

TITLE 35

MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES; SUBSTANCE ABUSE TREATMENT

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427. Persons With Intellectual or Developmental Disabilities
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Chapter 426

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Persons With Mental Illness; Dangerous Persons; Commitment; Housing

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PERSONS WITH MENTAL ILLNESS
(Definitions)

426.005 Definitions for ORS 426.005 to 426.390. (1) As used in ORS 426.005 to 426.390, unless the context requires otherwise:

(a) “Community mental health program director” means the director of an entity that provides the services described in ORS 430.630 (3) to (5).

(b) “Director of the facility” means a superintendent of a state mental hospital, the chief of psychiatric services in a community hospital or the person in charge of treatment and rehabilitation programs at other treatment facilities.

(c) “Facility” means a state mental hospital, community hospital, residential facility, detoxification center, day treatment facility or such other facility as the authority determines suitable that provides diagnosis and evaluation, medical care, detoxification, social services or rehabilitation to persons who are in custody during a prehearing period of detention or who have been committed to the Oregon Health Authority under ORS 426.130.

(d) “Licensed independent practitioner” means:

(A) A physician, as defined in ORS 677.010;

(B) A nurse practitioner certified under ORS 678.375 and authorized to write prescriptions under ORS 678.390; or

(C) A naturopathic physician licensed under ORS chapter 685.

(e) “Nonhospital facility” means any facility, other than a hospital, that is approved by the authority to provide adequate security, psychiatric, nursing and other services to persons under ORS 426.232 or 426.233.

(f) “Person with mental illness” means a person who, because of a mental disorder, is one or more of the following:

(A) Dangerous to self or others.

(B) Unable to provide for basic personal needs that are necessary to avoid serious physical harm in the near future, and is not receiving such care as is necessary to avoid such harm.

(C) A person:

(i) With a chronic mental illness, as defined in ORS 426.495;

(ii) Who, within the previous three years, has twice been placed in a hospital or approved inpatient facility by the authority or the Department of Human Services under ORS 426.060;

(iii) Who is exhibiting symptoms or behavior substantially similar to those that

preceded and led to one or more of the hospitalizations or inpatient placements referred to in sub-subparagraph (ii) of this subparagraph; and

(iv) Who, unless treated, will continue, to a reasonable medical probability, to physically or mentally deteriorate so that the person will become a person described under either subparagraph (A) or (B) of this paragraph or both.

(g) “Prehearing period of detention” means a period of time calculated from the initiation of custody during which a person may be detained under ORS 426.228, 426.231, 426.232 or 426.233.

(2) Whenever a community mental health program director, director of the facility, superintendent of a state hospital or administrator of a facility is referred to, the reference includes any designee such person has designated to act on the person’s behalf in the exercise of duties. [1961 c.706 §25; 1973 c.838 §1; 1987 c.903 §5; 1989 c.993 §3; 1993 c.484 §11; 2001 c.900 §125; 2007 c.70 §203; 2009 c.595 §381; 2009 c.828 §23; 2011 c.720 §160; 2013 c.360 §15; 2015 c.433 §1; 2015 c.461 §1; 2017 c.356 §47]

(Hospitals)

426.010 State hospitals for persons with mental illness. Except as otherwise ordered by the Oregon Health Authority pursuant to ORS 179.325, the Oregon State Hospital campuses in Salem, Marion County, and in Junction City, Lane County, shall be used as state hospitals for the care and treatment of persons with mental illness who are assigned to the care of the institutions by the authority or who have previously been committed to the institutions. [Amended by 1955 c.651 §3; 1965 c.339 §23; 1965 c.595 §2; 1983 c.505 §1; 1999 c.983 §6; 2007 c.14 §1; 2009 c.269 §2; 2009 c.595 §382; 2013 c.360 §16; 2015 c.318 §14]

426.020 Superintendent; chief medical officer. (1) The superintendent of a hospital referred to in ORS 426.010 shall be a person the Oregon Health Authority considers qualified to administer the hospital. If the superintendent of any hospital is a physician licensed by the Oregon Medical Board, the superintendent shall serve as chief medical officer.

(2) If the superintendent is not a physician, the Director of the Oregon Health Authority or the designee of the director shall designate a physician to serve as chief medical officer. The designated chief medical officer may be an appointed state employee in the unclassified service, a self-employed contractor or an employee of a public or private entity that contracts with the authority to provide chief medical officer services. Unless the designated chief medical officer is specifically appointed as a state employee in the

unclassified service, the designated chief medical officer shall not be deemed a state employee for purposes of any state statute, rule or policy.

(3)(a) Notwithstanding any other provision of law, the designated chief medical officer may supervise physicians and naturopathic physicians who are employed by the hospital or who provide services at the hospital pursuant to a contract.

(b) The designated chief medical officer may delegate all or part of the authority to supervise other physicians and naturopathic physicians at the hospital to a physician who is employed by the state, a self-employed contractor or an employee of a public or private entity that contracts with the authority to provide physician services. [Amended by 1955 c.651 §4; 1969 c.391 §1; 1973 c.807 §2; 1987 c.158 §76; 2003 c.14 §234; 2007 c.71 §116; 2009 c.59 §1; 2009 c.828 §14; 2017 c.356 §48]

426.030 [Amended by 1955 c.651 §5; 1957 c.43 §1; repealed by 1999 c.983 §7]

426.060 Commitment to Oregon Health Authority; powers of authority; placement; transfer. (1) Commitments to the Oregon Health Authority shall be made only by the judge of a circuit court in a county of this state.

(2) The following is a nonexclusive list of powers the authority may exercise concerning the placement of persons committed or persons receiving emergency care and treatment under ORS 426.070, 426.228 to 426.235 or 426.237:

(a) In its discretion and for reasons which are satisfactory to the authority, the authority may direct any court-committed person to the facility best able to treat the person. The decision of the authority on such matters shall be final.

(b) At any time, for good cause and in the best interest of the person with mental illness, the authority may transfer a committed person from one facility to another. When transferring a person under this paragraph, the authority shall make the transfer:

(A) If the transfer is from a facility in one class to a facility of the same class, as provided by rule of the authority;

(B) If the transfer is from a facility in one class to a facility in a less restrictive class, by following the procedures for trial visits under ORS 426.273; and

(C) If the transfer is from a facility in one class to a facility in a more restrictive class, by following the procedures under ORS 426.275.

(c) At any time, for good cause and in the best interest of the person with mental illness, the authority may transfer a person receiving emergency care and treatment under

ORS 426.070 or 426.228 to 426.235, or intensive treatment under ORS 426.237, between hospitals and nonhospital facilities approved by the authority to provide emergency care or treatment as defined by rule of the authority.

(d) Pursuant to its rules, the authority may delegate to a community mental health program director the responsibility for assignment of persons with mental illness to suitable facilities or transfer between such facilities under conditions which the authority may define. [Amended by 1955 c.651 §6; 1963 c.254 §1; 1967 c.534 §19; 1973 c.838 §2; 1975 c.690 §1; 1987 c.903 §6; 1993 c.484 §12; 2009 c.595 §384; 2013 c.360 §17]

(Commitment Procedure)

426.070 Initiation; notification required; recommendation to court; citation. (1) Any of the following may initiate commitment procedures under this section by giving the notice described under subsection (2) of this section:

- (a) Two persons;
- (b) The local health officer; or
- (c) Any magistrate.

(2) For purposes of subsection (1) of this section, the notice must comply with the following:

(a) It must be in writing under oath;

(b) It must be given to the community mental health program director or a designee of the director in the county where the person alleged to have a mental illness resides;

(c) It must state that a person within the county other than the person giving the notice is a person with mental illness and is in need of treatment, care or custody;

(d) If the commitment proceeding is initiated by two persons under subsection (1)(a) of this section, it may include a request that the court notify the two persons:

(A) Of the issuance or nonissuance of a warrant under this section; or

(B) Of the court's determination under ORS 426.130 (1); and

(e) If the notice contains a request under paragraph (d) of this subsection, it must also include the addresses of the two persons making the request.

(3) Upon receipt of a notice under subsections (1) and (2) of this section or when notified by a circuit court that the court received notice under ORS 426.234, the community mental health program director, or designee of the director, shall:

(a) Immediately notify the judge of the court having jurisdiction for that county under ORS 426.060 of the notification described in subsections (1) and (2) of this section.

(b) Immediately notify the Oregon Health Authority if commitment is proposed because the person appears to be a person with mental illness, as defined in ORS 426.005 (1)(f)(C). When such notice is received, the authority may verify, to the extent known by the authority, whether or not the person meets the criteria described in ORS 426.005 (1)(f)(C)(i) and (ii) and so inform the community mental health program director or designee of the director.

(c) Initiate an investigation under ORS 426.074 to determine whether there is probable cause to believe that the person is in fact a person with mental illness.

(4) Upon completion, a recommendation based upon the investigation report under ORS 426.074 shall be promptly submitted to the court. If the community mental health program director determines that probable cause does not exist to believe that a person released from detention under ORS 426.234 (2)(c) or (3)(b) is a person with mental illness, the community mental health program director may recommend assisted outpatient treatment in accordance with ORS 426.133.

(5) When the court receives notice under subsection (3) of this section:

(a) If the court, following the investigation, concludes that there is probable cause to believe that the person investigated is a person with mental illness, it shall, through the issuance of a citation as provided in ORS 426.090, cause the person to be brought before it at a time and place as it may direct, for a hearing under ORS 426.095 to determine whether the person is a person with mental illness. The person shall be given the opportunity to appear voluntarily at the hearing unless the person fails to appear or unless the person is detained pursuant to paragraph (b) of this subsection.

(b)(A) If the court finds that there is probable cause to believe that failure to take the person into custody pending the investigation or hearing would pose serious harm or danger to the person or to others, the court may issue a warrant of detention to the community mental health program director or designee or the sheriff of the county or designee directing the director, sheriff or a designee to take the person alleged to have a mental illness into custody and produce the person at the time and place stated in the warrant.

(B) At the time the person is taken into custody, the person shall be informed by the community mental health program director, the sheriff or a designee of the following:

(i) The person's rights with regard to representation by or appointment of counsel as described in ORS 426.100;

(ii) The warning under ORS 426.123; and

(iii) The person's right, if the community mental health program director, sheriff or designee reasonably suspects that the person is a foreign national, to communicate with an official from the consulate of the person's country. A community mental health program director, sheriff or designee is not civilly or criminally liable for failure to provide the information required by this subparagraph. Failure to provide the information required by this subparagraph does not in itself constitute grounds for the exclusion of evidence that would otherwise be admissible in a proceeding.

(C) The court may make any orders for the care and custody of the person prior to the hearing as it considers necessary.

(c) If the notice includes a request under subsection (2)(d)(A) of this section, the court shall notify the two persons of the issuance or nonissuance of a warrant under this subsection. [Amended by 1957 c.329 §1; 1967 c.534 §20; 1973 c.838 §3; 1975 c.690 §2; 1979 c.408 §1; 1983 c.740 §149; 1987 c.903 §7; 1989 c.993 §4; 1993 c.484 §26; 1995 c.201 §2; 1995 c.498 §1; 2003 c.14 §235; 2003 c.109 §3; 2009 c.595 §385; 2009 c.828 §26; 2013 c.360 §18; 2013 c.737 §3; 2015 c.461 §2; 2015 c.736 §66]

426.072 Care while in custody; responsibilities of licensed independent practitioner; rules. (1) A hospital or nonhospital facility must comply with provisions of subsection (2) of this section when a person alleged to have a mental illness is placed in custody at the hospital or nonhospital facility:

(a) By a warrant of detention under ORS 426.070;

(b) By a peace officer under ORS 426.228 or other individual authorized under ORS 426.233; or

(c) By a licensed independent practitioner under ORS 426.232.

(2) In circumstances described under subsection (1) of this section, the hospital or nonhospital facility and a treating licensed independent practitioner must comply with all the following:

(a) The person shall receive the care, custody and treatment required for mental and physical health and safety.

(b) The treating licensed independent practitioner shall report any care, custody and treatment to the court as required in ORS 426.075.

(c) All methods of treatment, including the prescription and administration of drugs, shall be the sole responsibility of the treating licensed independent practitioner. However, the person shall not be subject to electroshock therapy or unduly hazardous

treatment and shall receive usual and customary treatment in accordance with medical standards in the community.

(d) The treating licensed independent practitioner shall be notified immediately of any seclusion of the person or use of mechanical restraints on the person. Every use of seclusion or mechanical restraint and the reasons for the use shall be made a part of the clinical record of the person over the signature of the treating licensed independent practitioner.

(e) The treating licensed independent practitioner shall give the person the warning under ORS 426.123 at times the treating licensed independent practitioner determines the person will reasonably understand the notice. This paragraph only requires the notice to be given as often as the licensed independent practitioner determines is necessary to assure that the person is given an opportunity to be aware of the notice.

(3) The Oregon Health Authority shall adopt rules necessary to carry out this section, including rules regarding the content of the medical record compiled during the current period of custody. [1987 c.903 §9; 1993 c.484 §13; 1997 c.531 §1; 2009 c.595 §386; 2013 c.360 §19; 2015 c.81 §1; 2015 c.461 §3]

426.074 Investigation; procedure; content; report. The following is applicable to an investigation initiated by a community mental health program director, or a designee of the director, as part of commitment procedures under ORS 426.070 and 426.228 to 426.235:

(1) If the person alleged to have a mental illness is held in custody before the hearing the investigation shall be completed at least 24 hours before the hearing under ORS 426.095, otherwise the investigation shall comply with the following time schedule:

(a) If the person can be located, the investigator shall contact the person within three judicial days from the date the community mental health program director or a designee receives a notice under ORS 426.070 alleging that the person has a mental illness and is in need of treatment.

(b) Within 15 days from the date the community mental health program director or a designee receives a notice under ORS 426.070, one of the following shall occur:

(A) The investigation shall be completed and submitted to the court.

(B) An application for extension shall be made to the court under paragraph (c) of this subsection.

(c) The community mental health program director, a designee or the investigator may file for an extension of the time under

paragraph (b) of this subsection only if one of the following occurs:

(A) A treatment option less restrictive than involuntary in-patient commitment is actively being pursued.

(B) The person alleged to have a mental illness cannot be located.

(d) A court may grant an extension under paragraph (c) of this subsection for a time and upon the terms and conditions the court considers appropriate.

(2) This subsection establishes a nonexclusive list of provisions applicable to the content of the investigation, as follows:

(a) The investigation conducted should, where appropriate, include an interview or examination of the person alleged to have a mental illness in the home of the person or other place familiar to the person.

(b) Whether or not the person consents, the investigation should include interviews with any individuals that the investigator has probable cause to believe have pertinent information regarding the investigation. If the person objects to the contact with any individual, the objection shall be noted in the investigator's report.

(c) The investigator shall be allowed access to licensed independent practitioners, nurses or social workers and to medical records compiled during the current involuntary prehearing period of detention to determine probable cause and to develop alternatives to commitment. If commitment is proposed because the person appears to be a person with mental illness as defined in ORS 426.005 (1)(f)(C), the investigator shall be allowed access to medical records necessary to verify the existence of criteria described in ORS 426.005 (1)(f)(C). The investigator shall include pertinent parts of the medical record in the investigation report. Records and communications described in this paragraph and related communications are not privileged under ORS 40.230, 40.235, 40.240 or 40.250.

(3) A copy of the investigation report shall be provided as soon as possible, but in no event later than 24 hours prior to the hearing, to the person and to the person's counsel. Copies shall likewise be provided to counsel assisting the court, to the examiners and to the court for use in questioning witnesses. [1987 c.903 §10; 1989 c.993 §5; 1993 c.484 §14; 1997 c.649 §1; 2009 c.595 §387; 2009 c.828 §27; 2013 c.360 §20; 2015 c.461 §4]

426.075 Notice and records of treatment prior to hearing; procedures. This section establishes procedures that are required to be followed before the hearing if a court, under ORS 426.070, orders a hearing

under ORS 426.095. The following apply as described:

(1) The court shall be fully advised of all drugs and other treatment known to have been administered to the person alleged to have a mental illness that may substantially affect the ability of the person to prepare for or function effectively at the hearing. The following shall advise the court as required by this subsection:

(a) When not otherwise provided by paragraph (b) of this subsection, the community mental health program director or designee.

(b) When the person has been detained by a warrant of detention under ORS 426.070, 426.180, 426.228, 426.232 or 426.233, the treating licensed independent practitioner.

(2) The court shall appoint examiners under ORS 426.110 sufficiently in advance of the hearing so that the examiners may begin their preparation for the hearing. The records established by the Oregon Health Authority by rule and the investigation report shall be made available to the examiners at least 24 hours before the hearing in order that the examiners may review the medical record and have an opportunity to inquire of the medical personnel concerning the treatment of the person alleged to have a mental illness during the detention period prior to the hearing.

(3) The medical record described in subsection (2) of this section shall be made available to counsel for the person alleged to have a mental illness at least 24 hours prior to the hearing.

