TITLE 35

MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES; ALCOHOL AND DRUG ABUSE

Chapter 426. Persons With Mental Illness; Sexually Dangerous Persons
427. Persons With Mental Retardation; Persons With Developmental Disabilities
428. Nonresident Persons With Mental Disabilities
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Chapter 426

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Persons With Mental Illness; Sexually Dangerous Persons

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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) "Department" means the Department of Human Services.

(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 department determines suitable, any of which may provide diagnosis and evaluation, medical care, detoxification, social services or rehabilitation for committed mentally ill persons.

(d) "Mentally ill person" 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 and is not receiving such care as is necessary for health or safety.

(C) A person who:

(i) Is chronically mentally ill, as defined in ORS 426.495;

(ii) Within the previous three years, has twice been placed in a hospital or approved inpatient facility by the department under ORS 426.060;

(iii) 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 subsubparagraph (ii) of this subparagraph; and

(iv) 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 or both subparagraph (A) or (B) of this paragraph.

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

(f) "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 and developmental disabilities 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]

(Hospitals)

426.010 State hospitals for mentally ill persons. Except as otherwise ordered by the Department of Human Services pursuant to ORS 179.325, the Oregon State Hospital in Salem, Marion County, and the Eastern Oregon Psychiatric Center in Pendleton, Umatilla County, shall be used as state hospitals for the care and treatment of mentally ill persons who are assigned to the care of such institutions by the department or who have previously been committed to such institutions. [Amended by 1955 c.651 §3; 1965 c.339 §23; 1965 c.595 §2; 1983 c.505 §1; 1999 c.983 §6]

426.020 Superintendents; chief medical officer. The superintendents of the hospitals mentioned in ORS 426.010 shall be persons the Department of Human Services considers qualified to administer the hospital. If the superintendent of any hospital is a physician licensed by the Board of Medical Examiners for the State of Oregon, the superintendent shall serve as chief medical officer. If the superintendent is not a physician, the Director of Human Services or the designee of the director shall appoint a physician to serve as chief medical officer who shall be in the unclassified service. [Amended by 1955 c.651 §4; 1969 c.391 §1; 1973 c.807 §2; 1987 c.158 §76; 2003 c.14 §234]

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

426.060 Commitment to Department of Human Services; authority of department to direct placement; transfer authority; delegation. (1) Commitments to the Department of Human Services 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 department 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 department, the department may direct any court committed person to the facility best able to treat the person. The authority of the department on such matters shall be final.

(b) At any time, for good cause and in the best interest of the mentally ill person, the department may transfer a committed person from one facility to another. When

transferring a person under this paragraph, the department 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 department;

(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 mentally ill person, the department 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 department to provide emergency care or treatment as defined by rule of the department.

(d) Pursuant to its rules, the department may delegate to a community mental health and developmental disabilities program director the responsibility for assignment of mentally ill persons to suitable facilities or transfer between such facilities under conditions which the department 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]

(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 county 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 and developmental disabilities program director or a designee of the director in the county where the allegedly mentally ill person resides;

(c) It must state that a person within the county other than the person giving the notice is a mentally ill person 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 and developmental disabilities 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 Department of Human Services if commitment is proposed because the person appears to be a mentally ill person, as defined in ORS 426.005 (1)(d)(C). When such notice is received, the department may verify, to the extent known by the department, whether or not the person meets the criteria described in ORS 426.005 (1)(d)(C)(i) and (ii) and so inform the community mental health and developmental disabilities 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 mentally ill person.

(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 and developmental disabilities 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 mentally ill person, the community mental health and developmental disabilities program director shall not submit a recommendation to the court.

(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 mentally ill person, 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 mentally ill. 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) The judge may cause the allegedly mentally ill person to be taken into custody pending the investigation or hearing by issuing a warrant of detention under this subsection. A judge may only issue a warrant under this subsection if the court finds that there is probable cause to believe that failure to take the person into custody would pose serious harm or danger to the person or to others.

(B) To cause the custody of a person under this paragraph, the judge must issue a warrant of detention to the community mental health and developmental disabilities program director or designee, the sheriff of the county or designee, directing that person to take the allegedly mentally ill person into custody and produce the person at the time and place stated in the warrant.

(C) At the time the person is taken into custody, the person shall be informed by the community mental health and developmental disabilities 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 and developmental disabilities 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 and developmental disabilities program director, sheriff or designee is not civilly or criminally liable for failure to provide the information required by this sub-subparagraph. Failure to provide the information required by this sub-subparagraph does not in itself constitute grounds for the exclusion of evidence that would otherwise be admissible in a proceeding.

(D) 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]

426.072 Custody; care; responsibilities of treating physician; rules. (1) A hospital or nonhospital facility and a treating physician must comply with the following when an allegedly mentally ill person 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 person authorized under ORS 426.233; or

(c) By a physician under ORS 426.232.

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

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

(b) The treating physician 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 physician. 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 physician shall be notified immediately of any use of mechanical restraints on the person. Every use of a mechanical restraint and the reasons therefor shall be made a part of the clinical record of the person over the signature of the treating physician; and

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

(3) The Department of Human Services 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]

426.074 Investigation; procedure; content; report. The following is applicable to an investigation initiated by a community mental health and developmental disabilities 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 allegedly mentally ill person 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 allegedly mentally ill person can be located, the investigator shall contact the person within three judicial days from the date the community mental health and developmental disabilities program director or a designee receives a notice under ORS 426.070 alleging that the person is mentally ill.

