plan is appropriate.
  - (i) 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.
  - (j) The testimony of hospital staff will be considered as evidence to assist the Board in deciding whether the patient has met his/her burden.

STATUTORY/OTHER AUTHORITY: ORS 161.387

STATUTES/OTHER IMPLEMENTED: ORS 161.336, ORS 161.341, ORS 161.346, ORS 161.327

AMEND: 859-050-0095

RULE TITLE: Examination of Person Under Jurisdiction of the Board

NOTICE FILED DATE: 11/28/2021

RULE SUMMARY: This rule was amended to remove the term "patient" from the rule title, add language consistent with the definitions under OAR 859-010-0005, and clarify who may be appointed to examine a person and submit a jurisdictional report to the Board.

RULE TEXT:

- (1) The Board may appoint a psychiatrist, psychiatric mental health nurse practitioner, or licensed psychologist to examine the person and submit a jurisdictional 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:
- (2) The attorney representing the state may choose, at the state's expense, a psychiatrist or licensed psychologist to examine the person.
  - (a) The jurisdictional report will 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.
  - (b) The attorney for the state will file a written notice of intent to conduct an examination. This notice may include a request for a continuance of the scheduled hearing in order to allow time for the requested examination.
- (3) The attorney for the patient/outpatient may file a written request for the Board to appoint a psychiatrist or licensed psychologist to examine the patient/outpatient at the Public Defense Services Commission's expense. The attorney may request a continuance of the scheduled hearing in order to allow time for the requested examination.
- (4) The Board, regardless of whether a request for examination is made by the Board, the State, the person's attorney or the patient, may order the person placed in temporary custody of any state hospital or suitable facility for purposes of examination.

STATUTORY/OTHER AUTHORITY: ORS 161.387

STATUTES/OTHER IMPLEMENTED: ORS 161.346

AMEND: 859-050-0100

RULE TITLE: Appearance at Hearings by Remote Means

NOTICE FILED DATE: 11/28/2021

RULE SUMMARY: This rule was amended to provide clarification regarding remote hearings.

RULE TEXT:

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

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

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

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

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

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

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

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

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

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

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

STATUTORY/OTHER AUTHORITY: ORS 161.387

STATUTES/OTHER IMPLEMENTED: ORS 161.326 - 161.351

AMEND: 859-060-0015

RULE TITLE: Initial Hearing

NOTICE FILED DATE: 11/28/2021

RULE SUMMARY: This rule was amended to comply with SB 206 (2021).

RULE TEXT:

(1) 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:

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

(b) If the Board finds at its initial hearing that the person is affected by a qualifying mental disorder, 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 Oregon Health Authority for custody, care, and treatment.

(c) If the Board finds the person is still affected by a qualifying mental disorder 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 70.

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

(2) After being placed under the jurisdiction of the Board and conditionally released by the court, the person shall have an initial review hearing before the Board to determine whether the person should be committed to a state hospital, continued on conditional release, or discharged.

(a) If the Board finds at its initial review hearing that the person is affected by a qualifying mental disorder, presents a substantial danger to others and is not a proper subject for conditional release, the Board shall order the person committed to a state hospital designated by the Oregon Health Authority for custody, care and treatment.

(b) If the Board finds the person is still affected by a qualifying mental disorder and is a substantial danger to others but can be adequately controlled with treatment and supervision, the Board shall find the person appropriate for continued conditional release.

(c) 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.

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

STATUTORY/OTHER AUTHORITY: ORS 161.387

STATUTES/OTHER IMPLEMENTED: ORS 161.336, ORS 161.341, ORS 161.346, ORS 161.327

AMEND: 859-060-0025

RULE TITLE: Patient Request for Conditional Release

NOTICE FILED DATE: 11/28/2021

RULE SUMMARY: This rule was amended to ensure consistency with the definitions under OAR 859-010-0005.

RULE TEXT:

(1) In a hearing before the Board on a person under the jurisdiction of the PSRB's request for conditional release, the Board shall consider whether, although still affected by a qualifying mental disorder, the person 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.

(2) A jurisdictional report is required to schedule this hearing type.

STATUTORY/OTHER AUTHORITY: ORS 161.387

STATUTES/OTHER IMPLEMENTED: ORS 161.341

AMEND: 859-060-0030

RULE TITLE: Patient Request for Discharge

NOTICE FILED DATE: 11/28/2021

RULE SUMMARY: This rule was amended to ensure consistency with the definitions under OAR 859-010-0005.

RULE TEXT:

(1) 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 qualifying mental disorder and is a substantial danger to others:

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

(b) 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.

(2) A jurisdictional report is required to schedule this hearing type.