(4) When requested by a party to the action, the party's attorney shall subpoena licensed independent practitioners who are or have been treating the person. Any treating licensed independent practitioner subpoenaed under this subsection shall be subpoenaed as an expert witness. [1973 c.838 §8; 1975 c.690 §3; 1979 c.408 §2; 1987 c.903 §12; 1989 c.189 §1; 1993 c.484 §15; 2009 c.595 §388; 2013 c.360 §21; 2015 c.461 §5]

426.080 Execution and return of citation or warrant of detention. The person serving a warrant of detention or the citation provided for by ORS 426.090 shall, immediately after service thereof, make a return upon the original warrant or citation showing the time, place and manner of such service and file it with the clerk of the court. In executing the warrant of detention or citation, the person has all the powers provided by ORS 133.235 and 161.235 to 161.245 and may require the assistance of any peace officer or other person. [Amended by 1971 c.743 §366; 1973 c.836 §348; 1973 c.838 §4a]

426.090 Citation; service. The judge shall issue a citation to the person alleged to have a mental illness stating the nature of

the information filed concerning the person and the specific reasons the person is believed to be a person with mental illness. The citation shall further contain a notice of the time and place of the commitment hearing, the right to legal counsel, the right to have legal counsel appointed if the person is unable to afford legal counsel, and, if requested, to have legal counsel immediately appointed, the right to subpoena witnesses in behalf of the person to the hearing and other information as the court may direct. The citation shall be served upon the person by delivering a duly certified copy of the original thereof to the person in person prior to the hearing. The person shall have an opportunity to consult with legal counsel prior to being brought before the court. [Amended by 1957 c.329 §2; 1967 c.459 §1; 1971 c.368 §1; 1973 c.838 §5; 1975 c.690 §4; 2013 c.360 §22]

426.095 Commitment hearing; postponement; right to cross-examine; admissibility of investigation report. The following is applicable to a commitment hearing held by a court under ORS 426.070:

(1) The hearing may be held in a hospital, the person's home or in some other place convenient to the court and the person alleged to have a mental illness.

(2) The court shall hold the hearing at the time established according to the following:

(a) Except as provided by paragraph (b) or (c) of this subsection, a hearing shall be held five judicial days from the day a court under ORS 426.070 issues a citation provided under ORS 426.090.

(b) Except as provided by paragraph (c) of this subsection, if a person is detained by a warrant of detention under ORS 426.070, a hearing shall be held within five judicial days of the commencement of detention.

(c) If requested under this paragraph, the court, for good cause, may postpone the hearing for not more than five judicial days in order to allow preparation for the hearing. The court may make orders for the care and custody of the person during a postponement as it deems necessary. If a person is detained before a hearing under ORS 426.070, 426.180, 426.228, 426.232, 426.233 or 426.702 and the hearing is postponed under this paragraph, the court, for good cause, may allow the person to be detained during the postponement if the postponement is requested by the person or the legal counsel of the person. Any of the following may request a postponement under this paragraph:

(A) The person alleged to have a mental illness or the person alleged to be an extremely dangerous person with mental illness.

(B) The legal counsel or guardian of the person.

(C) The individual representing the state's interest.

(3) The person alleged to have a mental illness and the individual representing the state's interest shall have the right to cross-examine all the following:

(a) Witnesses.

(b) The individual conducting the investigation.

(c) The examining physicians or other licensed independent practitioners who have examined the person.

(4) The provisions of ORS 40.230, 40.235, 40.240 and 40.250 shall not apply to and the court may consider as evidence any of the following:

(a) Medical records for the current involuntary prehearing period of detention.

(b) Statements attributed by the maker of the medical records or the investigation report to witnesses concerning their own observations in the absence of objection or if such individuals are produced as witnesses at the hearing available for cross-examination.

(c) The testimony of any treating licensed independent practitioners, nurses or social workers for the prehearing period of detention. Any treating licensed independent practitioner, nurse or social worker who is subpoenaed as a witness for the proceeding shall testify as an expert witness under the provisions of ORS 40.410, 40.415, 40.420 and 40.425 and is subject to treatment as an expert witness in the payment of witness fees and costs.

(d) The investigation report prepared under ORS 426.074. Subject to the following, the investigation report shall be introduced in evidence:

(A) Introduction of the report under this paragraph does not require the consent of the person alleged to have a mental illness.

(B) Upon objection by any party to the action, the court shall exclude any part of the investigation report that may be excluded under the Oregon Evidence Code on grounds other than those set forth in ORS 40.230, 40.235, 40.240 or 40.250.

(C) Neither the investigation report nor any part thereof shall be introduced into evidence under this paragraph unless the investigator is present during the proceeding to be cross-examined or unless the presence of the investigator is waived by the person alleged to have a mental illness or counsel for the person. [1973 c.838 §9; 1975 c.690 §5; 1987 c.903 §13; 1993 c.484 §16; 1997 c.649 §2; 2009 c.595 §389; 2013 c.715 §§4,15; 2015 c.461 §6]

426.100 Advice of court; appointment of legal counsel; costs; representation of state's interest. (1) At the time the person alleged to have a mental illness is brought before the court, the court shall advise the person of the following:

(a) The reason for being brought before the court;

(b) The nature of the proceedings;

(c) The possible results of the proceedings;

(d) The right to subpoena witnesses; and

(e) The person's rights regarding representation by or appointment of counsel.

(2) Subsection (3) of this section establishes the rights of persons alleged to have a mental illness in each of the following circumstances:

(a) When the person is held by warrant of detention issued under ORS 426.070.

(b) In commitment hearings under ORS 426.095.

(c) When the person is detained as provided under ORS 426.228, 426.232 or 426.233.

(d) In recommitment hearings under ORS 426.307.

(3) When provided under subsection (2) of this section, a person alleged to have a mental illness has the following rights relating to representation by or appointment of counsel:

(a) The right to obtain suitable legal counsel possessing skills and experience commensurate with the nature of the allegations and complexity of the case during the proceedings.

(b) If the person is determined to be financially eligible for appointed counsel at state expense, the court will appoint legal counsel to represent the person. If counsel is appointed at state expense, payment of expenses and compensation relating to legal counsel shall be made as provided under ORS 426.250.

(c) If the person alleged to have a mental illness does not request legal counsel, the legal guardian, relative or friend may request the assistance of suitable legal counsel on behalf of the person.

(d) If no request for legal counsel is made, the court shall appoint suitable legal counsel unless counsel is expressly, knowingly and intelligently refused by the person.

(e) If the person is being involuntarily detained before a hearing on the issue of commitment, the right under paragraph (a) of this subsection to contact an attorney or under paragraph (b) of this subsection to

have an attorney appointed may be exercised as soon as reasonably possible.

(f) In all cases suitable legal counsel shall be present at the hearing and may be present at examination and may examine all witnesses offering testimony, and otherwise represent the person.

(4) The responsibility for representing the state's interest in commitment proceedings, including, but not limited to, preparation of the state's case and appearances at commitment hearings is as follows:

(a) The Attorney General's office shall have the responsibility relating to proceedings initiated by state hospital staff that are any of the following:

(A) Recommitment proceedings under ORS 426.307; or

(B) Proceedings under ORS 426.228, 426.232 or 426.233.

(b) The district attorney if requested to do so by the governing body of the county.

(c) In lieu of the district attorney under paragraph (b) of this subsection, a counsel designated by the governing body of a county shall take the responsibility. A county governing body may designate counsel to take responsibility under this paragraph either for single proceedings or for all such proceedings the county will be obligated to pay for under ORS 426.250. If a county governing body elects to proceed under this paragraph, the county governing body shall so notify the district attorney. The expenses of an attorney appointed under this paragraph shall be paid as provided under ORS 426.250. [Amended by 1967 c.458 §1; 1971 c.368 §2; 1973 c.838 §6; 1975 c.690 §6; 1977 c.259 §1; 1979 c.574 §§1,2; 1979 c.867 §10; 1981 s.s. c.3 §133; 1987 c.903 §14; 1993 c.484 §17; 2001 c.962 §57; 2013 c.360 §24]

426.110 Appointment of examiners; qualifications; costs. The following requirements relating to the appointment of examiners for purposes of a hearing under ORS 426.095 or 426.701 and 426.702 apply as described:

(1) The judge shall appoint one qualified examiner. If requested, the judge shall appoint one additional qualified examiner. A request for an additional examiner under this subsection must be made in writing and must be made by the person alleged to have a mental illness or the attorney for the person.

(2) To be qualified for purposes of this section, an examiner must:

(a) Agree to be an examiner.

(b) Be one of the following:

(A) A physician licensed by the Oregon Medical Board who is competent to practice psychiatry as provided by the Oregon Health

Authority or the Psychiatric Security Review Board by rule.

(B) Certified by the authority or the Psychiatric Security Review Board as a mental health examiner qualified to make examinations for involuntary commitment proceedings.

(3) The authority or the Psychiatric Security Review Board may establish, by rule, requirements for certification as a mental health examiner for purposes of subsection (2)(b)(B) of this section.

(4) The cost of examiners under this section shall be paid as provided under ORS 426.250. [Amended by 1973 c.838 §10; 1987 c.158 §77; 1987 c.903 §15; 2009 c.595 §390; 2013 c.715 §§5,16]

426.120 Examination report; rules. (1) Examiners appointed under ORS 426.110 shall do all of the following:

(a) Examine the person as to mental condition.

(b) Initiate the examination process prior to the hearing. Any failure to comply with this paragraph shall not, in itself, constitute sufficient grounds to challenge the examination conducted by an examiner.

(c) Make their separate reports in writing, under oath, to the court.

(d) Upon completion of the hearing, file the reports with the clerk of the court.

(2) The following is a nonexclusive list of requirements relating to the content of examination reports prepared under subsection (1) of this section:

(a) If the examiners find, and show by their reports, that the person examined is a person with mental illness, the reports shall include a recommendation as to the type of treatment facility best calculated to help the person recover from mental illness.

(b) Each report shall also advise the court whether in the opinion of the examiner the person with mental illness would cooperate with and benefit from a program of voluntary treatment.

(c) Reports shall contain the information required by the Oregon Health Authority by rule. The authority shall adopt rules necessary to carry out this paragraph.

(3) The examiner shall be allowed access to licensed independent practitioners, nurses or social workers and to medical records compiled during the current involuntary pre-hearing period of detention and the investigation report. Records and communications described in this subsection and related communications are not privileged under ORS 40.230, 40.235, 40.240 or 40.250. [Amended by 1973 c.838 §11; 1975 c.690 §7; 1987 c.903 §16; 1997 c.649 §3; 2009 c.595 §391; 2013 c.360 §26; 2015 c.461 §7]

426.123 Observation of person in custody; warning; evidence. (1) Whenever specifically required under ORS 426.070, 426.072, 426.180 or 426.234, a person shall be given a warning that observations of the person by the staff of the facility where the person is in custody may be used as evidence in subsequent court proceedings to determine whether the person should be or should continue to be committed as a person with mental illness.

(2) The warning described under subsection (1) of this section shall be given both orally and in writing.

(3) Failure to give a warning under this section does not in itself constitute grounds for the exclusion of evidence that would otherwise be admissible in a proceeding. [1987 c.903 §11; 1993 c.484 §18; 2013 c.360 §27]

426.125 Qualifications and requirements for conditional release. The following qualifications, requirements and other provisions relating to a conditional release under ORS 426.130 apply as described:

(1) A court may only order conditional release if all of the following occur:

(a) The conditional release is requested by the legal guardian, relative or friend of the person with mental illness.

(b) The legal guardian, relative or friend requesting the conditional release requests to be allowed to care for the person during the period of commitment in a place satisfactory to the judge.

(c) The legal guardian, relative or friend requesting the release establishes all of the following to the satisfaction of the court:

(A) The ability of the legal guardian, relative or friend to care for the person.

(B) That there are adequate financial resources available for the care of the person.

(2) If the court determines to allow conditional release, the court shall order that the person be conditionally released and placed in the care of the requester. The court shall establish any terms and conditions on the conditional release that the court determines appropriate.

(3) Any conditional release ordered under this section is subject to the provisions under ORS 426.275. [1987 c.903 §18; 2013 c.360 §28]

426.127 Outpatient commitment. The following provisions are applicable to outpatient commitment under ORS 426.130 as described:

(1) The Oregon Health Authority may only place a person in an outpatient commitment if an adequate treatment facility is available.

(2) At the time of the hearing under ORS 426.095, the community mental health program director, or a designee for the director, for the county in which the hearing takes place shall set the conditions for the outpatient commitment. The conditions shall include, but not be limited to, the following:

(a) Provision for outpatient care.

(b) A designation of a facility, service or other provider to provide care or treatment.

(3) A copy of the conditions shall be given to all of the individuals and entities described in ORS 426.278.

(4) Any outpatient commitment ordered under this section is subject to the provisions under ORS 426.275.

(5) The community mental health program director or designee, for the county where a person is on outpatient commitment, may modify the conditions for outpatient commitment when a modification is in the best interest of the person. The community mental health program director or designee shall send notification of such changes and the reasons for the changes to all those who received a copy of the original conditions under ORS 426.278. [1987 c.903 §19; 1989 c.171 §52; 2003 c.14 §236; 2009 c.595 §392; 2013 c.360 §29]

426.129 Community liaison. The Oregon Health Authority shall employ at least one individual to serve as a liaison between the authority and communities in which the authority plans to establish housing for persons conditionally released by the Psychiatric Security Review Board or for persons with mental illness. [2009 c.809 §1; 2011 c.720 §161]

Note: 426.129 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 426 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

426.130 Court determination of mental illness; discharge; release for voluntary treatment; conditional release; commitment; assisted outpatient treatment; prohibition relating to firearms; period of commitment. (1) After hearing all of the evidence, and reviewing the findings of the examiners, the court shall determine whether the person has a mental illness and is in need of treatment. If, in the opinion of the court, the person:

(a) Is a person with mental illness based upon clear and convincing evidence, the court:

(A) Shall order the release of the person and dismiss the case if:

(i) The person is willing and able to participate in treatment on a voluntary basis; and

(ii) The court finds that the person will probably do so.

(B) May order conditional release under this subparagraph subject to the qualifications and requirements under ORS 426.125. If the court orders conditional release under this subparagraph, the court shall establish a period of commitment for the conditional release.

(C) May order commitment of the person with mental illness to the Oregon Health Authority for treatment if, in the opinion of the court, subparagraph (A) or (B) of this paragraph is not in the best interest of the person. If the court orders commitment under this subparagraph:

(i) The court shall establish a period of commitment.

(ii) The authority may place the committed person in outpatient commitment under ORS 426.127.

(D) Shall order that the person be prohibited from purchasing or possessing a firearm if, in the opinion of the court, there is a reasonable likelihood the person would constitute a danger to self or others or to the community at large as a result of the person's mental or psychological state as demonstrated by past behavior or participation in incidents involving unlawful violence or threats of unlawful violence, or by reason of a single incident of extreme, violent, unlawful conduct. When a court makes an order under this subparagraph, the court shall cause a copy of the order to be delivered to the sheriff of the county who will enter the information into the Law Enforcement Data System.

(b) Is not a person with mental illness, the court shall release the person from custody if the person has been detained under ORS 426.070, 426.180, 426.228, 426.232 or 426.233 and:

(A) Dismiss the case; or

(B) Order the person to participate in assisted outpatient treatment in accordance with ORS 426.133. The court may continue the proceeding for no more than seven days to allow time for the community mental health program director to develop the person's assisted outpatient treatment plan.

(2) A court that orders a conditional release, a commitment or assisted outpatient treatment under this section shall establish a period of commitment or treatment for the person subject to the order. Any period of commitment ordered for commitment or conditional release under this section shall be for a period of time not to exceed 180 days. A period of assisted outpatient treatment shall be for a period of time not to exceed 12 months.

(3) If the commitment proceeding was initiated under ORS 426.070 (1)(a) and if the

notice included a request under ORS 426.070 (2)(d)(B), the court shall notify the two persons of the court's determination under subsection (1) of this section.

(4) If the court finds that the person is a person with mental illness and either orders commitment under subsection (1)(a)(B) or (C) of this section or enters an order under subsection (1)(a)(D) of this section, the court shall notify the person that the person is prohibited from purchasing or possessing a firearm under state and federal law unless the person obtains relief from the prohibition from the Psychiatric Security Review Board under ORS 166.273 or under federal law. [Amended by 1973 c.838 §12; 1975 c.690 §8; 1979 c.408 §3; 1987 c.903 §17; 1989 c.839 §36; 1993 c.735 §9; 1995 c.498 §2; 2009 c.595 §393; 2013 c.360 §30; 2013 c.737 §6; 2017 c.233 §2]

426.133 Assisted outpatient treatment.

(1) As used in ORS 426.005 to 426.390, "assisted outpatient treatment" may not be construed to be a commitment under ORS 426.130 and does not include taking a person into custody or the forced medication of a person.

(2) A court may issue an order requiring a person to participate in assisted outpatient treatment if the court finds that the person:

(a)(A) Is 18 years of age or older;

(B) Has a mental disorder;

(C) Will not obtain treatment in the community voluntarily; and

(D) Is unable to make an informed decision to seek or to comply with voluntary treatment; and

(b) As a result of being a person described in paragraph (a) of this subsection:

(A) Is incapable of surviving safely in the community without treatment; and

(B) Requires treatment to prevent a deterioration in the person's condition that will predictably result in the person becoming a person with mental illness.

(3) In determining whether to issue the order under subsection (2) of this section, the court shall consider, but is not limited to considering, the following factors:

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

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

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

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

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

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

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

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

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

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

(4) The community mental health program director may recommend to the court a treatment plan for a person participating in assisted outpatient treatment. The court may adopt the plan as recommended or with modifications.

(5) As part of the order under subsection (2) of this section, the court may prohibit the person from purchasing or possessing a firearm during the period of assisted outpatient treatment if, in the opinion of the court, there is a reasonable likelihood the person would constitute a danger to self or others or to the community at large as a result of the person's mental or psychological state, as demonstrated by past behavior or participation in incidents involving unlawful violence or threats of unlawful violence, or by reason of a single incident of extreme, violent, unlawful conduct. When a court adds a firearm prohibition to an order under subsection (2) of this section, the court shall cause a copy of the order to be delivered to the sheriff of the county, who shall enter the information into the Law Enforcement Data System.

(6) The court retains jurisdiction over the person until the earlier of the end of the period of the assisted outpatient treatment established under ORS 426.130 (2) or until the court finds that the person no longer meets the criteria in subsection (2) of this section.

