

TITLE 35

MENTAL HEALTH

- Chapter** 426. Mentally Ill and Sexually Dangerous
427. Fairview Home for the Mentally Deficient
428. Residency of Mentally Ill or Deficient; Columbia Park State Home
430. State and Local Mental Health Administration

Chapter 426

1963 REPLACEMENT PART

Mentally Ill and Sexually Dangerous

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MENTALLY ILL

426.005 Definitions for ORS 426.005 to 426.350. As used in ORS 426.005 to 426.350, unless the context requires otherwise, "Mental Health Division" or "division" means the Mental Health Division of the Oregon State Board of Control.
[1961 c.706 §25]

426.010 Oregon State Hospital, F. H. Dammasch State Hospital and Eastern Oregon State Hospital designated as state hospitals for mentally ill persons. The Oregon State Hospital in Salem, Marion County, the F. H. Dammasch State Hospital authorized to be located within a 20-mile radius of the county courthouse of Multnomah County, and the Eastern Oregon State Hospital in Pendleton, Umatilla County, shall be used as state hospitals for the confinement of mentally ill persons who are committed to such institutions.
[Amended by 1955 c.651 §3]

426.020 Superintendents; other personnel; residence and subsistence. The superintendents of the hospitals mentioned in ORS 426.010 shall be well-educated physicians, licensed by the State Board of Medical Examiners to practice medicine and surgery. Each shall appoint an assistant superintendent and all other necessary physicians and medical assistants, who shall receive such salaries as the Mental Health Division may authorize, within the appropriation therefor and limitations prescribed by law. The superintendents and all persons so appointed shall reside either at or near the hospitals or, in the case of the Oregon State Hospital, may reside at or near the farm operated in connection therewith, and shall be furnished residences or housekeeping rooms and household furniture, provisions, heat and light, at such rates of payment therefor as the division from time to time may prescribe. The assistant superintendents shall be well-educated physicians licensed by the State Board of Medical Examiners to practice medicine and surgery.
[Amended by 1955 c.651 §4]

426.030 F. H. Dammasch State Hospital authorized and established. A hospital for the care and treatment of mentally ill persons hereby is authorized and directed to be located, constructed, operated and maintained in the area situated within a 20-mile radius of the county courthouse of Multno-

mah County, Oregon. The institution authorized by this section hereby is established as a state hospital and shall be known as the F. H. Dammasch State Hospital.

[Amended by 1955 c.651 §5; 1957 c.43 §1]

426.040 to 426.050 [Reserved for expansion]

426.060 Commitment to designated state hospital. (1) Commitments to the Oregon State Hospital, the F. H. Dammasch State Hospital and the Eastern Oregon State Hospital shall be made by the judge of any court having probate jurisdiction in any county of this state.

(2) The Mental Health Division may, in its discretion and for reasons which are satisfactory to the division, direct any judge to make his commitments to any hospital listed in subsection (1) of this section. The authority of the division on such matters shall be final.

[Amended by 1955 c.651; 1963 c.254 §1]

426.070 Compelling appearance of mentally ill person; liability for giving notice of another's alleged mental illness. The judge of any court having probate jurisdiction in any county of this state, upon being notified in writing under oath by two persons or by the county health officer or any magistrate that any other person within the county is mentally ill and by reason of such illness is in need of treatment, care or custody, shall cause the allegedly mentally ill person to be brought before him at such time and place as he may direct. If necessary, the judge may issue a warrant of detention to the county health officer, or to the sheriff of the county, directing the officer to take such person into his custody and produce him at the time and place stated in the warrant. The county health officer, any magistrate, any peace officer, probation officer, physician attending the allegedly mentally ill person or the physician attached to a hospital or institution wherein the allegedly mentally ill person is a patient shall in no way be held criminally or civilly liable for the making of such notification, provided he acts in good faith, on probable cause and without malice.
[Amended by 1957 c.329 §1]

426.080 Execution and return of warrant of detention. The officer serving the warrant of detention and the citation provided for by ORS 426.090 shall, immediately after service thereof, make a return upon

the original warrant 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 officer has all the powers provided by ORS 133.280 and 133.290, and may require the assistance of any peace officer or other person.

