

Chapter 426

Mentally Ill and Sexually Dangerous

Chapter 426

NOTES OF DECISIONS

Under ORS ch. 428, as originally enacted, the court, in addition to entering an order of commitment, is required to make findings of facts concerning the abilities of the individual and his relatives to pay for his maintenance and if these findings indicate ability to pay, the court must enter an order to that effect. In re Idleman's Commitment, (1934) 146 Or 13, 27 P2d 305.

A determination with the assistance of a jury is not provided for in proceedings to determine mental disease or to secure the appointment of a guardian for a mentally diseased person. *Id.*

LAW REVIEW CITATIONS: 49 OLR 23.

426.010

ATTY. GEN. OPINIONS: Transfer of mentally retarded persons to other institutions, 1964-66, p 30; location of outpatient centers outside of Marion County, (1970) Vol 35, p 378.

426.020

ATTY. GEN. OPINIONS: Employment of unlicensed physician in state institutions, 1948-50, p 334.

426.030

ATTY. GEN. OPINIONS: Changing purpose of hospital from mental illness of aged to general mental illness without referral to voters, 1952-54, p 105.

426.060

ATTY. GEN. OPINIONS: Transfer of resident patients from federal hospitals in this state to state mental institutions on condition that Federal Government pay costs of care and maintenance, 1942-44, p 369; authority for juvenile court commitment to or placement in state hospital, 1966-68, p 551.

426.070 to 426.170

Release does not make moot an appeal from a commitment proceeding. *State v. Van Tassel*, (1971) 5 Or App 376, 484 P2d 1117.

426.070

NOTES OF DECISIONS

A condition precedent to the commitment hearing requires that "the writing under oath by the two persons" consist of continuing averments of both persons. *State v. Van Tassel*, (1971) 5 Or App 376, 484 P2d 1117.

FURTHER CITATIONS: *Sprigg v. Stump*, (1881) 7 Sawy.

280, 8 Fed. 207; *Springer v. Steiner*, (1919) 91 Or 100, 178 P 592; *Ex parte Moore*, (1942) 43 F. Supp 886.

ATTY. GEN. OPINIONS: Immunity of county health officer from criminal or civil liability, 1954-56, p 129; authority of police officer to take escaped mental patients into custody, 1966-68, p 434; authority for juvenile court commitment to or placement in state hospital, 1966-68, p 551.

426.080

ATTY. GEN. OPINIONS: Authority of police officer to take escaped mental patients into custody, 1966-68, p 434.

426.100

LAW REVIEW CITATIONS: 5 WLJ 19.

426.110

CASE CITATIONS: *Hoffman v. Halden*, (1959) 268 F2d 280.

426.120

NOTES OF DECISIONS

Under a former similar statute, on appeal to the circuit court from a county court order finding respondent mentally diseased and committing him, it was not error for the court to submit the issue of respondent's mental illness vel non to a jury. In re *Sneddon*, (1915) 74 Or 586, 590, 144 P 676.

Under a former similar statute, a physician was not liable for false imprisonment merely because of his negligence in the examination. *Springer v. Steiner*, (1919) 91 Or 100, 178 P 592.

Under a former similar statute, the remedy of one who has been improperly committed is by appeal from the order of commitment; he has no cause of action against the person who instituted the proceedings. *First Nat. Bank v. Wall*, (1939) 161 Or 152, 88 P2d 311.

FURTHER CITATIONS: In re *Fehl*, (1938) 159 Or 545, 81 P2d 130; *Postelle v. Shuholm*, (1951) 192 Or 441, 235 P2d 869; *Hoffman v. Halden*, (1959) 268 F2d 280.

ATTY. GEN. OPINIONS: Authority of police officer to take escaped mental patients into custody, 1966-68, p 434; authority for juvenile court commitment to or placement in state hospital, 1966-68, p 551.

426.130

CASE CITATIONS: *Hoffman v. Halden*, (1959) 268 F2d 280.

426.140

ATTY. GEN. OPINIONS: Employment of deputy sheriff as an attendant at a county hospital, (1969) Vol 34, p 429.

426.160

CASE CITATIONS: State v. Van Tassel, (1971) 5 Or App 376, 484 P2d 1117.

426.215

NOTES OF DECISIONS

Police, when taking a person into custody under this section, have a right to search the person, not alone for such articles as may be lawfully seized following a valid arrest, but for such further objects as may appear reasonably related to diagnosing or treating his apparent mental or physical condition. State v. Marsh, (1969) 1 Or App 351, 462 P2d 459.

That the article seized from a person in custody under this section proves to be contraband does not render the seizure invalid. Id.