(7) This section does not:

(a) Prevent a court from appointing a guardian ad litem to act for the person; or

(b) Require a community mental health program to provide treatment or services to, or supervision of, the person:

(A) If the county lacks sufficient funds for such purposes; or

(B) In the case of a county that has declined to operate or contract for a community mental health program, if the public agency or private corporation that contracts with the Oregon Health Authority to provide the program, as described in ORS 430.640, lacks sufficient funds for such purposes. [2013 c.737 §2; 2015 c.50 §11; 2015 c.785 §1]

Note: 426.133 was added to and made a part of 426.005 to 426.390 by legislative action but was not added to any other series. See Preface to Oregon Revised Statutes for further explanation.

426.135 Counsel on appeal; costs of appeal. If a person determined to be a person with mental illness as provided in ORS 426.130, or determined to be an extremely dangerous person with mental illness under ORS 426.701 or 426.702, appeals the determination or the disposition, and is determined to be financially eligible for appointed counsel at state expense, upon request of the person or upon its own motion, the court shall appoint suitable legal counsel to represent the person. The compensation for legal counsel and costs and expenses necessary to the appeal shall be determined and paid by the public defense services executive director as provided in ORS 135.055 if the circuit court is the appellate court or as provided in ORS 138.500 if the Court of Appeals or Supreme Court is the appellate court. The compensation, costs and expenses shall be paid as provided in ORS 138.500. [1979 c.867 §12; 1981 s.s. c.3 §134; 1985 c.502 §25; 2001 c.962 §58; 2013 c.715 §§6,17]

426.140 Place of confinement; attendant. (1) A person, other than a person incarcerated upon a criminal charge, who has been adjudged to be a person with mental illness or against whom commitment proceedings have been instituted may not be confined in any prison, jail or other enclosure where those charged with a crime or a violation of a municipal ordinance are incarcerated, unless the person represents an immediate and serious danger to staff or physical facilities of a hospital or other facility approved by the Oregon Health Authority for the care, custody and treatment of the person.

(2) A person alleged to have a mental illness who has been taken into custody may not be confined, either before or after the commitment hearing, without an attendant in direct charge of the person. If the person is not confined in a community hospital, the sheriff or community mental health program director having the person in custody shall select an appropriate individual to act as attendant in quarters that are suitable for the comfortable, safe and humane confinement of the person and approved by the authority. [Amended by 1973 c.838 §23; 1975 c.690 §9; 1977 c.764 §1; 2009 c.595 §394; 2013 c.360 §32]

426.150 Transportation to treatment facility. (1) Upon receipt of the order of commitment, the Oregon Health Authority or its designee shall take the person with mental illness into its custody, and ensure the safekeeping and proper care of the person until the person is delivered to an assigned treatment facility or to a

representative of the assigned treatment facility. The representative of the assigned treatment facility, accompanied by any assistants the authority or its designee may deem necessary, shall proceed to the place where the person is in custody, and upon demand shall be given custody of the person, together with the certified record required by ORS 426.170. The representative shall issue appropriate receipts and immediately transport the person safely to the assigned treatment facility and deliver the person and the record to the director or a designated employee of the facility. In taking custody of the person, the authority, its designee or the representative of the facility has all the powers provided by ORS 133.225 and 161.255 and may require the assistance of any peace officer or other authorized individual.

(2) The committing judge, upon approval of the examining physicians or other qualified professionals as recommended by the authority and upon request of a legal guardian, friend or relative of the person with mental illness, may authorize the legal guardian, friend or relative to transport the person to the assigned facility when the committing judge determines that means of transportation would not be detrimental to the welfare of the person or to the public. [Amended by 1963 c.325 §1; 1973 c.838 §24; 1975 c.690 §10; 2009 c.595 §395; 2013 c.360 §33]

426.155 Release of information about person held in custody pending commitment proceeding or while committed or recommitted. (1) The provisions of this section apply to the release of information about a person who is held in custody either pending a commitment proceeding under ORS 426.070, 426.140, 426.228, 426.232, 426.233 or 426.237 (1)(b) or while committed or recommitted under ORS 426.005 to 426.390.

(2) Notwithstanding the provisions of ORS 179.495, 179.505 or 192.355 (2) and notwithstanding any other provision of ORS 426.005 to 426.390, a facility or nonhospital facility where a person is held shall establish procedures for releasing information as required under subsections (3) and (4) of this section.

(3)(a) If a person described in subsection (1) of this section authorizes disclosure as provided in subsection (5) of this section, upon request of a member of the family of the person, or any other designee of the person, a facility or nonhospital facility where the person is held shall provide the family member or the designee with the following information:

- (A) The person's diagnosis;
- (B) The person's prognosis;

(C) The medications prescribed for the person and the side effects of medications prescribed, if any;

(D) The person's progress;

(E) Information about any civil commitment process, including the date, time and location of the person's commitment hearing; and

(F) Where and when the person may be visited.

(b) If a request for information is made under this subsection and the person is unable to authorize disclosure as provided in subsection (5) of this section, the requester shall be provided notice of the presence of the person in any facility or nonhospital facility. Information shall not be provided under this paragraph if the licensed independent practitioner who is treating the person determines that it would not be in the person's best interest to provide the information or if providing the information is prohibited by federal law.

(4) Upon the admission of any person to a facility or nonhospital facility under ORS 426.005 to 426.390, the facility or nonhospital facility shall make reasonable attempts to notify the person's next of kin, or any other designee of the person, of the person's admission, unless the person requests that this information not be provided. The facility or nonhospital facility shall make reasonable attempts to notify the person's next of kin, or any other designee of the person, of the person's release, transfer, serious illness, injury or death upon request of the family member or designee, unless the person requests that this information not be provided. The person shall be advised by the facility or nonhospital facility that the person has the right to request that this information not be provided.

(5) The person who is held in custody shall be notified by the facility or nonhospital facility that information about the person has been requested. Except as provided in subsection (3) of this section, the consent of the person who is held is required for release of information under subsections (3) and (4) of this section. If, when initially informed of the request for information, the person is unable to give voluntary and informed consent to authorize the release of information, notation of the attempt shall be made in the person's treatment record and daily efforts shall be made to secure the person's consent or refusal of authorization.

(6) Notwithstanding any other provision of this section, an individual eligible to receive information under subsection (3) of this section may not receive information unless the individual first agrees to make no further

disclosure of the information. The agreement may be made orally.

(7) A facility or nonhospital facility that releases information under subsection (3) or (4) of this section shall:

(a) Notify the person who is held to whom, when and what information was released; and

(b) Note in the medical record of the person who is held:

(A) The basis for finding that the person gave voluntary and informed consent;

(B) The oral or written consent of the person who is held;

(C) To whom, when and what information was released;

(D) The agreement to the requirements of subsection (6) of this section by the requester; and

(E) Any determination made by the licensed independent practitioner under subsection (3)(b) of this section regarding the provision of notice of the presence of the person in any facility or nonhospital facility.

(8) A facility or nonhospital facility, including the staff of such facilities and nonhospital facilities, that releases information under this section or rules adopted under ORS 426.236 may not be held civilly or criminally liable for damages caused or alleged to be caused by the release of information or the failure to release information as long as the release was done in good faith and in compliance with subsections (3) and (4) of this section or rules adopted under ORS 426.236.

(9) The provisions of subsections (3) and (4) of this section do not limit the ability or obligation of facilities, nonhospital facilities, licensed independent practitioners, mental health care providers or licensed mental health professionals to provide information as otherwise allowed or required by law. [2001 c.481 §2; 2013 c.360 §34; 2015 c.461 §8]

Note: 426.155 was added to and made a part of 426.005 to 426.390 by legislative action but was not added to any other series. See Preface to Oregon Revised Statutes for further explanation.

426.160 Disclosure of record of commitment proceeding. (1) The court having jurisdiction over any proceeding conducted pursuant to ORS 426.005, 426.060 to 426.170, 426.217, 426.228, 426.255 to 426.292, 426.300 to 426.309, 426.385, 426.395, 426.701 and 426.702 may not disclose any part of the record of the proceeding or commitment to any person except:

(a) The court shall, pursuant to rules adopted by the Department of State Police, transmit the minimum information neces-

sary, as defined in ORS 181A.290, to the Department of State Police for persons described in ORS 181A.290 (1)(a) or (b) to enable the department to access and maintain the information and transmit the information to the federal government as required under federal law;

(b) As provided in ORS 426.070 (5)(c), 426.130 (3) or 426.170;

(c) On request of the person subject to the proceeding;

(d) On request of the person's legal representative or the attorney for the person or the state; or

(e) Pursuant to court order.

(2) In any proceeding described in subsection (1) of this section that is before the Supreme Court or the Court of Appeals, the limitations on disclosure imposed by this section apply to the appellate court record and to the trial court record while it is in the appellate court's custody. The appellate court may disclose information from the trial or appellate court record in a decision, as defined in ORS 19.450, provided that the court uses initials, an alias or some other convention for protecting against public disclosure the identity of the person subject to the proceeding. [Amended by 1965 c.420 §1; 1969 c.148 §1; 1973 c.838 §21; 1993 c.223 §11; 1993 c.484 §19; 1995 c.498 §3; 2009 c.826 §2; 2011 c.332 §§1,6a; 2011 c.547 §45; 2013 c.715 §§7,18]

426.170 Delivery of certified copy of record. If any person is adjudged to have a mental illness and is ordered committed to the Oregon Health Authority, a copy of the complete record in the case, certified to by the court clerk or court administrator, shall be given to the local health officer, or to the sheriff, for delivery to the director of the facility to which such person is assigned. The record shall include the name, residence, nativity, sex and age of the person and all other information that may be required by the rules and regulations promulgated by the authority. [Amended by 1973 c.838 §25; 1993 c.223 §12; 2009 c.595 §396; 2013 c.360 §36; 2015 c.736 §67]

426.175 [1969 c.371 §1; 1975 c.690 §11; 1977 c.764 §2; 1987 c.903 §20; 1991 c.901 §1; repealed by 1993 c.484 §27]

(Emergency and Voluntary Admissions)

426.180 Emergency commitment of individuals in Indian country. (1) ORS 426.180 to 426.210 apply to the commitment of an individual in Indian country if the state does not have jurisdiction over the individual.

(2) As used in this section and ORS 426.200 and 426.210, "hospital" means a hospital that is licensed under ORS chapter 441, other than an institution listed in ORS 426.010.

(3) If the court of a tribe having jurisdiction over an individual issues an order finding that the individual is dangerous to self or to any other person and is in need of immediate care, custody or treatment for mental illness, a person may request that the individual be taken by a tribal police officer or other peace officer to a hospital or non-hospital facility by submitting to the officer a certified copy of the order and an affidavit that includes:

(a) The name and address of the nearest relative or legal guardian of the individual; and

(b) A medical history completed by one of the following, who may not be related to the individual by blood or marriage:

(A) The tribe's mental health authority, if the tribe has entered into an agreement with the state pursuant to ORS 430.630 (9)(a)(B);

(B) A qualified mental health professional; or

(C) A licensed independent practitioner.

(4) Upon receipt of the order and affidavit described in subsection (3) of this section, the tribal police officer or other peace officer shall immediately transport the individual to a hospital or a nonhospital facility and present the individual to the hospital or nonhospital facility accompanied by the court order and affidavit.

(5) The director of the hospital or non-hospital facility may refuse to admit the individual if a licensed independent practitioner, after reviewing the documents accompanying the individual, is not satisfied that an emergency exists or that the individual is dangerous to self or others and in need of immediate care, custody or treatment for mental illness.

(6) If the hospital or nonhospital facility admits the individual, the director or a licensed independent practitioner shall notify the community mental health program director for the area and the circuit court with jurisdiction in the area where the facility is located. Upon receipt of the notice, the community mental health program director shall initiate commitment proceedings in accordance with ORS 426.070.

(7) If an individual is admitted to a hospital or nonhospital facility under this section, any licensed independent practitioner who is treating the individual shall give the individual the warning under ORS 426.123.

(8) This section may be applied as provided by agreement with the governing body of the reservation. Payment of costs for a commitment made under this section shall be as provided under ORS 426.250.

(9) The director of the hospital or non-hospital facility or licensed independent practitioner shall notify the appropriate tribe regarding all actions taken under ORS 426.180 to 426.210 no later than 24 hours after the action is taken, except for information protected from disclosure by state or federal law. [Amended by 1953 c.442 §2; 1975 c.690 §12; 1987 c.903 §21; 2007 c.70 §204; 2009 c.595 §397; 2012 c.25 §1; 2015 c.461 §9]

426.190 [Amended by 1969 c.391 §2; repealed by 2012 c.25 §6]

426.200 Duties following emergency admission. Within 72 hours after admission under ORS 426.180, the community mental health program director shall initiate an investigation in accordance with ORS 426.070 (3). [Amended by 1963 c.325 §2; 1975 c.690 §13; 1987 c.903 §22; 2012 c.25 §2]

426.210 Limit of detention after commitment in emergency proceedings. An individual admitted to a hospital or nonhospital facility pursuant to the emergency proceedings under ORS 426.180 to 426.200 may not be detained there for more than five judicial days following admission. The court, for good cause, may allow a postponement and detention during a postponement as provided under ORS 426.095. [Amended by 1987 c.903 §23; 2012 c.25 §3]

426.215 [1965 c.628 §1; 1973 c.838 §32; 1975 c.690 §14; 1977 c.764 §3; 1979 c.408 §4; 1985 c.743 §§1,2,3; 1987 c.368 §1; 1987 c.903 §§24,25; repealed by 1993 c.484 §27]

426.217 Change of status of committed patient to voluntary patient; effect of change. At any time after commitment by the court, the person, with the approval of the Oregon Health Authority or its designee, may change the status of the person to that of a voluntary patient. Notwithstanding ORS 426.220, any person who alters status to that of a voluntary patient under this section shall be released from the treating facility within 72 hours of the request of the person for release. [1973 c.838 §14; 1975 c.690 §15; 2009 c.595 §398]

426.220 Voluntary admission; leave of absence; notice to parent or guardian. (1) Pursuant to rules and regulations promulgated by the Oregon Health Authority, the superintendent of any state hospital for the treatment and care of persons with mental illness may admit and hospitalize therein as a patient, any person who may have a nervous disorder or a mental illness, and who voluntarily has made written application for such admission. No person under the age of 18 years shall be admitted as a patient to any such state hospital unless an application therefor in behalf of the person has been executed by the parent, adult next of kin or legal guardian of the person. Except when a period of longer hospitalization has been imposed as a condition of admission, pursuant

to rules and regulations of the authority, no person voluntarily admitted to any state hospital shall be detained therein more than 72 hours after the person, if at least 18 years of age, has given notice in writing of a desire to be discharged therefrom, or, if the patient is under the age of 18 years, after notice in writing has been given by the parent, adult next of kin or legal guardian of the person that such parent, adult next of kin or legal guardian desires that such person be discharged therefrom.

(2) Any person voluntarily admitted to a state hospital pursuant to this section may upon application and notice to the superintendent of the hospital concerned, be granted a temporary leave of absence from the hospital if such leave, in the opinion of the superintendent, will not interfere with the successful treatment or examination of the applicant for leave.

(3) Upon admission or discharge of a minor to or from a state hospital the superintendent shall immediately notify the parent or guardian. [Amended by 1953 c.127 §2; 1963 c.325 §3; 1967 c.371 §1; 1969 c.273 §1; 2007 c.70 §205; 2009 c.595 §399]

426.222 [1953 c.597 §1; 1961 c.385 §1; 1969 c.391 §3; 1969 c.638 §4; repealed by 1975 c.690 §28]

426.223 Retaking persons in custody of or committed to Oregon Health Authority; assistance of peace officers and others. In retaking custody of a person with mental illness who has been committed to the Oregon Health Authority under ORS 426.130 and who has, without lawful authority, left the custody of the facility to which the person has been assigned under ORS 426.060, or in the case of a person alleged to have a mental illness who is in custody under ORS 426.070, 426.095, 426.228 to 426.235 or 426.237 at a hospital or nonhospital facility and who has, without lawful authority, left the hospital or nonhospital facility, the facility director or designee has all the powers provided by ORS 133.225 and 161.255 and may require the assistance of any peace officer or other authorized individual. [1975 c.690 §25; 1993 c.484 §20; 2009 c.595 §400; 2013 c.360 §37]

426.224 [1953 c.597 §2; 1961 c.385 §2; 1969 c.391 §4; 1969 c.638 §5; repealed by 1975 c.690 §28]

426.225 Voluntary admission to state hospital of committed person; examination by licensed independent practitioner.

(1) If any person who has been committed to the Oregon Health Authority under ORS 426.127 or 426.130 (1)(a)(B) or (C) requests, during this period of commitment, voluntary admission to a state hospital, the superintendent shall cause the person to be examined immediately by a licensed independent practitioner. If the licensed independent practitioner finds the person to be in need of immediate care or treatment for mental

illness, the person shall be voluntarily admitted.

(2) If any person who has been committed to the authority under ORS 426.127 or 426.130 (1)(a)(B) or (C) requests, during this period of commitment, voluntary admission to a facility approved by the authority, the administrator of the facility shall cause the person to be examined immediately by a licensed independent practitioner. If the licensed independent practitioner finds the person to be in need of immediate care or treatment for mental illness, and the authority grants approval, the person shall be voluntarily admitted. [1989 c.993 §2; 2009 c.595 §401; 2015 c.461 §10]

426.226 [1953 c.597 §3; 1969 c.391 §5; 1969 c.638 §6; repealed by 1975 c.690 §28]

(Emergency Care and Treatment)

426.228 Custody; authority of peace officers and other individuals; transporting to facility; reports; examination of person. (1) A peace officer may take into custody a person who the officer has probable cause to believe is dangerous to self or to any other person and is in need of immediate care, custody or treatment for mental illness. As directed by the community mental health program director, a peace officer shall remove a person taken into custody under this section to the nearest hospital or non-hospital facility approved by the Oregon Health Authority. The officer shall prepare a written report and deliver it to the licensed independent practitioner who is treating the person. The report shall state:

(a) The reason for custody;

(b) The date, time and place the person was taken into custody; and

(c) The name of the community mental health program director and a telephone number where the director may be reached at all times.