426.090 Citation; duty of district attorney. The judge shall cause a citation to issue to the allegedly mentally ill person stating the nature of the information filed concerning him. The citation shall be served upon such person by the officer who takes such person into custody, by delivering a duly certified copy of the original thereof to him in person. In counties having a population of 300,000 or more, a copy of the citation shall be served upon the district attorney at least 24 hours before the time set for such person to be brought before the court. The district attorney shall be present at the court proceedings, in person or by deputy, to prevent fraud or collusion and to protect the interest of and to represent the person against whom the information has been filed, if said person does not secure counsel in accordance with the provisions of ORS 426.100. [Amended by 1957 c.329 §2]

426.100 Appointment and duty of legal counsel. If the allegedly mentally ill person, when brought before the court, requests the assistance of counsel to represent him at the proceedings provided for by ORS 426.070 to 426.150, the court shall give such person opportunity to obtain such legal counsel. If no such request is made by the allegedly mentally ill person, his legal guardian, relative or friend may, in the order named, request assistance of legal counsel. If no request for legal counsel is made by any party, the court may, at its discretion, appoint legal counsel. In all cases such legal counsel shall be present at the hearing and examination and may examine all witnesses offering testimony, and otherwise represent such person.

426.110 Appointment of examining physicians. The judge shall appoint at least two competent physicians licensed by the State Board of Medical Examiners for the State of Oregon to practice medicine and surgery, one of whom may be the county health officer, to examine the person as to his mental condition. In counties having a population of 10,000 or less, as determined by the latest federal census, the judge may appoint only

one such physician, who may be the county health officer, but the judge may, in his discretion, appoint additional physicians, qualified as required by this section, to assist in the examination of the person as to his mental condition. If the allegedly mentally ill person requests in writing that one additional examining physician be appointed, or, if in the absence of such request by the allegedly mentally ill person, such request is made by the legal guardian, relative or friend of the alleged mentally ill person, the court shall appoint a physician nominated in such request; however, the court shall not appoint more than one such additional examining physician, who shall be a resident of the State of Oregon.

426.120 Physician's report; order of commitment. The physicians appointed shall examine the person as to his mental condition and report their separate or joint findings in writing, under oath, to the court, which findings immediately shall be filed with the clerk of the court. If the examining physicians find, and show by their verified findings, that the person examined is mentally ill and by reason of mental illness is in need of treatment, care or custody, and if the judge, after having examined the verified findings and considered all competent evidence submitted to him, is of the opinion that the person is in need of treatment, care or custody, he shall adjudge the person to be mentally ill and order him committed to the proper state hospital. The order of commitment shall direct that the mentally ill person be promptly and safely delivered to the superintendent of the proper state hospital, as provided in ORS 426.150.

426.130 Parole of mentally ill person before commitment. If the legal guardian, relative or friend of the mentally ill person requests that he be allowed to care for him in a place satisfactory to the judge, and shows that he, such applicant, is competent and financially able to care for the mentally ill person, and also if it appears to the court that the mentally ill person is not criminally inclined or violent, and that proper care and treatment can and will be provided him by such applicant, and that it would be to the best interest of the mentally ill person to be paroled, the judge may order that the mentally ill person be released and placed in the care and custody of such applicant. The order may be revoked and the mentally ill

person committed to an Oregon state hospital whenever, in the opinion of the judge, it is for the best interest of the mentally ill person.

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 proceedings have been instituted shall be confined in any prison, jail or other inclosure where those charged with crime or violation of a municipal ordinance are incarcerated, if a place suitable for the comfortable, safe and humane confinement of such person is available.

(2) No alleged mentally ill person who has been taken into custody shall be confined, either before or after the hearing and examination, without an attendant in direct charge of him; and, if not confined in a county hospital, the health officer or sheriff having such person in his custody shall select some suitable person to act as attendant.