(b) Within 15 days from the date the community mental health and developmental disabilities program director or a designee receives a notice under ORS 426.070 alleging that a person is mentally ill, 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 and developmental disabilities 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 allegedly mentally ill person 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 allegedly mentally ill person in the home of the person or other place familiar to the person.

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

(c) The investigator shall be allowed access to physicians, 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 mentally ill person as defined in ORS 426.005 (1)(d)(C), the investigator shall be allowed access to medical records necessary to verify the existence of criteria described in ORS 426.005 (1)(d)(C). The investigator shall include pertinent parts of the medical record in the investigation report. Records and communications described in this paragraph and communications related thereto 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 allegedly mentally ill person and to that 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]

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 allegedly mentally ill person 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 and developmental disabilities 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 physician.

(2) The court shall appoint examiners under ORS 426.110 sufficiently long before the hearing so that they may begin their preparation for the hearing. The records established by the Department of Human Services 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 allegedly mentally ill person relating to 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 allegedly mentally ill person at least 24 hours prior to the hearing.

(4) When requested by a party to the action, the party's attorney shall subpoena physicians who are or have been treating the

allegedly mentally ill person. Any treating physician 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]

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 cause a citation to issue to the allegedly mentally ill person stating the nature of the information filed concerning the person and the specific reasons the person is believed to be mentally ill. 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]

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 allegedly mentally ill person.

(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 or 426.233 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 allegedly mentally ill person.

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

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

(3) The allegedly mentally ill person and the person representing the state's interest shall have the right to cross-examine all the following:

(a) Witnesses.

(b) The person conducting the investigation.

(c) The examining physicians or other qualified persons recommended by the Department of Human Services 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 persons are produced as witnesses at the hearing available for cross-examination.

(c) The testimony of any treating physicians, nurses or social workers for the prehearing period of detention. Any treating physician, 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 allegedly mentally ill person.

(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 allegedly mentally ill person or counsel for the allegedly mentally ill person. [1973 c.838 §9; 1975 c.690 §5; 1987 c.903 §13; 1993 c.484 §16; 1997 c.649 §2]

426.100 Advice of court; appointment of legal counsel; costs; representation of state's interest. (1) At the time the allegedly mentally ill person 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 allegedly mentally ill persons 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, an allegedly mentally ill person 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 a person is appointed counsel at state expense, payment of expenses and compensation relating to legal counsel shall be made as provided under ORS 426.250.

(c) If the allegedly mentally ill person 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]

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 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 allegedly mentally ill person or the attorney for the allegedly mentally ill person.

(2) To be qualified for purposes of this section, an examiner must meet all of the following qualifications:

(a) The person must agree to be an examiner.

(b) The person must be one of the following:

(A) A physician licensed by the Board of Medical Examiners for the State of Oregon who is competent to practice psychiatry as provided by the Department of Human Services by rule.

(B) Certified as a mental health examiner qualified to make examinations for involuntary commitment proceedings by the department. The department has authority to establish, by rule, requirements for certification as a mental health examiner for purposes of this subparagraph.

(3) 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]

426.120 Examination report; rules. (1) Persons appointed under ORS 426.110 to conduct the examination shall do 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; and

(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 examining persons find, and show by their reports, that the person examined is a mentally ill person, 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 mentally ill person would cooperate with and benefit from a program of voluntary treatment.

(c) Reports shall contain the information required by the Department of Human Services by rule. The department shall adopt rules necessary to carry out this paragraph.

(3) The examiner shall be allowed access to physicians, nurses or social workers and to medical records compiled during the current involuntary prehearing period of detention and the investigation report. Records and communications described in this subsection and communications related thereto 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]

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 mentally ill person.

(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]

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 mentally ill person.

(b) The person requesting the conditional release requests to be allowed to care for the mentally ill person during the period of commitment in a place satisfactory to the judge.

(c) The person requesting the release establishes all of the following to the satisfaction of the court:

(A) Ability to care for the mentally ill person.

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

(2) If the court determines to allow conditional release, the court shall order that the mentally ill person be conditionally released and placed in the care of the re-

quester. 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]

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

(1) The Department of Human Services may only place a person in an outpatient commitment if an adequate treatment facility is available.

(2) Conditions for the outpatient commitment shall be set at the time of the hearing under ORS 426.095 by the community mental health and developmental disabilities program director, or a designee for the director, for the county in which the hearing takes place. 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 persons 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 and developmental disabilities 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 and developmental disabilities 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]

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

(a) Not mentally ill, the person shall be discharged forthwith.

(b) Mentally ill based upon clear and convincing evidence, the court:

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

(i) The mentally ill 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 individual to the Department of Human Services for treatment if, in the opinion of the court, subparagraph (A) or (B) of this paragraph is not in the best interest of the mentally ill person. If the court orders commitment under this subparagraph:

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

(ii) The department 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.

(2) A court that orders a conditional release or a commitment under this section shall establish a period of commitment 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.

(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. [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]

426.135 Counsel on appeal; costs of appeal. If a person determined to be mentally ill as provided in ORS 426.130 appeals the determination or disposition based thereon, 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]

426.140 Place of confinement; attendant. (1) No person, not incarcerated upon a criminal charge, who has been adjudged a mentally ill person or one against whom commitment proceedings have been instituted shall 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 Department of Human Services for the care, custody and treatment of the person.

