

Enrolled House Bill 2251

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CHAPTER

AN ACT

Relating to state of impending public health crisis; creating new provisions; amending ORS 433.019 and 433.035; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. (1) The Governor may proclaim a state of impending public health crisis after determining that a threat to the public health is imminent and likely to be widespread, life-threatening and of a scope that requires immediate medical action as authorized by sections 1 to 5 and 11 of this 2003 Act to protect the public health.

(2) A proclamation of a state of impending public health crisis must specify the nature of the impending public health crisis. A public health crisis can result from bioterrorism, chemical or radiological contamination, pandemic influenza or any other unusual or extraordinary incidence of a communicable or reportable disease.

(3) Nothing in sections 1 to 5 and 11 of this 2003 Act limits the authority of the Governor to declare a state of emergency under ORS 401.055. If a state of emergency is declared as authorized under ORS 401.055, the Governor may implement any action authorized by sections 1 to 5 and 11 of this 2003 Act.

(4) A proclamation of a state of impending public health crisis expires when terminated by a declaration of the Governor or 14 days after the date it is proclaimed unless the proclamation is expressly extended for an additional 14-day period by the Governor.

SECTION 2. (1)(a) During a proclaimed state of impending public health crisis, the Department of Human Services may:

(A) Adopt reporting requirements for and provide notice of those requirements to health care providers, institutions and facilities for the purpose of obtaining information directly related to the impending public health crisis;

(B) After consultation with appropriate medical experts, create diagnostic and treatment protocols to respond to the impending public health crisis and provide notice of those protocols to health care providers, institutions and facilities;

(C) Order, or authorize local public health administrators to order, public health measures, including temporary isolation or quarantine of individuals or groups, as provided in ORS 433.019, 433.022, 433.035 and 433.106;

(D) Upon approval of the Governor, take other reasonable administrative actions necessary to address the impending public health crisis and provide notice of those actions to health care providers, institutions and facilities; and

(E) Impose civil penalties of up to \$500 per day against individuals, institutions or facilities that knowingly fail to comply with requirements resulting from actions taken in accordance with the powers granted to the Department of Human Services under subparagraphs (A), (B) and (D) of this paragraph.

(b) The authority of the Department of Human Services to take administrative action, and the effectiveness of any action taken, under paragraph (a)(A), (B) and (D) of this subsection terminates upon the expiration of the proclaimed state of impending public health crisis, unless the actions are continued under other applicable law.

(2) Civil penalties under subsection (1) of this section shall be imposed in the manner provided in ORS 183.090. The Department of Human Services must establish that the individual, institution or facility subject to the civil penalty had actual notice of the action taken that is the basis for the penalty. The maximum aggregate total for penalties that may be imposed against an individual, institution or facility under subsection (1) of this section is \$500 for each day of violation, regardless of the number of violations of subsection (1) of this section that occurred on each day of violation.

(3)(a) During a proclaimed state of impending public health crisis, the Department of Human Services and local public health administrators shall be given immediate access to individually identifiable health information necessary to:

- (A) Determine the causes of an illness related to the impending public health crisis;
- (B) Identify persons at risk;
- (C) Identify patterns of transmission;
- (D) Provide treatment; and
- (E) Take steps to control the disease.

(b) Individually identifiable health information accessed as provided by paragraph (a) of this subsection may not be used for conducting nonemergency epidemiologic research or to identify persons at risk for post-traumatic mental health problems.

(c) Individually identifiable health information obtained by the Department of Human Services or local public health administrators under this subsection may not be disclosed without written authorization of the identified individual except:

(A) Directly to the individual who is the subject of the information or to the legal representative of that individual;

(B) To state, local or federal agencies authorized to receive such information by state or federal law;

(C) To identify or to determine the cause or manner of death of a deceased individual;

or

(D) Directly to a health care provider, institution or facility for the evaluation or treatment of a condition that is the subject of a proclamation of a state of impending public health crisis issued under section 1 of this 2003 Act.

(d) Upon expiration of the state of impending public health crisis, the Department of Human Services or local public health administrators may not use or disclose any individually identifiable health information that has been obtained under this section. If a state of emergency that is related to the state of impending public health crisis has been declared under 401.055, the Department of Human Services and local public health administrators may continue to use any information obtained as provided in this section until termination of the state of emergency.

(4) As used in this section:

(a) "Covered entity" means:

(A) The Children's Health Insurance Program;

(B) The Family Health Insurance Assistance Program established under ORS 735.722;

(C) A health insurer that is an insurer as defined in ORS 731.106 and that issues health insurance as defined in ORS 731.162;