STATUTORY/OTHER AUTHORITY: ORS 161.387

STATUTES/OTHER IMPLEMENTED: ORS 161.341

AMEND: 859-060-0035

RULE TITLE: Hospital Request for Conditional Release

NOTICE FILED DATE: 11/28/2021

RULE SUMMARY: This rule was amended to ensure consistency with the definitions under OAR 859-010-0005.

RULE TEXT:

(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 a qualifying mental disorder and continues to be a danger to others but can be controlled in the community with proper care, medication, supervision and treatment.

(2) A jurisdictional report is required to schedule this hearing type.

STATUTORY/OTHER AUTHORITY: ORS 161.387

STATUTES/OTHER IMPLEMENTED: ORS 161.341

AMEND: 859-060-0040

RULE TITLE: Hospital or Outpatient Supervisor Request for Discharge

NOTICE FILED DATE: 11/28/2021

RULE SUMMARY: This rule was amended to ensure consistency with the definitions under OAR 859-010-0005.

RULE TEXT:

(1) At any time while a patient is committed to a state hospital designated by the Oregon Health Authority the superintendent of the hospital or designee shall apply to the Board for discharge if, in the opinion of the hospital superintendent or designee the person is no longer affected by a qualifying mental disorder or, if so affected, the person no longer presents a substantial danger to others.

(2) At any time while an individual is on conditional release, the case monitor shall apply to the Board for discharge if, in the opinion of the case monitor, the person is no longer affected by a qualifying mental disorder or, if so affected, the person no longer presents a substantial danger to others.

(3) A jurisdictional report is required to schedule this hearing type.

STATUTORY/OTHER AUTHORITY: ORS 161.387

STATUTES/OTHER IMPLEMENTED: ORS 161.341

AMEND: 859-060-0045

RULE TITLE: Mandatory Two-Year, Five-Year Hearings

NOTICE FILED DATE: 11/28/2021

RULE SUMMARY: This rule was amended to ensure consistency with the definitions under OAR 859-010-0005.

RULE TEXT:

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 a qualifying mental disorder, whether the person presents a substantial danger to others, and if the person is affected by a qualifying mental disorder 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 a qualifying mental disorder, whether the person presents a substantial danger to others, and if the person is affected by a qualifying mental disorder and is a substantial danger to others, whether the person shall be continued on conditional release.

(3) A jurisdictional report is required to schedule these hearing types.

STATUTORY/OTHER AUTHORITY: ORS 161.387

STATUTES/OTHER IMPLEMENTED: ORS 161.341, ORS 161.351

AMEND: 859-070-0005

RULE TITLE: Court Conditional Release

NOTICE FILED DATE: 11/28/2021

RULE SUMMARY: This rule was amended to comply with SB 206 (2021).

RULE TEXT:

(1) 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.

(2) To make the finding above, the court must:

(a) Order a consultation to the local mental health program designated by the Board to determine whether the necessary supervision and treatment for the person are available in the community and appropriate for the person.

(A) A consultation must be ordered by the court when the person's most serious offense in the charging instrument is a Class C felony.

(B) A consultation may be ordered by the court when the person's most serious offense in the charging instrument is a Class A or Class B felony.

(b) Order a community evaluation if the local mental health program determines through the consultation that the necessary supervision and treatment for the person are available in the community and appropriate for the person.

(3) All orders conditionally releasing a person must include:

(a) The agency designated by the Board to supervise the person upon release;

(b) The address where the person shall reside; and

(c) Those conditions as outlined on the Summary of Conditional Release Plan template available on the PSRB's website, including, but not limited to mandated treatment type and frequency and other special conditions that the court finds are in the best interests of justice, the protection of society and the welfare of the person.

(4) The court must notify the Board within one judicial day of a conditional release order and provide to the Board an electronic copy of the conditional release order.

(5) The Board shall hold an initial review hearing within 90 days from the date an individual is ordered to be placed on a court conditional release. 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.

(6) 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.

(7) The Board may issue an order of revocation in accordance with provisions set forth in Division 80.

STATUTORY/OTHER AUTHORITY: ORS 161.387

STATUTES/OTHER IMPLEMENTED: ORS 161.327

AMEND: 859-070-0030

RULE TITLE: Evaluation and Reports

NOTICE FILED DATE: 11/28/2021

RULE SUMMARY: This rule was amended to ensure consistency with the definitions under OAR 859-010-0005.

RULE TEXT:

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

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

(a) Unauthorized departure;

(b) Arrest;

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

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

(e) Psychiatric or medical hospitalization;

(f) Violent or dangerous behaviors; or

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

STATUTORY/OTHER AUTHORITY: ORS 161.387

STATUTES/OTHER IMPLEMENTED: ORS 161.336

AMEND: 859-080-0015

RULE TITLE: Procedure for Revocation

NOTICE FILED DATE: 11/28/2021

RULE SUMMARY: This rule was amended to correct rule citations.