(2) A peace officer shall take a person into custody when the community mental health program director, pursuant to ORS 426.233, notifies the peace officer that the director has probable cause to believe that the person is imminently dangerous to self or to any other person. As directed by the community mental health program director, the peace officer shall remove the person to a hospital or nonhospital facility approved by the authority. The community mental health program director shall prepare a written report that the peace officer shall deliver to the licensed independent practitioner who is treating the person. The report shall state:

(a) The reason for custody;

(b) The date, time and place the person was taken into custody; and

(c) The name of the community mental health program director and a telephone number where the director may be reached at all times.

(c) The name of the community mental health program director and a telephone number where the director may be reached at all times.

(3) If more than one hour will be required to transport the person to the hospital or nonhospital facility from the location where the person was taken into custody, the peace officer shall obtain, if possible, a certificate from a licensed independent practitioner stating that the travel will not be detrimental to the person's physical health and that the person is dangerous to self or to any other person and is in need of immediate care or treatment for mental illness. The licensed independent practitioner shall have personally examined the person within 24 hours prior to signing the certificate.

(4) When a peace officer or other authorized individual, acting under this section, delivers a person to a hospital or nonhospital facility, a licensed independent practitioner shall examine the person immediately. If the licensed independent practitioner finds the person to be in need of emergency care or treatment for mental illness, the licensed independent practitioner shall proceed under ORS 426.232, otherwise the person may not be retained in custody. If the person is to be released from custody, the peace officer or the community mental health program director shall return the person to the place where the person was taken into custody unless the person declines that service.

(5) A peace officer may transfer a person in custody under this section to the custody of an individual authorized by the community mental health program director under ORS 426.233 (3). The peace officer may meet the authorized individual at any location that is in accordance with ORS 426.140 to effect the transfer. When transferring a person in custody to an authorized individual, the peace officer shall deliver the report required under subsections (1) and (2) of this section to the authorized individual.

(6) An individual authorized under ORS 426.233 (3) shall take a person into custody when directed to do so by a peace officer or by a community mental health program director under ORS 426.233.

(7) An individual authorized under ORS 426.233 (3) shall perform the duties of the peace officer or the community mental health program director required by this section and ORS 426.233 if the peace officer or the director has not already done so.

(8) An individual authorized under ORS 426.233 (3) may transfer a person in custody under this section to the custody of another individual authorized under ORS 426.233 (3) or a peace officer. The individual transferring custody may meet another authorized

individual or a peace officer at any location that is in accordance with ORS 426.140 to effect the transfer.

(9)(a) When a peace officer takes a person into custody under this section, and the peace officer reasonably suspects that the person is a foreign national, the peace officer shall inform the person of the person's right to communicate with an official from the consulate of the person's country.

(b) A peace officer is not civilly or criminally liable for failure to provide the information required by this subsection. Failure to provide the information required by this subsection does not in itself constitute grounds for the exclusion of evidence that would otherwise be admissible in a proceeding. [1993 c.484 §2; 1997 c.531 §2; 2003 c.109 §2; 2009 c.595 §402; 2013 c.360 §38; 2015 c.461 §11; 2015 c.785 §2]

Note: 426.228 to 426.238 were added to and made a part of 426.005 to 426.390 by legislative action but were not added to any other series. See Preface to Oregon Revised Statutes for further explanation.

426.230 [Amended by 1955 c.651 §7; repealed by 1957 c.388 §17]

426.231 Hold by licensed independent practitioner; when authorized; statement required. (1) A licensed independent practitioner may hold a person for transportation to a treatment facility for up to 12 hours in a health care facility licensed under ORS chapter 441 and approved by the Oregon Health Authority if:

(a) The licensed independent practitioner believes the person is dangerous to self or to any other person and is in need of emergency care or treatment for mental illness;

(b) The licensed independent practitioner is not related to the person by blood or marriage; and

(c) A licensed independent practitioner with admitting privileges at the receiving facility consents to the transporting.

(2) Before transporting the person, the licensed independent practitioner shall prepare a written statement that:

(a) The licensed independent practitioner has examined the person within the preceding 12 hours;

(b) A licensed independent practitioner with admitting privileges at the receiving facility has consented to the transporting of the person for examination and admission if appropriate; and

(c) The licensed independent practitioner believes the person is dangerous to self or to any other person and is in need of emergency care or treatment for mental illness.

(3) The written statement required by subsection (2) of this section authorizes a peace officer, an individual authorized under

ORS 426.233 or the designee of a community mental health program director to transport a person to the treatment facility indicated on the statement. [1993 c.484 §3; 1997 c.531 §3; 2009 c.595 §403; 2013 c.360 §39; 2015 c.461 §12]

Note: See note under 426.228.

426.232 Emergency admission; notice; limit of hold. (1) If a licensed independent practitioner believes a person who is brought to a hospital or nonhospital facility by a peace officer under ORS 426.228 or by an individual authorized under ORS 426.233, or believes a person who is at a hospital or nonhospital facility, is dangerous to self or to any other person and is in need of emergency care or treatment for mental illness, and the licensed independent practitioner is not related to the person by blood or marriage, the licensed independent practitioner may do one of the following:

(a) Detain the person and cause the person to be admitted or, if the person is already admitted, cause the person to be retained in a hospital where the licensed independent practitioner has admitting privileges or is on staff.

(b) Approve the person for emergency care or treatment at a nonhospital facility approved by the authority.

(2) When approving a person for emergency care or treatment at a nonhospital facility under this section, the licensed independent practitioner shall notify immediately the community mental health program director in the county where the person was taken into custody and maintain the person, if the person is being held at a hospital, for as long as is feasible given the needs of the person for mental or physical health or safety. However, under no circumstances may the person be held for longer than five judicial days. [1993 c.484 §4; 1995 c.201 §3; 1997 c.531 §4; 2009 c.595 §404; 2013 c.360 §40; 2015 c.461 §13]

Note: See note under 426.228.

426.233 Authority of community mental health program director and of other individuals; costs of transportation. (1)(a) A community mental health program director operating under ORS 430.610 to 430.695 or a designee of the director may take one of the actions listed in paragraph (b) of this subsection when the community mental health program director or designee has probable cause to believe a person:

(A) Is dangerous to self or to any other person and is in need of immediate care, custody or treatment for mental illness; or

(B)(i) Is a person with mental illness placed on conditional release under ORS 426.125, outpatient commitment under ORS 426.127 or trial visit under ORS 426.273; and

(ii) Is dangerous to self or to any other person or is unable to provide for basic personal needs and is not receiving the care that is necessary for health and safety and is in need of immediate care, custody or treatment for mental illness.

(b) The community mental health program director or designee under the circumstances set out in paragraph (a) of this subsection may:

(A) Notify a peace officer to take the person into custody and direct the officer to remove the person to a hospital or nonhospital facility approved by the Oregon Health Authority;

(B) Authorize involuntary admission of, or, if already admitted, cause to be involuntarily retained in a nonhospital facility approved by the authority, a person approved for care or treatment at a nonhospital facility by a licensed independent practitioner under ORS 426.232;

(C) Notify an individual authorized under subsection (3) of this section to take the person into custody and direct the authorized individual to remove the person in custody to a hospital or nonhospital facility approved by the authority;

(D) Direct an individual authorized under subsection (3) of this section to transport a person in custody from a hospital or a nonhospital facility approved by the authority to another hospital or nonhospital facility approved by the authority as provided under ORS 426.235; or

(E) Direct an individual authorized under subsection (3) of this section to transport a person in custody from a facility approved by the authority to another facility approved by the authority as provided under ORS 426.060.

(2) A designee under subsection (1) of this section must meet the standards established by rule of the authority and be approved by the community mental health program director before assuming the authority permitted under subsection (1) of this section.

(3) The community mental health program director may authorize any individual to provide custody and secure transportation services for a person in custody under ORS 426.228. In authorizing an individual under this subsection, the community mental health program director shall grant the individual the authority to do the following:

(a) Accept custody from a peace officer of a person in custody under ORS 426.228;

(b) Take custody of a person upon notification by the community mental health program director under the provisions of this section;

(c) Remove a person in custody to an approved hospital or nonhospital facility as directed by the community mental health program director;

(d) Transfer a person in custody to another individual authorized under this subsection or a peace officer;

(e) Transfer a person in custody from a hospital or nonhospital facility to another hospital facility or nonhospital facility when directed to do so by the community mental health program director; and

(f) Retain a person in custody at the approved hospital or nonhospital facility until a licensed independent practitioner makes a determination under ORS 426.232.

(4) An individual authorized under subsection (3) of this section must meet the standards established by rule of the authority and be approved by the community mental health program director before assuming the authority granted under this section.

(5) The costs of transporting a person under ORS 426.060, 426.228 or 426.235 by an individual authorized under subsection (3) of this section shall be the responsibility of the community mental health program in the county in which the authorized individual is directed by a peace officer or a community mental health program director to take custody of a person and to transport the person to a facility approved by the authority, but the community mental health program shall not be responsible for costs that exceed the amount provided by the state for that transportation. An individual authorized to act under subsection (3) of this section shall charge the cost of emergency medical transportation to, and collect that cost from, the person, third party payers or other legally or financially responsible individuals or entities in the same manner that costs for the transportation of other persons are charged and collected. [1993 c.484 §5; 1997 c.531 §5; 2009 c.595 §405; 2013 c.360 §41; 2015 c.461 §14; 2015 c.785 §3]

Note: See note under 426.228.

426.234 Duties of professionals at facility where person admitted; notification; duties of court. (1) At the time a person alleged to have a mental illness is admitted to or retained in a hospital or nonhospital facility under ORS 426.232 or 426.233, a licensed independent practitioner, nurse or qualified mental health professional at the hospital or nonhospital facility shall:

(a) Inform the person of the person's right to representation by or appointment of counsel as described in ORS 426.100;

(b) Give the person the warning under ORS 426.123;

(c) Immediately examine the person;

(d) Set forth, in writing, the condition of the person and the need for emergency care or treatment; and

(e) If the licensed independent practitioner, nurse or qualified mental health professional reasonably suspects that the person is a foreign national, inform the person of the person's right to communicate with an official from the consulate of the person's country. A licensed independent practitioner, nurse or qualified mental health professional is not civilly or criminally liable for failure to provide the information required by this paragraph. Failure to provide the information required by this paragraph does not in itself constitute grounds for the exclusion of evidence that would otherwise be admissible in a proceeding.

(2)(a) At the time the person is admitted to or retained in a hospital under ORS 426.232, the licensed independent practitioner shall contact the community mental health program director of the county in which the person resides, if the county of residence is different from the county in which the hospital is located. The community mental health program director may request that the licensed independent practitioner notify the circuit court in the county in which the person resides. If the community mental health program director does not make the request, the licensed independent practitioner shall notify, immediately and in writing, the circuit court in the county in which the person is hospitalized.

(b) At the time the person is admitted to a hospital under ORS 426.232 after being brought to the hospital by a peace officer under ORS 426.228, the licensed independent practitioner shall contact the community mental health program director of the county in which the person is hospitalized. The community mental health program director of the county in which the person is hospitalized may request that the licensed independent practitioner notify the circuit court in the county in which the person is hospitalized. If the community mental health program director does not make the request, the licensed independent practitioner shall notify, immediately and in writing, the circuit court in the county in which the person was taken into custody.

(c) If, at any time prior to the hearing under ORS 426.070 to 426.130, the licensed independent practitioner responsible for a person admitted or retained under ORS 426.232 determines that the person is not dangerous to self or to any other person and is not in need of emergency care or treatment for mental illness, the licensed independent practitioner may release the person from the detention authorized by ORS

426.232. The licensed independent practitioner shall immediately notify the circuit court notified under this subsection and the community mental health program director of the person's release from detention.

(3)(a) At the time the person is admitted to or retained in a nonhospital facility under ORS 426.233, the community mental health program director in the county where the person was taken into custody shall contact the community mental health program director of the county in which the person resides, if the county of residence is different from the county in which the person was taken into custody. The community mental health program director of the county in which the person resides may request that the community mental health program director of the county in which the person was taken into custody notify the circuit court in the county where the person resides. Otherwise, the community mental health program director of the county in which the person was taken into custody shall notify, immediately and in writing, the circuit court in the county in which the person was taken into custody.

(b) If, at any time prior to the hearing under ORS 426.070 to 426.130, a community mental health program director, after consultation with a licensed independent practitioner, determines that a person admitted or retained under ORS 426.233 is not dangerous to self or to any other person and is not in need of immediate care, custody or treatment for mental illness, the community mental health program director may release the person from detention. The community mental health program director shall immediately notify the circuit court originally notified under paragraph (a) of this subsection of the person's release from detention.

(4) When the judge of the circuit court receives notice under subsection (2) or (3) of this section, the judge immediately shall commence proceedings under ORS 426.070 to 426.130. In a county having a population of 100,000 or more, and when feasible in a county with a lesser population, the community mental health program director or designee who directs the peace officer or other authorized individual to take a person into custody under ORS 426.233 shall not also conduct the investigation as provided for under ORS 426.074. Except when a person is being held under ORS 426.237 (1)(b), a person shall not be held under ORS 426.232 or 426.233 for more than five judicial days without a hearing being held under ORS 426.070 to 426.130.

(5) When the judge of the circuit court receives notice under subsection (2)(c) or (3)(b) of this section that a person has been

released, and unless the court receives the recommendation required by ORS 426.070 (4), the judge shall dismiss the case no later than 14 days after the date the person was initially detained. [1993 c.484 §6; 1995 c.201 §1; 1997 c.531 §6; 2001 c.481 §3; 2003 c.109 §4; 2009 c.595 §406; 2013 c.360 §42; 2015 c.461 §15]

Note: See note under 426.228.

426.235 Transfer between hospital and nonhospital facilities. (1) The community mental health program director may transfer a person in custody under ORS 426.232, 426.233 or 426.237 (1)(b) to a hospital or nonhospital facility approved by the Oregon Health Authority at any time during the period of detention.

(2) A person in custody at a hospital may be transferred from the hospital only with the consent of the licensed independent practitioner who is treating the person and when the director of a nonhospital facility approved by the authority agrees to admit the person.

(3) A person in custody at a nonhospital facility approved by the authority may be transferred to a hospital approved by the authority only when a licensed independent practitioner with admitting privileges agrees to admit the person.

(4) In transporting a person between a hospital and nonhospital facility under this section, the community mental health program director has all the powers provided in ORS 133.225 and 161.255 and may compel the assistance of any peace officer or other authorized individual.

(5) When a person is transferred under this section, the community mental health program director shall notify immediately the court notified under ORS 426.234 (2) or (3) of the fact of the transfer and of the location of the person. [1993 c.484 §7; 2009 c.595 §407; 2013 c.360 §43; 2015 c.461 §16]

Note: See note under 426.228.

426.236 Rules. The Oregon Health Authority shall adopt rules necessary to carry out the provisions of ORS 426.155 and 426.228 to 426.238. [1993 c.484 §8; 2001 c.481 §4; 2009 c.595 §408]

Note: See note under 426.228.

426.237 Prehearing detention; duties of community mental health program director; certification for treatment; court proceedings. (1) During a prehearing period of detention as provided in ORS 426.070, 426.140, 426.232 or 426.233, the community mental health program director shall do one of the following:

(a) Recommend, in an investigation report as provided in ORS 426.074, that the circuit court not proceed further in the matter if the community mental health program

director does not believe the person is a person with mental illness or that the person is in need of assisted outpatient treatment.

(b) No later than three judicial days after initiation of a prehearing period of detention as provided in ORS 426.070, 426.140, 426.232 or 426.233, certify the detained person for a 14-day period of intensive treatment if:

(A) The community mental health program director and a licensed independent practitioner have probable cause to believe the person is a person with mental illness;

(B) The community mental health program director in the county where the person resides verbally approves the arrangements for payment for the services at the hospital or nonhospital facility; and

(C) The community mental health program director locates a hospital or nonhospital facility that:

(i) Is approved by the authority and the community mental health program director in the county where the person resides; and

(ii) Can, in the opinion of the community mental health program director and the licensed independent practitioner, provide intensive care or treatment for mental illness necessary and sufficient to meet the emergency psychiatric needs of the person.

(c) Recommend, in an investigation report as provided in ORS 426.074, that the circuit court hold a hearing under ORS 426.070 to 426.130 if the community mental health program director has probable cause to believe the person is a person with mental illness or that the person is in need of assisted outpatient treatment.

(2)(a) If the circuit court adopts the recommendation of the community mental health program director under subsection (1)(a) of this section, the circuit court shall enter an order releasing the person and dismissing the case. Unless the person agrees to voluntary treatment, if the person is being detained in a:

(A) Nonhospital facility, the community mental health program director shall make discharge plans and ensure the discharge of the person.

(B) Hospital, the licensed independent practitioner who is treating the person shall make discharge plans and discharge the person.

(b) Upon release of the person, the community mental health program director shall attempt to notify the person's next of kin if the person consents to the notification.

(3)(a) If the detained person is certified for treatment under subsection (1)(b) of this section, the community mental health program director shall:

(A) Deliver immediately a certificate to the court having jurisdiction under ORS 426.060; and

(B) Orally inform the person of the certification and deliver a copy of the certificate to the person.

(b) The certificate required by paragraph (a) of this subsection shall include:

(A) A written statement under oath by the community mental health program director and the licensed independent practitioner that they have probable cause to believe the person is a person with mental illness in need of care or treatment for mental illness;

(B) A treatment plan that describes, in general terms, the types of treatment and medication to be provided to the person during the 14-day period of intensive treatment;

(C) A notice of the person's right to an attorney and that an attorney will be appointed by the court or as otherwise obtained under ORS 426.100 (3);

(D) A notice that the person has a right to request and be provided a hearing under ORS 426.070 to 426.130 at any time during the 14-day period; and

(E) The date and time the copy of the certificate was delivered to the person.