ATTY. GEN. OPINIONS: Authority of police officer to take escaped mental patients into custody, 1966-68, p 434.

426.220

CASE CITATIONS: State v. Pace, (1949) 187 Or 498, 212 P2d 755; In re Christofferson's Estate, (1948) 183 Or 75, 190 P2d 928.

ATTY. GEN. OPINIONS: Expense of maintenance of patients who voluntarily enter state hospital, 1934-36, p 27.

426.240

CASE CITATIONS: State v. Van Tassel, (1971) 5 Or App 376, 484 P2d 1117.

426.250

ATTY. GEN. OPINIONS: Payment of witnesses before the county court and the circuit court on appeal, 1944-46, p 430; paying for psychiatric examinations in commitments of sexually dangerous persons, 1966-68, p 467.

426.280

CASE CITATIONS: Ex Parte Anderson, (1951) 191 Or 409, 229 P2d 633, 230 P2d 770, 29 ALR2d 1051.

ATTY. GEN. OPINIONS: Costs of care of parolee pending return to Oregon State Hospital, 1958-60, p 217; discharging patient for placement in nursing home, 1960-62, p 292; authority of superintendent to apply for welfare assistance for patients, 1962-64, p 263.

LAW REVIEW CITATIONS: 47 OLR 368; 48 OLR 115, 117.

426.290

NOTES OF DECISIONS

This section does not deprive every court of jurisdiction to charge parolee with a criminal offense. Syphers v. Gladden, (1962) 230 Or 148, 368 P2d 942.

ATTY. GEN. OPINIONS: Procedure when paroled mentally diseased patient is placed in an environment which may cause reversion to mental illness, 1934-36, p 612; discharging patient for placement in nursing home, 1960-62, p 292.

426.295

NOTES OF DECISIONS

Under former statute, an order of discharge stating pa-

tient is "competent" only determined competency to be free from custodial restraint, and was not a determination of the necessity of guardianship of the estate of the ward. Spaulding v. Miller, (1960) 221 Or 503, 350 P2d 1073.

ATTY. GEN. OPINIONS: Discharge from commitment of person "Not Guilty by Reason of Insanity," 1964-66, p 88.

426.300

NOTES OF DECISIONS

An order of discharge stating patient is "competent" only determines competency to be free from custodial restraint, and is not a determination of the necessity of guardianship of the estate of the ward. Spaulding v. Miller, (1960) 221 Or 503, 350 P2d 1073.

Release does not make moot an appeal from a commitment proceeding. State v. Van Tassel, (1971) 5 Or App 376, 484 P2d 1117.

Complaint which alleged superintendent conspired with others and wilfully held plaintiff in asylum in violation of Civil Rights Act failed to state a cause of action, since the duty to discharge was discretionary and immune regardless of conspiratorial motive. Hoffman v. Halden, (1959) 268 F2d 280.

ATTY. GEN. OPINIONS: Legal capacity of person released from a mental institution, 1950-52, p 208; discharging patient for placement in nursing home, 1960-62, p 292; assistance if matching funds are not provided, 1962-64, p 473; discharge from commitment of person "Not Guilty by Reason of Insanity," 1964-66, p 88.

LAW REVIEW CITATIONS: 49 OLR 35, 230; 4 WLJ 74-76.

426.310

ATTY. GEN. OPINIONS: Liability of committing county for direct payment, 1930-32, p 777.

426.340

ATTY. GEN. OPINIONS: Paying for psychiatric examinations in commitments of sexually dangerous persons, 1966-68, p 467.

426.380

ATTY. GEN. OPINIONS: Authority for juvenile court commitment to or placement in state hospital, 1966-68, p 551.

LAW REVIEW CITATIONS: 5 WLJ 20.

426.510 to 426.670

ATTY. GEN. OPINIONS: Duties of State Board of Parole and Probation regarding persons paroled, 1964-66, p 93; construing "segregated," 1964-66, p 139; state reimbursement of counties for transportation of persons, 1966-68, p 551.

426.510

ATTY. GEN. OPINIONS: Paying for psychiatric examinations in commitments, 1966-68, p 467.

426.520

ATTY. GEN. OPINIONS: Availability of in rem proceeding against obscene literature, 1964-66, p 132; paying for psychiatric examinations in commitments, 1966-68, p 467.

426.580

LAW REVIEW CITATIONS: 5 WLJ 20.

426.610

ATTY. GEN. OPINIONS: Paying for psychiatric examinations in commitments, 1966-68, p 467.

426.670

ATTY. GEN. OPINIONS: Paying for psychiatric examinations in commitments, 1966-68, p 467.