RULE TEXT:

(1) 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.

(2) A community mental health program director shall contact the PSRB's executive director as soon as is safe and practicable after discovering that a law enforcement officer has contacted a PSRB patient for whom the mental health program director has responsibility.

(3) When a law enforcement officer contacts a PSRB patient who has absconded from conditional release, a written or electronic order from the patient's assigned community mental health program director shall serve as sufficient warrant for the officer to take the patient into custody and to transport the patient to an appropriate facility as outlined in ORS 161.336.

(4) Any Psychiatric Security Review Board patient whose conditional release is revoked under this chapter is entitled to a hearing under ORS 161.336(4)(c).

(5) For purposes of this section, "other facility" means a residential facility that provides mental health treatment and is licensed, certified, contracted, or operated by the Oregon Health Authority.

STATUTORY/OTHER AUTHORITY: ORS 161.387

STATUTES/OTHER IMPLEMENTED: ORS 161.336

ADOPT: 859-100-0035

RULE TITLE: Emergency Move Exceptions

NOTICE FILED DATE: 11/28/2021

RULE SUMMARY: This rule was adopted to ensure that persons under the jurisdiction of the Board are able to move to a temporary placement in the community during an emergency.

RULE TEXT:

(1) Nothing in Divisions 1 through 110 prohibits the Board, the community placement, and the Oregon Health Authority from entering into a mutually satisfactory agreement regarding the patient's temporary placement in the community during an emergency.

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

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

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

STATUTORY/OTHER AUTHORITY: ORS 161.387

STATUTES/OTHER IMPLEMENTED: ORS 161.387

AMEND: 859-200-0005

RULE TITLE: Background and Purpose of Extremely Dangerous Civil Commitment Program

NOTICE FILED DATE: 11/28/2021

RULE SUMMARY: This rule was amended to comply with SB 205 (2021).

RULE TEXT:

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

(a) Extremely dangerous:

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

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

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

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

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

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

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

STATUTORY/OTHER AUTHORITY: ORS 161.387, ORS 426.701

STATUTES/OTHER IMPLEMENTED: ORS 161.387, ORS 426.701, ORS 426.702

AMEND: 859-200-0010

RULE TITLE: Rules Applicability

NOTICE FILED DATE: 11/28/2021

RULE SUMMARY: This rule was amended to correct administrative rule and statutory citations.

RULE TEXT:

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

STATUTORY/OTHER AUTHORITY: ORS 161.387, ORS 426.701

STATUTES/OTHER IMPLEMENTED: ORS 161.387, ORS 426.701, ORS 426.702

AMEND: 859-200-0020

RULE TITLE: Definitions

NOTICE FILED DATE: 11/28/2021

RULE SUMMARY: This rule was amended to update definitions and comply with SB 205 (2021).

RULE TEXT:

- (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) "Incident Report" means a report completed by the PSRB case monitor that describes any significant behavioral or mental health changes, serious violations of conditional release requirements, psychotropic medication refusals, or any other information that is relevant to an individual's ability to be safely managed in a community setting. The incident report should contain the following information:
  - (a) A description of incident;
  - (b) A summary of the interventions that were used by community mental health provider staff;
  - (c) A summary of the debrief with the individual or a summary of why a debrief did not occur; and
  - (d) Any recommendations on how to mitigate future incidents, including but not limited to modifications to the individual's conditional release plan.
- (10) "Qualifying Mental disorder" means a mental illness that is resistant to treatment. A "qualifying mental disorder" is resistant to treatment if, after receiving care from a licensed psychiatrist and exhausting all reasonable psychiatric treatment, or after refusing psychiatric treatment, the person continues to be significantly impaired in the person's ability to make competent decisions and to be aware of and control extremely dangerous behavior.
- (11) "Mental illness" 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 illness" does not include an abnormality manifested solely by repeated criminal or otherwise antisocial conduct. The term "mental illness" does not include a disorder constituting solely a personality disorder and excludes a diagnosis of an intellectual disability or developmental disability as defined in ORS 427.005.

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

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

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

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

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

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

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

(19) "Victim" means the person or persons who have suffered financial, social, psychological or physical harm as a result of one of the acts articulated in ORS 426.701(3)(a)(C) and for whom the extremely dangerous 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.