(c) Immediately upon receipt of a certificate under paragraph (a) of this subsection, the court shall notify the person's attorney or appoint an attorney for the person if the person cannot afford one. Within 24 hours of the time the certificate is delivered to the court, the person's attorney shall review the certificate with the person. If the person and the person's attorney consent to the certification within one judicial day of the time the certificate is delivered to the circuit court and, except as provided in subsection (4) of this section, the court shall postpone the hearing required by ORS 426.070 to 426.130 for 14 days.

(d) When a person is certified for treatment under subsection (1)(b) of this section and accepts the certification:

(A) Except as otherwise provided in this paragraph, all methods of treatment, including the prescription and administration of drugs, shall be the sole responsibility of the licensed independent practitioner who is treating the person. However, the person shall not be subject to electroshock therapy or unduly hazardous treatment and shall receive usual and customary treatment in accordance with medical standards in the community.

(B) Except when the person expressly refuses treatment, the treating licensed independent practitioner shall treat the person within the scope of the treatment plan pro-

vided the person under paragraph (b) of this subsection. The person's refusal of treatment constitutes sufficient grounds for the community mental health program director to request a hearing as provided in subsection (4)(a) of this section.

(C) If the person is in a hospital and the community mental health program director locates a nonhospital facility, approved by the authority, that, in the opinion of the community mental health program director and the licensed independent practitioner who is treating the person, can provide care or treatment for mental illness necessary and sufficient to meet the emergency psychiatric needs of the person, the treating licensed independent practitioner shall discharge the person from the hospital and the community mental health program director shall remove the person to the nonhospital facility for the remainder of the 14-day intensive treatment period. If, however, in the opinion of the treating licensed independent practitioner, the person's condition requires the person to receive medical care or treatment, the licensed independent practitioner shall retain the person in the hospital.

(D) If the person is in a nonhospital facility, the community mental health program director shall transfer the person to a hospital approved by the authority under the following conditions:

(i) If, in the opinion of a licensed independent practitioner, the person's condition requires the person to receive medical care or treatment in a hospital; and

(ii) The licensed independent practitioner agrees to admit the person to a hospital, approved by the authority, where the licensed independent practitioner has admitting privileges.

(E) If the person is transferred as provided in subparagraph (C) or (D) of this paragraph, the community mental health program director shall notify the circuit court, in the county where the certificate was filed, of the location of the person. The person may appeal the transfer as provided by rules of the authority.

(e) If the person is in a hospital, the licensed independent practitioner who is treating the person may discharge the person at any time during the 14-day period. The treating licensed independent practitioner shall confer with the community mental health program director and the person's next of kin, if the person consents to the consultation, prior to discharging the person. Immediately upon discharge of the person, the treating licensed independent practitioner shall notify the court in the county in which the certificate was filed initially.

(f) If the person is in a nonhospital facility, the community mental health program director may discharge the person at any time during the 14-day period. The community mental health program director shall consult with the licensed independent practitioner who is treating the person and the person's next of kin, if the person consents to the consultation, prior to discharging the person. Immediately upon discharge of the person, the community mental health program director shall notify the court in the county in which the certificate was filed initially.

(g) The person may agree to voluntary treatment at any time during the 14-day period. When a person agrees to voluntary treatment under this paragraph, the community mental health program director immediately shall notify the court in the county in which the certificate was filed initially.

(h) A person consenting to 14 days of treatment under subsection (3)(c) of this section shall not be held longer than 14 days from the time of consenting without a hearing as provided in ORS 426.070 to 426.130.

(i) When the court receives notification under paragraph (e), (f) or (g) of this subsection, the court shall dismiss the case.

(4) The judge of the circuit court shall immediately commence proceedings under ORS 426.070 to 426.130 when:

(a) The person consenting to 14 days of treatment or the community mental health program director requests a hearing. The hearing shall be held without unreasonable delay. In no case shall the person be held in a hospital or nonhospital facility longer than five judicial days after the request for a hearing is made without a hearing being held under ORS 426.070 to 426.130.

(b) The community mental health program director acts under subsection (1)(c) of this section. In no case shall the person be held longer than five judicial days without a hearing under this subsection. [1993 c.484 §9; 2003 c.14 §237; 2009 c.595 §409; 2013 c.360 §44; 2013 c.737 §5; 2015 c.461 §17]

Note: See note under 426.228.

426.238 Classifying facilities. The Oregon Health Authority may assign classifications, as defined by rule of the authority, to facilities that provide care and treatment for persons committed to the authority under ORS 426.130 or provide emergency care or treatment for persons pursuant to ORS 426.070, 426.228 to 426.235 or 426.237. The authority may authorize a facility to retake custody of a person who unlawfully leaves a facility as provided in ORS 426.223. [1993 c.484 §10; 2009 c.595 §410]

Note: See note under 426.228.

426.240 [Amended by 1959 c.652 §22; 1975 c.690 §16; repealed by 1977 c.764 §4 (426.241 enacted in lieu of 426.240)]

(Costs)

426.241 Payment of care, custody and treatment costs; denial of payment; rules. (1) The cost of emergency psychiatric care, custody and treatment related to or resulting from such psychiatric condition, provided by a hospital or other facility approved by the Oregon Health Authority and the community mental health program director of the county in which the facility is located, except a state hospital, for a person alleged to have a mental illness who is admitted or detained under ORS 426.070, 426.140, 426.228, 426.232 or 426.233, or for a person with mental illness who is admitted or detained under ORS 426.150, 426.223, 426.273, 426.275 or 426.292, shall be paid by the community mental health program in the county of which the person is a resident from state funds provided to the community mental health program for this purpose. The community mental health program is responsible for the cost when state funds provided to the community mental health program are exhausted. The hospital or other facility shall charge to and collect from the person, third party payers or other legally or financially responsible individuals or entities the costs of the emergency care, custody and treatment, as it would for any other patient, and any funds received shall be applied as an offset to the cost of the services provided under this section.

(2) If any person is admitted to or detained in a state hospital under ORS 426.070, 426.140, 426.180 to 426.210, 426.228, 426.232 or 426.233 for emergency care, custody or treatment, the authority shall charge to and collect from the person, third party payers or other legally or financially responsible individuals or entities the costs as it would for other patients of the state hospitals under the provisions of ORS 179.610 to 179.770.

(3) If any person is adjudged to have a mental illness under the provisions of ORS 426.130, or determined to be an extremely dangerous person with mental illness under ORS 426.701 or 426.702, and the person receives care and treatment in a state hospital, the person, third party payers or other legally or financially responsible individuals or entities shall be required to pay for the costs of the hospitalization at the state hospital, as provided by ORS 179.610 to 179.770, if financially able to do so.

(4) For purposes of this section and ORS 426.310, "resident" means resident of the county in which the person maintains a current mailing address or, if the person does

not maintain a current mailing address within the state, the county in which the person is found, or the county in which a court-committed person has been conditionally released.

(5)(a) The authority may deny payment for part or all of the emergency psychiatric services provided by a hospital or nonhospital facility under ORS 426.232, 426.233 or 426.237 when the authority finds, upon review, that the condition of the person alleged to have a mental illness did not meet the admission criteria in ORS 426.232 (1), 426.233 (1) or 426.237 (1)(b)(A). The payer responsible under this section shall make a request for denial of payment for emergency psychiatric services provided under ORS 426.232, 426.233 or 426.237 in writing to the authority.

(b) The authority may require the following to provide the authority with any information that the authority determines is necessary to review a request for denial of payment made under this subsection or to conduct a review of emergency psychiatric services for the purpose of planning or defining authority rules:

(A) A hospital or nonhospital facility approved under ORS 426.228 to 426.235 or 426.237.

(B) A physician or a person providing emergency psychiatric services under ORS 426.228 to 426.235 or 426.237.

(c) The authority shall adopt rules necessary to carry out the purposes of this subsection. [1977 c.764 §5 (enacted in lieu of 426.240); 1979 c.392 §1; 1981 c.750 §16; 1987 c.527 §1; 1993 c.484 §21; 2009 c.595 §411; 2013 c.715 §§8,19; 2015 c.785 §4]

426.250 Payment of costs related to commitment proceedings. The following is a nonexclusive list of responsibilities for payment of various costs related to commitment proceedings under this chapter as described:

(1) Any physician or qualified professional recommended by the Oregon Health Authority who is employed under ORS 426.110 to make an examination as to the mental condition of a person alleged to have a mental illness shall be allowed a fee as the court in its discretion determines reasonable for the examination.

(2) Witnesses subpoenaed to give testimony shall receive the same fees as are paid in criminal cases, and are subject to compulsory attendance in the same manner as provided in ORS 136.567 to 136.603. The attendance of out-of-state witnesses may be secured in the same manner as provided in ORS 136.623 to 136.637. The party who subpoenas the witness or requests the court to subpoena the witness is responsible for payment of the cost of the subpoena and pay-

ment for the attendance of the witness at a hearing. When the witness has been subpoenaed on behalf of a person alleged to have a mental illness who is represented by appointed counsel, the fees and costs allowed for that witness shall be paid pursuant to ORS 135.055. If the costs of witnesses subpoenaed by the person are paid as provided under this subsection, the procedure for subpoenaing witnesses shall comply with ORS 136.570.

(3) If a person with a right to a counsel under ORS 426.100, 426.701 or 426.702 is determined to be financially eligible for appointed counsel at state expense, the public defense services executive director shall determine and pay, as provided in ORS 135.055, the reasonable expenses related to the representation of the person and compensation for legal counsel. The expenses and compensation so allowed shall be paid by the public defense services executive director from funds available for the purpose.

(4) The authority shall pay the costs of expenses incurred under ORS 426.100 by the Attorney General's office. Any costs for district attorneys or other counsel appointed to assume responsibility for presenting the state's case shall be paid by the county where the commitment hearing is held, subject to reimbursement under ORS 426.310.

(5) All costs incurred in connection with a proceeding under ORS 426.180, 426.701 or 426.702, including the costs of transportation, commitment and delivery of the person, shall be paid by the community mental health program in the county of which the person is a resident. If the person is not a resident of this state, then the costs incurred in connection with the proceeding shall be paid by the community mental health program in the county from which the emergency admission was made.

(6) All costs incurred in connection with a proceeding under ORS 426.180 for the commitment of a person from a reservation, including the cost of transportation, commitment and delivery of the person, shall be paid by the governing body of the reservation of which the person is a resident. [Amended by 1965 c.420 §2; 1975 c.690 §17; 1977 c.764 §6; 1987 c.606 §9; 1987 c.903 §§26,26a; 2001 c.962 §59; 2009 c.595 §412; 2011 c.720 §162; 2012 c.25 §4; 2013 c.360 §46; 2013 c.715 §9; 2015 c.785 §5]

426.255 County to pay costs. Costs of hearings conducted pursuant to ORS 426.307, and the fees for physicians and other examiners shall be charged to the county of the person's residence in the same manner provided by ORS 426.310, whether the hearing is held in the county of residence or county of the treating facility. [1973 c.838 §19; 1987 c.803 §23; 1987 c.903 §27; 2013 c.360 §47]

426.260 [Amended by 1955 c.651 §8; repealed by 1957 c.160 §6]

426.270 [Amended by 1955 c.651 §9; repealed by 1957 c.160 §6]

(Trial Visits; Conditional Release; Outpatient Commitment; Early Release)

426.273 Trial visits. (1) During a period of commitment of a patient under ORS 426.130, the Oregon Health Authority may grant a trial visit to the patient for a period of time and under any conditions the authority shall establish. The authority shall only grant a trial visit under this section if the trial visit is agreed to by the community mental health program director, or the designee of the director, for the county in which the person would reside.

(2) When in the opinion of the authority, the committed person can be appropriately served by outpatient care during the period of commitment, the outpatient care may be required as a condition for trial visit for a period which, when added to the inpatient treatment period, shall not exceed the period of commitment. If outpatient care is required as a condition for a trial visit, the conditions shall include a designation of a facility, service or other provider to provide care or treatment.

(3) A copy of the conditions for trial visit shall be given to all of the individuals or entities listed in ORS 426.278.

(4) Any trial visit granted under this section is subject to the provisions under ORS 426.275.

(5) The director of the community mental health program, or designee, of the county in which a person who is on trial visit lives while on trial visit may modify the conditions for continued trial visit when such modification is in the best interest of the person. The director shall send notification of such changes and the reasons for the changes to all those who received a copy of the original conditions under ORS 426.278. [1985 c.242 §2 (enacted in lieu of 426.290); 1987 c.903 §28; 2009 c.595 §413; 2013 c.360 §48]

426.275 Effect of failure to adhere to condition of placement. The following are applicable to placements of persons with mental illness that are made as conditional release under ORS 426.125, outpatient commitments under ORS 426.127 or trial visits under ORS 426.273 as described:

(1) If the individual responsible under this subsection determines that a person with mental illness is failing to adhere to the terms and conditions of the placement, the responsible individual shall notify the court having jurisdiction that the person with mental illness is not adhering to the terms and conditions of the placement. If the

placement is an outpatient commitment under ORS 426.127 or a trial visit under ORS 426.273, the notifications shall include a copy of the conditions for the placement. The individual responsible for notifying the court under this subsection is as follows:

(a) For conditional releases under ORS 426.125, the guardian, relative or friend in whose care the person with mental illness is conditionally released.

(b) For outpatient commitments under ORS 426.127, the community mental health program director, or designee of the director, of the county in which the person on outpatient commitment lives.

(c) For trial visits under ORS 426.273, the community mental health program director, or designee of the director, of the county in which the person on trial visit is to receive outpatient treatment.

(2) On its own motion, the court with jurisdiction of a person with mental illness on placement may cause the person to be brought before it for a hearing to determine whether the person is or is not adhering to the terms and conditions of the placement. The person shall have the same rights with respect to notice, detention stay, hearing and counsel as for a hearing held under ORS 426.095. The court shall hold the hearing within five judicial days of the date the person with mental illness receives notice under this section. The court may allow postponement and detention during postponement as provided under ORS 426.095.

(3) Pursuant to the determination of the court upon hearing under this section, a person on placement shall either continue the placement on the same or modified conditions or shall be returned to the Oregon Health Authority for involuntary care and treatment on an inpatient basis subject to discharge at the end of the commitment period or as otherwise provided under this chapter.

(4) If the person on placement is living in a county other than the county of the court that established the current period of commitment under ORS 426.130 during which the trial visit, conditional release or outpatient commitment takes place, the court establishing the current period of commitment shall transfer jurisdiction to the appropriate court of the county in which the person is living while on the placement and the court receiving the transfer shall accept jurisdiction.

(5) The court may proceed as provided in ORS 426.307 or this section when the court:

(a) Receives notice under ORS 426.070 or 426.228 to 426.235; and

(b) Determines that the person is a person with mental illness on conditional re-

lease under ORS 426.125, outpatient commitment under ORS 426.127 or trial visit under ORS 426.273. [1985 c.242 §3 (enacted in lieu of 426.290); 1987 c.903 §29; 1993 c.484 §22; 2009 c.595 §414; 2011 c.720 §163; 2013 c.360 §49]

426.278 Distribution of copies of conditions for outpatient commitment or trial visit. The Oregon Health Authority shall provide to each of the following individuals or entities a copy of the conditions of an outpatient commitment under ORS 426.127 or a trial visit under ORS 426.273:

(1) The committed person;

(2) The community mental health program director, or designee of the director, of the county in which the committed person is to receive outpatient treatment;

(3) The director of any facility, service or other provider designated to provide care or treatment;

(4) The court of current commitment; and

(5) The appropriate court of the county in which the committed person lives during the commitment period if the person is living in a different county than the county of the court that made the current commitment. [1987 c.903 §30; 2009 c.595 §415; 2013 c.360 §50]

426.280 [Amended by 1961 c.228 §1; 1961 c.706 §26; 1969 c.597 §91; 1973 c.838 §26; 1985 c.242 §5; 1987 c.903 §31; 1993 c.484 §23; 1997 c.531 §7; renumbered 426.335 in 2003]

426.290 [Amended by 1959 c.513 §1; 1961 c.228 §2; 1969 c.391 §6; 1973 c.838 §27; 1975 c.690 §18; repealed by 1985 c.242 §1 (426.273, 426.275 and 426.292 enacted in lieu of 426.290)]

426.292 Release prior to expiration of term of commitment. Nothing in this chapter and ORS 430.397 to 430.401 prohibits the Oregon Health Authority from releasing a person from a hospital or other facility in which the person is being treated prior to the expiration of the period of commitment under ORS 426.130 when, in the opinion of the director of the facility or the licensed independent practitioner who is treating the person, the person is no longer a person with mental illness. [1985 c.242 §4 (enacted in lieu of 426.290); 2009 c.595 §416; 2013 c.360 §51; 2015 c.461 §18]

(Competency and Discharge)

426.295 Judicial determination of competency; restoration of competency.

(1) No person admitted to a state hospital for the treatment of mental illness shall be considered by virtue of the admission to be incompetent.

(2) Upon petition of a person committed to a state hospital, or the guardian, relative or creditor of the person or other interested person, the court of competent jurisdiction in the county in which the state hospital is located or, if the petitioner requests a hearing in the county where the commitment origi-

nated, then the court in such county shall hold a hearing to determine whether or not the person in the state hospital is competent. A guardian who is not the petitioner shall be notified of the hearing at least three days before the date set for hearing. After the hearing the court shall enter an order pursuant to its finding and serve a copy of the order on the petitioner and forward a copy of the order to the committing court.