426.150 Commitment procedure. (1) Upon receipt of the order of commitment, the health officer or the sheriff, as the case may be, shall take such mentally ill person into his custody, and insure his safekeeping and proper care until delivery is made to the superintendent of the proper state hospital or a designated employe thereof. Immediately after being notified of the court's order of commitment of such mentally ill person, the county health officer or the sheriff shall notify by telephone, if possible, the superintendent of the state hospital to which the person was committed, informing him of the fact that such person is being held awaiting delivery, and also stating the name, character, condition, sex and age of such person. Except as provided in subsection (2) of this section, the superintendent shall thereupon designate an employe of the hospital to take custody of such person and safely transport him to the state hospital. The employe, accompanied by such assistants as the superintendent may deem necessary, shall proceed to the place where the person is to be delivered into his custody, and, upon demand shall be given custody of the committed mentally ill person, together with the certified record required by ORS 426.170. The employe shall issue appropriate receipts therefor and immediately proceed to transport the mentally ill person safely to

the state hospital to which he has been committed, and there make delivery of him and the record to the superintendent or a designated employe of the hospital.

(2) The committing judge, upon approval of the examining physician 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 hospital when the committing judge determines that such 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]

426.160 Record of proceedings. The judge shall cause to be recorded in the court records a full account of proceedings had at the hearing and examination, together with the judgment and order of the court and a copy of the orders issued.

426.170 Delivery of certified copy of record. If any person is adjudged mentally ill and ordered committed to a state hospital, a copy of the complete record in the case, certified to by the county clerk of the county, shall be given to the health officer of the county, or to the sheriff, for delivery to the superintendent of the state hospital to which such mentally ill person is committed. 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 Mental Health Division.

426.180 Emergency commitment on application. If the judge of a court having probate jurisdiction in any county of this state is absent from the county seat or for any other reason is unable to act and there is no other judge available with authority to act so that a hearing on an application for commitment cannot be held immediately, a person charged by affidavit or affidavits of two other persons with being mentally ill may be admitted to a state hospital for the mentally ill for emergency treatment, care and custody, provided such affidavit sets forth the circumstances constituting the emergency and is accompanied by written application for admission to the hospital, executed in duplicate, and by a certificate to the effect that the person is so mentally ill as to be in need of immediate hospitalization, together with medical history

of the case, including the name, condition, sex and age of the patient, and also the name and address of the nearest relative or legal guardian, if any, of the patient. The certificates, applications and case histories shall be made upon forms prescribed by the Mental Health Division and shall be executed by the county health officer, or, if that officer is unable to act or is related to such person by blood or marriage, then by two physicians licensed by the Board of Medical Examiners and not related to such person by blood or marriage.

[Amended by 1953 c.442 §2]

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 his deputy to the state hospital indicated by law to receive such patient. The superintendent of the state hospital may refuse to admit the person unless he 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, he shall receive and care for as a patient in the hospital the person named in the documents.

426.200 Court commitment following emergency admission. 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 he has been received. If, after completion of the examination, the physicians certify that he is so mentally ill as to be in need of treatment, care or custody, the superintendent shall, if he 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 probate jurisdiction in the county where the hospital is located, requesting a court commitment as provided by

law. If the examining physicians certify that such person is not so mentally ill as to be in need of treatment, care or custody, the superintendent of the state hospital shall cause the person immediately to be discharged therefrom. If a court commitment is made, all expenses incurred in connection with the proceeding, including the expenses of examination, transportation, commitment and delivery of such person, shall be paid by the county of which the person is a resident; or, if such person is not a resident of this state, then by the county from which the emergency admission was made.

[Amended by 1963 c.325 §2]

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 15 days following admission.

426.220 Voluntary commitment on application. (1) Pursuant to rules and regulations promulgated by the Mental Health Division, the superintendent of any state hospital for the treatment and care of the mentally ill may admit and hospitalize therein as a patient, for a period of not more than 30 days on the first application or for a period of not to exceed 90 days on any subsequent application, 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 21 years shall be admitted as a patient to any such state hospital unless an application therefor in his behalf has been executed by his parent, adult next of kin, or legal guardian. No person so admitted to any state hospital shall be detained therein more than 10 days after he, if an adult, has given notice in writing of his desire to be discharged therefrom, or, if the patient is a minor, after notice in writing has been given by his parent, adult next of kin or legal guardian that such parent, adult next of kin or legal guardian desires that such minor be discharged therefrom. No person who accepts treatment as authorized in this section may give such notice within less than 20 days after admission to the hospital in case of a first commitment or 80 days after admission in case of any subsequent commitment.