STATUTORY/OTHER AUTHORITY: ORS 161.387, ORS 426.701

STATUTES/OTHER IMPLEMENTED: ORS 161.387, ORS 426.701, ORS 426.702

ADOPT: 859-200-0046

RULE TITLE: Appearance at Hearings by Remote Means

NOTICE FILED DATE: 11/28/2021

RULE SUMMARY: This rule was adopted to provide clarification regarding remote hearings before the Board.

RULE TEXT:

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

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

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

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

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

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

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

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

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

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

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

STATUTORY/OTHER AUTHORITY: ORS 161.387, ORS 426.701

STATUTES/OTHER IMPLEMENTED: ORS 161.387, ORS 426.701, ORS 426.702

AMEND: 859-200-0060

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

NOTICE FILED DATE: 11/28/2021

RULE SUMMARY: This rule was amended to comply with SB 205 (2021).

RULE TEXT:

(1) The Board presumes that the district attorney from the county of commitment will represent the State at all PSRB hearings. If another representative or agency is appointed or designated by the district attorney, such as an Assistant Attorney General or the district attorney in the county of current residence, the district attorney of the county of commitment shall notify the Board within 7 days of that appointment.

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

STATUTORY/OTHER AUTHORITY: ORS 161.387, ORS 426.701

STATUTES/OTHER IMPLEMENTED: ORS 161.387, ORS 426.701, ORS 426.702

AMEND: 859-200-0070

RULE TITLE: Types of Hearings/Certification Procedure

NOTICE FILED DATE: 11/28/2021

RULE SUMMARY: This rule was amended to ensure consistency with the definitions under OAR 859-200-0020 and comply with SB 205 (2021).

RULE TEXT:

(1) Initial 6-Month Hearings

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

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

(2) Revocation Hearings.

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

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

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

(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 monitor may request a status hearing to amend or modify the person's conditions of release. The request for the hearing should be accompanied by a proposed Summary of Conditional Release Plan that reflects the requested modifications.

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

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

(d) At any time, if either the person or the State objects to requested conditional release plan modifications, the person or the State may request a full hearing regarding the requested modifications rather than having the modifications considered at an administrative review.

(6) PSRB Case Monitor Request for Discharge Hearings. At any time during the person's conditional release, the PSRB case monitor may request a hearing for discharge if the treating physician or certified mental health examiner believes the person no longer suffers from a mental disorder that is resistant to treatment or is no longer extremely dangerous. The request for discharge of the person from the Board's jurisdiction should be accompanied by a report setting forth the facts and evidence upon which the request is based.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

STATUTORY/OTHER AUTHORITY: ORS 161.387, ORS 426.701

STATUTES/OTHER IMPLEMENTED: ORS 161.387, ORS 426.701, ORS 426.702

ADOPT: 859-200-0071

RULE TITLE: Discharge Recommendations from the State Hospital or Local Mental Health Facility

NOTICE FILED DATE: 11/28/2021

RULE SUMMARY: This rule was adopted to comply with SB 205 (2021).

RULE TEXT:

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

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

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

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

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

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

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

STATUTORY/OTHER AUTHORITY: ORS 161.387, ORS 426.701

STATUTES/OTHER IMPLEMENTED: ORS 161.387, ORS 426.701, ORS 426.702

ADOPT: 859-200-0072

RULE TITLE: Further Periods of Commitment

NOTICE FILED DATE: 11/28/2021

RULE SUMMARY: This rule was adopted to comply with SB 205 (2021).

RULE TEXT:

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

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

STATUTORY/OTHER AUTHORITY: ORS 161.387, ORS 426.701

STATUTES/OTHER IMPLEMENTED: ORS 161.387, ORS 426.701, ORS 426.702

AMEND: 859-200-0080

RULE TITLE: Person's Right to Review Record; Exceptions

NOTICE FILED DATE: 11/28/2021

RULE SUMMARY: This rule was amended to correct a statutory citation.

RULE TEXT:

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

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

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

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

STATUTORY/OTHER AUTHORITY: ORS 161.387, ORS 426.701

STATUTES/OTHER IMPLEMENTED: ORS 161.387, ORS 426.701, ORS 426.702

AMEND: 859-200-0085

RULE TITLE: Evidence Considered; Admissibility

NOTICE FILED DATE: 11/28/2021

RULE SUMMARY: This rule was amended to ensure consistency with the definitions under OAR 859-200-0020.

RULE TEXT:

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

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

STATUTORY/OTHER AUTHORITY: ORS 161.387, ORS 426.701

STATUTES/OTHER IMPLEMENTED: ORS 161.387, ORS 426.701, ORS 426.702

AMEND: 859-200-0115

RULE TITLE: Waiver of Appearance at Hearings

NOTICE FILED DATE: 11/28/2021

RULE SUMMARY: This rule was amended to provide clarification on when an extremely dangerous person with mental illness may waive appearance at a hearing before the Board.