(2) No allegedly mentally ill person who has been taken into custody shall be confined, either before or after the commitment hearing, without an attendant in direct charge of the person; and, if not confined in a community hospital, the sheriff or community mental health and developmental disabilities program director having the person in custody shall select some suitable person to act as attendant in quarters suitable for the comfortable, safe and humane confinement of the person and approved by the department. [Amended by 1973 c.838 §23; 1975 c.690 §9; 1977 c.764 §1]

426.150 Transportation to treatment facility. (1) Upon receipt of the order of commitment, the Department of Human Services or its designee shall take the mentally ill person into its custody, and insure the safekeeping and proper care of the person until delivery is made to an assigned treatment facility or its representative. The representative of the treating facility to which the person has been assigned, accompanied by any assistants the department or its designee may deem necessary, shall proceed to the place where the person is to be delivered into custody, and upon demand shall be given custody of the mentally ill person, together with the certified record required by ORS 426.170. The representative shall issue appropriate receipts therefor and immediately proceed to transport the committed mentally ill person safely to the facility to which the person has been assigned by the department and there make delivery of the person and the record to the director or a designated employee of the facility. In taking custody of the person, the department, 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 person.

(2) The committing judge, upon approval of the examining physicians or other qualified persons as recommended by the department and upon request of a guardian, friend or relative of the mentally ill person, may authorize the guardian, friend or relative to transport the person to the designated facility when the committing judge determines that means of transportation would not be detrimental to the welfare of the mentally ill person or to the public. [Amended by 1963 c.325 §1; 1973 c.838 §24; 1975 c.690 §10]

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 192.502 (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 person designated by 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 de-

scribed in subsection (1) of this section is unable to authorize disclosure as provided in subsection (5) of this section, the person requesting information shall be provided notice of the presence of the person described in subsection (1) of this section in any facility or nonhospital facility. Information shall not be provided under this paragraph if the physician of the person described in subsection (1) of this section 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 person designated by 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 person designated by 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 person who requested information; and

(E) Any determination made by the person's physician 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, physicians, mental health care providers or licensed mental health professionals to provide information as otherwise allowed or required by law. [2001 c.481 §2]

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 therein. See Preface to Oregon Revised Statutes for further explanation.

426.160 Record of proceedings. The judge shall cause to be recorded in the court records a full account of proceedings had at all hearings and examinations 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, 426.335, 426.385 and 426.395, together with the judgments and orders of the court and a copy of the orders issued. The account of the proceedings and transcripts of testimony if taken there at shall be delivered to the court clerk or court administrator who shall cause it to be sealed and neither the account of the proceedings nor the transcript of testimony if taken shall be disclosed to any person except:

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

(2) Upon request of the person subject to the proceedings, the legal representatives, or the attorney of the person; or

(3) Pursuant to court order. [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]

426.170 Delivery of certified copy of record. If any person is adjudged mentally ill and ordered committed to the Department of Human Services, a copy of the complete record in the case, certified to by the court clerk or court administrator, shall be given to the health officer of the county, or to the sheriff, for delivery to the director of the facility to which such mentally ill person is assigned. The record shall include the name, residence, nativity, sex and age of such mentally ill person and all other information that may be required by the rules and regulations promulgated by the department. [Amended by 1973 c.838 §25; 1993 c.223 §12]

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 certain Native Americans. (1) This section applies to commitments of a person from a reservation for land-based tribes of Native Americans when, under federal law, the state does not have jurisdiction of commitments on the reservation.

(2) When this section is applicable as provided under subsection (1) of this section, a person alleged to be mentally ill by affidavit of two other persons may be admitted to a state hospital for the mentally ill for emergency treatment, care and custody, provided such affidavit includes or is accompanied by all of the following:

(a) The circumstances constituting the emergency.

(b) Written application for admission to the hospital, executed in duplicate.

(c) A certificate to the effect that the person is so mentally ill as to be in need of immediate hospitalization.

(d) A medical history, including the name, condition, sex and age of the person.

(e) The name and address of the nearest relative or legal guardian, if any, of the person.

(3) The certificates, applications and medical histories shall be made upon forms prescribed by the Department of Human Services and shall be executed by the county health officer or by two physicians licensed by the Board of Medical Examiners, none of whom shall be related to the person by blood or marriage.

(4) When a person is admitted to a state hospital under this section, any physician treating the person shall give the person the warning under ORS 426.123.

(5) This section may be applied as provided by agreement with the ruling body of the reservation. Payment of costs for a commitment made under this section shall be as provided under ORS 426.250. [Amended by 1953 c.442 §2; 1975 c.690 §12; 1987 c.903 §21]

426.190 Admission on emergency commitment. Immediately upon execution of the documents mentioned in ORS 426.180, the person, together with the documents, shall be transported by the sheriff or other person on the authorization of the county health officers or deputy to the state hospital indicated by law to receive such patient. The chief medical officer of the state hospital may refuse to admit the person unless the chief medical officer is satisfied from the documents that an emergency exists, and that the person is so mentally ill as to be in need of immediate hospitalization. The superintendent shall file such documents in the office of the hospital, where they shall remain a matter of record. If the superintendent is satisfied that an emergency exists, and that such person is so mentally ill as to be in need of immediate hospitalization, the superintendent shall receive and care for as a patient in the hospital the person named in the documents. [Amended by 1969 c.391 §2]