(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.

[Amended by 1953 c.127 §2; 1963 c.325 §3]

426.222 Establishment of outpatient clinics. The superintendents of existing and future state hospitals, with the approval of the Mental Health Division and with funds appropriated for that purpose by the legislature, may establish and maintain, in connection with and as a part of their respective institutions, outpatient clinics providing initial examination service of all persons presenting themselves for voluntary admission pursuant to ORS 426.220 and diagnostic and treatment services for persons suffering from mental illness or epilepsy who are not admitted to a state hospital and for persons released from a hospital without a certificate of discharge in those cases which, in the opinion of the superintendent of the institution concerned, will benefit from treatment or consultation on an outpatient basis.

[1953 c.597 §1; 1961 c.385 §1]

426.224 Patients who may be received in outpatient clinics. Outpatient clinics in state hospitals may receive without commitment those patients voluntarily presenting themselves and those patients who are referred by:

(1) A health officer, a guardian, parent or relative of the patient or any other interested person, if the patient at the time of referral is not in a state hospital.

(2) The superintendent of a state hospital from which the patient has been released without a certificate of discharge as provided in ORS 426.222.

(3) The superintendent of any state hospital to which the patient has presented himself for voluntary commitment pursuant to ORS 426.220, if the patient has been examined pursuant to ORS 426.222 and if the superintendent believes the services of the outpatient clinic provide the psychiatric treatment and consultation needed by the patient.

[1953 c.597 §2; 1961 c.385 §2]

426.226 Supervision of outpatient clinics; fee schedules. (1) Treatment and ser-

VICES furnished by the outpatient clinics shall be under the supervision of the superintendents of the hospitals.

(2) The Mental Health Division, by its rules and regulations, shall establish fee schedules for services under ORS 426.222 and 426.224.

[1953 c.597 §3]

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

426.240 Care and costs pending commitment and after commitment. (1) Upon order of a court of competent jurisdiction, any person charged according to law with being mentally diseased shall be cared for, pending proceedings for the commitment of such person and until commitment or release, but in no event in excess of 72 hours, in the county hospital of the county in which such proceedings are pending or in such other quarters suitable for the comfortable, safe and humane confinement of such person as are provided by the county court or board of county commissioners, of such county. The costs of such temporary care shall be paid as the other costs of such proceedings are paid under ORS 426.250 and 426.310.

(2) If any person is adjudged mentally ill as provided by ORS 426.120, he, or those legally responsible for his support, may be required to pay the cost of his hospitalization at such state hospital, as provided by ORS 179.610 to 179.770, if financially able so to do.

[Amended by 1959 c.652 §22]

426.250 Payment of examining physicians. Any physician employed by the judge to make an examination as to the mental condition of a person alleged to be mentally ill shall be allowed not more than \$10 for such examination. Witnesses summoned and giving testimony shall receive the same fees as are paid in civil cases. The expenses of the examination and the care and custody of said patient, until delivery is made to the proper authorities from the hospital, shall be paid by the county in which the examination and commitment were made.

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]

426.280 Trial visits; liability for expenses and damages caused by patient on trial visit. A superintendent may grant a

trial visit to a patient for any period of time under general conditions prescribed by the Mental Health Division. The hospital granting a trial visit to a patient, the superintendent thereof, the administrator of the Mental Health Division and members of the State Board of Control, shall not be liable for a patient's expenses while on trial visit, nor shall the superintendent of any such hospital, any member of the Board of Control or the administrator of the Mental Health Division be liable for any damages whatsoever that are sustained by any person on account of the misconduct of such patient while on trial visit.