RULE TEXT:

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

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

STATUTORY/OTHER AUTHORITY: ORS 161.387, ORS 426.701

STATUTES/OTHER IMPLEMENTED: ORS 161.387, ORS 426.701, ORS 426.702

AMEND: 859-200-0150

RULE TITLE: Victim's Rights

NOTICE FILED DATE: 11/28/2021

RULE SUMMARY: This rule was amended to ensure that victims and victim advocates are able to find all rights pertaining to a victim under a single rule.

RULE TEXT:

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

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

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

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

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

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

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

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

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

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

STATUTORY/OTHER AUTHORITY: ORS 161.387, ORS 426.701

STATUTES/OTHER IMPLEMENTED: ORS 161.387, ORS 426.701, ORS 426.702

AMEND: 859-200-0230

RULE TITLE: Conditional Release Evaluation and Reports

NOTICE FILED DATE: 11/28/2021

RULE SUMMARY: This rule was amended to ensure consistency with the definitions under OAR 859-200-0020.

RULE TEXT:

- (1) All reports and evaluations received on the person's fitness for conditional release, modification of conditional release or revocation, and monthly progress shall be made a part of the record in the hearing.
- (2) All serious incidents must be communicated through an immediate phone call to the PSRB executive director or designee and followed-up with a written incident report. A serious incident includes, but is not limited to:
  - (a) Unauthorized departure;
  - (b) Arrest;
  - (c) Positive urine or oral drug screen or other substance use testing;
  - (d) Repeated refusals to take psychotropic medications or other medications prescribed to manage the person's mental health;
  - (e) Psychiatric or medical hospitalization;
  - (f) Violent or dangerous behaviors; or
  - (g) Other circumstances deemed to be serious by the reporting party.

STATUTORY/OTHER AUTHORITY: ORS 161.387, ORS 426.701

STATUTES/OTHER IMPLEMENTED: ORS 161.387, ORS 426.701, ORS 426.702

AMEND: 859-200-0235

RULE TITLE: Monthly Reporting

NOTICE FILED DATE: 11/28/2021

RULE SUMMARY: This rule was amended to ensure consistency with the definitions under OAR 859-200-0020.

RULE TEXT:

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

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

(a) Unauthorized leave;

(b) Arrest;

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

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

(e) Psychiatric or medical hospitalization;

(f) Violent or dangerous behaviors; or

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

STATUTORY/OTHER AUTHORITY: ORS 161.387(1), ORS 426.701

STATUTES/OTHER IMPLEMENTED: ORS 161.387(1), ORS 426.701, ORS 426.702

AMEND: 859-200-0300

RULE TITLE: Reasonable Grounds for Revocation

NOTICE FILED DATE: 11/28/2021

RULE SUMMARY: This rule was amended to ensure consistency with the definitions under OAR 859-200-0020.

RULE TEXT:

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

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

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

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

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

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

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

STATUTORY/OTHER AUTHORITY: ORS 161.387, ORS 426.701

STATUTES/OTHER IMPLEMENTED: ORS 161.387, ORS 426.701, ORS 426.702

AMEND: 859-200-0310

RULE TITLE: Procedure for Transporting a Revoked Person

NOTICE FILED DATE: 11/28/2021

RULE SUMMARY: This rule was amended to clarify current Board policies regarding the procedures for transporting a person who has had their conditional release revoked.

RULE TEXT:

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

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

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

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

STATUTORY/OTHER AUTHORITY: ORS 161.387(1), ORS 426.701

STATUTES/OTHER IMPLEMENTED: ORS 161.387(1), ORS 426.701, ORS 426.702

ADOPT: 859-200-0315

RULE TITLE: Emergency Move Exceptions

NOTICE FILED DATE: 11/28/2021

RULE SUMMARY: This rule was adopted to ensure that persons under the jurisdiction of the Board are able to move to a temporary placement in the community during an emergency.

RULE TEXT:

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

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

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

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

STATUTORY/OTHER AUTHORITY: ORS 161.387, ORS 426.701

STATUTES/OTHER IMPLEMENTED: ORS 161.387, ORS 426.701, ORS 426.702

ADOPT: 859-200-0320

RULE TITLE: Diversity, Equity, and Inclusion

NOTICE FILED DATE: 11/28/2021

RULE SUMMARY: This rule was adopted to clarify the Board's commitment to engaging in practices that value diversity, equity, and inclusion.

RULE TEXT:

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

STATUTORY/OTHER AUTHORITY: ORS 161.387, ORS 426.701

STATUTES/OTHER IMPLEMENTED: ORS 161.387, ORS 426.701, ORS 426.702

AMEND: 859-300-0210

RULE TITLE: Mandatory Personal Appearance

NOTICE FILED DATE: 11/28/2021

RULE SUMMARY: This rule was amended to provide clarification regarding remote hearings.