(D) The state medical assistance program; and

- (E) A health care provider.
- (b) "Health care provider" includes but is not limited to:
- (A) A psychologist, occupational therapist, clinical social worker, professional counselor or marriage and family therapist licensed under ORS chapter 675 or an employee of the psychologist, occupational therapist, clinical social worker, professional counselor or marriage and family therapist;
- (B) A physician, podiatric physician and surgeon, physician assistant or acupuncturist licensed under ORS chapter 677 or an employee of the physician, podiatric physician and surgeon, physician assistant or acupuncturist;
- (C) A nurse or nursing home administrator licensed under ORS chapter 678 or an employee of the nurse or nursing home administrator;
- (D) A dentist licensed under ORS chapter 679 or an employee of the dentist;
- (E) A dental hygienist or denturist licensed under ORS chapter 680 or an employee of the dental hygienist or denturist;
- (F) A speech-language pathologist or audiologist licensed under ORS chapter 681 or an employee of the speech-language pathologist or audiologist;
- (G) An emergency medical technician certified under ORS chapter 682;
- (H) An optometrist licensed under ORS chapter 683 or an employee of the optometrist;
- (I) A chiropractic physician licensed under ORS chapter 684 or an employee of the chiropractic physician;
- (J) A naturopathic physician licensed under ORS chapter 685 or an employee of the naturopathic physician;
- (K) A massage therapist licensed under ORS 687.011 to 687.250 or an employee of the massage therapist;
- (L) A direct entry midwife licensed under ORS 687.405 to 687.495 or an employee of the direct entry midwife;
- (M) A physical therapist licensed under ORS 688.010 to 688.220 or an employee of the physical therapist;
- (N) A radiologic technologist licensed under ORS 688.405 to 688.605 or an employee of the radiologic technologist;
- (O) A respiratory care practitioner licensed under ORS 688.800 to 688.840 or an employee of the respiratory care practitioner;
- (P) A pharmacist licensed under ORS chapter 689 or an employee of the pharmacist;
- (Q) A dietitian licensed under ORS 691.405 to 691.585 or an employee of the dietitian;
- (R) A funeral service practitioner licensed under ORS chapter 692 or an employee of the funeral service practitioner;
- (S) A health care facility as defined in ORS 442.015;
- (T) A home health agency as defined in ORS 443.005;
- (U) A hospice program as defined in ORS 443.850;
- (V) A clinical laboratory as defined in ORS 438.010;
- (W) A pharmacy as defined in ORS 689.005;
- (X) A diabetes self-management program as defined in ORS 743.694; and
- (Y) Any other person or entity that furnishes, bills for or is paid for health care in the normal course of business.
- (c) "Individually identifiable health information" means any oral or written health information in any form or medium that is:
- (A) Created or received by a covered entity, an employer or a health care provider that is not a covered entity; and
- (B) Identifiable to an individual, including demographic information that identifies the individual, or for which there is a reasonable basis to believe the information can be used to identify an individual, and that relates to:
- (i) The past, present or future physical or mental health or condition of an individual;

(ii) The provision of health care to an individual; or

(iii) The past, present or future payment for the provision of health care to an individual.

SECTION 3. All civil penalties recovered under section 2 of this 2003 Act shall be paid into the State Treasury and credited to the General Fund and are available for general governmental expenses.

SECTION 4. The Governor may seek assistance under the Emergency Management Assistance Compact during a state of impending public health crisis to obtain additional resources for providing services directly related to mitigation of the crisis.

SECTION 5. (1)(a) During a state of impending public health crisis proclaimed under section 1 of this 2003 Act or during a state of emergency declared under ORS 401.055 that is related to a state of impending public health crisis that has not expired, the immunization registry and tracking and recall system established under ORS 433.094 may be used as a vaccination management and tracking system for the purpose of preventing the spread of diseases that can be prevented by vaccination or for tracking the mass administration of antibiotic prophylaxis.

(b) When being used as authorized by this section, an immunization registry may include persons of any age, and vaccination records may be shared with authorized users of the registry for purposes related to the proclaimed state of impending public health crisis without obtaining the prior authorization of the clients of the registry.

(2) As used in this section, “client” and “immunization registry” have the meaning given those terms in ORS 433.090.

SECTION 6. Sections 1 to 5 of this 2003 Act are added to and made a part of ORS 433.106 to 433.770.

SECTION 7. ORS 433.019 is amended to read:

433.019. (1) As used in this section[.]:

(a) **“Person” includes an identified or unidentified individual known to be on the property that is the subject of the petition.**

(b) “Subject of the petition” means the person or the property upon which the public health measure is sought to be imposed.

(2) Except as provided in ORS 433.022, proceedings for imposing a public health measure shall be initiated by filing a petition in the circuit court for the county in which the subject of the petition is located. If the property which is the subject of the petition is in more than one county, then the petition may be filed in the circuit court for any one of those counties. The petition shall name as the respondent, the person who is the subject of the petition or the person who possesses the property which is the subject of the petition. The petition shall be accompanied by an affidavit or affidavits based upon the investigation of the Director of Human Services or the local public health administrator supporting the allegations in the petition. The petition shall describe the public health measure requested and shall allege:

(a)(A) The subject of the petition has, or contains persons or property having, an infectious agent of a communicable disease designated a reportable disease by the Department of Human Services; [or]

(B) The subject of the petition is contaminated with or contains property contaminated with a toxic substance; or

(C) The subject of the petition has been exposed to, or the Director of Human Services or the local public health administrator reasonably believes that the subject of the petition has been exposed to, a condition that is the basis for a state of impending public health crisis declared by the Governor as authorized by section 1 of this 2003 Act.

(b) The subject of the petition poses a substantial threat to public health;

(c) The respondent is unable or unwilling to behave or to control the subject of the petition so as not to expose other persons to danger of infection or contamination; and

(d) The public health measure requested is necessary and the least restrictive alternative measure under the circumstances to protect or preserve the public health.

(3) If the court, upon the basis of the affidavits, concludes that there is probable cause for the allegations in the petition, it shall issue a citation as provided in subsection (11) of this section. The court shall also issue a warrant of detention to the sheriff of the county or counties, directing the sheriff or the sheriff's designee to place the subject of the petition under custody.

(4) At the time the subject of the petition is placed under custody, the respondent shall be served certified copies of the warrant of detention, the citation and petition. The sheriff or designee shall also read the citation to the respondent and inform the respondent that a request for hearing may be made within 14 days by signing and filing with the petitioner a simple request form to be given to the respondent with the citation:

(a) If the respondent does not file a signed request for a hearing within 14 days of service of the citation, the petitioner shall so notify the court and the court shall have the respondent brought before it or communicate with the respondent by telephone. If the court then determines that the respondent does not request a hearing, it may, without hearing, order imposition of the requested public health measure effective for a period of time not to exceed 60 days or, if substantial medical evidence indicates that the condition is spread by the airborne route and either that it cannot be rendered noninfectious within 60 days or that it may recur after the public health measure is discontinued, for a period not to exceed 180 days. However, if at the time of inquiry by the court it determines that the respondent does request a hearing, one shall be conducted at a time and place the court may direct consistent with subsection (6) of this section.

