

TITLE 35

MENTAL HEALTH

- Chapter** 426. Mentally Ill and Sexually Dangerous
427. Mentally Deficient
428. Nonresident and Aged Mentally Ill or Deficient
430. State and Local Mental Health Administration

Chapter 426

1969 REPLACEMENT PART

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MENTALLY ILL

(Definitions)

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

(Hospitals)

426.010 State hospitals for mentally ill persons. Except as otherwise ordered by the Mental Health Division pursuant to ORS 179.325, 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 Hospital and Training Center in Pendleton, Umatilla County, shall be used as state hospitals for the care and treatment of mentally ill persons who are assigned to the care of such institutions by the Mental Health Division or who have previously been committed to such institutions.
[Amended by 1955 c.651 §3; 1965 c.339 §23; 1965 c.595 §2]

426.020 Superintendents; chief medical officer; other personnel; residence may be provided. (1) The superintendents of the hospitals mentioned in ORS 426.010 shall be persons the Mental Health Division considers qualified to administer the hospital. If the superintendent of any hospital is a physician licensed by the State Board of Medical Examiners, he shall serve as chief medical officer. If he is not a physician, he shall appoint a physician to serve as chief medical officer who shall be in the unclassified service. Each superintendent shall appoint all necessary physicians and medical assistants. Persons appointed by the superintendent shall receive such salaries as the Mental Health Division may authorize, within the appropriation therefor and limitations prescribed by law.

(2) The superintendents may 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.
[Amended by 1955 c.651 §4; 1969 c.391 §1]

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 Multnomah 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]

426.060 Commitment to designated state hospital. (1) Commitments to the Oregon State Hospital, the F. H. Dammasch State Hospital and the Eastern Oregon Hospital and Training Center shall be made by the judge of any court having probate jurisdiction or, if the circuit court is not the probate court, the circuit court if its jurisdiction has been extended to include commitment of the mentally ill pursuant to ORS 3.275 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; 1967 c.534 §19]

(Commitment Procedure)

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 or, if the circuit court is not the probate court, the circuit court if its jurisdiction has been extended to include commitment of the mentally ill pursuant to ORS 3.275 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; 1967 c.534 §20]

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; service. 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.

[Amended by 1957 c.329 §2; 1967 c.459 §1]

426.100 Appointment of legal counsel; fee; continuance of hearing. (1) 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, the court may, at its discretion, appoint legal counsel.

(2) If the person is indigent, the court may provide by order for payment of a reasonable attorney fee by the county of residence of the allegedly mentally ill person. 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.

(3) Where legal counsel is requested or provided, the court may continue the hearing for up to 72 hours after the request or appointment and may make such orders for the care and custody of the person during that period as it deems necessary.

[Amended by 1967 c.458 §1]

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 Transportation to state hospital. (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. The account of the proceedings and transcripts of testimony if taken thereat shall be delivered to the county clerk who shall cause it to be sealed and neither the account of the proceedings nor the transcript of testimony if taken shall be disclosed to any person except:

(1) As provided in ORS 426.170;

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

(3) Pursuant to court order.

[Amended by 1965 c.420 §1; 1969 c.148 §1]

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.

(Emergency and Voluntary Commitments)

426.175 Emergency hospitalization by physician; limit on detention; exemption from liability. (1) A physician licensed to practice medicine by the Board of Medical Examiners for the State of Oregon, in consultation with a similarly qualified physician, neither of whom shall be related by blood or marriage to the person, may admit or if already admitted, cause to be retained in a hospital a person he believes to be dangerous to himself or to any other person and who he believes is in need of emergency care or treatment for mental illness.

(2) The allegedly mentally ill person shall be examined forthwith by the physician, and a written record shall be made setting forth his condition and need for emergency hospitalization. The physician shall notify in writing forthwith a court having probate jurisdiction in the county in which the person is hospitalized and he shall make every effort to notify the patient's next of kin of patient's whereabouts. In no case shall the person be held in a hospital longer than 96 hours without a warrant being issued by the judge of the probate court.

(3) The person shall only be admitted and retained in a hospital licensed by the State Board of Health that maintains adequate staff and facilities for care of the mentally ill. The expenses of the emergency care shall be paid by the county of residence of the person or, if he has no residence within the state, by the county in which the person is taken into custody, unless otherwise provided by law. Sums paid by the county shall be a charge to and be collected from the person hospitalized, his estate, or other persons otherwise legally responsible for such expenses.

(4) No physician, hospital or judge shall be held criminally or civilly liable for actions pursuant to this section, provided he acts in good faith, on probable cause and without malice.

[1969 c.371 §1]

Note: ORS 426.175 was not added to and made a part of ORS 426.005 to 426.350.

426.180 Emergency commitment on affidavit of two persons. 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 affi-

davits 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 chief medical officer 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.

[Amended by 1969 c.391 §2]

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.