[Amended by 1961 c.228 §1; 1961 c.706 §26]

426.290 Readmission of patient on trial visit. (1) If a written complaint against a patient on trial visit from a state hospital for the mentally ill is received by a superintendent of a state hospital for the mentally ill and the complaint is sworn to by a citizen of Oregon before an officer qualified to administer an oath, the patient named in the complaint shall be sent to and received by a state hospital for the mentally ill. If the acts complained of are such as to indicate to the superintendent of the receiving hospital that the patient should no longer be permitted to remain on trial visit, the patient shall be admitted thereto.

(2) Upon voluntary application to be admitted thereto, every patient on trial visit must be received by a state hospital for the mentally ill.

(3) Every patient on trial visit received by a state hospital for the mentally ill under this section shall be admitted to the hospital without examination as to his sanity before any court or judge having jurisdiction over such matters.

[Amended by 1959 c.513 §1; 1961 c.228 §2]

426.300 Discharge of patients; application for public assistance. (1) The superintendent of any state hospital wherein are confined persons adjudged to be mentally diseased may, by filing his written certificate with the committing court, discharge any patient, 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 he is convinced that the patient is sufficiently recovered to be of no danger to himself or others and that the discharge is in the best interest of the patient.

(2) The superintendent of a state mental hospital may sign applications for public assistance on behalf of those patients who no longer require care in a state mental hospital but who will require public assistance while on trial visit.

[Amended by 1963 c.325 §4]

426.305 Competency of patient being discharged. A certificate of discharge filed pursuant to ORS 426.300 shall state whether or not the patient is competent. If it sufficiently appears from the certificate that the patient is competent, the court, without the filing of a petition or a hearing as provided in ORS 33.820 shall enter an order so declaring.

[1955 c.522 §4; 1963 c.325 §5]

426.310 Reimbursement of county in case of nonresident patients. If the mentally diseased patient is a resident of some other county in this state, the county making the commitment shall be reimbursed by the county of which the patient is a resident. All reasonable and actual expenses incurred and paid by the county by reason of the examination, commitment, custody and delivery of the nonresident patient to the proper authorities from the hospital to which he has been committed 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 patient was a resident.

426.320 Payment of certain expenses by the state. All actual and necessary expenses incurred by the agent or attendant from the state hospital and his assistants, together with those of the patient or patients to be transferred after he has been taken from the custody of the sheriff, shall be paid by the state in the manner provided in ORS 426.330.

426.330 Presentation and payment of claims. The special funds authorized by section 10, chapter 342, Oregon Laws 1913, for the use of the superintendents of the Oregon State Hospital and the Eastern Oregon State Hospital, 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 Mental Health Division, shall be paid by the Secretary of State by warrant upon the State Treasurer against the fund appropriated to cover the cost of transporting the mentally diseased.

426.340 Use of "insane" and "insanity." In all proceedings under this chapter, the words "mentally diseased" shall be used in lieu of the word "insane," and the words "mental disease" shall be used in lieu of the word "insanity."

426.350 Crematory at Oregon State Hospital. The Mental Health Division shall cause to be erected and maintained at the Oregon State Hospital and the Eastern Oregon State Hospital a crematory or incinerator for the disposition of dead bodies of patients and other inmates of the institution or of any other state institutions, as provided by law.

[Amended by 1961 c.152 §1]

426.360 Transportation services to and from F. H. Dammasch State Hospital. (1) Notwithstanding the provisions of ORS 291.726, the Oregon State Board of Control, acting for F. H. Dammasch State Hospital, may provide transportation services between the city center of the City of Portland, Oregon, and F. H. Dammasch State Hospital located near Wilsonville, Oregon, to the extent that the services are not adequately provided, in the opinion of the board, by one or more contract or common carriers.

(2) The transportation services provided under this section are for the following purposes:

(a) Providing transportation for individuals utilizing the outpatient clinic services at F. H. Dammasch State Hospital and for those accompanying such individuals.

(b) Providing transportation for visitors to patients in F. H. Dammasch State Hospital.

(c) Providing transportation for patients admitted as voluntary admissions from F. H. Dammasch State Hospital to the City of Portland, upon release.