(b) If the respondent files a signed request for a hearing within 14 days of service of the citation, the petitioner shall immediately notify the court and the court shall have the respondent brought before it or communicate with the respondent, or if represented the respondent's counsel, by telephone. If the request for hearing is confirmed, one shall be conducted at a time and place the court may direct consistent with subsection (6) of this section. If at the time of inquiry by the court it is determined that the respondent does not request a hearing, it may without hearing, order imposition of the requested public health measure effective for a period of time not to exceed 60 days or, if substantial medical evidence indicates that the condition is spread by the airborne route and either that it cannot be rendered noninfectious within 60 days or that it may recur after the public health measure is discontinued, for a period not to exceed 180 days.

(5) A person placed under custody under subsection (4) of this section may as appropriate and as directed by the court be held in a residence or in a health care or other facility consistent with the requirements of subsection (19) of this section and receive the care, custody and treatment required for mental and physical health and safety. The treating physician shall report any care, custody and treatment to the court as required in subsection (9) of this section. All methods of treatment, including the prescription and administration of drugs, shall be the sole responsibility of the treating physician. Property placed under custody shall be detained as described by the court either under the possession of the respondent or under the possession of the sheriff, or the sheriff's designee. Property detained under the possession of the sheriff will be provided care and treatment which is reasonable under the circumstances.

(6) The hearing may be held in the place where the subject of the petition is being held in custody or in some other place convenient to the court and the respondent. The hearing shall be held within three judicial days of the respondent's initial appearance before the court requesting a hearing. The court may for good cause, allow the person or property to be detained up to an additional 72 hours if additional time is requested by the respondent or the legal counsel of the respondent. The court may make any orders for the care and custody of the subject of the petition as it deems necessary.

(7) The petitioner shall prepare or cause to be prepared an investigative report setting forth the evidence on which the petition is based. A copy of the investigative report shall be provided upon request to the respondent and to the respondent's counsel. Copies shall likewise be provided to counsel assisting the court, to the examiners and to the court for the use in questioning witnesses in a hearing under this section.

(8) The provisions of ORS 40.230 to 40.240 shall not apply in a hearing under this section insofar as the information is relevant to the proceeding. Such evidence shall be disclosed only to the court, the examiners, the parties and their attorneys or persons authorized by the court and shall not be disclosed to the public.

(9) In a hearing under this section, the court shall be fully advised by the treating physician of all drugs and other treatment known to have been administered to the subject of the petition, which may be pertinent to the subject's infectious or contaminated state. The medical record of treatment shall be made available in order that the examiners may review the medical record of treatment and have an opportunity to inquire of the medical personnel concerning the treatment of the respondent during the detention period prior to the hearing. Such record shall be made available to counsel for said respondent at least 24 hours prior to the hearing.

(10) The person serving a warrant of detention, citation and petition provided for by subsection (4) of this section shall, immediately after service thereof, make a return showing the time, place and manner of such service and file it with the clerk of the court. In executing the warrant of detention, 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.

(11) The citation issued to the respondent shall state the nature of the proceedings and the public health measure requested in the petition. The citation shall further contain a notice that the respondent may file a request with the petitioner for a court hearing on the petition within 14 days and, if the respondent does not do so, the court will order imposition of the public health measure requested in the petition. The citation shall also notify of the right to legal counsel, the right to have legal counsel appointed if the respondent is unable to afford legal counsel, and, if requested, to have legal counsel immediately appointed, the right to subpoena witnesses in behalf of the respondent to the hearing and other information as the court may direct. The respondent shall have an opportunity to consult with legal counsel when requested.

(12) In a hearing under this section, the respondent shall have the right to cross-examine all witnesses, the person conducting the investigation, the examining physicians or other qualified persons who have examined the subject of the petition.

(13) At the time the respondent appears before the court, the court shall advise the respondent of the nature of the proceedings and the possible results of the proceedings. The court shall also advise respondent of the right to subpoena witnesses and to obtain suitable legal counsel possessing skills and experience commensurate with the nature of the allegations and complexity of the case during the proceedings, and if the respondent is an individual in custody under subsection (4) of this section and does not have funds with which to retain legal counsel, the court shall appoint legal counsel to represent the respondent without cost. If the respondent is an individual in custody under subsection (4) of this section and does not request legal counsel, the legal guardian, relative or friend may request the assistance of suitable legal counsel on behalf of the respondent.

(a) If no request for legal counsel is made by an individual in custody, the court shall appoint suitable legal counsel therefor unless counsel is expressly, knowingly and intelligently refused by the respondent.

(b) If the respondent is an individual in custody and is unable to afford legal counsel, the court shall determine and allow, as provided in ORS 135.055, the reasonable expenses of the person and compensation for legal counsel. The expenses and compensation so allowed shall be paid by the county if the petition was filed by the local public health administrator and by the state if the petition was filed by the director. In such cases suitable legal counsel shall be present at the hearing and examination and may examine all witnesses offering testimony, and otherwise represent the respondent and may be present in other cases.

(c) The governing body of the county shall designate either the district attorney or counsel appointed pursuant to ORS 203.145 to assist the court in the conduct of the hearing if the court requests assistance. If the person so designated has a conflict of interest in a particular case, the court may appoint private counsel to render such assistance.