426.215 Peace officer taking into custody person in need of treatment; examination; notice to court; hearing; emergency care; exemption from liability. (1) Any peace officer may take into custody any person who he has reasonable cause to believe is dangerous to himself or to any other person and who he has reasonable cause to believe is in need of immediate care or treatment for mental illness. If a peace officer takes a person into custody under this section, he shall remove him forthwith to:

(a) A hospital, described in subsection (4) of this section, in the county where the person is taken into custody; or

(b) Such a hospital in another county after having obtained a certificate from a physician licensed to practice medicine and surgery by the Board of Medical Examiners for the State of Oregon that the person is dangerous to himself or to any other person

and is in need of immediate care or treatment for mental illness.

(2) The superintendent of the hospital shall cause the person to be examined forthwith by a staff physician. If the physician finds the person to be in need of immediate care or treatment for mental illness, the person shall be admitted as a patient. Otherwise he shall not be retained in further custody under this section.

(3) The peace officer, after taking a person into custody under this section, shall notify forthwith a court having probate jurisdiction in the county in which the person was taken into custody of the fact of taking the person into custody and the person's whereabouts. When the judge of such a court is informed by a peace officer that a person is in custody, within 24 hours the judge shall issue a warrant directing that such person be brought before the court within 24 hours after issuance of the warrant, and a hearing shall be held as provided in ORS 426.070 to 426.170.

(4) The superintendent of a hospital maintaining adequate staff and facilities for the care and treatment of persons alleged to be mentally ill and approved by the Mental Health Division may receive and retain therein as a patient for a period not to exceed five days any person alleged to be in need of immediate care or treatment for mental illness as provided in this section. The expenses of such emergency care shall be paid by the county of residence of the person or, if he has no residence within the state, by the county in which the person is taken into custody, unless otherwise provided by law.

(5) No peace officer, hospital, physician or judge shall be held criminally or civilly liable for actions pursuant to this section provided he acts in good faith, on probable cause and without malice.

[1965 c.628 §1]

426.220 Voluntary commitment; release procedure. (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, any person who may be suffering from nervous disorder or mental illness, and who voluntarily has made written application for such admission. No person under the age of 18 years shall be admitted as a patient to any such state hospital unless an application therefor in his behalf has been

executed by his parent, adult next of kin or legal guardian. Except when a period of longer hospitalization has been imposed as a condition of admission, pursuant to rules and regulations of the division, no person voluntarily admitted to any state hospital shall be detained therein more than 72 hours after he, if at least 18 years of age, has given notice in writing of his desire to be discharged therefrom, or, if the patient is under the age of 18 years, 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 person be discharged therefrom.

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

(3) Upon admission or discharge of a minor to or from a state hospital the superintendent shall immediately notify the parent or guardian.

[Amended by 1953 c.127 §2; 1963 c.325 §3; 1967 c.371 §1; 1969 c.273 §1]

(Outpatient Programs)

426.222 Outpatient programs. The Mental Health Division, with funds appropriated for that purpose by the legislature, may establish and maintain outpatient programs providing initial examination service of all persons presenting themselves for voluntary admission pursuant to ORS 426.220, including any addict presenting himself pursuant to ORS 426.410, and diagnostic and treatment services for persons suffering from addiction, 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; 1969 c.391 §3; 1969 c.638 §4]

426.224 Persons eligible for outpatient programs. Outpatient programs may provide services to those persons 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 inter-

ested person, if the person at the time of referral is not in a state hospital.

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

(3) The chief medical officer 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 and if the chief medical officer believes the services of an outpatient program provide the treatment and consultation needed by the patient.

[1953 c.597 §2; 1961 c.385 §2; 1969 c.391 §4; 1969 c.638 §5]

426.226 Supervision and operation of outpatient programs; fee schedule. (1) Treatment and services furnished by the outpatient programs shall be under the supervision of the Mental Health Division or may be provided by a public or private agency under agreement with the division and subject to rules and regulations of the division.

(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; 1969 c.391 §5; 1969 c.638 §6]

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

(Costs)

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 a fee as the court in its discretion shall determine to be reasonable 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.

[Amended by 1965 c.420 §2]

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

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

(Trial Visits)

426.280 Trial visits; exemption from liability for visits. 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 the chief medical officer of the hospital shall not be liable for a patient's expenses while on trial visit, nor shall the superintendent of any such hospital, the Administrator of the Mental Health Division or the chief medical officer of the hospital 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; 1969 c.597 §91]

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 examining physician 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; 1969 c.391 §6]

(Competency and Discharge)

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

(2) Upon petition of a person committed to a state hospital, or his guardian, relative or creditor or other interested person, the court of competent jurisdiction in the county in which the state hospital is located or, if the petitioner requests a hearing in the county where the commitment originated, then the court in such county shall hold a hearing to determine whether or not the person in the state hospital is competent. A guardian who is not the petitioner shall be notified of the hearing at least three days before the date set for hearing. After the hearing the court shall enter an order pursuant to its finding and serve a copy of the order on the petitioner and forward a copy of the order to the committing court.