426.200 Duties following emergency admission; application for voluntary admission; court commitment. Within 48 hours after admission under ORS 426.190, an examination as to the mental condition of any person so admitted shall be commenced and shall be conducted as expeditiously as possible by two staff physicians of the state hospital where the person has been received. If, after completion of the examination, the physicians certify that the person is so mentally ill as to be in need of treatment, care or custody, the superintendent shall, if the superintendent determines that further hospitalization is necessary, within 48 hours thereafter, either obtain from the mentally ill person a signed application for voluntary admission under the provisions of ORS 426.220 or file a complaint with the court having jurisdiction under ORS 426.060 in the county where the hospital is located, requesting a court commitment as provided by law. If the examining physicians certify that the person is not so mentally ill as to be in need of treatment, care or custody, the superintendent of the state hospital shall immediately discharge the person. Costs shall be paid as provided under ORS 426.250. [Amended by 1963 c.325 §2; 1975 c.690 §13; 1987 c.903 §22]

426.210 Limit of detention after commitment in emergency proceedings. In no event shall any person admitted to a state hospital pursuant to the emergency proceedings provided by ORS 426.180 to 426.200 be detained therein by virtue of such proceedings for more than five judicial days following admission. The court, for good cause, may allow a postponement and detention

during the postponement as provided under ORS 426.095. [Amended by 1987 c.903 §23]

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 Department of Human Services 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]

426.220 Voluntary admission; leave of absence; notice to parent or guardian. (1) Pursuant to rules and regulations promulgated by the Department of Human Services, the superintendent of any state hospital for the treatment and care of the mentally ill may admit and hospitalize therein as a patient, any person who may be suffering from nervous disorder or 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 department, 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]

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 department; assistance of peace officers and others. In retaking custody of a mentally ill person who has been committed to the Department of Human Services 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 an allegedly mentally ill person 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 person. [1975 c.690 §25; 1993 c.484 §20]

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 physician. (1) If any person who has been committed to the Department of Human Services under ORS 426.127 or 426.130 (1)(b)(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 physician. If the physician finds the person to be in need of immediate care or treatment for mental illness, the person shall be voluntarily admitted upon request of the person.

(2) If any person who has been committed to the department under ORS 426.127 or 426.130 (1)(b)(B) or (C) requests, during this period of commitment, voluntary admission to a facility approved by the department, the administrator of the facility shall cause the person to be examined immediately by a physician. If the physician finds the person to be in need of immediate care or treatment for mental illness, and the department grants approval, the person shall be voluntarily admitted upon request of the person. [1989 c.993 §2]

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 persons; 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 and developmental disabilities program director, a peace officer shall remove a person taken into custody under this section to the nearest hospital or nonhospital facility ap-

proved by the Department of Human Services. The officer shall prepare a written report and deliver it to the treating physician. 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 and developmental disabilities 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 and developmental disabilities 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 and developmental disabilities program director, the peace officer shall remove the person to a hospital or nonhospital facility approved by the department. The community mental health and developmental disabilities program director shall prepare a written report that the peace officer shall deliver to the treating physician. 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 and developmental disabilities 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 physician licensed by the Board of Medical Examiners for the State of Oregon 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 physician shall have personally examined the allegedly mentally ill person within 24 hours prior to signing the certificate.

(4) When a peace officer or other authorized person, acting under this section, delivers a person to a hospital or nonhospital facility, a physician licensed by the Board of Medical Examiners for the State of Oregon shall examine the person immediately. If the physician finds the person to be in need of emergency care or treatment for mental illness, the physician shall proceed under ORS 426.232, otherwise the person shall not be retained in custody. If the person is to be released from custody, the peace officer or the community mental health and developmental disabilities 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 a person authorized by the county governing body under ORS 426.233 (3). The peace officer may meet the authorized person at any location that is in accordance with ORS 426.140 to effect the transfer. When transferring a person in custody to an authorized person, the peace officer shall deliver the report required under subsections (1) and (2) of this section to the authorized person.

(6) A person 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 and developmental disabilities program director under ORS 426.233.

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

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

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 smaller series therein. 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 Physician hold; when authorized; statement required. (1) A physician licensed by the Board of Medical Examiners for the State of Oregon may hold a person

for transportation to a treatment facility for up to 12 hours in a health care facility licensed under ORS chapter 431 and approved by the Department of Human Services if:

(a) The physician 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 physician is not related to the person by blood or marriage; and

(c) An admitting physician at the receiving facility consents to the transporting.

(2) Before transporting the person, the physician shall prepare a written statement that:

(a) The physician has examined the person within the preceding 12 hours;

(b) An admitting physician at the receiving facility has consented to the transporting of the person for examination and admission if appropriate; and

(c) The physician 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, a person authorized under ORS 426.233 or the designee of a community mental health and developmental disabilities program director to transport a person to the treatment facility indicated on the statement. [1993 c.484 §3; 1997 c.531 §3]

Note: See note under 426.228.

426.232 Physician emergency admission; notice; limit of hold. (1) When a physician licensed to practice medicine by the Board of Medical Examiners for the State of Oregon believes a person who is brought to a hospital or nonhospital facility by a peace officer under ORS 426.228, a person authorized under ORS 426.233 or 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, the physician may do one of the following:

(a) After consulting with a physician or a qualified mental health professional, as defined by rule of the Department of Human Services, 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 physician has admitting privileges or is on staff. Neither the physician nor the qualified mental health professional may be related by blood or marriage to the person.

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

(2) When approving a person for emergency care or treatment at a nonhospital facility under this section, the physician shall notify immediately the community mental health and developmental disabilities 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]

Note: See note under 426.228.