(d) If the respondent, the legal counsel or guardian, or examiners request, the court may, for good cause, postpone the hearing for not more than 72 hours in order to allow preparation for the hearing. The court may make orders for the care and custody of the subject of the petition during a postponement as it deems necessary.

(14)(a) In the case where it is alleged that the subject of the petition has or contains an infectious agent of a communicable disease, when a hearing is requested the court shall appoint at least one competent physician, licensed by the Board of Medical Examiners for the State of Oregon and expert in the field of infectious diseases or public health to examine the respondent as to the matters alleged in the petition. The person appointed may be the county health officer or other person recommended by the local public health administrator.

(b) In the case where it is alleged that the subject of the petition is contaminated with a toxic substance, when a hearing is requested the court shall appoint an expert on the particular subject, who may be the county health officer or other person recommended by the local public health administrator, to examine the subject of the petition as to the matters alleged in the petition.

(c) If the respondent requests in writing that one additional examining physician or qualified person be appointed, or, in the absence of such request by the respondent, if such request is made by the legal guardian, relative or friend of the respondent, the court shall appoint an additional physician or other qualified person.

(15) The persons appointed to conduct the examination shall make their separate report in writing, under oath, to the court. The reports shall be filed immediately with the clerk of the court. If the examining persons find, and show by their reports, that the allegations described in subsection (2)(a) to (c) of this section are true, the reports shall include a recommendation as to whether the allegations described under subsection (2)(d) of this section are true or as to alternative measures that would satisfy subsection (2)(d) of this section.

(16) After hearing all of the evidence and reviewing the findings of the examining persons, the court shall determine the truth of the allegations contained in the petition and the need for the requested public health measure. If, based upon clear and convincing evidence, it is the opinion of the court that the allegations are true, the court shall order the requested order or such other measure the court deems appropriate to satisfy subsection (2)(d) of this section.

(17) The order shall be effective for a period of time not to exceed 60 days or, if substantial medical evidence indicates that the condition is spread by the airborne route and either that it cannot be rendered noninfectious within 60 days or that it may recur after the public health measure is discontinued, for a period not to exceed 180 days.

(18) If a respondent who is an individual in custody under subsection (4) of this section appeals the determination or disposition based thereon, and is unable to afford suitable legal counsel possessing skills and experience commensurate with the nature and complexity of the case to represent the respondent on appeal, the court, upon request of the respondent in custody or upon its own motion, shall appoint suitable legal counsel to represent the respondent. The compensation for legal counsel and costs and expenses necessary to the appeal shall be determined and allowed by the appellate court as provided in ORS 138.500 and the compensation, costs and expenses so allowed shall be paid as provided in ORS 138.500.

(19)(a) Any person who is not incarcerated upon a criminal charge and is the subject of a petition under this section, shall not be confined in any prison, jail or other enclosure where those charged with a crime or a violation of a municipal ordinance are incarcerated, unless the person represents an immediate and serious danger to staff or physical facilities of a hospital or other facility to which committed, or unless the person has been found in contempt of court because of failure to obey a court order or other public health measure.

(b) Any respondent who is the subject of a petition and has been taken into custody shall not be confined, either before or after the hearing, without an attendant in direct charge of the person. If the respondent is not confined in a health care facility, the sheriff 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 assistant administrator or local public health administrator.

(20)(a) Upon receipt of the order of the court, the sheriff or the sheriff's designee shall take the subject of the petition into custody or continue custody, and insure the safekeeping and proper care of the subject until delivery is made to an assigned facility or other location. During custody of the subject, the sheriff or sheriff's 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.

(b) The court may authorize the guardian, custodian, friend or relative to transport the subject of the petition to the designated facility or location when the court determines that the means of transportation would not be detrimental to the welfare of the subject or to the public.

(21) The judge shall cause to be recorded and filed in the court records a full account of proceedings had at all hearings and examinations conducted pursuant to this section together with the judgments and orders of the court and a copy of the orders issued. If the respondent is the subject of the petition, the court clerk shall seal the record and it shall not be disclosed to any person except:

- (a) The assistant administrator or local public health administrator;
- (b) As provided in subsection (22) of this section;
- (c) Upon request of the respondent, the legal representatives or the attorney of the person; or
- (d) Pursuant to court order.

(22) If the subject of the petition is ordered committed to a facility, a copy of the judgment and orders of the court, medical records and such other information as the court deems necessary, certified by the court clerk shall be given to the sheriff, for delivery to the director of the facility to which such person is committed.

(23) The petitioner shall, by filing a written certificate with the ordering court, discharge the subject of the petition except when the subject is being held, upon an order of a court or judge having criminal jurisdiction, in an action or proceeding arising out of a criminal offense, when in the petitioner's opinion the matters alleged in the petition are no longer true.

(24)(a) At the end of the 60-day or 180-day period, the subject of the petition shall be released from an order imposing a public health measure under this section unless the petitioner certifies to the ordering court that the order should be continued. If the certification is made, the subject shall not be released from the order but the petitioner shall immediately issue a copy of the certification to the respondent.

(b) The certification shall be served upon the respondent by the sheriff or the sheriff's designee. The sheriff shall inform the court in writing that service has been made and the date thereof.

