Chapter 427

1969 REPLACEMENT PART

Mentally Deficient

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427.005 Definitions. (1) As used in this chapter, unless the context requires otherwise:

(a) "Division" means the Mental Health Division.

(b) "Physician" means a person licensed by the State Board of Medical Examiners to practice medicine and surgery.

(c) "Resident" means a person admitted voluntarily or after commitment to the Mental Health Division to a state institution for the care and treatment of the mentally deficient.

(2) For purposes of laws relating to the care and custody of mentally deficient persons in state institutions, "resident of this state" means a person who has either been born in this state and resided in this state since birth or been physically present in this state for at least one year regardless of the residence of his parent or guardian. However, a service man or woman on active duty in the Armed Forces of the United States who was domiciled in Oregon upon entry into active duty and who has acquired no other domicile shall be entitled to have his or her children considered a resident of this state so long as no other domicile is acquired by the service man or woman.

[1959 c.331 §10; 1961 c.706 §27; 1965 c.339 §1; subsection (2) enacted as 1965 c.595 §5; 1967 c.299 §1]

427.010 Fairview Hospital and Training Center; personnel. (1) Except as otherwise ordered by the Mental Health Division pursuant to ORS 179.325, the Fairview Hospital and Training Center shall be used for the care and training of such mentally deficient persons as are assigned to its care by the Mental Health Division or who have previously been committed to its custody. The institution shall be quasi-educational in its nature.

(2) The superintendent shall appoint officers, teachers and other employes necessary to instruct such mentally deficient persons as, in the judgment of the superintendent, should receive instruction. The superintendent shall be a person the Mental Health Division considers qualified to administer the hospital. If the superintendent 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.

[Amended by 1953 c.155 §7; 1965 c.339 §2; 1965 c.595 §3; 1969 c.391 §9]

427.015 Petition for commitment of mentally deficient person. The judge of any probate court 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 deficient pursuant to ORS 3.275 may, upon written petition of any citizen, alleging that any person is mentally deficient and by reason thereof is in need of care, custody or training, cause such person to be brought before him at such time and place as he may direct.

[1961 c.661 §2; 1967 c.534 §21]

427.025 Precommitment examination required; examination facilities. (1) If, after receiving a petition for commitment and viewing the person alleged to be mentally deficient, the judge considers the person to be in need of care, custody or training, he shall order a precommitment physical and mental examination of the person at a facility or institution as provided in subsection (2) of this section. No person shall be committed to the Mental Health Division as mentally deficient without a precommitment examination.

(2) If there is no facility or institution which is, in the opinion of the Mental Health Division, capable of making a proper precommitment examination and which is within a reasonable distance from the court, the judge shall order the person to be examined at the Fairview Hospital and Training Center.

(3) Application for the precommitment examination shall be made in the manner and form prescribed by the examining authority and shall be accompanied by copies of all personal and family histories and medical and psychological reports available on the person alleged to be mentally deficient.

(4) The division shall notify all courts having commitment jurisdiction which facility or institution is acceptable and within

reasonable distance for making the precommitment examination.
[1961 c.661 §3; 1965 c.339 §3; 1967 c.534 §22]

427.030 [Amended by 1953 c.155 §7; 1957 c.403 §6; 1959 c.331 §7; repealed by 1961 c.661 §20]

427.035 Precommitment examination. Upon receipt of an application as provided in ORS 427.025, the acceptable facility or institution or Fairview Hospital and Training Center, whichever has been requested to make the examination, shall schedule a date for the person alleged to be mentally deficient to be brought to the facility or institution or Fairview Hospital and Training Center for examination. The person shall not be kept in residence for a period longer than seven days.
[1961 c.661 §4; 1965 c.339 §4]

427.040 [Amended by 1953 c.155 §7; repealed by 1961 c.661 §20]

427.045 Report of findings; recommendations. (1) The facility or institution which makes the examination under ORS 427.025 shall report its findings to the court within 30 days of completion of the examination. These findings shall indicate whether the person is mentally deficient, and recommend the type of treatment which is in the best interest of the person, his family and the community.