(3) The board shall, in compliance with ORS chapter 183, promulgate rules and regulations governing the transportation services provided by the board under this section. A sufficient charge shall be assessed to defray the cost of the services. The board

shall meet the requirements of ORS 767.105 to 767.215 in providing the services.

[1961 c.513 §§1, 2, 3]

SEXUALLY DANGEROUS

426.510 Definitions for ORS 426.510 to 426.670. As used in ORS 426.510 to 426.670, unless the context otherwise requires:

(1) "Sexually dangerous person" means one, not insane, who by a course of repeated misconduct in sexual matters has evidenced such lack of power to control his sexual impulses as to be dangerous to other persons of the age of 12 or under because he is likely to attack or otherwise inflict injury or pain on the objects of his desire.

(2) "Patient" means a person with respect to whom there has been filed with the clerk of the circuit court a complaint in writing setting forth facts tending to show that such a person is a sexually dangerous person or a person who has voluntarily filed an application for commitment as a sexually dangerous person pursuant to ORS 426.650.

(3) "Qualified psychiatrist" means a physician licensed by the State Board of Medical Examiners to practice medicine in this state who has specialized in the diagnosis and treatment of mental and nervous disorders for a period of not less than five years.

[1963 c.467 §1]

426.520 District attorney to file complaint. Whenever, upon the presentation of facts showing good cause for judicial inquiry, it shall appear to the district attorney that any person is a sexually dangerous person, the district attorney may file with the clerk of the circuit court, a complaint in writing setting forth the facts tending to show that such a person is a sexually dangerous person.

[1963 c.467 §2]

426.530 Compelling appearance of patient. Upon the filing of a complaint under ORS 426.520, the judge of any circuit court in this state shall cause the patient to be brought before him at such time and place as the judge may direct, by the issuance of a citation to the patient stating the nature of the information filed concerning him. If necessary for good cause shown, the judge may issue a warrant of detention to the sheriff of the county, directing the officer to take such patient into custody and produce

him at the time and place stated in the warrant. In executing the warrant of detention, the sheriff has all the powers provided by ORS 133.280 and 133.290, and may require the assistance of any peace officer or other person.

[1963 c.467 §3]

426.540 Service of citation; warrant of detention. (1) The citation shall be served on the patient by the sheriff of the county by delivering a duly certified copy of the original thereof to the patient in person. The officer serving the citation shall, immediately after service thereof, make a return upon the original citation showing the time, place and manner of such service and file it with the clerk of the court.

(2) If the patient upon whom a citation is personally served pursuant to subsection (1) of this section shall fail to appear at the time and place specified in the citation, the judge of the circuit court issuing such citation shall issue a warrant of detention to the sheriff of the county, directing the officer to take such patient into custody and produce him at the time and place stated in the warrant.

[1963 c.467 §4]

426.550 Execution and return of warrant; applicable procedure. If, in addition to the citation, a warrant of detention is issued by the judge of any circuit court, the officer serving the warrant of detention shall, immediately after service thereof and the taking of the patient into custody, make a return upon the original warrant showing the time, place and manner of such service. The procedures established pursuant to ORS chapter 133 shall be applicable, as if the warrant were a warrant of arrest and the charge one of a felony, in all instances where there is no conflict with specific provisions of ORS 426.510 to 426.670.

[1963 c.467 §5]

426.560 Place of confinement; attendant. (1) Any patient or sexually dangerous person held in physical custody pursuant to the authority granted by ORS 426.510 to 426.670, other than in a facility designated under ORS 426.670, shall be confined in a cell or place not then used for the incarceration of those held under criminal proceedings.

(2) Any such patient or sexually dangerous person so held in physical custody shall be confined with an attendant in direct charge of him; and, if not confined in a coun-

ty hospital, the sheriff having such person in his custody shall select some suitable person to act as attendant.