(c) The certification shall advise the respondent:

(A) That the petitioner has requested that the order be continued for an additional period of time;

(B) That the respondent may consult with legal counsel and that legal counsel shall be provided for the respondent who is an individual in custody without cost if the respondent is unable to afford legal counsel;

(C) That the respondent may protest this further extension of the order within 14 days and, if the respondent does not, it shall be continued for an indefinite period of time up to 60 days;

(D) That, if the respondent does protest a further extension of the order, the respondent is entitled to a hearing before the court on whether the order should be continued;

(E) That the respondent may protest in writing by signing a simple protest form accompanying the certification by filing it with the petitioner within 14 days;

(F) That the respondent is entitled to have a physician or other qualified person examine the subject of the petition and report to the court the results of the examination;

(G) That the respondent may subpoena witnesses and offer evidence on behalf of the respondent at the hearing; and

(H) That, if the respondent is an individual in custody and is without funds to retain legal counsel or an examining physician or qualified person, the court shall appoint legal counsel, a physician or other qualified person at no cost to the respondent.

(25) The person serving the certification shall read and deliver the certification to the respondent. If the respondent does not file a protest of the extension of order within 14 days, the procedures in subsection (4)(a) of this section shall be followed before ordering an extension of the order. If the respondent files a protest of the extension of order, the procedures in subsection (4)(b) of this section shall be followed before setting a hearing on the extension of the order.

(26) If, at the time of inquiry by the court, it is determined that no hearing is requested by the respondent the court, without hearing, may order an extension of the order effective for a period of time not to exceed 60 days.

(27) If at the time of inquiry the respondent requests a hearing, the hearing shall be conducted as promptly as possible and at a time and place the court may direct. If the respondent requests a continuance in order to prepare for the hearing or to obtain legal counsel to represent the respondent, the court may grant a continuance for up to 72 hours for this purpose. In the event the respondent is an individual in custody and requests the appointment of legal counsel and is without funds to retain legal counsel, the court shall appoint legal counsel to represent respondent at no cost to the respondent. If no request for legal counsel is made, the court shall appoint legal counsel to represent a respondent who is an individual in custody unless legal counsel is expressly, knowingly and intelligently refused by the respondent. If such respondent requests an examination by a physician or other qualified person 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 respondent may be confined, to examine the respondent at no expense to the respondent and to report to the court the results of the examination. The court shall then conduct a hearing and after hearing the evidence and reviewing the recommendations of the treating and examining physician or other qualified person, the court shall determine whether the order should be continued. If in the opinion of the court the allegations of the original petition are still applicable to the subject of the petition by clear and convincing evidence the court may continue the order for an additional indefinite period of time up to 60 days or may order such other measure to satisfy subsection (2)(d) of this section. At the end of the 60-day period, the subject of the petition shall be released unless the Director of Human Services or local public health administrator again certifies to the committing court that the order should be extended in which event the procedures set forth in subsections (24) to (27) of this section shall be followed.

(28) Neither the director or any local public health administrator, sheriff, peace officer, physician, attorney, judge or other person or entity shall in any way be held criminally or civilly liable for actions pursuant to this section and ORS 433.022 provided the actions are taken in good faith, without malice and based on reasonable belief.

(29) Failure to obey a court order or other public health measure issued under this section shall subject the individual in violation of the order or measure to contempt proceedings.

SECTION 8. ORS 433.019, as amended by section 74, chapter 962, Oregon Laws 2001, is amended to read:

433.019. (1) As used in this section[.]:

(a) "Person" includes an identified or unidentified individual known to be on the property that is the subject of the petition.

(b) "Subject of the petition" means the person or the property upon which the public health measure is sought to be imposed.

(2) Except as provided in ORS 433.022, proceedings for imposing a public health measure shall be initiated by filing a petition in the circuit court for the county in which the subject of the petition is located. If the property which is the subject of the petition is in more than one county, then the petition may be filed in the circuit court for any one of those counties. The petition shall name as the respondent, the person who is the subject of the petition or the person who possesses the

property which is the subject of the petition. The petition shall be accompanied by an affidavit or affidavits based upon the investigation of the Director of Human Services or the local public health administrator supporting the allegations in the petition. The petition shall describe the public health measure requested and shall allege:

(a)(A) The subject of the petition has, or contains persons or property having, an infectious agent of a communicable disease designated a reportable disease by the Department of Human Services; [or]

(B) The subject of the petition is contaminated with or contains property contaminated with a toxic substance; or

(C) The subject of the petition has been exposed to, or the Director of Human Services or the local public health administrator reasonably believes that the subject of the petition has been exposed to, a condition that is the basis for a state of impending public health crisis declared by the Governor as authorized by section 1 of this 2003 Act.

(b) The subject of the petition poses a substantial threat to public health;

(c) The respondent is unable or unwilling to behave or to control the subject of the petition so as not to expose other persons to danger of infection or contamination; and

(d) The public health measure requested is necessary and the least restrictive alternative measure under the circumstances to protect or preserve the public health.

(3) If the court, upon the basis of the affidavits, concludes that there is probable cause for the allegations in the petition, it shall issue a citation as provided in subsection (11) of this section. The court shall also issue a warrant of detention to the sheriff of the county or counties, directing the sheriff or the sheriff's designee to place the subject of the petition under custody.

(4) At the time the subject of the petition is placed under custody, the respondent shall be served certified copies of the warrant of detention, the citation and petition. The sheriff or designee shall also read the citation to the respondent and inform the respondent that a request for hearing may be made within 14 days by signing and filing with the petitioner a simple request form to be given to the respondent with the citation:

(a) If the respondent does not file a signed request for a hearing within 14 days of service of the citation, the petitioner shall so notify the court and the court shall have the respondent brought before it or communicate with the respondent by telephone. If the court then determines that the respondent does not request a hearing, it may, without hearing, order imposition of the requested public health measure effective for a period of time not to exceed 60 days or, if substantial medical evidence indicates that the condition is spread by the airborne route and either that it cannot be rendered noninfectious within 60 days or that it may recur after the public health measure is discontinued, for a period not to exceed 180 days. However, if at the time of inquiry by the court it determines that the respondent does request a hearing, one shall be conducted at a time and place the court may direct consistent with subsection (6) of this section.