(3) When a person committed to a state hospital has been declared incompetent pursuant to subsection (2) of this section and is discharged from the hospital, the superintendent of the hospital shall advise the court which entered the order of incompetency whether or not, in the opinion of the chief medical officer of the hospital on the basis of medical evidence, the person is competent. The superintendent shall make a reasonable effort to notify the discharged person of the advice to the court. If the court is advised that the person is competent, the court shall enter an order to that effect. If the court is advised that the person is not competent, upon petition of the person, the guardian, relative or creditor of the person or other interested person, the court shall hold a hearing to determine whether or not the discharged person is competent. The court shall serve a copy of any order entered pursuant to this subsection on the person and forward a copy of such order to the committing court. [1965 c.628 §2; 1967 c.460 §1; 1969 c.391 §7]

426.297 Payment of expenses for proceeding under ORS 426.295. (1) The expenses of a proceeding under ORS 426.295 (2) shall be paid by the person with mental illness, unless it appears from the affidavit of the person or other evidence that the person is unable to pay the expenses. If the person is unable to pay, the expenses of the proceedings shall be paid by the community mental health program in the county of which the person was a resident at the time of admission. If the county of residence cannot be established, the community mental health program in the county from which the person was admitted shall pay the expenses.

(2) The expenses of the proceeding under ORS 426.295 (3) shall be paid by the petitioner.

(3) Any physician employed by the court to make an examination as to the mental condition of a person subject to a competency proceeding under ORS 426.295 or 426.380 to 426.390 shall be allowed a reasonable professional fee by order of the court. Witnesses summoned and giving testimony shall receive the same fees as are paid in ORS 44.415 (2). [1967 c.460 §2; 1989 c.980 §14; 2013 c.360 §52; 2015 c.785 §6]

426.300 Discharge of committed persons; application for assistance on behalf of committed person. (1) The Oregon Health Authority shall, by filing a written certificate with the last committing court and the court of residence, discharge an individual from court commitment, except one held upon an order of a court or judge having criminal jurisdiction in an action or proceeding arising out of criminal offense, if the authority finds that the individual is no longer a person with mental illness or that the transfer of the individual to a voluntary status is in the individual's best interest.

(2) The authority may sign applications for public assistance, as defined in ORS 411.010, medical assistance, as defined in ORS 414.025, or any other state or federal benefits on behalf of those individuals who may be eligible for public assistance, medical assistance or any other state or federal benefits upon discharge. [Amended by 1963 c.325 §4; 1967 c.549 §8; 1973 c.838 §22; 1997 c.249 §137; 2009 c.595 §417; 2013 c.360 §53; 2013 c.688 §90; 2017 c.65 §1]

426.301 Release of committed person; certification of continued mental illness; service of certificate; content; period of further commitment; effect of failure to protest further commitment. (1) At the end of the 180-day period of commitment, any person whose status has not been changed to voluntary shall be released unless the Oregon Health Authority certifies to the court in the county where the treating facility is located that the person is still a person with mental illness and is in need of further treatment. The authority, pursuant to its rules, may delegate to the director of the treating facility the responsibility for making the certification. The director of the treating facility shall consult with the community mental health program director of the county of residence prior to making the certification. If the certification is made, the person will not be released, but the director of the treating facility shall immediately issue a copy of the certification to the person and to the community mental health program director of the county of residence.

(2) The certification shall be served upon the person by the director of the facility where the person is confined or by the designee of the director. The director of the facility shall inform the court in writing that service has been made and the date thereof.

(3) The certification shall advise the person of all the following:

(a) That the authority or facility has requested that commitment be continued for an additional period of time.

(b) That the person may consult with legal counsel and that legal counsel will be

provided for the person without cost if the person is unable to afford legal counsel.

(c) That the person may protest this further period of commitment within 14 days, and if the person does not protest the further commitment, commitment will be continued for an indefinite period of time up to 180 days.

(d) That if the person does protest a further period of commitment, the person is entitled to a hearing before the court on whether commitment should be continued.

(e) That the person may protest either orally or in writing by signing the form accompanying the certification.

(f) That the person is entitled to have a physician or other qualified professional as recommended by the authority, other than a member of the staff at the facility where the person is confined, examine the person and report to the court the results of the examination.

(g) That the person may subpoena witnesses and offer evidence on behalf of the person at the hearing.

(h) That if the person is without funds to retain legal counsel or an examining physician or qualified professional as recommended by the authority, the court will appoint legal counsel, a physician or other qualified professional.

(4) Nothing in subsection (3) of this section requires the giving of the warning under ORS 426.123.

(5) When serving the certification upon the person, the authority shall read and deliver the certification to the person and ask whether the person protests a further period of commitment. The person may protest further commitment either orally or by signing a simple protest form to be given to the person with the certification. If the person does not protest a further period of commitment within 14 days of service of the certification, the authority or facility shall so notify the court and the court shall, without further hearing, order the commitment of the person for an additional indefinite period of time up to 180 days. [1973 c.838 §15; 1975 c.690 §19; 1987 c.903 §32; 2001 c.962 §60; 2009 c.595 §418; 2013 c.360 §54]

426.303 Effect of protest of further commitment; advice of court. When the person protests a further period of commitment the Oregon Health Authority or facility designated in accordance with ORS 426.301 shall immediately notify the court and the court shall have the person brought before it and shall again advise the person that the authority or facility has requested that commitment be continued for an additional period of time and that if the person does not

protest this commitment the commitment will be continued for an indefinite period of time up to 180 days. The person shall also be informed of the rights set forth in ORS 426.301. [1973 c.838 §16; 1975 c.690 §20; 2009 c.595 §419]

426.305 [1955 c.522 §4; 1963 c.325 §5; repealed by 1965 c.628 §3]

426.307 Court hearing; continuance; attorney; examination; determination of mental illness; order of further commitment; period of commitment. If a person with mental illness requests a hearing under ORS 426.301 or if the court proceeds under ORS 426.275 (5), the following provisions apply:

(1) The hearing shall be conducted as promptly as possible and at a time and place as the court may direct.

(2) If the person requests a continuance in order to prepare for the hearing or to obtain legal counsel to represent the person, the court may grant postponement and detention during postponement as provided under ORS 426.095.

(3) The person has the right to representation by or appointment of counsel as provided under ORS 426.100 subject to ORS 135.055, 151.216 and 151.219.

(4) If the person requests an examination by a physician or other qualified professional as recommended by the Oregon Health Authority and is without funds to retain a physician or other qualified professional for purposes of the examination, the court shall appoint a physician or other qualified professional, other than a member of the staff from the facility where the person is confined, to examine the person at no expense to the person and to report to the court the results of the examination.

(5) The provisions of ORS 40.230, 40.235, 40.240 and 40.250 do not apply to the use of medical records from the current period of commitment or to testimony related to such records or period of commitment in connection with hearings under this section. The court may consider as evidence such reports and testimony.

(6) The court shall then conduct a hearing and after hearing the evidence and reviewing the recommendations of the treating and examining physicians or other qualified professionals, the court shall determine whether the person is still a person with mental illness and is in need of further treatment. If in the opinion of the court the individual is still a person with mental illness by clear and convincing evidence and is in need of further treatment, the court may order commitment to the authority for an additional indefinite period of time up to 180 days.

(7) At the end of the 180-day period, the person shall be released unless the authority or facility again certifies to the committing court that the person is still a person with mental illness and is in need of further treatment, in which event the procedures set forth in ORS 426.301 to 426.307 shall be followed. [1973 c.838 §17; 1975 c.690 §21; 1979 c.408 §5; 1987 c.803 §24; 1987 c.903 §§33,33a; 1989 c.171 §53; 1993 c.484 §24; 1997 c.649 §4; 2001 c.962 §61; 2009 c.595 §420; 2013 c.360 §1]

426.309 Effect of ORS 426.217 and 426.301 to 426.307 on other discharge procedure. ORS 426.217 and 426.301 to 426.307 do not restrict or limit the discharge procedures set forth in ORS 426.300. [1973 c.838 §20]

(Miscellaneous)

426.310 Reimbursement of county expenses for commitment proceedings involving nonresidents. (1) If a person with mental illness is a resident of some other county in this state, the county making the commitment shall be reimbursed by the county of which the person is a resident. All reasonable and actual expenses incurred and paid by the county by reason of the care, custody, treatment, investigation, examination and commitment hearing shall, upon presentation of a copy of the order of the judge making the examination and commitment, together with a properly itemized and certified claim covering the expense, be promptly paid to the county by the county of which the person was a resident. The expenses reimbursed under this subsection shall include any expenses incurred to pay for representation of the state's interest under ORS 426.100 and 426.250.

(2) If a person alleged to have a mental illness is a resident of some other county in this state, a county attempting a commitment shall be reimbursed by the county of which the person is a resident, as defined in ORS 426.241, for all actual, reasonable expenses incurred and paid by the county attempting commitment by reason of the care, custody, treatment, investigation, examination and commitment hearing. The expenses reimbursed under this subsection shall include any expenses incurred to pay for representation of the state's interest under ORS 426.100 and 426.250.

(3) In the case of a county that declines to operate or contract for a community mental health program, the public agency or private corporation that contracts with the Oregon Health Authority to provide the program, as described in ORS 430.640, is responsible for reimbursing a county for the costs incurred by the county in the care, custody, treatment, investigation and examination of the person. [Amended by 1975 c.690 §22;

1977 c.764 §7; 1979 c.392 §2; 1987 c.903 §34; 2013 c.360 §55; 2015 c.785 §7]

426.320 Payment of certain expenses by the state. When a person with mental illness is assigned to or transferred to a state hospital, all of the actual and necessary expenses of transporting the person to the hospital that are incurred by the agent or attendant from the state hospital, the assistants of the agent or attendant and the person, shall be paid by the state in the manner provided in ORS 426.330. [Amended by 1975 c.690 §23; 2013 c.360 §56]

426.330 Presentation and payment of claims. (1) The special funds authorized for the use of the superintendent of the Oregon State Hospital to better enable the superintendent promptly to meet the advances and expenses necessary in the matter of transferring patients to the Oregon State Hospital are continued in existence. The superintendent shall present the superintendent's claims monthly, with vouchers that show the expenditures from the special funds during the preceding month, to the Oregon Health Authority for the transfer of patients to the Oregon State Hospital.

(2) Against the funds appropriated to cover the cost of transporting patients, the State Treasurer shall pay the claims of the superintendent that have been approved by the Oregon Health Authority. [Amended by 1975 c.614 §14; 1985 c.565 §67; 2007 c.14 §2; 2007 c.70 §206; 2009 c.595 §421; 2011 c.9 §59; 2013 c.36 §68; 2015 c.318 §15]

426.335 Limitations on liability. The following limitations on liability are applicable to actions and proceedings within this chapter and ORS 430.397 to 430.401:

(1) The following individuals may not in any way be held criminally or civilly liable for the initiation of commitment procedures under ORS 426.070, provided the individual acts in good faith, on probable cause and without malice:

- (a) The community mental health program director or designee of the director.
- (b) The two petitioning persons.
- (c) The local health officer.
- (d) Any magistrate.
- (e) Any peace officer or parole and probation officer.
- (f) Any licensed independent practitioner attending the person alleged to have a mental illness.

(g) Any licensed independent practitioner associated with the hospital or institution where the person alleged to have a mental illness is a patient.

(2) The community mental health program director or the designee of the director conducting the investigation under ORS

426.070 and 426.074 shall not be held criminally or civilly liable for conducting the investigation, provided the investigator acts in good faith, on probable cause and without malice.

(3) The individual representing the state's interest under ORS 426.100 shall not be held criminally or civilly liable for performing responsibilities under ORS 426.100 as long as the individual acts in good faith and without malice.

(4) An examiner appointed under ORS 426.110 may not be held criminally or civilly liable for actions pursuant to ORS 426.120 if the examiner acts in good faith and without malice.

(5) A licensed independent practitioner, hospital or judge may not be held criminally or civilly liable for actions pursuant to ORS 426.228, 426.231, 426.232, 426.234 or 426.235 if the licensed independent practitioner, hospital or judge acts in good faith, on probable cause and without malice.

(6) A peace officer, individual authorized under ORS 426.233, community mental health director or designee, hospital or other facility, licensed independent practitioner or judge may not in any way be held criminally or civilly liable for actions pursuant to ORS 426.228 to 426.235 if the individual or facility acts in good faith, on probable cause and without malice.

(7) Any legal guardian, relative or friend of a person with mental illness who assumes responsibility for the person under a conditional release under ORS 426.125 shall not be liable for any damages that result from the misconduct of the person while on conditional release if the legal guardian, relative or friend acts in good faith and without malice.

(8) The individuals designated in this subsection may not be liable for personal injuries or other damages that result from the misconduct of a person with mental illness while the person is on outpatient commitment under ORS 426.127 if the designated individual acts without willful and wanton neglect of duty. This subsection is applicable to all of the following:

(a) The community mental health program director and the designee of the director for the county in which the committed person resides.

(b) The superintendent or director of any staff of any facility where the person with mental illness receives treatment during the outpatient commitment.

(c) The Director of the Oregon Health Authority.

(d) The licensed independent practitioner and the facility providing care or treatment to a person on outpatient commitment.

(9) For trial visits granted under ORS 426.273 and 426.275:

(a) The following individuals and entities may not be liable for a person's expenses while on trial visit:

(A) The licensed independent practitioner and the facility providing care or treatment to a person on a trial visit;

(B) The superintendent or director of the facility providing care or treatment to a person on a trial visit;

(C) The Director of the Oregon Health Authority; and

(D) The chief medical officer of the facility.

(b) The individuals designated in this paragraph may not be liable for damages that result from the misconduct of a person with mental illness while on trial visit if the designated individual acts without willful and wanton neglect of duty:

(A) The community mental health program director for the county in which the person resides;

(B) The superintendent, director or chief medical officer of any facility providing care or treatment to a patient on a trial visit;

(C) The licensed independent practitioner responsible for the patient's care or treatment during a trial visit;

(D) The Director of the Oregon Health Authority; or

(E) The employees and agents of individuals or facilities under this paragraph. [Formerly 426.280; 2005 c.264 §21; 2009 c.595 §422; 2013 c.360 §57; 2015 c.461 §19; 2015 c.736 §68]

426.340 [Repealed by 1975 c.690 §28]

426.350 [Amended by 1961 c.152 §1; repealed by 1971 c.64 §12]

426.360 [1961 c.513 §§1,2,3; 1969 c.597 §92; 1971 c.655 §246; 1977 c.253 §40; repealed by 2001 c.900 §261]

426.370 Withholding information obtained in certain commitment or admission investigations. A community mental health program director or designee may withhold information obtained during an investigation under ORS 426.070, 426.228, 426.232, 426.233 or 426.234 if the community mental health program director determines:

(1) That information was not included in its investigation report or otherwise used in a material way to support a determination by the community mental health program director that there was probable cause to believe a person was a person with mental illness; and

(2) Release of the information would constitute a clear and immediate danger to any person. [1989 c.993 §6; 1993 c.484 §25; 2009 c.595 §423; 2013 c.360 §58]

Note: 426.370 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 426 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

426.375 [1967 c.460 §5; repealed by 1973 c.838 §29]

426.380 Availability of writ of habeas corpus. Any individual committed pursuant to ORS 426.005 to 426.223 and 426.241 to 426.380 shall be entitled to the writ of habeas corpus upon proper petition by the individual or a friend to any court generally empowered to issue the writ of habeas corpus in the county in which the state hospital in which the person is detained is located. [1967 c.460 §6]

426.385 Rights of committed persons.

(1) Every person with mental illness committed to the Oregon Health Authority shall have the right to:

(a) Communicate freely in person and by reasonable access to telephones;

(b) Send and receive sealed mail, except that this right may be limited for security reasons in state institutions as described in ORS 426.010;

(c) Wear the clothing of the person;

(d) Keep personal possessions, including toilet articles;

(e) Religious freedom;

(f) A private storage area with free access thereto;

(g) Be furnished with a reasonable supply of writing materials and stamps;

(h) A written treatment plan, kept current with the progress of the person;

(i) Be represented by counsel whenever the substantial rights of the person may be affected;

(j) Petition for a writ of habeas corpus;

(k) Not be required to perform routine labor tasks of the facility except those essential for treatment;

(L) Be given reasonable compensation for all work performed other than personal housekeeping duties;

(m) Daily access to fresh air and the outdoors, except that this right may be limited when it would create significant risk of harm to the person or others;

(n) Such other rights as may be specified by rule; and

(o) Exercise all civil rights in the same manner and with the same effect as one not admitted to the facility, including, but not limited to, the right to dispose of real prop-

erty, execute instruments, make purchases, enter contractual relationships, and vote, unless the person has been adjudicated incompetent and has not been restored to legal capacity. Disposal of personal property in possession of the person in a state institution described in ORS 426.010 is subject to limitation for security reasons.

(2)(a) A person must be immediately informed, orally and in writing, of any limitation:

(A) Of the right to send or receive sealed mail under subsection (1)(b) of this section;

(B) Regarding the disposal of personal property under subsection (1)(o) of this section; and

(C) Of the right to daily access to fresh air and the outdoors under subsection (1)(m) of this section.

(b) Any limitation under this subsection and the reasons for the limitation must be stated in the person's written treatment plan.

(c) The person has the right to challenge any limitation under this subsection pursuant to rules adopted by the authority. The person must be informed, orally and in writing, of this right.

(3) A person with mental illness committed to the authority shall have the right to be free from potentially unusual or hazardous treatment procedures, including convulsive therapy, unless the person has given express and informed consent or authorized the treatment pursuant to ORS 127.700 to 127.737. This right may be denied to a person for good cause as defined in administrative rule only by the director of the facility in which the person is confined, but only after consultation with and approval of an independent examining physician. Any denial shall be entered into the person's treatment record and shall include the reasons for the denial. A person with mental illness may not be subjected to psychosurgery, as defined in ORS 677.190 (21)(b).