426.233 Authority of community mental health and developmental disabilities program director and of other persons; costs of transportation. (1)(a) A community mental health and developmental disabilities program director operating under ORS 430.610 to 430.695 or a designee thereof, under authorization of a county governing body, may take one of the actions listed in paragraph (b) of this subsection when the community mental health and developmental disabilities 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 mentally ill person 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 and developmental disabilities 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 Department of Human Services;

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

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

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

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

(2) A designee under subsection (1) of this section must be recommended by the community mental health and developmental disabilities program director, meet the standards established by rule of the department and be approved by the county governing body before assuming the authority permitted under subsection (1) of this section.

(3) The county governing body may, upon recommendation by the community mental health and developmental disabilities program director, authorize any person to provide custody and secure transportation services for a person in custody under ORS 426.228. In authorizing a person under this subsection, the county governing body shall grant the person 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 and developmental disabilities 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 and developmental disabilities program director;

(d) Transfer a person in custody to another person 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 and developmental disabilities program director; and

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

(4) A person authorized under subsection (3) of this section must be recommended by the community mental health and developmental disabilities program director, meet the standards established by rule of the department and be approved by the governing body before assuming the authority granted under this section.

(5) The costs of transporting a person as authorized under ORS 426.060, 426.228 or 426.235 by a person authorized under subsection (3) of this section shall be the responsibility of the county whose peace officer or community mental health and developmental disabilities program director directs the authorized person to take custody of a person and to transport the person to a facility approved by the department, but the county shall not be responsible for costs that exceed the amount provided by the state for that transportation. A person 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 otherwise legally responsible persons or agencies in the same manner that costs for the transportation of other persons are charged and collected. [1993 c.484 §5; 1997 c.531 §5]

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 is admitted to or retained in a hospital or nonhospital facility under ORS 426.232 or 426.233, a physician, 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 allegedly mentally ill person;

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

(e) If the physician, 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 physician, 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 physician shall contact the community mental health and developmental disabilities 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 and developmental disabilities program director may request that the physician notify the circuit court in the county in which the person resides. If the community mental health and developmental disabilities program director does not make the request authorized by this paragraph, the physician 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 physician shall contact the community mental health and developmental disabilities program director of the county in which the person is hospitalized. The community mental health and developmental disabilities program director of the county in which the person is hospitalized may request that the physician notify the circuit court in the county in which the person is hospitalized. If the community mental health and developmental disabilities program director does not make the request authorized by this paragraph, the physician 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 physician responsible for a person admitted or retained under ORS 426.232 determines that the person is not dangerous to self or others and is not in need of emergency care or treatment for mental illness, the physician may release the person from the detention authorized by ORS 426.232. The physician shall immediately notify the circuit court notified under this subsection and the community mental health and developmental disabilities 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 and developmental disabilities program director in the county where the person was taken into custody shall contact the community mental health and developmental disabilities 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 and developmental disabilities program director of the county in which the person resides may request that the community mental health and developmental disabilities 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 and developmental disabilities 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 and developmental disabilities program director, after consultation with a physician, determines that a person admitted or retained under ORS 426.233 is not dangerous to self or others and is not in need of immediate care, custody or treatment for mental illness, the community mental health and developmental disabilities program director may release the person from detention. The community mental health and developmental disabilities 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 and developmental disabilities program director or designee who directs the peace officer or other authorized person 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]

Note: See note under 426.228.

426.235 Transfer between hospital and nonhospital facilities. (1) The community mental health and developmental disabilities 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 Department of Human Services 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 treating physician and when the director of a nonhospital facility approved by the department agrees to admit the person.

(3) A person in custody at a nonhospital facility approved by the department may be transferred to a hospital approved by the department only when a physician 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 and developmental disabilities 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 person.

(5) When a person is transferred under this section, the community mental health and developmental disabilities 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]

Note: See note under 426.228.

426.236 Rules. The Department of Human Services 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]

Note: See note under 426.228.

426.237 Prehearing detention; duties of community mental health and developmental disabilities 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 and developmental disabilities 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 and developmental disabilities program director does not believe the person is a mentally ill person.

(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 and developmental disabilities program director and a psychiatrist, as defined by rule by the Department of Human Services, have probable cause to believe the person is a mentally ill person;

(B) The community mental health and developmental disabilities 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 and developmental disabilities program director locates a hospital or nonhospital facility that:

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

(ii) Can, in the opinion of the community mental health and developmental disabilities program director and the psychiatrist, 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 and developmental disabilities program director has probable cause to believe the person is a mentally ill person.

(2)(a) If the circuit court adopts the recommendation of the community mental health and developmental disabilities 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 and developmental disabilities program director shall make discharge plans and insure the discharge of the person.

(B) Hospital, the treating physician shall make discharge plans and discharge the person.

(b) Upon release of the person, the community mental health and developmental disabilities 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 and developmental disabilities 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 and developmental disabilities program director and the psychiatrist that they have probable

cause to believe the person is a mentally ill person 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 treating physician. 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 physician shall treat the person within the scope of the treatment plan provided the person under paragraph (b) of this subsection. The person's refusal of treatment constitutes sufficient grounds for the community mental health and developmental disabilities 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 and developmental disabilities program director locates a nonhospital facility, approved by the department, that, in the opinion of the community mental health and developmental disabilities program director and the treating physician, can provide care or treatment for mental illness necessary and sufficient to meet the emergency psychiatric needs of the person, the treating physician shall discharge the person from the hospital and the community mental health and developmental disabilities 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 physician, the person's condition requires the person to receive medical care or treatment, the physician shall retain the person in the hospital.

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

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

(ii) The physician agrees to admit the person to a hospital, approved by the department, where the physician has admitting privileges.

(E) If the person is transferred as provided in subparagraph (C) or (D) of this paragraph, the community mental health and developmental disabilities 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 department.