(b) If the respondent files a signed request for a hearing within 14 days of service of the citation, the petitioner shall immediately notify the court and the court shall have the respondent brought before it or communicate with the respondent, or if represented the respondent's counsel, by telephone. If the request for hearing is confirmed, one shall be conducted at a time and place the court may direct consistent with subsection (6) of this section. If at the time of inquiry by the court it is determined that the respondent does not request a hearing, it may without hearing, order imposition of the requested public health measure effective for a period of time not to exceed 60 days or, if substantial medical evidence indicates that the condition is spread by the airborne route and either that it cannot be rendered noninfectious within 60 days or that it may recur after the public health measure is discontinued, for a period not to exceed 180 days.

(5) A person placed under custody under subsection (4) of this section may as appropriate and as directed by the court be held in a residence or in a health care or other facility consistent with the requirements of subsection (19) of this section and receive the care, custody and treatment required for mental and physical health and safety. The treating physician shall report any care, custody and treatment to the court as required in subsection (9) of this section. All methods of

treatment, including the prescription and administration of drugs, shall be the sole responsibility of the treating physician. Property placed under custody shall be detained as described by the court either under the possession of the respondent or under the possession of the sheriff, or the sheriff's designee. Property detained under the possession of the sheriff will be provided care and treatment which is reasonable under the circumstances.

(6) The hearing may be held in the place where the subject of the petition is being held in custody or in some other place convenient to the court and the respondent. The hearing shall be held within three judicial days of the respondent's initial appearance before the court requesting a hearing. The court may for good cause, allow the person or property to be detained up to an additional 72 hours if additional time is requested by the respondent or the legal counsel of the respondent. The court may make any orders for the care and custody of the subject of the petition as it deems necessary.

(7) The petitioner shall prepare or cause to be prepared an investigative report setting forth the evidence on which the petition is based. A copy of the investigative report shall be provided upon request to the respondent and to the respondent's counsel. Copies shall likewise be provided to counsel assisting the court, to the examiners and to the court for the use in questioning witnesses in a hearing under this section.

(8) The provisions of ORS 40.230 to 40.240 shall not apply in a hearing under this section insofar as the information is relevant to the proceeding. Such evidence shall be disclosed only to the court, the examiners, the parties and their attorneys or persons authorized by the court and shall not be disclosed to the public.

(9) In a hearing under this section, the court shall be fully advised by the treating physician of all drugs and other treatment known to have been administered to the subject of the petition, which may be pertinent to the subject's infectious or contaminated state. The medical record of treatment shall be made available in order that the examiners may review the medical record of treatment and have an opportunity to inquire of the medical personnel concerning the treatment of the respondent during the detention period prior to the hearing. Such record shall be made available to counsel for said respondent at least 24 hours prior to the hearing.

(10) The person serving a warrant of detention, citation and petition provided for by subsection (4) of this section shall, immediately after service thereof, make a return showing the time, place and manner of such service and file it with the clerk of the court. In executing the warrant of detention, 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.

(11) The citation issued to the respondent shall state the nature of the proceedings and the public health measure requested in the petition. The citation shall further contain a notice that the respondent may file a request with the petitioner for a court hearing on the petition within 14 days and, if the respondent does not do so, the court will order imposition of the public health measure requested in the petition. The citation shall also notify of the right to legal counsel, the right to have legal counsel appointed if the respondent is unable to afford legal counsel, and, if requested, to have legal counsel immediately appointed, the right to subpoena witnesses in behalf of the respondent to the hearing and other information as the court may direct. The respondent shall have an opportunity to consult with legal counsel when requested.

(12) In a hearing under this section, the respondent shall have the right to cross-examine all witnesses, the person conducting the investigation, the examining physicians or other qualified persons who have examined the subject of the petition.

(13) At the time the respondent appears before the court, the court shall advise the respondent of the nature of the proceedings and the possible results of the proceedings. The court shall also advise respondent of the right to subpoena witnesses and to obtain suitable legal counsel possessing skills and experience commensurate with the nature of the allegations and complexity of the case during the proceedings, and if the respondent is an individual in custody under subsection (4) of this section and does not have funds with which to retain legal counsel, the court shall appoint legal counsel to represent the respondent. If the respondent is an individual in custody under subsection

(4) of this section and does not request legal counsel, the legal guardian, relative or friend may request the assistance of suitable legal counsel on behalf of the respondent.

(a) If no request for legal counsel is made by an individual in custody, the court shall appoint suitable legal counsel therefor unless counsel is expressly, knowingly and intelligently refused by the respondent.

(b) If the respondent is an individual in custody and is unable to afford legal counsel, the public defense services executive director shall determine and pay, as provided in ORS 135.055, the reasonable expenses of the person and compensation for legal counsel. In such cases suitable legal counsel shall be present at the hearing and examination and may examine all witnesses offering testimony, and otherwise represent the respondent and may be present in other cases.

(c) The governing body of the county shall designate either the district attorney or counsel appointed pursuant to ORS 203.145 to assist the court in the conduct of the hearing if the court requests assistance. If the person so designated has a conflict of interest in a particular case, the court may appoint private counsel to render such assistance.

(d) If the respondent, the legal counsel or guardian, or examiners request, the court may, for good cause, postpone the hearing for not more than 72 hours in order to allow preparation for the hearing. The court may make orders for the care and custody of the subject of the petition during a postponement as it deems necessary.