(2) If a person alleged to be mentally deficient has been examined at the facility or institution within one year prior to the application for examination under ORS 427.025, the findings from such previous examination may at the discretion of the facility or institution be reported to the court in lieu of the examination.

(3) The recommendation may be for commitment to the Mental Health Division, treatment through the outpatient clinic of a state institution for the care and treatment of the mentally deficient or through available local services, retention at his home or commitment to another state institution.
[1961 c.661 §§5, 6; 1965 c.339 §5]

427.050 [Amended by 1953 c.155 §7; 1957 c.388 §12; 1961 c.661 §11; renumbered 427.065]

427.055 Costs of transportation and maintenance of person during examination. (1) The cost of transportation from the county where the person alleged to be mentally deficient resides to the examining facility or institution, shall be at the expense of the county where the petition for commitment is filed. The cost of maintenance of the person while in residence at a state institution shall be determined by the Mental Health Division and shall be paid by the person being examined or those persons legally responsible for his support as such persons are specified in ORS 179.630. Where the person being examined or those persons specified in ORS 179.630 are unable to pay, in whole or in part, the cost of such maintenance as such ability and costs of maintenance are determined by the division, the Mental Health Division shall provide such maintenance without charge or obligation for that part of such costs which remains unpaid.

(2) If the petition has been filed in a county other than that in which the person alleged to be mentally deficient resides, the county where the petition is filed shall be reimbursed for transportation costs by the county in which the person resides.
[1961 c.661 §§7, 8; 1965 c.339 §6]

427.059 Certification of mental deficiency; order of commitment; copy to division. (1) If the findings of the examining facility or institution are that the person is mentally deficient, the judge may certify that the person is mentally deficient. If he certifies that the person is mentally deficient, he may order the person committed to the Mental Health Division.

(2) Whenever an order is made committing a person to the Mental Health Division, a certified copy of the order shall be mailed to the administrator of the division who shall indorse thereon the date of receipt and file the copy in the office of the division. The order shall be entered on forms supplied by the Mental Health Division.
[1961 c.661 §§9, 10; 1965 c.339 §7]

427.060 [Amended by 1961 c.661 §12; renumbered 427.067]

427.062 Legal counsel at commitment proceedings; appointment of counsel for indigent; continuation of hearing. (1) If the allegedly mentally deficient person, when brought before the court, requests the assistance of counsel to represent him at the proceedings provided for by ORS 427.015 to 427.059, the court shall give such person opportunity to obtain such legal counsel. If no such request is made by the allegedly mentally deficient 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 an attorney fee by the county of residence of the allegedly mentally deficient person. The attorney fee shall be fixed by the court and shall be paid on the same basis as fees for attorneys appointed in criminal cases from the circuit court. 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.

[1969 c.632 §§2, 3, 4]

427.065 Admission on commitment; cost of transportation; residence requirement. (1) Persons are entitled to admission to state institutions for the care and treatment of the mentally deficient in the order in which the copies of the orders for commitment are received and filed or the applications for admission under ORS 427.220 are received and approved. Whenever there is space available in the appropriate unit at such institution to receive additional residents, the Mental Health Division shall at once notify the court which made the commitment earliest received and filed or as provided in ORS 427.230. However, pursuant to rules of the Mental Health Division, persons may be admitted on a priority basis if their behavior or condition is a threat to their welfare or safety or the safety of others.

(2) The court shall within 30 days thereafter cause the person to be taken to the institution designated by the division or shall enter an order that such person is no longer entitled to admission, notify the division, thereof, and provide for the safe and suitable care of such person.

(3) The person committed shall be conveyed to the designated institution by a member of his family or by a trained attendant of the institution in the same manner as is provided for the conveyance of mentally ill persons to the Oregon state hospitals. The expense of such transportation for the person to the designated institution shall be paid by the county in which the petition of commitment is filed. No mentally deficient person who has not been a resident of this state for at least one year shall be committed under subsection (1) of ORS 427.059 or admitted under ORS 427.220.