(e) If the person is in a hospital, the treating physician may discharge the person at any time during the 14-day period. The treating physician shall confer with the community mental health and developmental disabilities 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 physician 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 and developmental disabilities program director may discharge the person at any time during the 14-day period. The community mental health and developmental disabilities program director shall consult with the treating physician 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 and developmental disabilities 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 and developmental disabilities 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 and developmental disabilities 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 and developmental disabilities 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]

Note: See note under 426.228.

426.238 Classifying facilities. The Department of Human Services may assign classifications, as defined by rule of the department, to facilities that provide care and treatment for persons committed to the department 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 department 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]

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 Department of Human Services and the community mental health and developmental disabilities program director of the county in which the facility is located, except a state mental hospital, for an allegedly mentally ill person admitted or detained under ORS 426.070, 426.140, 426.228, 426.232 or 426.233, or for a mentally ill person admitted or detained under ORS 426.150, 426.223, 426.273, 426.275 or 426.292, shall be paid by the county of which the person is a resident from state funds provided it for this purpose. The county is responsible for the cost when state funds available therefor are exhausted. The hospital or other facility shall charge to and collect from the person, third party payers or other persons or agencies otherwise legally responsible therefor, 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 mental 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 department shall charge to and collect from the person, third party payers or other persons or agencies otherwise legally responsible therefor, the costs as it would for other patients of the state mental hospitals under the provisions of ORS 179.610 to 179.770.

(3) If any person is adjudged mentally ill under the provisions of ORS 426.130, and the person receives care and treatment in a state mental hospital, the person, third party payers or other persons or agencies otherwise legally responsible therefor, 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 mentally ill person has been conditionally released.

(5)(a) The department 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 department finds, upon review, that the allegedly mentally ill person's condition 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 department.

(b) The department may require the following to provide the department with any information the department determines necessary to review a request for denial of payment made under this subsection and to make a finding, or to conduct review of emergency psychiatric services for the purpose of planning or defining standards in department rule:

(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 department 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]

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 and ORS 430.397 to 430.401 as described:

(1) Any physician or qualified person recommended by the Department of Human Services who is employed under ORS 426.110 to make an examination as to the mental condition of a person alleged to be mentally ill 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 payment for the attendance of the witness at a hearing. When the witness has been subpoenaed on behalf of an allegedly mentally ill person 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 allegedly mentally ill 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 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 department 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 426.200, including the costs of transportation, commitment and delivery of the person, shall be paid by the county of which the person is a resident; or, if the person is not a resident of this state, then by 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 for land-based tribes of Native Americans, including the cost of transportation, commitment and delivery of the person, shall be paid by the ruling 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]

426.255 County to pay costs. Costs of hearings conducted pursuant to ORS 426.307, and the fees for physicians and other qualified persons 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]

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 Department of Human Services may grant a trial visit to the patient for a period of time and under any conditions the department shall establish. The department shall only grant a trial visit under this section if the trial visit is agreed to by the community mental health and developmental disabilities program director, or the designee of the director, for the county in which the person would reside.

(2) When in the opinion of the department, the committed person can be appropri-

ately 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 persons 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 and developmental disabilities 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]

426.275 Effect of failure to adhere to condition of placement. The following are applicable to placements of mentally ill persons 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 person responsible under this subsection determines that the mentally ill person is failing to adhere to the terms and conditions of the placement, the responsible person shall notify the court having jurisdiction that the mentally ill person 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 person 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 mentally ill person is conditionally released.

(b) For outpatient commitments under ORS 426.127, the community mental health and developmental disabilities 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 and developmental disabilities 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 mentally ill person on such 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 mentally ill person 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 Department of Human Services 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 and ORS 430.397 to 430.401.

(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 mentally ill person on conditional release 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]

426.278 Distribution of copies of conditions for outpatient commitment or trial visit. The following persons shall be given a copy of the conditions of a placement of a mentally ill person that is made as an outpatient commitment under ORS 426.127 or as a trial visit under ORS 426.273:

(1) The committed person;

(2) The community mental health and developmental disabilities 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]

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 Department of Human Services 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 treating physician, the person is no longer mentally ill. [1985 c.242 §4 (enacted in lieu of 426.290)]

(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 originated, 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, 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 county of which the mentally ill person was a resident at the time of admission. If the county of residence cannot be established, 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]

426.300 Discharge of patients; application for public assistance. (1) The Department of Human Services shall, by filing a written certificate with the last committing court and the court of residence, discharge any patient 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 when in its opinion the individual is no longer a mentally ill person or when in its opinion the transfer of the individual to a voluntary status is in the best interest of the treatment of the patient.

(2) The department may sign applications for public assistance on behalf of those patients who may be eligible for public assistance. [Amended by 1963 c.325 §4; 1967 c.549 §8; 1973 c.838 §22; 1997 c.249 §137]

426.301 Release of committed patient; 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 Department of Human Services certifies to the court in the county where the treating facility is located that the person is still mentally ill and in need of further treatment. The department, 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 and developmental disabilities 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 and developmental disabilities program director of the county of residence.

(2) The certification shall be served upon the person by the director of the facility wherein the person is confined or 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 department 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 commitment within 14 days, and if the person does not 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; that the person is entitled to have a physician or other qualified person as recommended by the department, 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.