RULE TEXT:

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. The petitioner may appear by remote means.

STATUTORY/OTHER AUTHORITY: ORS 161.387, ORS 419C.533, ORS 166.273

STATUTES/OTHER IMPLEMENTED: ORS 161.387, ORS 419C.533, ORS 166.273

AMEND: 859-400-0210

RULE TITLE: Mandatory Personal Appearance

NOTICE FILED DATE: 11/28/2021

RULE SUMMARY: This rule was amended to provide clarification regarding remote hearings.

RULE TEXT:

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. The petitioner may appear by remote means.

STATUTORY/OTHER AUTHORITY: ORS 163A.105, ORS 161.387, ORS 419C.533

STATUTES/OTHER IMPLEMENTED: ORS 163A.105, ORS 161.387, ORS 419C.533

AMEND: 859-510-0005

RULE TITLE: Definitions

NOTICE FILED DATE: 11/28/2021

RULE SUMMARY: This rule was amended to update definitions for clarification across the JPSRB program.

RULE TEXT:

(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) "Community Evaluation" is a written report ordered by the Board or other court and conducted by a qualified mental health professional from a local mental health program designated by the Board to determine if a youth can be adequately controlled with supervision and treatment if conditionally released and that necessary supervision and treatment are available.

(7) "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.

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

(9) "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 qualifying mental disorder that presents a substantial danger to others and requires regular medical care, medication, supervision or treatment; or term of jurisdiction has lapsed.

(10) "Escape" means:

(a) A youth committed to a state hospital, SAIP, SCIP, or SITP who:

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

(B) Leaves the facility without permission; or

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

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

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

(11) "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.

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

(a) A description of incident;

(b) A summary of the interventions that were used by community mental health provider staff;

(c) A summary of the debrief with the youth or a summary of why a debrief did not occur; and

(d) Any recommendations on how to mitigate future incidents, including but not limited to modifications to the youth's conditional release plan.

(13) "Jurisdictional Report" means a report completed by a psychiatrist, psychiatric mental health nurse practitioner, or licensed psychologist that assists the Board in making the determinations described in ORS 419C.532, and includes the following information:

(a) An opinion as to the mental condition of the youth;

(b) Whether the youth presents a substantial danger to others; and

(c) Whether the youth could be adequately controlled with treatment as a condition of release.

(14) "Monthly Progress Report" means a template report available on the PSRB's website that is required to be completed for all youth who are on conditional release by the community agency mental health provider that includes the following information attached, if applicable:

(a) Prescriber and specialty progress notes that occurred within the reporting month of the monthly progress report; and

(b) Any incident reports that that occurred within the reporting month of the monthly progress report.

(15) "Qualifying Mental Disorder" (formerly "Mental disease or defect") means:

(a) that which is manifested by developmental delay or 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; or

(b) 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 5) of the American Psychiatric Association.

(16) The term "qualifying mental disorder" 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.

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

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

(19) "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.

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

(21) "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.

(22) "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 qualifying mental disorder 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.

(23) "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.

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

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

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

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

(28) "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.

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

(30) "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.

(31) "Unauthorized Departure" means:

(a) A youth who is under the jurisdiction of the Board who is conditionally released to the community that:

(A) Leaves the supervision of the community mental health program staff without permission;

(B) Leave the authorized placement listed on the conditional release order without permission;

(C) Fails to return to the authorized placement listed on the conditional release order at the appointed time;

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

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

STATUTORY/OTHER AUTHORITY: ORS 161.387, ORS 419C.533

STATUTES/OTHER IMPLEMENTED: ORS 419C.533

ADOPT: 859-530-0015

RULE TITLE: Diversity, Equity, and Inclusion

NOTICE FILED DATE: 11/28/2021

RULE SUMMARY: This rule was adopted to clarify the Board's commitment to engaging in practices that value diversity, equity, and inclusion.

RULE TEXT:

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

STATUTORY/OTHER AUTHORITY: ORS 161.387, ORS 419C.533

STATUTES/OTHER IMPLEMENTED: ORS 419C.533

ADOPT: 859-530-0020

RULE TITLE: Victim's Rights

NOTICE FILED DATE: 11/28/2021

RULE SUMMARY: This rule was adopted to ensure that victims and victim advocates are able to find all rights pertaining to a victim under a single rule.