[1963 c.467 §6]

426.570 Release pending hearing. Any patient taken into custody by the issuance of a warrant of detention pursuant to ORS 426.530 or 426.540, shall be entitled to release pending the proceedings under ORS 426.510 to 426.650 upon his own recognizance at the discretion of the judge issuing the warrant, or shall be entitled to post bond to secure his appearance at the time and place specified in the warrant in the same manner as a person admitted to bail under the provisions of ORS 140.010 to 140.200.

[1963 c.467 §7]

426.580 Appointment of counsel; counsel fees. (1) A patient shall have the right to be personally present and have the assistance of counsel at every stage of the proceedings under ORS 426.510 to 426.650.

(2) Suitable counsel for a patient shall be appointed by the circuit court pursuant to subsection (1) of this section if:

(a) The patient requests aid of counsel;

(b) The patient makes a verified financial statement and provides any other information as to his ability to obtain counsel; and

(c) It appears the patient is without means and unable to obtain counsel.

(3) Upon completion of all services by any attorney or attorneys assigned to represent a patient under subsections (1) and (2) of this section, the attorney or attorneys shall submit to the court an affidavit containing an accurate statement of all reasonable expenses of investigation and preparation paid or incurred, supported by appropriate receipts or vouchers. The court shall thereupon enter an order for a reasonable attorney fee, directing the county to pay to such attorney or attorneys the amount of the fee plus the expenses, or such portion thereof as may be approved by the court.

[1963 c.467 §§8, 9]

426.590 Hearing on facts stated in complaint; special verdict. (1) After personal appearance of the patient pursuant to the citation issued by the judge and advice as to the patient's right to counsel, the judge of the circuit court shall set a time certain for a hearing to determine the truth of facts stated in the complaint.

(2) Pursuant to such hearing, the jury, or the judge if the jury is not requested, shall issue a special verdict in the manner established by ORS 136.630.
[1963 c.467 §10]

426.600 [Reserved for expansion]

426.610 Dismissal or commitment for observation; report; hearing; use of records.

(1) If the court thereupon finds as a matter of law that the facts found in the special verdict are insufficient to support a judgment that the patient is a sexually dangerous person the proceedings shall be dismissed. Otherwise the court shall commit the patient to the facility designated under ORS 426.670. Such commitment shall be for observation and report for a period of not less than 30 days nor more than 45 days. The superintendent shall appoint two qualified psychiatrists to make a personal examination of the patient, based upon the facts presented in the special verdict. The patient and his counsel shall be advised of the name and address of each psychiatrist so appointed and a date certain by which personal examinations of the patient are to be completed. The patient shall be required to answer questions asked by the psychiatrists under penalty of contempt of court. Each psychiatrist shall file with the court a written report of the examination, which shall include a statement of his conclusion as to whether the patient is a sexually dangerous person.

(2) Unless, in their reports filed pursuant to subsection (1) of this section, both psychiatrists state that the patient is not a sexually dangerous person, the court shall conduct a hearing in the manner provided in ORS 426.620, to determine whether the patient is a sexually dangerous person. If, on the basis of the reports filed, the court is not required to conduct such a hearing, the court shall enter an order dismissing the complaint filed under ORS 426.520 to determine whether the patient is a sexually dangerous person.

(3) Counsel and psychiatrists for the patient shall have the right to inspect the reports of the examination of the patient. No such report, no evidence resulting from the personal examination of the patient and no finding of any special verdict under ORS 426.510 to 426.670, shall be admissible against him in any judicial proceeding except a proceeding under ORS 426.510 to

426.650 to determine whether the patient is a sexually dangerous person.
[1963 c.467 §11]

426.620 Judicial determination; commitment; appeal. (1) Upon the evidence introduced at a hearing held for that purpose, the court shall determine whether or not the patient is a sexually dangerous person.

(2) If the patient is determined to be a sexually dangerous person by the court, the court shall;

(a) Commit him to the state institution designated by the Oregon State Board of Control to receive such commitments, for medical or mental therapeutic treatment; or

(b) Release him subject to such conditions, if any, as the court may at its sound discretion impose, including the condition that the patient receive outpatient treatment.

(3) The court may, in considering the action to be taken, order and utilize a report from the probation officer.