[Formerly 427.050; amended by 1965 c.339 §8]

427.067 Care of mentally deficient person by relative or guardian. If any relative or guardian of any person who has been certified by the judge to be mentally deficient agrees to furnish such means of private care and supervision of the person as are satisfactory to the court, the judge may make the mentally deficient person a ward of the court. The court shall require the relative or guardian to give a good and sufficient bond, in a form to be prescribed by the Attorney General, to care for, protect and supervise the mentally deficient person.

[Formerly 427.060]

427.070 [Amended by 1961 c.661 §13; repealed by 1965 c.339 §27]

427.075 Waiver of residence requirement. Notwithstanding any residence requirement imposed under this chapter relating to the care and custody in a state institution, the Administrator of the Mental Health Division may waive any such requirement whenever:

(1) The residence of the person cannot be established after reasonable and diligent investigation and effort.

(2) In the judgment of the administrator, the peculiar circumstances of the case provide a sufficient reason for waiving the residence requirement.

[1969 c.38 §2]

427.080 [Repealed by 1961 c.661 §20]

427.085 Appeal from determination of mental deficiency. Any proper party who is dissatisfied with the determination of a county court as to mental deficiency as prescribed by ORS 427.059 may appeal to the circuit court. Upon such appeal the circuit court shall appoint an examining board to examine the person alleged to be mentally deficient. The board shall consist of at least two physicians or one physician and one psychologist. If the examining board certifies that the person is mentally deficient, the certification and order of commitment, if any, of the county court shall be sustained. If the examining board does not certify that the person is mentally deficient, the circuit court may set aside the certification and order of commitment, if any, of the county court.

[1961 c.661 §15; 1967 c.534 §23; 1969 c.591 §299]

Note: The 1969 amendment to ORS 427.085 takes effect July 1, 1970.

427.090 Information given in commitment papers. In all cases of commitment to the Mental Health Division under ORS chapter 427, the commitment papers shall furnish all available information concerning persons so committed, including the school record, family history and cause of condition, for the permanent records of the division except such information as shall have been furnished under ORS 427.035.
[Amended by 1961 c.661 §16; 1965 c.339 §9]

427.100 Payment of examining board, witnesses, cost of examination and commitment. The board employed for the examination of mentally deficient persons under ORS 427.085 shall receive the same compensation as is provided for in the examination of allegedly mentally ill persons. Witnesses shall receive the same compensation as in civil cases. The cost of examination and commitment shall be paid by the county in which the examination is made.
[Amended by 1965 c.339 §10]

427.104 Establishment of outpatient departments. The Mental Health Division with funds appropriated for that purpose by the legislature, may establish and maintain outpatient departments, to be operated as parts of state institutions for the care and treatment of the mentally deficient as a service to parents and guardians of mentally deficient children who are not admitted to such state institutions.
[1953 c.631 §1; 1965 c.339 §21]

427.106 Services provided by outpatient departments. The outpatient department may provide:

(1) Diagnostic services, advice and other necessary services to any mentally deficient person not committed to the Mental Health Division or to the parents or guardians of mentally deficient persons who are not committed to the Mental Health Division.

(2) Guidance, advice and other necessary services to parents or guardians of mentally deficient persons or to the mentally deficient persons who have been committed to the Mental Health Division pursuant to ORS 427.059 or who have been accepted for admission under ORS 427.220 to 427.230, but cannot be admitted to a state institution for the care and treatment of the mentally deficient until a vacancy occurs.
[1953 c.631 §2; 1965 c.339 §22; 1969 c.53 §1]

427.108 Fee schedules for outpatient services. The Mental Health Division, by its rules and regulations, shall establish fee schedules for services under ORS 427.104 and 427.106.
[1953 c.631 §3]

427.110 [Repealed by 1953 c.155 §7]