RULE TEXT:

(1) The Board shall make reasonable efforts to notify victims identified in a jurisdictional order or victims who have requested to be notified of any of the following regarding a person under the Board's jurisdiction:

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

(2) Victims may provide oral or written victim impact statements at an individual's full hearing and written victim impact statements at a person's administrative hearing. Victim impact statements are not considered testimony and will not be taken under oath by the Board.

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

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

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

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

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

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

STATUTORY/OTHER AUTHORITY: ORS 161.387, ORS 419C.533

STATUTES/OTHER IMPLEMENTED: ORS 419C.533

AMEND: 859-550-0005

RULE TITLE: Notice

NOTICE FILED DATE: 11/28/2021

RULE SUMMARY: This rule was amended to correct a statutory citation and ensure compliance with OAR 419C.532.

RULE TEXT:

Written notice of a hearing shall be given to those indicated in ORS 419C.532 via electronic mail unless a hard copy is requested.

(1) Those given notice under ORS 419C.532 include the:

- (a) Youth about whom the hearing is being conducted;
- (b) Attorney representing the youth under JPSRB jurisdiction;
- (c) The youth's parents or guardians, if known;
- (d) The person having legal custody of the youth;
- (e) The Attorney General or other attorney representing the state, if any; and
- (f) The district attorney of the county in which the young person was adjudicated.

(2) The written notice of hearings will contain the information specified in ORS 419C.532, as follows:

- (a) The time, place, and location of the hearing;
- (b) The nature of the hearing and the specific action for which a hearing has been requested, the issues to be considered at the hearing and a reference to the particular sections of the statutes and rules involved;
- (c) A statement of the legal authority and jurisdiction under which the hearing is to be held; and
- (d) A statement outlining the following additional rights:
  - (A) To appear at all proceedings held pursuant to this section, except for deliberations;
  - (B) To cross-examine all witnesses appearing to testify at the hearing;
  - (C) To subpoena witnesses and documents as provided in ORS 161.395;
  - (D) To be represented by suitable legal counsel possessing skills and experience commensurate with the nature and complexity of the case, to consult with counsel prior to the hearing and, if financially eligible, to have suitable counsel appointed at state expense; and
  - (E) To examine all information, documents and reports that the agency considers. If available to the agency at that time, the information, documents and reports will be disclosed to the person so as to allow examination prior to the hearing.

STATUTORY/OTHER AUTHORITY: ORS 161.387, ORS 419C.533

STATUTES/OTHER IMPLEMENTED: ORS 419C.532

AMEND: 859-550-0030

RULE TITLE: Evidence Considered; Admissibility

NOTICE FILED DATE: 11/28/2021

RULE SUMMARY: This rule was amended to ensure consistency with the definitions under OAR 859-510-0005.

RULE TEXT:

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) Jurisdictional 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.

STATUTORY/OTHER AUTHORITY: ORS 161.387, ORS 419C.533

STATUTES/OTHER IMPLEMENTED: ORS 161.336, ORS 161.341, ORS 161.346, ORS 419C.540, ORS 419C.529, ORS 419C.532, ORS 419C.538

AMEND: 859-550-0095

RULE TITLE: Examination of Youth

NOTICE FILED DATE: 11/28/2021

RULE SUMMARY: This rule was amended to ensure consistency with the definitions under OAR 859-510-0005.

RULE TEXT:

(1) The Board may, on its own motion, appoint a psychiatrist or psychologist to conduct a forensic mental health assessment and to submit a jurisdictional 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 jurisdictional 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.

STATUTORY/OTHER AUTHORITY: ORS 161.387, ORS 419C.533

STATUTES/OTHER IMPLEMENTED: ORS 161.346, ORS 419C.532, ORS 419C.538, ORS 419C.540

AMEND: 859-550-0100

RULE TITLE: Appearance at Hearings by Remote Means

NOTICE FILED DATE: 11/28/2021

RULE SUMMARY: This rule was amended to provide clarification regarding remote hearings.

RULE TEXT:

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

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

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

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

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

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

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

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

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

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

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

STATUTORY/OTHER AUTHORITY: ORS 161.387, ORS 419C.533

STATUTES/OTHER IMPLEMENTED: ORS 419C.533

AMEND: 859-570-0010

RULE TITLE: Conditional Release Planning for Youths in Secure Facilities

NOTICE FILED DATE: 11/28/2021

RULE SUMMARY: This rule was amended to ensure consistency with the definitions under OAR 859-510-0005.

RULE TEXT:

(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 through a monthly progress report;

(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.

STATUTORY/OTHER AUTHORITY: ORS 161.387, ORS 419C.533

STATUTES/OTHER IMPLEMENTED: ORS 161.336, ORS 161.341, ORS 161.346, ORS 419C.520, ORS 161.332, ORS 161.390, ORS 419C.538, ORS 419C.540

AMEND: 859-570-0025

RULE TITLE: Modification Of/Discharge From Conditional Release

NOTICE FILED DATE: 11/28/2021

RULE SUMMARY: This rule was amended to clarify Board policies regarding hearing requests.