(4) Mechanical restraints shall not be applied to a person admitted to a facility unless it is determined by the chief medical officer of the facility or designee to be required by the medical needs of the person. Every use of a mechanical restraint and the reasons for using a mechanical restraint shall be made a part of the clinical record of the person over the signature of the chief medical officer of the facility or designee.

(5) Nothing in this section prevents the authority from acting to exclude contraband from its facilities and to prevent possession or use of contraband in its facilities.

(6) As used in this section:

(a) “Contraband” has the meaning given that term in ORS 162.135.

(b) “Security reasons” means the protection of the person with mental illness from serious and immediate harm and the protection of others from threats or harassment as defined by rule of the authority. [1967 c.460 §4; 1973 c.838 §28; 1981 c.372 §3; 1983 c.486 §1; 1993 c.442 §16; 1995 c.141 §1; 2001 c.104 §152; 2007 c.56 §1; 2009 c.595 §424; 2009 c.756 §20; 2013 c.360 §59]

426.390 Construction. Nothing in ORS 426.295, 426.297 and 426.380 to 426.390 is intended to detract from the powers of a court under ORS chapter 125 or ORS 179.640. [1967 c.460 §7; 1973 c.823 §137; 1995 c.664 §96]

426.395 Posting of statement of rights of committed persons. A simple and clear statement of rights guaranteed to patients committed to the Oregon Health Authority shall be prominently posted in each room frequented by patients in all facilities housing such patients. A copy of the statement shall be given to each patient upon admission and sent, upon request, to the legal counsel, guardian, relative or friend of the patient. The statement shall include the name, address and telephone number of the system described in ORS 192.517 (1). [1973 c.838 §31; 2003 c.14 §238; 2007 c.57 §1; 2009 c.595 §425]

426.405 [1983 c.536 §1; repealed by 2001 c.900 §261]

426.407 [1983 c.536 §2; repealed by 2001 c.900 §261]

426.410 [1969 c.638 §1; repealed by 1975 c.690 §28]

(Licensing of Persons Who May Order Restraint or Seclusion)

426.415 Licensing of persons who may order and oversee use of restraint and seclusion in facilities providing mental health treatment to individuals under 21 years of age; rules. (1) The Director of the Oregon Health Authority may adopt rules establishing requirements and procedures for licensing persons who may order, monitor and evaluate the use of restraint and seclusion in facilities providing intensive mental health treatment services to individuals under 21 years of age.

(2) A license may not be issued or renewed under rules adopted under this section unless the person applying for the license or renewal:

(a) Is employed by or providing services under contract with a provider that is certified by the Oregon Health Authority to provide intensive mental health treatment services for individuals under 21 years of age;

(b) Has successfully completed an emergency safety intervention training program approved by the director;

(c) Provides documented evidence of the person’s ability to assess the psychological and physical well-being of individuals under 21 years of age;

(d) Meets other qualifications established by the director by rule for qualified mental health professionals; and

(e) Demonstrates knowledge of federal and state rules governing the use of restraint and seclusion in intensive mental health treatment programs for individuals under 21 years of age.

(3) The rules described in subsection (1) of this section shall:

(a) Specify procedures for issuing and renewing licenses;

(b) Establish a term of licensure;

(c) Require a person issued a license to satisfy annual training requirements relating to emergency safety intervention procedures;

(d) Specify grounds for denial, suspension or revocation of a license;

(e) Set any license or renewal fees the director determines are necessary; and

(f) Specify any other licensing provisions the director determines are necessary to comply with federal law or regulations or to operate a licensing system described in this section. [2001 c.807 §1; 2009 c.595 §426]

Note: 426.415 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 426 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

426.450 [1971 c.622 §6; renumbered 430.397 in 1995]

426.460 [1971 c.622 §7; 1973 c.795 §3; 1979 c.744 §22; 1981 c.809 §1; 1985 c.565 §68; renumbered 430.399 in 1995]

426.470 [1971 c.622 §8; renumbered 430.401 in 1995]

COMMUNITY INTEGRATION OF PERSONS WITH CHRONIC MENTAL ILLNESS

426.490 Policy. It is declared to be the policy and intent of the Legislative Assembly that the State of Oregon shall assist in improving the quality of life of persons with chronic mental illness within this state by ensuring the availability of an appropriate range of residential opportunities and related support services. [1979 c.784 §1; 2007 c.70 §207]

Note: 426.490 to 426.500 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 426 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

426.495 Definitions for ORS 426.490 to 426.500; rules. (1) As used in ORS 426.490 to 426.500, unless the context requires otherwise:

(a) “Case manager” means a person who works on a continuing basis with a person

with a chronic mental illness and is responsible for assuring the continuity of the various services called for in the discharge plan of the person with a chronic mental illness including services for basic personal maintenance, mental and personal treatment, and appropriate education and employment.

(b) “Discharge plan” means a written plan prepared jointly with the person with a chronic mental illness, mental health staff and case manager prior to discharge, prescribing for the basic and special needs of the person upon release from the hospital.

(c) “Person with a chronic mental illness” means an individual who is:

(A) Eighteen years of age or older; and

(B) Diagnosed by a psychiatrist, a licensed clinical psychologist, a licensed independent practitioner as defined in ORS 426.005 or a nonmedical examiner certified by the Oregon Health Authority or the Department of Human Services as having chronic schizophrenia, a chronic major affective disorder, a chronic paranoid disorder or another chronic psychotic mental disorder other than those caused by substance abuse.

(2) For purposes of providing services in the community, the authority may adopt rules consistent with accepted professional practices in the fields of psychology and psychiatry to specify other criteria for determining who is a person with a chronic mental illness. [1979 c.784 §2; 1987 c.903 §35; 2007 c.70 §208; 2009 c.595 §427; 2011 c.720 §164; 2015 c.461 §20]

Note: See note under 426.490.

426.500 Powers and duties of Oregon Health Authority; rules. For the purpose of carrying out the policy and intent of ORS 426.490 to 426.500, the Oregon Health Authority shall:

(1) Adopt rules for the administration of ORS 426.490 to 426.500;

(2) Prepare a written discharge plan for each person with a chronic mental illness who is a patient at a state hospital or who is committed to the authority pursuant to ORS 426.005 to 426.223 and 426.241 to 426.380;

(3) Ensure that case managers are provided for each person with a chronic mental illness described in subsection (2) of this section; and

(4) Disburse from any available funds:

(a) Funds for one LINC model in the area served by F. H. Dammasch State Hospital and one LINC model in the area served by the Oregon State Hospital licensed under ORS 443.415;

(b) Discretionary funds for services necessary to implement a discharge plan, in-

cluding but not limited to transportation, medication, recreation and socialization; and

(c) Funds to provide day treatment services, community psychiatric inpatient services, and work activity services for persons with chronic mental illness when needed. [1979 c.784 §3; 1999 c.59 §121; 2007 c.70 §209; 2009 c.595 §428; 2013 c.360 §67]

Note: See note under 426.490.

426.502 Definitions for ORS 426.502 to 426.508. As used in ORS 426.502 to 426.508:

(1) “Authority” means the Oregon Health Authority.

(2) “Community housing” means property and related equipment that are used or could be used to house persons with chronic mental illness and their care providers. “Community housing” includes single-family housing and multiple-unit residential housing.

(3) “Construct” means to build, install, assemble, expand, alter, convert, replace or relocate. “Construct” includes to install equipment and to prepare a site.

(4) “Equipment” means furnishings, fixtures or appliances that are used or could be used to provide care in community housing.

(5) “Multiple-unit residential housing” means housing that provides two or more living units and spaces for common use by the occupants in social and recreational activities. “Multiple-unit residential housing” may include nonhousing facilities incidental or appurtenant to the housing that, in the determination of the authority, improve the quality of the housing.

(6) “Person with a chronic mental illness” has the meaning given that term in ORS 426.495.

(7) “Single-family housing” means a detached living unit with common living room and dining facilities for at least three occupants with chronic mental illness. “Single-family housing” may include nonhousing facilities incidental or appurtenant to the housing that, in the determination of the authority, improve the quality of the housing. [1999 c.983 §2; 2005 c.11 §1; 2007 c.70 §210; 2009 c.595 §429]

426.504 Power of Oregon Health Authority to develop community housing for persons with chronic mental illness; sale of community housing; conditions. (1) The Oregon Health Authority may, through contract or otherwise, acquire, purchase, receive, hold, exchange, demolish, construct, lease, maintain, repair, replace, improve and equip community housing for the purpose of housing persons with chronic mental illness.

(2) The authority may dispose of community housing acquired under subsection (1) of this section in a public or private sale,

upon such terms and conditions as the authority considers advisable to increase the quality and quantity of community housing available for persons with chronic mental illness. Except as provided in subsection (3) of this section, in any instrument conveying fee title to community housing, the authority shall include language that restricts the use of the community housing to housing for persons with chronic mental illness. Such restriction is not a violation of ORS 93.270.

(3) If the authority determines that community housing acquired under subsection (1) of this section is no longer suitable for use as community housing, the authority may sell or otherwise dispose of the community housing without including in any instrument conveying fee title to the community housing any language that restricts the use of the community housing. Proceeds from the sale or disposition of community housing under this subsection are considered proceeds described in ORS 426.506 (4)(c).

(4) When exercising the power granted to the authority under this section, the authority is not subject to ORS chapter 273 or ORS 270.100 to 270.190, 276.900 to 276.915 or 279A.250 to 279A.290. [1999 c.983 §3; 2003 c.794 §281; 2005 c.11 §2; 2007 c.70 §211; 2009 c.595 §430]

426.506 Community Mental Health Housing Fund; Community Housing Trust Account; report. (1) There is created in the State Treasury, separate and distinct from the General Fund, the Community Mental Health Housing Fund. All earnings on investments of moneys in the Community Mental Health Housing Fund shall accrue to the fund. Interest earned on moneys in the fund shall be credited to the fund. All moneys in the fund are continuously appropriated to the Oregon Health Authority to carry out the provisions of ORS 426.504.

(2) The Community Mental Health Housing Fund shall be administered by the authority to provide housing for persons with chronic mental illness. As used in this subsection, "housing" may include acquisition, maintenance, repair, furnishings and equipment.

(3)(a) There is established within the Community Mental Health Housing Fund a Community Housing Trust Account. With approval of the State Treasurer and upon request of the Director of the Oregon Health Authority, moneys in the account may be invested as provided in ORS 293.701 to 293.857.

(b) Notwithstanding the provisions of ORS 270.150, the authority shall deposit into the Community Housing Trust Account the proceeds, less costs to the state, received by the authority from the sale of F. H. Dammasch State Hospital property under ORS 426.508. The authority may expend, for

the purposes set forth in ORS 426.504, any earnings credited to the account, including any interest earned on moneys deposited in the account, and up to five percent of the sale proceeds initially credited to the account by the Oregon Department of Administrative Services. At least 95 percent of the sale proceeds shall remain in the account in perpetuity. Proceeds deposited in the account may not be commingled with proceeds from the sale of any surplus real property owned, operated or controlled by the authority and used as a state training center.

(c) Interest earned on moneys in the Community Housing Trust Account may be expended in the following manner:

(A) Seventy percent of interest earned on deposits in the account shall be expended for community housing purposes; and

(B) Thirty percent of interest earned on deposits in the account shall be expended for institutional housing purposes.

(d) Interest earned on deposits in the Community Housing Trust Account shall not be used to support operating expenses of the authority.

(4) The Community Mental Health Housing Fund shall consist of:

(a) Moneys appropriated to the fund by the Legislative Assembly;

(b) Sale proceeds and earnings from the account under subsection (3) of this section;

(c) Proceeds from the sale, transfer or lease of any surplus real property owned, operated or controlled by the authority and used as community housing;

(d) Moneys reallocated from other areas of the authority's budget;

(e) Interest and earnings credited to the fund; and

(f) Gifts of money or other property from any source, to be used for the purposes of developing housing for persons with chronic mental illness.

(5) The authority shall adopt policies:

(a) To establish priorities for the use of moneys in the Community Mental Health Housing Fund for the sole purpose of developing housing for persons with chronic mental illness;

(b) To match public and private moneys available from other sources for developing housing for persons with chronic mental illness; and

(c) To administer the fund in a manner that will not exceed the State Treasury's maximum cost per transaction.

(6) The authority shall collaborate with the Housing and Community Services De-

partment to ensure the highest return and best value for community housing from the Community Mental Health Housing Fund.

(7) The authority shall provide a report of revenues to and expenditures from the Community Mental Health Housing Fund as part of its budget submission to the Governor and Legislative Assembly under ORS chapter 291. [1999 c.983 §4; 2001 c.954 §31; 2007 c.70 §212; 2007 c.217 §7; 2009 c.595 §431]

426.508 Sale of F. H. Dammasch State Hospital; fair market value; redevelopment of property; property reserved for community housing. (1) Notwithstanding ORS 421.611 to 421.630 or any actions taken under ORS 421.611 to 421.630, the Department of Corrections shall transfer the real property known as the F. H. Dammasch State Hospital and all improvements to the Oregon Department of Administrative Services to be sold for the benefit of the Oregon Health Authority.

(2)(a) Notwithstanding ORS 270.100 to 270.190, and except as provided in subsection (4) of this section, the Oregon Department of Administrative Services shall sell or otherwise convey the real property known as the F. H. Dammasch State Hospital in a manner consistent with the provisions of this section. Conveyance shall not include transfer to a state agency. The sale price of the real property shall equal or exceed the fair market value of the real property. The Oregon Department of Administrative Services shall engage the services of a licensed real estate broker or principal real estate broker to facilitate the sale of the real property.

(b) The Oregon Department of Administrative Services shall retain from the sale or other conveyance of the real property those costs incurred by the state in selling or conveying the real property, including costs incurred by the Department of Corrections in transferring the real property to the Oregon Department of Administrative Services. The remaining proceeds from the sale or other conveyance shall be transferred to the Community Housing Trust Account created under ORS 426.506 (3).

(3) Redevelopment of the real property formerly occupied by the F. H. Dammasch State Hospital shall be consistent with the Dammasch Area Transportation Efficient Land Use Plan developed by Clackamas County, the City of Wilsonville, the Oregon Department of Administrative Services, the Department of Land Conservation and Development, the Department of Transportation, the Oregon Housing Stability Council, the Oregon Health Authority and the Department of State Lands.

(4) The Oregon Department of Administrative Services shall reserve from the sale

of the real property under subsection (2) of this section not more than 10 acres. The real property reserved from sale shall be transferred to the Oregon Health Authority for use by the authority to develop community housing for persons with chronic mental illness. The department and the authority shall jointly coordinate with the City of Wilsonville to identify the real property reserved from sale under this subsection. [1999 c.983 §5; 2001 c.300 §76; 2001 c.900 §253; 2007 c.70 §213; 2009 c.595 §432; 2015 c.180 §47]

SEXUALLY DANGEROUS PERSONS

426.510 “Sexually dangerous person” defined. As used in ORS 426.510 to 426.680, unless the context otherwise requires, “sexually dangerous person” means a person who because of repeated or compulsive acts of misconduct in sexual matters, or because of a qualifying mental disorder, is deemed likely to continue to perform such acts and be a danger to other persons. [1963 c.467 §1; 1977 c.377 §1; 2017 c.634 §28]

426.520 [1963 c.467 §2; repealed by 1977 c.377 §6]

426.530 [1963 c.467 §3; 1971 c.743 §367; 1973 c.836 §349; repealed by 1977 c.377 §6]

426.540 [1963 c.467 §4; repealed by 1977 c.377 §6]

426.550 [1963 c.467 §5; repealed by 1977 c.377 §6]

426.560 [1963 c.467 §6; repealed by 1977 c.377 §6]

426.570 [1963 c.467 §7; 1973 c.836 §350; repealed by 1977 c.377 §6]

426.580 [1963 c.467 §§8,9; 1973 c.443 §1; repealed by 1977 c.377 §6]

426.590 [1963 c.467 §10; repealed by 1977 c.377 §6]

426.610 [1963 c.467 §11; 1973 c.443 §2; repealed by 1977 c.377 §6]

426.620 [1963 c.467 §12; repealed by 1977 c.377 §6]

426.630 [1963 c.467 §13; repealed by 1977 c.377 §6]

426.640 [1963 c.467 §14; 1973 c.443 §3; 1975 c.380 §8; repealed by 1977 c.377 §6]

426.650 Voluntary admission to state institution; rules. (1) Pursuant to rules promulgated by the Oregon Health Authority, the superintendent of any state hospital for the treatment and care of persons with mental illness may admit and hospitalize therein as a patient any person in need of medical or mental therapeutic treatment as a sexually dangerous person who voluntarily has made written application for such admission. No person under the age of 18 years shall be admitted as a patient to any such state hospital unless an application therefor in behalf of the person has been executed by the parent, adult next of kin or legal guardian of the person. Pursuant to rules and regulations of the authority, no person voluntarily admitted to any state hospital shall be detained therein more than 72 hours after the person, if at least 18 years of age, has given notice in writing of desire to be discharged therefrom, or, if the patient is

under the age of 18 years, after notice in writing has been given by the parent, adult next of kin or legal guardian of the person that such parent, adult next of kin or legal guardian desires that such person be discharged therefrom.