427.120 Reexamination, transfer or discharge of inmate; expense of return. The administrator of the Mental Health Division may require that a reexamination of any resident of a state institution for the care and treatment of the mentally deficient be made. If the examination shows the resident to be no longer a fit subject for the institution, the resident shall be transferred by the Mental Health Division to a more appropriate state institution or the resident shall be discharged and the case shall be returned to the court having jurisdiction over commitments in the county of which he was a resident at time of commitment for a determination of the legal status of the discharged resident. The expense incurred in returning the resident to the court shall be paid by the county of which he was a resident at time of commitment. If a person is committed to the Mental Health Division as mentally deficient while in another state institution or within 90 days after his release from another state institution, his residence shall be deemed to be the same as it was at the time he entered the prior state institution.
[Amended by 1953 c.155 §7; 1959 c.331 §8; 1965 c.339 §11]

427.130 [Amended by 1955 c.651 §10; repealed by 1957 c.160 §6]

427.140 [Repealed by 1957 c.388 §17]

427.150 Leave of absence for inmate; damages caused by inmate while on leave; return to institution upon complaint. (1) The superintendent of a state institution for the care and treatment of the mentally deficient may grant leave of absence to any resident of the state institution pursuant to the rules and regulations of the Mental Health Division. The state institution, the superintendent and the chief medical officer thereof, and the Administrator of the Mental Health Division shall not be liable for a resident's expenses while on leave of absence nor shall they be liable for any damages whatsoever that are sustained by a person on account of the actions or misconduct of a resident while on leave of absence.

(2) Every resident granted leave under this section shall be received back into the state institution upon complaint in writing by a citizen of this state to the district attorney of the county in which the resident resides. The district attorney shall promptly notify the Mental Health Division of the complaint if the acts complained of are such as to indicate that the resident should no longer be permitted to remain at large. Thereupon, the superintendent of the state institution in which the resident resides may cancel the leave of absence and have the resident returned to the state institution.
[1953 c.155 §5; 1963 c.411 §1; 1965 c.339 §12; 1969 c.597 §93]

427.200 [1953 c.615 §1; repealed by 1957 c.202 §6]

427.210 Definitions for ORS 427.210 to 427.260. As used in ORS 427.210 to 427.260, unless the context requires otherwise:

(1) "Custody" means the right of immediate physical control, retention and supervision.

(2) "Discharge" means the relinquishment by the Mental Health Division of all rights and responsibilities it may have acquired by reason of the admission of any resident.

(3) "Mental retardation" is synonymous with "mental deficiency."

(4) "Minor" means any unmarried person under the age of 21 years.

(5) "Person" includes any person, as defined in ORS 174.100, and public officials and public agencies.
[1959 c.331 §1; 1965 c.339 §13]

427.220 Application for admission of minors without commitment. Pursuant to reasonable rules and regulations of the Mental Health Division and in conformity with ORS 427.225 and 427.230, the superintendent of the state institution for the care and treatment of the mentally deficient designated by the division shall admit as a resident and take custody of any minor shown by examination under ORS 427.225 to be mentally deficient upon written application for such minor's admission, submitted in accordance with the following requirements:

(1) The application shall be made by the minor's parents or, if the parents are not entitled to custody, by the person entitled to custody.

(2) The application shall be made in the manner and form required by the division.
[1959 c.331 §2; 1961 c.661 §17; 1965 c.339 §14]

427.225 Preadmission examination of minors; costs of transportation and maintenance during examination. (1) Upon receipt and approval of an application provided in ORS 427.220, the Mental Health Division shall order an examination of the minor on whose behalf the application for admission is made at a facility or institution capable, in the opinion of the division, of making a proper examination and designated by the division to make the examination of the minor on whose behalf the application is made for the examination. Upon receipt of the order, the designated facility or institution shall schedule a date for the examination and notify the person having custody of the minor. No minor shall be kept in residence for a period longer than seven days without an order of admission by the administrator of the division.

(2) The costs of transportation to the designated institution or facility shall be paid by the parents or persons entitled to custody of the minor. The cost of maintenance for the period of residence shall be determined by the Mental Health Division and paid by the parents or person entitled to custody.
[1961 c.661 §19; 1965 c.339 §15]

427.230 Admission as resident; residence requirement; cancellation of application; continuous custody upon commitment. (1) A minor is entitled to admission as a resident in a state institution for the care and treatment of the mentally deficient pursuant to ORS 427.065.