RULE TEXT:

(1) Modification. Modification of an order of conditional release may be proposed by the youth, the person supervising the youth, or staff of the mental health facility providing treatment to the youth, or the Board on its own motion upon a review of the status of the youth.

(a) Modifications of conditional release may be considered by the Board at a hearing after giving proper notice.

(b) The individual designated by the Board as having primary reporting responsibility shall provide the Board with a written summary of the youth's progress which shall include the specific nature of the request for modification, evidence of recent behavior supporting the modification, and any evidence of recent behaviors that would not support modification, as well as what precautions will be taken to off-set any changes in plan.

(c) If the Board considers the request for modification at a full hearing, the designated individual having primary reporting responsibility shall be available to testify, in person, if possible, or telephonically on these issues at the Board hearing.

(2) Discharge.

(a) A request for discharge from Board jurisdiction may be proposed by the youth on conditional release, the person supervising the youth, or the staff of the facility providing treatment to the youth. The Board must be notified of the request as soon as practicable before the scheduled hearing to provide reasonable notice, per ORS 419C.540(2). If a request for discharge is not made prior to this date, either party may request a continuance or the Board may, of its own motion, continue the matter.

(b) This request shall be accompanied by a psychiatric/psychological evaluation of the youth that has been performed within 30-days of the hearing date by his community treatment practitioner. This evaluation shall address what the youth's current diagnosis is; whether the qualifying mental disorder is active or in remission; and whether the youth's qualifying mental disorder, with reasonable medical probability, will occasionally become active, and when active, render the youth a substantial danger to others. This report shall be submitted to the Board no later than 10 days prior to hearing. The individual making the request shall be available to testify in person, if possible, or telephonically on these issues at the Board hearing. The psychiatrist/psychologist evaluator shall also be available to testify either in person or by phone.

(c) All requests for discharge shall be considered only at a full hearing.

STATUTORY/OTHER AUTHORITY: ORS 161.387, ORS 419C.533

STATUTES/OTHER IMPLEMENTED: ORS 161.332, ORS 161.336, ORS 161.346, ORS 161.390, ORS 419C.520, ORS 419C.529, ORS 419C.532, ORS 419C.538, ORS 419C.540

AMEND: 859-570-0030

RULE TITLE: Evaluation and Reports

NOTICE FILED DATE: 11/28/2021

RULE SUMMARY: This rule was amended to ensure compliance with current Board policies and consistency with the definitions under OAR 859-510-0005.

RULE TEXT:

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

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

(a) Unauthorized departure;

(b) Arrest;

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

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

(e) Psychiatric or medical hospitalization;

(f) Violent or dangerous behaviors; or

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

STATUTORY/OTHER AUTHORITY: ORS 161.387, ORS 419C.533

STATUTES/OTHER IMPLEMENTED: ORS 161.332, ORS 161.336, ORS 161.346, ORS 161.390, ORS 419C.520, ORS 419C.529, ORS 419C.532, ORS 419C.538

AMEND: 859-600-0025

RULE TITLE: Leaves and Passes

NOTICE FILED DATE: 11/28/2021

RULE SUMMARY: This rule is being amended to provide consistency across PSRB program areas.

RULE TEXT:

(1) Any overnight or out-of-town leave of absence or pass request for the youth in a secure children's inpatient treatment program 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) 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 secure children's inpatient treatment program would pose no substantial danger to others and would be therapeutic for the youth;

(b) Secure children's inpatient treatment program staff will be contacted by the PSRB only if there are any reservations about the pass.

STATUTORY/OTHER AUTHORITY: ORS 419C.533, ORS 161.387

STATUTES/OTHER IMPLEMENTED: ORS 137.540, ORS 419C.533

ADOPT: 859-600-0030

RULE TITLE: Emergency Move Exceptions

NOTICE FILED DATE: 11/28/2021

RULE SUMMARY: This rule was adopted to ensure that youth under the jurisdiction of the Board are able to move to a temporary placement in the community during an emergency.

RULE TEXT:

(1) Nothing in Divisions 501 through 600 prohibits the Board, the youth's SAIP, SCIP, SITP, or community placement, and the Oregon Health Authority from entering into a mutually satisfactory agreement regarding the youth's placement in the community during an emergency.

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

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

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

STATUTORY/OTHER AUTHORITY: ORS 161.387, ORS 419C.533

STATUTES/OTHER IMPLEMENTED: ORS 419C.533