(2) Any person voluntarily admitted to a state facility pursuant to this section may upon application and notice to the superintendent of the institution concerned, be granted a temporary leave of absence from the institution if such leave, in the opinion of the chief medical officer, will not interfere with the successful treatment or examination of the applicant. [1963 c.467 §15; 1969 c.391 §8; 1973 c.443 §4; 1973 c.827 §43; 1974 c.36 §11; 2007 c.70 §214; 2009 c.595 §433]

426.660 [1963 c.467 §16; repealed by 1973 c.443 §5]

426.670 Treatment programs for sexually dangerous persons. The Oregon Health Authority hereby is directed and authorized to establish and operate treatment programs, either separately within an existing state Department of Corrections institution, as part of an existing program within an Oregon Health Authority institution, or in specified and approved sites in the community to receive, treat, study and retain in custody, as required, such sexually dangerous persons as are committed under ORS 426.510 to 426.670. [1963 c.467 §17; 1965 c.481 §1; 1979 c.606 §1; 1987 c.320 §230; 2009 c.595 §434]

426.675 Determination of sexually dangerous persons; custody pending sentencing; hearing; sentencing; rules. (1) When a defendant has been convicted of a sexual offense under ORS 163.305 to 163.467 or 163.525 and there is probable cause to believe the defendant is a sexually dangerous person, the court prior to imposing sentence may continue the time for sentencing and commit the defendant to a facility designated under ORS 426.670 for a period not to exceed 30 days for evaluation and report.

(2) If the facility reports to the court that the defendant is a sexually dangerous person and that treatment available may reduce the risk of future sexual offenses, the court shall hold a hearing to determine by clear and convincing evidence that the defendant is a sexually dangerous person. The state and the defendant shall have the right to call and cross-examine witnesses at such hearing. The defendant may waive the hearing required by this subsection.

(3) If the court finds that the defendant is a sexually dangerous person and that treatment is available which will reduce the risk of future sexual offenses, it may, in its discretion at the time of sentencing:

(a) Sentence the defendant to probation on the condition that the person participate in and successfully complete a treatment

program for sexually dangerous persons pursuant to ORS 426.670;

(b) Impose a sentence of imprisonment with the order that the defendant be assigned by the Director of the Department of Corrections to participate in a treatment program for sexually dangerous persons pursuant to ORS 426.670. The Department of Corrections and the Oregon Health Authority shall jointly adopt administrative rules to coordinate assignment and treatment of prisoners under this subsection; or

(c) Impose any other sentence authorized by law. [1977 c.377 §3; 1979 c.606 §2; 1987 c.320 §231; 1993 c.14 §24; 2009 c.595 §435]

426.680 Trial visits for probationer. (1) The superintendent of the facility designated under ORS 426.670 to receive commitments for medical or mental therapeutic treatment of sexually dangerous persons may grant a trial visit to a defendant committed as a condition of probation where:

(a) The trial visit is not inconsistent with the terms and conditions of probation; and

(b) The trial visit is agreed to by the community mental health program director for the county in which the person would reside.

(2) Trial visit here shall correspond to trial visit as described in ORS 426.273 to 426.292 and 426.335, except that the length of a trial visit may be for the duration of the period of probation, subject to the consent of the sentencing court. [1973 c.443 §7; 1977 c.377 §4; 1985 c.242 §7; 2009 c.595 §436]

426.700 [1973 c.616 §1; repealed by 1981 c.372 §2]

EXTREMELY DANGEROUS PERSONS WITH MENTAL ILLNESS

426.701 Commitment of "extremely dangerous" person with mental illness; requirements for conditional release; rules. (1) For the purposes of this section and ORS 426.702:

(a) A person is "extremely dangerous" if the person:

(A) Is at least 18 years of age;

(B) Is exhibiting symptoms or behaviors of a mental disorder substantially similar to those that preceded the act described in subsection (3)(a)(C) of this section; and

(C) Because of a mental disorder:

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

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

(b) "Mental disorder" does not include:

(A) A disorder manifested solely by repeated criminal or otherwise antisocial conduct; or

(B) A disorder constituting solely a personality disorder.

(c) A 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.

(2)(a) A district attorney may petition the court to initiate commitment proceedings described in this section if there is reason to believe a person is an extremely dangerous person with mental illness. The petition shall immediately be served upon the person.

(b) The person shall be advised in writing of:

(A) The allegation that the person is an extremely dangerous person with mental illness and may be committed to the jurisdiction of the Psychiatric Security Review Board for a maximum period of 24 months; and

(B) The right to a hearing to determine whether the person is an extremely dangerous person with mental illness, unless the person consents to the commitment by waiving the right to a hearing in writing after consultation with legal counsel.

(c) A person against whom a petition described in this subsection is filed shall have the following:

(A) The right to obtain suitable legal counsel possessing skills and experience commensurate with the nature of the allegations and complexity of the case and, if the person is without funds to retain legal counsel, the right to have the court appoint legal counsel;

(B) The right to subpoena witnesses and to offer evidence on behalf of the person at the hearing;

(C) The right to cross-examine any witnesses who appear at the hearing; and

(D) The right to examine all reports, documents and information that the court considers, including the right to examine the reports, documents and information prior to the hearing, if available.

(d) The court shall appoint an examiner as described in ORS 426.110 to evaluate the person.

(3)(a) Upon receipt of a petition filed under subsection (2) of this section, the court

shall schedule a hearing. At the hearing, the court shall order the person committed as an extremely dangerous person with mental illness under the jurisdiction of the Psychiatric Security Review Board for a maximum of 24 months if the court finds, by clear and convincing evidence, that:

(A) The person is extremely dangerous;

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

(C) Because of the mental disorder that is resistant to treatment, the person committed one of the following acts:

(i) Caused the death of another person;

(ii) Caused serious physical injury to another person by means of a dangerous weapon;

(iii) Caused physical injury to another person by means of a firearm as defined in ORS 166.210 or an explosive as defined in ORS 164.055;

(iv) Engaged in oral-genital contact with a child under 14 years of age;

(v) Forcibly compelled sexual intercourse, oral-genital contact or the penetration of another person's anus or vagina; or

(vi) Caused a fire or explosion that damaged the protected property of another, as those terms are defined in ORS 164.305, or placed another person in danger of physical injury, and the fire or explosion was not the incidental result of normal and usual daily activities.

(b) The court shall further commit the person to a state hospital for custody, care and treatment if the court finds, by clear and convincing evidence, that the person cannot be controlled in the community with proper care, medication, supervision and treatment on conditional release.

(c) The court shall specify in the order whether any person who would be considered a victim as defined in ORS 131.007 of the act described in paragraph (a)(C) of this subsection, if the act had been criminally prosecuted, requests notification of any order or hearing, conditional release, discharge or escape of the person committed under this section.

(d) The court shall be fully advised of all drugs and other treatment known to have been administered to the alleged extremely dangerous person with mental illness that may substantially affect the ability of the person to prepare for, or to function effectively at, the hearing.

(e) The provisions of ORS 40.230, 40.235, 40.240, 40.250 and 179.505 do not apply to the use of the examiner's report and the court may consider the report as evidence.

(4) The findings of the court that a person committed an act described in subsection (3)(a)(C) of this section may not be admitted in a criminal prosecution.

(5) A person committed under this section shall remain under the jurisdiction of the board for a maximum of 24 months unless the board conducts a hearing and makes the findings described in subsection (6)(d) of this section.

(6)(a) The board shall hold a hearing six months after the initial commitment described in subsection (3) of this section, and thereafter six months after a further commitment described in ORS 426.702, to determine the placement of the person and whether the person is eligible for conditional release or early discharge. The board shall provide written notice of the hearing to the person, the person's legal counsel and the office of the district attorney who filed the initial petition under subsection (2) of this section within a reasonable time prior to the hearing. The board shall further notify the person of the following:

(A) The nature of the hearing and possible outcomes;

(B) The right to appear at the hearing and present evidence;

(C) The right to be represented by legal counsel and, if the person is without funds to retain legal counsel, the right to have the court appoint legal counsel;

(D) The right to subpoena witnesses;

(E) The right to cross-examine witnesses who appear at the hearing; and

(F) The right to examine all reports, documents and information that the board considers, including the right to examine the reports, documents and information prior to the hearing if available.

(b) If the board determines at the hearing that the person still suffers from a mental disorder that is resistant to treatment and continues to be extremely dangerous, and that the person cannot be controlled in the community with proper care, medication, supervision and treatment if conditionally released, the person shall remain committed to a state hospital.

(c) If the board determines at the hearing that the person still suffers from a mental disorder that is resistant to treatment and continues to be extremely dangerous, but finds that the person can be controlled in the community with proper care, medication, supervision and treatment if conditionally released, the board shall conditionally release the person.

(d) If the board determines at the hearing that the person no longer suffers from a

mental disorder that is resistant to treatment or is no longer extremely dangerous, the board shall discharge the person. The discharge of a person committed under this section does not preclude commitment of the person pursuant to ORS 426.005 to 426.390.

(7)(a) At any time during the commitment to a state hospital, the superintendent of the state hospital may request a hearing to determine the status of the person's commitment under the jurisdiction of the board. The request shall be accompanied by a report setting forth the facts supporting the request. If the request is for conditional release, the request shall be accompanied by a verified conditional release plan. The hearing shall be conducted as described in subsection (6) of this section.

(b) The board may make the findings described in subsection (6)(c) of this section and conditionally release the person without a hearing if the office of the district attorney who filed the initial petition under subsection (2) of this section does not object to the conditional release.

(c) At any time during conditional release, a state or local mental health facility providing treatment to the person may request a hearing to determine the status of the person's commitment under the jurisdiction of the board. The hearing shall be conducted as described in subsection (6) of this section.

(8)(a) If the board orders the conditional release of a person under subsection (6)(c) of this section, the board shall order conditions of release that may include a requirement to report to any state or local mental health facility for evaluation. The board may further require cooperation with, and acceptance of, psychiatric or psychological treatment from the facility. Conditions of release may be modified by the board from time to time.

(b) When a person is referred to a state or local mental health facility for an evaluation under this subsection, the facility shall perform the evaluation and submit a written report of its findings to the board. If the facility finds that treatment of the person is appropriate, the facility shall include its recommendations for treatment in the report to the board.

(c) Whenever treatment is provided to the person by a state or local mental health facility under this subsection, the facility shall furnish reports to the board on a regular basis concerning the progress of the person.

(d) Copies of all reports submitted to the board pursuant to this subsection shall be furnished to the person and to the person's legal counsel, if applicable. The confidential-

ity of these reports is determined pursuant to ORS 192.338, 192.345 and 192.355.

(e) The state or local mental health facility providing treatment to the person under this subsection shall comply with the conditional release order and any modifications of the conditions ordered by the board.

(9)(a) If at any time while the person is conditionally released it appears that the person has violated the terms of the conditional release, the board may order the person returned to a state hospital for evaluation or treatment. A written order of the board is sufficient warrant for any law enforcement officer to take the person into custody. A sheriff, municipal police officer, parole or probation officer or other peace officer shall execute the order, and the person shall be returned to the state hospital as soon as practicable.

(b) The director of a state or local mental health facility providing treatment to a person under subsection (8) of this section may request that the board issue a written order for a person on conditional release to be taken into custody if there is reason to believe that the person can no longer be controlled in the community with proper care, medication, supervision and treatment.

(c) Within 30 days following the return of the person to a state hospital, the board shall conduct a hearing to determine if, by a preponderance of the evidence, the person is no longer fit for conditional release. The board shall provide written notice of the hearing to the person, the person's legal counsel and the office of the district attorney who filed the initial petition under subsection (2) of this section within a reasonable time prior to the hearing. The notice shall advise the person of the nature of the hearing, the right to have the court appoint legal counsel and the right to subpoena witnesses, examine documents considered by the board and cross-examine all witnesses who appear at the hearing.

(10)(a) 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 provide written notice to the board and the district attorney of the county where the criminal charges were initiated of the discharge recommendation at least 45 days before the hearing. The notice shall be accompanied by a report describing the person's diagnosis and the treatment the person has received.

(b) Upon receiving the notice described in this subsection, the district attorney may request an order from the court in the county where the criminal charges were initiated for an evaluation to determine if the person is fit to proceed in the criminal proceeding. 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.

(c) 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 as described in this subsection.

(11) The board shall make reasonable efforts to notify any person described in subsection (3)(c) of this section of any order or hearing, conditional release, discharge or escape of the person committed under this section.

(12) The board shall adopt rules to carry out the provisions of this section and ORS 426.702.

(13) Any time limitation described in ORS 131.125 to 131.155 does not run during a commitment described in this section or a further commitment described in ORS 426.702. [2013 c.715 §2; 2013 c.715 §13]

426.702 Discharge from commitment of extremely dangerous person with mental illness; requirements for further commitment; protest and hearing. (1)(a) At the end of the 24-month period of commitment described in ORS 426.701, any person who remains committed under the jurisdiction of the Psychiatric Security Review Board shall be discharged, unless the board certifies to the court in the county where the state hospital or state or local mental health facility providing treatment to the person is located that the person is still extremely dangerous and suffers from a mental disorder that is resistant to treatment. The board, pursuant to its rules, may delegate to the superintendent of the state hospital or the director of the state or local mental health facility providing treatment to the person the responsibility for making the certification. If the certification is made, the person will not be released.

(b) The board may additionally certify that the person cannot be controlled in the community with proper care, medication, supervision and treatment on conditional release and must be committed to a state hospital. The board, pursuant to its rules, may delegate to the superintendent of the state hospital or the director of the state or local

mental health facility providing treatment to the person the responsibility for making the additional certification.

(2) The certification shall immediately be served upon the person by the superintendent of the state hospital or the director of the state or local mental health facility providing treatment to the person. The superintendent or director shall inform the court in writing that service has been made and the date thereof.

(3) The certification shall advise the person of all the following:

(a) That the board, hospital or facility has requested that commitment be continued for an additional 24 months.

(b) That the person may protest this further commitment within 14 days, and that, if the person does not protest, the commitment will be continued for a maximum of 24 months.

(c) That the person may consult with legal counsel when deciding whether to protest the further commitment and that legal counsel will be provided for the person without cost if the person is without funds to retain legal counsel.

(d) That the person may protest a further period of commitment either orally or in writing by signing the form accompanying the certification.

(e) That if the person does protest a further period of commitment, the person is entitled to a hearing before the court to determine whether commitment should be continued.

(f) That the person is entitled to have a psychologist or psychiatrist, other than a member of the staff at the facility where the person is being treated, examine the person and report to the court the results of the examination at the hearing.

(g) That the person may subpoena witnesses and offer evidence on behalf of the person at the hearing.

(h) That if the person is without funds to retain legal counsel or an examining psychologist or psychiatrist for the hearing, the court will appoint legal counsel or an examining psychologist or psychiatrist.

(4) 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. The person may protest a further period of commitment and request a hearing either orally or by signing a simple protest form to be given to the person with the certification. If the person does not protest a further period of commitment within 14 days of service of the certification, the board, hospital or facility

shall so notify the court, and the court shall, without further hearing, order the commitment of the person to the jurisdiction of the board for a maximum of 24 months. The court shall further order that the person be committed to a state hospital if a certification under subsection (1)(b) of this section has been made.

(5) When the person protests a further period of commitment and requests a hearing, the board, hospital or facility shall immediately notify the court, and the court shall have the person brought before it and shall again advise the person that the board, hospital or facility has requested that commitment be continued for an additional period of time and that if the person does not protest this commitment the commitment will be continued for a maximum of 24 months. The person shall also be informed of the rights set forth in subsection (3) of this section.

(6) If the person requests a hearing under subsections (4) and (5) of this section, the following provisions apply as described:

(a) The hearing shall be conducted as promptly as possible and at a time and place as the court may direct.

(b) If the person requests a continuance in order to prepare for the hearing or to obtain legal counsel to represent the person, the court may grant postponement and detention during postponement as described in ORS 426.095 (2)(c).

(c) The person has the right to representation by or appointment of legal counsel subject to ORS 135.055, 151.216 and 151.219.

(d) If the person requests an examination by a psychologist or psychiatrist and is without funds to retain a psychologist or psychiatrist for purposes of the examination, the court shall appoint a psychologist or psychiatrist, other than a member of the staff from the facility where the person is being treated, to examine the person at no expense to the person and to report to the court the results of the examination.

(e) The provisions of ORS 40.230, 40.235, 40.240, 40.250 and 179.505 do not apply to the use of medical records from the current period of commitment or to testimony related to such records or period of commitment in connection with hearings under this section. The court may consider as evidence such reports and testimony.

(f) The court shall then conduct a hearing. The court may take judicial notice of the findings regarding the act described in ORS 426.701 (3)(a)(C) made by the court at the initial commitment. If, after hearing the evidence and reviewing the recommendations of the board and the state hospital or the state

or local mental health facility providing treatment to the person, in the opinion of the court the person is still extremely dangerous and suffering from a mental disorder that is resistant to treatment by clear and convincing evidence, the court may order commitment to the jurisdiction of the board for an additional maximum of 24 months. The court shall further commit the person to a state hospital for custody, care and treatment if the court finds, by clear and convincing evidence, that the person cannot be controlled in the community with proper care, medication, supervision and treatment on conditional release.

(g) At the end of the 24-month period, the person shall be discharged unless the board, hospital or facility again certifies to the committing court that the person is still an extremely dangerous person with mental ill-

ness and in need of further treatment, in which event the procedures set forth in this section shall be followed. [2013 c.715 §3; 2013 c.715 §14]

426.705 [1973 c.616 §2; repealed by 1981 c.372 §2]

426.710 [1973 c.616 §6; repealed by 1981 c.372 §2]

426.715 [1973 c.616 §7; repealed by 1981 c.372 §2]

426.720 [1973 c.616 §8; repealed by 1981 c.372 §2]

426.725 [1973 c.616 §9; repealed by 1981 c.372 §2]

426.730 [1973 c.616 §10; repealed by 1981 c.372 §2]

426.735 [1973 c.616 §11; repealed by 1981 c.372 §2]

426.740 [1973 c.616 §12; repealed by 1981 c.372 §2]

426.745 [1973 c.616 §§13,14,15; repealed by 1981 c.372 §2]

426.750 [1973 c.616 §3; repealed by 1981 c.372 §2]

426.755 [1973 c.616 §4; repealed by 1981 c.372 §2]

426.760 [1977 c.148 §5; repealed by 1981 c.372 §2]