(14)(a) In the case where it is alleged that the subject of the petition has or contains an infectious agent of a communicable disease, when a hearing is requested the court shall appoint at least one competent physician, licensed by the Board of Medical Examiners for the State of Oregon and expert in the field of infectious diseases or public health to examine the respondent as to the matters alleged in the petition. The person appointed may be the county health officer or other person recommended by the local public health administrator.

(b) In the case where it is alleged that the subject of the petition is contaminated with a toxic substance, when a hearing is requested the court shall appoint an expert on the particular subject, who may be the county health officer or other person recommended by the local public health administrator, to examine the subject of the petition as to the matters alleged in the petition.

(c) If the respondent requests in writing that one additional examining physician or qualified person be appointed, or, in the absence of such request by the respondent, if such request is made by the legal guardian, relative or friend of the respondent, the court shall appoint an additional physician or other qualified person.

(15) The persons appointed to conduct the examination shall make their separate report in writing, under oath, to the court. The reports shall be filed immediately with the clerk of the court. If the examining persons find, and show by their reports, that the allegations described in subsection (2)(a) to (c) of this section are true, the reports shall include a recommendation as to whether the allegations described under subsection (2)(d) of this section are true or as to alternative measures that would satisfy subsection (2)(d) of this section.

(16) After hearing all of the evidence and reviewing the findings of the examining persons, the court shall determine the truth of the allegations contained in the petition and the need for the requested public health measure. If, based upon clear and convincing evidence, it is the opinion of the court that the allegations are true, the court shall order the requested order or such other measure the court deems appropriate to satisfy subsection (2)(d) of this section.

(17) The order shall be effective for a period of time not to exceed 60 days or, if substantial medical evidence indicates that the condition is spread by the airborne route and either that it cannot be rendered noninfectious within 60 days or that it may recur after the public health measure is discontinued, for a period not to exceed 180 days.

(18) If a respondent who is an individual in custody under subsection (4) of this section appeals the determination or disposition based thereon, and is determined to be financially eligible for appointed counsel at state expense, the court, upon request of the respondent in custody or upon its own motion, shall appoint suitable legal counsel to represent the respondent. The compensation for

legal counsel and costs and expenses necessary to the appeal shall be determined and paid as provided in ORS 138.500.

(19)(a) Any person who is not incarcerated upon a criminal charge and is the subject of a petition under this section, shall not be confined in any prison, jail or other enclosure where those charged with a crime or a violation of a municipal ordinance are incarcerated, unless the person represents an immediate and serious danger to staff or physical facilities of a hospital or other facility to which committed, or unless the person has been found in contempt of court because of failure to obey a court order or other public health measure.

(b) Any respondent who is the subject of a petition and has been taken into custody shall not be confined, either before or after the hearing, without an attendant in direct charge of the person. If the respondent is not confined in a health care facility, the sheriff 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 assistant administrator or local public health administrator.

(20)(a) Upon receipt of the order of the court, the sheriff or the sheriff's designee shall take the subject of the petition into custody or continue custody, and insure the safekeeping and proper care of the subject until delivery is made to an assigned facility or other location. During custody of the subject, the sheriff or sheriff's 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.

(b) The court may authorize the guardian, custodian, friend or relative to transport the subject of the petition to the designated facility or location when the court determines that the means of transportation would not be detrimental to the welfare of the subject or to the public.

(21) The judge shall cause to be recorded and filed in the court records a full account of proceedings had at all hearings and examinations conducted pursuant to this section together with the judgments and orders of the court and a copy of the orders issued. If the respondent is the subject of the petition, the court clerk shall seal the record and it shall not be disclosed to any person except:

- (a) The assistant administrator or local public health administrator;
- (b) As provided in subsection (22) of this section;
- (c) Upon request of the respondent, the legal representatives or the attorney of the person; or
- (d) Pursuant to court order.

(22) If the subject of the petition is ordered committed to a facility, a copy of the judgment and orders of the court, medical records and such other information as the court deems necessary, certified by the court clerk shall be given to the sheriff, for delivery to the director of the facility to which such person is committed.

(23) The petitioner shall, by filing a written certificate with the ordering court, discharge the subject of the petition except when the subject is being held, upon an order of a court or judge having criminal jurisdiction, in an action or proceeding arising out of a criminal offense, when in the petitioner's opinion the matters alleged in the petition are no longer true.

(24)(a) At the end of the 60-day or 180-day period, the subject of the petition shall be released from an order imposing a public health measure under this section unless the petitioner certifies to the ordering court that the order should be continued. If the certification is made, the subject shall not be released from the order but the petitioner shall immediately issue a copy of the certification to the respondent.

(b) The certification shall be served upon the respondent by the sheriff or the sheriff's designee. The sheriff shall inform the court in writing that service has been made and the date thereof.

(c) The certification shall advise the respondent:

(A) That the petitioner has requested that the order be continued for an additional period of time;

(B) That the respondent may consult with legal counsel and that legal counsel shall be provided for the respondent who is an individual in custody without cost if the respondent is unable to afford legal counsel;

(C) That the respondent may protest this further extension of the order within 14 days and, if the respondent does not, it shall be continued for an indefinite period of time up to 60 days;

(D) That, if the respondent does protest a further extension of the order, the respondent is entitled to a hearing before the court on whether the order should be continued;

(E) That the respondent may protest in writing by signing a simple protest form accompanying the certification by filing it with the petitioner within 14 days;

(F) That the respondent is entitled to have a physician or other qualified person examine the subject of the petition and report to the court the results of the examination;

(G) That the respondent may subpoena witnesses and offer evidence on behalf of the respondent at the hearing; and

(H) That, if the respondent is an individual in custody and is without funds to retain legal counsel or an examining physician or qualified person, the court shall appoint legal counsel, a physician or other qualified person.