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

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

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

(5) 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 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 department 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]

426.303 Effect of protest of further commitment; advice of court. When the person protests a further period of commitment the Department of Human Services 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 department 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]

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 the person requests a hearing under ORS 426.301 or if the court proceeds under ORS 426.275 (5), the following provisions apply as described:

(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 person as recommended by the Department of Human Services and is without funds to retain a physician or other qualified person for purposes of the examination, the court shall appoint a physician or other qualified person, 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 persons, the court shall determine whether the person is still a mentally ill person and in need of further treatment. If in the opinion of the court the individual is still a mentally ill person by clear and convincing evidence and in need of further treatment, the court may order commitment to the department 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 department or facility again certifies to the committing court that the person is still a mentally ill person and 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]

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 in case of nonresident patients. (1) If the mentally ill person 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 an allegedly mentally ill person 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. [Amended by 1975 c.690 §22; 1977 c.764 §7; 1979 c.392 §2; 1987 c.903 §34]

426.320 Payment of certain expenses by the state. When a mentally ill person is assigned to or transferred to a state mental hospital, all actual and necessary expenses incurred by the agent or attendant from the state hospital and the assistants of the agent or attendant, together with those of the person for transportation to the hospital, shall be paid by the state in the manner provided in ORS 426.330. [Amended by 1975 c.690 §23]

426.330 Presentation and payment of claims. The special funds authorized for the use of the superintendents of the Oregon State Hospital, the Eastern Oregon Psychiatric Center and the Eastern Oregon Training Center to better enable them promptly to meet the advances and expenses necessary in the matter of transferring patients to the state hospitals are continued in existence. The superintendents shall present their claims monthly with proper vouchers attached, showing the expenditures from the special funds during the preceding month, which claims, when approved by the Department of Human Services, shall be paid by warrant upon the State Treasurer against the fund appropriated to cover the cost of transporting the mentally diseased. [Amended by 1975 c.614 §14; 1985 c.565 §67]

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

(1) None of the following shall in any way be held criminally or civilly liable for the making of the notification under ORS 426.070, provided the person acts in good faith, on probable cause and without malice:

(a) The community mental health and developmental disabilities program director or designee of the director.

(b) The two petitioning persons.

(c) The county health officer.

(d) Any magistrate.

(e) Any peace officer or probation officer.

(f) Any physician attending the allegedly mentally ill person.

(g) The physician attached to a hospital or institution wherein the allegedly mentally ill person is a patient.

(2) The person 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 person 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 person acts in good faith and without malice.

(4) No person appointed under ORS 426.110 to conduct an examination under ORS 426.120 shall be held criminally or civilly liable for actions pursuant to ORS 426.120 if the examiner acts in good faith and without malice.

(5) No physician, hospital or judge shall be held criminally or civilly liable for actions pursuant to ORS 426.228, 426.231, 426.232, 426.234 or 426.235 if the physician, hospital or judge acts in good faith, on probable cause and without malice.

(6) No peace officer, person authorized under ORS 426.233, community mental health director or designee, hospital or other facility, physician or judge shall 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 guardian, relative or friend of a mentally ill person who assumes responsibility for the mentally ill person under a conditional release under ORS 426.125 shall not be liable for any damages that are sustained by any person on account of the misconduct of the mentally ill person while on conditional release if the guardian, relative or friend acts in good faith and without malice.

(8) The persons designated in this subsection shall not be liable for damages that are sustained by any person or property on account of the misconduct of a mentally ill person while the mentally ill person is on outpatient commitment under ORS 426.127 if the designated person acts without willful and wanton neglect of duty. This subsection is applicable to all of the following:

(a) The community mental health and developmental disabilities 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 mentally ill person receives treatment during the outpatient commitment.

(c) The Director of Human Services.

(d) The physician and the facility granting an outpatient commitment to a patient.

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

(a) None of the following shall be liable for a patient's expenses while on trial visit:

(A) The physician and the facility granting a trial visit to a patient;

(B) The superintendent or director of the facility granting a trial visit;

(C) The Director of Human Services; and

(D) The chief medical officer of the facility.

(b) The following persons shall not be liable for damages that are sustained by any person on account of the misconduct of such patient while on trial visit if the person acts without willful and wanton neglect of duty:

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

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

(C) The physician responsible for the patient's trial visit;

(D) The Director of Human Services; or

(E) The employees and agents of persons listed in this paragraph. [Formerly 426.280]

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 and developmental disabilities 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 and developmental disabilities 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 and developmental disabilities program director that

there was probable cause to believe a person was a mentally ill person; and

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

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]

(Rights of Committed Persons)

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; notice of limitation of rights; consent for certain procedures; psychosurgery prohibited; mechanical restraints. (1) Every mentally ill person committed to the Department of Human Services 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) Such other rights as may be specified by rule; and

(n) 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 property, 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, verbally and in writing, of any limitation:

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

(B) Regarding the disposal of personal property under subsection (1)(n) 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 department. The person must be informed, verbally and in writing, of this right.

(3) Mentally ill persons committed to the department shall have the right to be free from potentially unusual or hazardous treatment procedures, including convulsive therapy, unless they have given their express and informed consent or authorized the treatment pursuant to ORS 127.700 to 127.737. This right may be denied to such persons 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 patient's treatment record and shall include the reasons for the denial. No patient shall be subjected to psychosurgery, as defined in ORS 677.190 (22)(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 therefor 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 department 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 mentally ill person from serious and immediate harm and the protection of others from threats or harassment as defined by rule of the department. [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]

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 patient rights. A simple and clear statement of rights guaranteed to patients committed to the Department of Human Services 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. [1973 c.838 §31; 2003 c.14 §238]

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 Human Services 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 Department of Human Services 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]

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]

CHRONICALLY MENTALLY ILL PERSONS

(Generally)

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 chronically mentally ill persons within this state by insuring the availability of an appropriate range of residential opportunities and related support services. [1979 c.784 §1]

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. As used in ORS 426.490 to 426.500, unless the context requires otherwise:

(1) "Case manager" means a person who works on a continuing basis with the chronically mentally ill person and is responsible for assuring the continuity of the various services called for in the discharge plan of the chronically mentally ill person including services for basic personal maintenance,

mental and personal treatment, and appropriate education and employment.