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

[1965 c.628 §2; 1967 c.460 §1; 1969 c.391 §7]

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

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

(3) Any physician employed by the court to make an examination as to the mental condition of a person subject to a competency proceeding under ORS 426.295 or 426.375 to 426.390 shall be allowed a reasonable professional fee by order of the court. Witnesses summoned and giving testimony shall receive the same fees as are paid in civil cases.

[1967 c.460 §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 institution for the mentally ill or mentally retarded or the administrator of the University State Tuberculosis Hospital may sign applications for public assistance on behalf of those patients who may be eligible for public assistance.

[Amended by 1963 c.325 §4; 1967 c.549 §8]

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

(Miscellaneous)

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 Hospital and Training Center to better enable them promptly to meet the advances and expenses necessary in the matter of transferring patients to the state hospitals are continued in existence. The superintendents shall present their claims monthly with proper vouchers attached, showing the expenditures from the special funds during the preceding month, which claims, when approved by the 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 state hospitals. The Mental Health Division shall cause to be erected and maintained at the Oregon State Hospital and the Eastern Oregon Hospital and Training Center 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 283.395, the Mental Health Division, 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 Administrator of the Mental Health Division, 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 administrator shall, in compliance with ORS chapter 183, promulgate rules and regulations governing the transportation services provided by the division under this section. A sufficient charge shall be assessed to defray the cost of the services. The division shall meet the requirements of ORS 767.105 to 767.215 in providing the services.

[1961 c.513 §§1, 2, 3; 1969 c.597 §92]

(Rights of Patients)

426.375 Patient rights; limitations thereon. (1) Subject to the general rules and regulations of the state hospital and except to the extent that the superintendent of the hospital determines that it is necessary for the medical welfare of the person admitted to the hospital to impose restrictions, every such person shall be entitled:

(a) To communicate by sealed mail or otherwise with persons, including official agencies, inside or outside the hospital;

(b) To receive visitors; and

(c) To exercise all civil rights in the same manner and with the same effect as one not admitted to the hospital, including but not limited to the right to dispose of

property, execute instruments, make purchases, enter contractual relationships, and vote, unless he has been adjudicated incompetent and has not been restored to legal capacity.

(2) Notwithstanding any limitations authorized under this section on the right of communication, every affected person shall be entitled to communicate by sealed mail with the Mental Health Division, the court, if any, which ordered his commitment, and with his attorney.

(3) Any limitations imposed by the superintendent on the exercise of these rights by the patient and the reasons for such limitations shall be made a part of the clinical record of the patient.

[1967 c.460 §5]

426.380 Availability of writ of habeas corpus. Any individual committed pursuant to ORS 426.005 to 426.380 shall be entitled to the writ of habeas corpus upon proper petition by himself or a friend to any court generally empowered to issue the writ of habeas corpus in the county in which the state hospital in which the person is detained is located.

[1967 c.460 §6]

426.385 Use of mechanical restraints limited. Mechanical restraints shall not be applied to a person admitted to a state hospital unless it is determined by the superintendent of the hospital or his designee to be required by the medical needs of the person. Every use of a mechanical restraint and the reasons therefor shall be made a part of the clinical record of the person under the signature of the superintendent of the hospital or his designee.

[1967 c.460 §4]

426.390 Construction. Nothing in ORS 426.295, 426.297, 426.375 to 426.390 is intended to detract from the powers of a court under ORS 179.640 or ORS 126.006 to 126.880.

[1967 c.460 §7]

DRUG ADDICTS

426.410 "Addict" defined; commitment of addicts to state hospital; status of committed addict. (1) As used in this section, "addict" means any person who at the time of examination is physically or psychologically dependent on a chemical or drug which impairs social or psychological functioning so as to endanger the public morals, health,

safety or welfare, or who is so far addicted to the use of such a chemical or drug as to have lost the power of self-control with reference to his chemical or drug use.

(2) A person who is alleged to be an addict may be committed or admitted to a state hospital for the mentally ill and he is entitled to the rights and is subject to the procedures prescribed in ORS 426.005 to 426.390 for purposes of such commitment, admission and treatment at a state hospital.

(3) A person committed or admitted to a state hospital pursuant to subsection (2) of this section shall not by reason of that fact alone be considered mentally ill for any other purpose.

(4) In any order of commitment of an addict entered under the provisions of ORS 426.120, the court shall specify that the person is an addict.

[1969 c.638 §1]

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 county 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 con-

taining 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]

426.610 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 Mental Health Division 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 pa-

tient 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 for treatment 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 person 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 chief medical officer, will not interfere with

the successful treatment or examination of the applicant.

[1963 c.467 §15; 1969 c.391 §8]

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 Treatment programs for sexually dangerous persons. The Mental Health Division hereby is directed and authorized to establish and operate treatment programs, either separately within an existing state institution or as part of existing program within the 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. The treatment programs shall not be within a penal institution.

[1963 c.467 §17; 1965 c.481 §1]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Robert W. Lundy, 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, 1969.

Robert W. Lundy
Legislative Counsel