(25) The person serving the certification shall read and deliver the certification to the respondent. If the respondent does not file a protest of the extension of order within 14 days, the procedures in subsection (4)(a) of this section shall be followed before ordering an extension of the order. If the respondent files a protest of the extension of order, the procedures in subsection (4)(b) of this section shall be followed before setting a hearing on the extension of the order.

(26) If, at the time of inquiry by the court, it is determined that no hearing is requested by the respondent the court, without hearing, may order an extension of the order effective for a period of time not to exceed 60 days.

(27) If at the time of inquiry the respondent requests a hearing, the hearing shall be conducted as promptly as possible and at a time and place the court may direct. If the respondent requests a continuance in order to prepare for the hearing or to obtain legal counsel to represent the respondent, the court may grant a continuance for up to 72 hours for this purpose. In the event the respondent is an individual in custody and requests the appointment of legal counsel and is without funds to retain legal counsel, the court shall appoint legal counsel to represent the respondent. If no request for legal counsel is made, the court shall appoint legal counsel to represent a respondent who is an individual in custody unless legal counsel is expressly, knowingly and intelligently refused by the respondent. If such respondent requests an examination by a physician or other qualified person 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 respondent may be confined, to examine the respondent at no expense to the respondent and to report to the court the results of the examination. The court shall then conduct a hearing and after hearing the evidence and reviewing the recommendations of the treating and examining physician or other qualified person, the court shall determine whether the order should be continued. If in the opinion of the court the allegations of the original petition are still applicable to the subject of the petition by clear and convincing evidence the court may continue the order for an additional indefinite period of time up to 60 days or may order such other measure to satisfy subsection (2)(d) of this section. At the end of the 60-day period, the subject of the petition shall be released unless the Director of Human Services or local public health administrator again certifies to the committing court that the order should be extended in which event the procedures set forth in subsections (24) to (27) of this section shall be followed.

(28) Neither the director or any local public health administrator, sheriff, peace officer, physician, attorney, judge or other person or entity shall in any way be held criminally or civilly liable for actions pursuant to this section and ORS 433.022 provided the actions are taken in good faith, without malice and based on reasonable belief.

(29) Failure to obey a court order or other public health measure issued under this section shall subject the individual in violation of the order or measure to contempt proceedings.

SECTION 9. ORS 433.035 is amended to read:

433.035. (1) Whenever the Director of Human Services or any local public health administrator reasonably believes any person within the jurisdiction of the director or local public health administrator has any communicable disease identified by rule of the Department of Human Services to be a reportable disease **or a condition that is the basis of a state of impending public health crisis declared by the Governor as authorized by section 1 of this 2003 Act**, the director or local public health administrator may cause a medical examination to be made of such person to determine whether the person has a communicable disease. The person who orders an examination pursuant to this section shall, in the order, make written findings stating the communicable disease that the person ordering the examination believes the person has, the reasons for that belief, that medical or laboratory confirmation of the disease is feasible and possible and that such confirmation would enable control measures to be taken to minimize infection of others with the disease. The order shall also include a statement that the person may refuse to submit to the examination and that if so, a public health measure may be imposed.

(2) When any person is directed to submit to an examination under subsection (1) of this section and the person agrees to do so, the person shall submit to such examination as may be necessary to establish the presence or absence of the communicable disease for which the medical examination was directed. The examination shall be carried out by the local health officer or a physician licensed by the Board of Medical Examiners for the State of Oregon or the Naturopathic Board of Examiners. A written report of the results of such examination shall be made to the person ordering the examination. Laboratory examinations, if any, shall be carried out by the laboratory of the department whenever such examinations are within the scope of the tests conducted by the laboratory. If treatment is needed, the person, the parent or guardian of the person shall be liable for the costs of treatment based on the examination carried out under this section, when able to pay such costs. Cost of any examination performed by a physician in private practice shall be paid from public funds available to the local public health administrator, if any, or from county funds available for general governmental expenses in the county for which the local public health administrator serves or in the county where the person examined resides if the local public health administrator serves more than one county or the examination was ordered by the director.

(3) If the person directed to submit to a medical examination pursuant to subsection (1) of this section refuses to do so the director or the local public health administrator may impose a public health measure pursuant to ORS 433.019, 433.022 and 433.106.

(4) In any proceeding under ORS 433.019, 433.022 and 433.106, the lack of confirming medical or laboratory evidence that could be obtained by an examination which was refused when requested under this section shall not preclude a finding that probable cause exists.

SECTION 10. Section 11 of this 2003 Act is added to and made a part of ORS 433.106 to 433.770.

SECTION 11. (1) If the Director of Human Services or the local public health administrator reasonably believes a person within the jurisdiction of the director or the administrator may have been exposed to a communicable disease identified by rule of the Department of Human Services to be a reportable disease or condition **or a condition that is the basis for a state of impending public health crisis declared by the Governor as authorized by section 1 of this 2003 Act**, the person may be detained for as long as reasonably necessary for the director or administrator to convey information to the person regarding the communicable disease or condition and to obtain contact information, including but not limited to the person's residence and employment addresses, date of birth, telephone numbers and any other contact information required by the director or administrator.

(2) If a person detained under subsection (1) of this section refuses to provide the information requested, the director or administrator may impose a public health measure pursuant to ORS 433.019 and 433.022.

SECTION 12. This 2003 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2003 Act takes effect on its passage.

Passed by House May 15, 2003

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Chief Clerk of House

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Speaker of House

Passed by Senate June 20, 2003

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President of Senate

Received by Governor:

.....M,....., 2003

Approved:

.....M,....., 2003

.....
Governor

Filed in Office of Secretary of State:

.....M,....., 2003

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Secretary of State