(2) "Chronically mentally ill" means an individual who is:

(a) Eighteen years of age or older; and

(b) Diagnosed by a psychiatrist, a licensed clinical psychologist or a nonmedical examiner certified by the Department of Human Services as suffering from chronic schizophrenia, a chronic major affective disorder, a chronic paranoid disorder or another chronic psychotic mental disorder other than those caused by substance abuse. For purposes of providing services in the community, the department may adopt rules consistent with this section and accepted professional practices in the fields of psychology and psychiatry more specifically to specify other criteria for determining who is chronically mentally ill.

(3) "Discharge plan" means a written plan prepared jointly with the chronically mentally ill person, mental health staff and case manager prior to discharge, prescribing for the basic and special needs of the person upon release from the hospital. [1979 c.784 §2; 1987 c.903 §35]

Note: See note under 426.490.

426.500 Powers and duties of Department of Human Services; rules. For the purpose of carrying out the policy and intent of ORS 426.490 to 426.500, the Department of Human Services shall:

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

(2) Prepare a written discharge plan for each chronically mentally ill person who is a patient at a state mental institution or who is committed to the department pursuant to ORS 426.005 to 426.223 and 426.241 to 426.380;

(3) Ensure that case managers are provided for each chronically mentally ill person 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, including 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 chronically mentally ill persons where needed. [1979 c.784 §3; 1999 c.59 §121]

Note: See note under 426.490.

(Community Housing)

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

(1) "Chronically mentally ill" has the meaning given that term in ORS 426.495.

(2) "Community housing" means property and related equipment that are used or could be used to house chronically mentally ill persons. "Community housing" includes only multiple-unit residential housing occupied by only chronically mentally ill persons.

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

(4) "Department" means the Department of Human Services.

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

(6) "Multiple-unit residential housing" means housing that provides four 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 department, improve the quality of the housing. [1999 c.983 §2]

426.504 Authority of department to develop community housing for chronically mentally ill persons; sale of community housing; conditions. (1) The Department of Human Services 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 chronically mentally ill persons.

(2) The department 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 department considers advisable to increase the quality and quantity of community housing available for chronically mentally ill persons. In any instrument conveying fee title to community housing, the department shall include language that restricts the use of the community housing to housing for chronically mentally ill persons. Such restriction is not a violation of ORS 93.270.

(3) When exercising the authority granted to the department under this section, the department is not subject to ORS chapter 273 or ORS 270.100 to 270.190, 276.900 to 276.915 or 279.800 to 279.833. [1999 c.983 §3]

Note: The amendments to 426.504 by section 281, chapter 794, Oregon Laws 2003, become operative March 1, 2005, and apply only to public contracts first adver-

tised, but if not advertised then entered into, on or after March 1, 2005. See sections 336 and 337, chapter 794, Oregon Laws 2003. The text that is operative on and after March 1, 2005, is set forth for the user's convenience.

426.504. (1) The Department of Human Services 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 chronically mentally ill persons.

(2) The department 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 department considers advisable to increase the quality and quantity of community housing available for chronically mentally ill persons. In any instrument conveying fee title to community housing, the department shall include language that restricts the use of the community housing to housing for chronically mentally ill persons. Such restriction is not a violation of ORS 93.270.

(3) When exercising the authority granted to the department under this section, the department 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.

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 Department of Human Services to carry out the provisions of ORS 426.504.

(2) The Community Mental Health Housing Fund shall be administered by the department to provide housing for chronically mentally ill persons. 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. Notwithstanding the provisions of ORS 270.150, the department shall deposit into the account the proceeds, less costs to the state, received by the department from the sale of F. H. Dammasch State Hospital property under ORS 426.508. The department 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 Department of Human Services and used as a state training center.

(b) 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.

(c) Interest earned on deposits in the account shall not be used to support operating expenses of the department.

(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 department and used as community housing;

(d) Moneys reallocated from other areas of the department'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 chronically mentally ill persons.

(5) The department 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 chronically mentally ill persons;

(b) To match public and private moneys available from other sources for developing housing for chronically mentally ill persons; and

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

(6) The Department of Human Services shall collaborate with the Housing and Community Services Department to ensure the highest return and best value for community housing from the Community Mental Health Housing Fund.

(7) The Department of Human Services 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]

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 Department of Human Services.

(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 State Housing Council, the Department of Human Services 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 Department of Human Services for use by the Department of Human Services to develop community housing for chronically mentally ill persons. The Oregon Department of Administrative Services and the Department of Human Services 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]

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 mental disease or defect, is deemed likely to continue to perform such acts and be a danger to other persons. [1963 c.467 §1; 1977 c.377 §1]

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. (1) Pursuant to rules promulgated by the Department of Human Services, the superintendent of any state hospital for the treatment and care of the mentally ill 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 department, 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]

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

426.670 Treatment programs for sexually dangerous persons. The Department of Human Services 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 a Department of Human Services 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]

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 Department of Human Services 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]

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 and developmental disabilities 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]

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

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]