(2) As space in an appropriate unit becomes available, the administrator of the Mental Health Division shall notify the person who made the application for admission of the minor that the minor may be admitted as a resident. The notice shall set the date when the admission is to be made. If within 30 days after the date set for admission, the minor is not brought to the designated institution, his application may, in the discretion of the administrator, be canceled.

(3) In case a resident admitted under ORS 427.220 to 427.230, while in the custody of the superintendent, is committed to the Mental Health Division as mentally deficient, such resident shall remain in custody under the order for commitment notwithstanding ORS 427.065.
[1959 c.331 §6; 1965 c.339 §16]

427.240 Termination of residency voluntarily or continuation of custody upon commitment. (1) Subject to the provisions of subsection (3) of this section, no resident admitted to a state institution for the care and treatment of the mentally deficient pursuant to ORS 427.220 to 427.230 shall be retained at such an institution for more than 30 days after the date when the person otherwise entitled to custody of the resident except for the custody of the institution has given written notice to the Mental Health Division of his desire to remove the resident from the institution. Such notice shall indicate the proposed plan of future residence of the resident.

(2) Whenever the chief medical officer of the institution to which the minor has been admitted considers it to be in the best interests of the resident that he be committed to the Mental Health Division, the superintendent shall promptly make application to the court having probate jurisdiction in the county in which the state institution is located for commitment of the resident to the Mental Health Division. The superintendent shall send, by certified mail to the last-known address of the person who gave notice of desire to remove the resident, a copy of his application for commitment. If, within 15 days after the date of such mailing, the person who gave such notice notifies the superintendent and the court in writing that he objects to the commitment proceeding taking place in the county in which the state institution is located, the proceeding shall be transferred to the court which would otherwise have jurisdiction to make an order of commitment upon application under ORS 427.030. Upon transfer, the costs of transporting the resident and of continuing his custody during the proceeding and the costs of examination and commitment shall be paid, notwithstanding ORS 427.100, by the person giving notice of desire to remove the resident; otherwise, the state shall bear such costs.

(3) Pending final determination of the commitment proceeding, the superintendent shall retain custody of the resident. If, upon final determination, the court does not order commitment of the resident to the Mental Health Division as mentally deficient, the superintendent shall discharge the resident.

[1959 c.331 §3; 1965 c.339 §17; 1969 c.391 §10]

427.250 Discharge or commitment of resident upon reaching age of majority. Each resident shall be examined upon reaching the age of majority by at least two physicians, or one physician and one psychologist, on the staff of the state institution to which he was admitted who shall determine and certify as to the minor's mental retardation and need of further residential care, treatment, training or education. If, in the opinion of the chief medical officer of the state institution, their findings indicate the resident to be no longer a fit subject for institutionalization, the resident shall be discharged. If the chief medical officer is of the opinion that the resident should be committed to the Mental Health Division the superintendent shall promptly make application to the court having probate jurisdiction in the county in which the state institution is located for commitment of the resident to the Mental Health Division. The procedure for commitment, transfer of the proceedings and costs shall be the same as provided in ORS 427.240. If, upon final determination, the court does not order commitment of the resident, the superintendent shall discharge the resident.

[1959 c.331 §4; 1965 c.339 §18; 1969 c.391 §11]

427.260 Discharge of residents; cost of care and maintenance of residents. (1) Residents admitted under ORS 427.220 to 427.230 may be discharged, but not transferred, in the same manner as is provided for other residents under ORS 427.120, except that, in the discretion of the superintendent, either (a) the resident admitted under ORS 427.220 to 427.230 may be returned to the person otherwise entitled to custody except for the custody of the state institution to which he was admitted, in which case the state shall bear the cost of returning the former resident, or (b) the resident may be discharged at the state institution. In the case of discharges of residents under subsection (3) of ORS 427.240 or ORS 427.250, the superintendent may exercise the same option.

(2) The cost of the care and treatment of a resident admitted under ORS 427.220 to 427.230 shall be charged and collected in so far as possible in the same manner as is provided in ORS 179.610 to 179.770.

[1959 c.331 §5; 1965 c.339 §19]

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