(4) Appeals may be taken as in other civil cases.
[1963 c.467 §12]

426.630 Rights of patient at hearing.

(1) A hearing held pursuant to ORS 426.590 and 426.620 shall be a private hearing and conducted without a jury unless, at least five days before the date set for such hearing, a jury or public hearing, or both, are demanded by the patient.

(2) The patient shall have process for the production of witnesses on his behalf. He shall also have the right to present evidence, including the testimony of qualified psychiatrists of his own choice, who shall be allowed to observe and consult with the patient at all reasonable times and places. The rules of evidence applicable in judicial proceedings in court shall be applicable to hearings held pursuant to ORS 426.590 and 426.620. However, notwithstanding any such rule:

(a) No minor shall be considered an accomplice.

(b) An allegation of fact need only be supported by clear and convincing evidence.

(c) Evidence of conviction of any number of crimes the commission of which tends to show the patient is a sexually dangerous person and the punishment inflicted therefor shall be admissible at any such hearing.

[1963 c.467 §13]

426.640 Petition for reexamination after commitment; report by psychiatrists; release. (1) Any patient committed to any appropriate institution within this state under the provisions of ORS 426.510 to 426.650, shall be entitled to reexamination and a hearing for discharge once in every 12 months after the date of original commitment upon the filing of a written petition by the committed patient, his parents, spouse, next of kin or any interested friend. The petition shall be filed in the circuit court from which the patient was committed and a copy of the petition shall be sent to the district attorney of the county where the original proceedings were commenced within 10 days after the petition is filed. The court shall set a date for a hearing which shall be conducted in the same manner as is provided in ORS 426.620 and 426.630.

(2) Two qualified psychiatrists shall be appointed by the court to examine the patient. Each psychiatrist shall report to the court and such reports shall include a statement as to the progress of the treatment, whether the patient is responding to treatment and a conclusion as to whether the patient is still a sexually dangerous person.

(3) Upon a finding by the court that the patient is no longer a sexually dangerous person, the court shall order the patient discharged.

[1963 c.467 §14]

426.650 Voluntary commitment to state institution. (1) The superintendent of any state institution designated under ORS 426.670 to receive commitments for medical or mental therapeutic treatment as sexually dangerous persons may admit and treat therein as a patient, for a period of not more than 30 days on the first application or for a period of not to exceed 90 days on any subsequent application, any person who may be a sexually dangerous person and who voluntarily has made written application for such admission.

(2) No person under the age of 21 years shall be admitted as a voluntary patient to any state facility unless an application therefor has also been executed by his parent, adult next of kin, or legal guardian. No per-

son so admitted to any state institution shall be detained therein more than 10 days after he, if an adult, has given notice in writing of his desire to be discharged therefrom, or, if the patient is a minor, after notice in writing has been given by the minor and by his parent, adult next of kin or legal guardian that such minor be discharged therefrom. No person who accepts treatment as authorized in this section may give such notice within less than 20 days after admission to the institution in case of a first commitment or 80 days after admission in case of any subsequent commitment.

(3) 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 for a period of 48 hours or less, if such leave, in the opinion of the superintendent, will not interfere with the successful treatment or examination of the applicant.

[1963 c.467 §15]

426.660 Parole of patient. Upon recommendation of the superintendent of the state institution designated under ORS 426.670 to receive commitments for medical or mental therapeutic treatment as sexually dangerous persons, a patient may be paroled by the State Board of Parole and Probation. The powers, functions and duties of the State Board of Parole and Probation with regard to inmates of institutions under ORS chapter 144 shall be applicable to and exercised in the same manner and with equal effect regarding persons committed under ORS 426.510 to 426.670, except that the provisions of ORS 144.310 shall not apply.

[1963 c.467 §16]

426.670 Segregated treatment facility for sexually dangerous persons. The Board of Control hereby is directed and authorized to establish and operate a segregated treatment facility within an existing state institution 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]

MENTALLY ILL AND SEXUALLY DANGEROUS

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Sam R. Haley, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
on December 1, 1963.

Sam R. Haley
Legislative Counsel

