

TITLE 35

MENTAL HEALTH

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

Chapter 426

1975 REPLACEMENT PART

Mentally Ill and Sexually Dangerous

- | | | |
|---------|---|---|
| | MENTALLY ILL
(Definitions) | 426.120 Examination report |
| 426.005 | Definitions for ORS 426.005 to 426.390 | 426.130 Discharge; voluntary treatment; conditional release; commitment |
| | (Hospitals) | 426.140 Place of confinement; attendant |
| 426.010 | State hospitals for mentally ill persons | 426.150 Transportation to treatment facility |
| 426.020 | Superintendents; chief medical officer | 426.160 Record of proceedings |
| 426.030 | F.H.Dammasch State Hospital authorized and established | 426.170 Delivery of certified copy of record |
| 426.060 | Commitment to Mental Health Division; authority of division to direct placement; transfer authority; delegation | |
| | (Commitment Procedure) | (Emergency and Voluntary Commitments) |
| 426.070 | Notification to court of investigation; recommendation to court; citation; custody; care; clinical record; liability for giving notice or investigating | 426.175 Emergency hospitalization by physician; legal counsel; limit on detention; exemption from liability |
| 426.075 | Notice to court of any treatment prior to hearing | 426.180 Emergency commitment on affidavit of two persons |
| 426.080 | Execution and return of citation or warrant of detention | 426.190 Admission on emergency commitment |
| 426.090 | Citation; service; counsel | 426.200 Court commitment following emergency admission |
| 426.095 | Right to cross-examine; admissibility of investigation report | 426.210 Limit of detention after commitment in emergency proceedings |
| 426.100 | Advice of court; appointment of legal counsel; fee; continuance of hearing | 426.215 Peace officer taking into custody person in need of treatment; examination; notice to court; legal counsel; hearing; emergency care; exemption from liability |
| 426.110 | Appointment of examining physicians; or other qualified persons | 426.217 Change of status of committed patient to voluntary patient; effect of change |
| | | 426.220 Voluntary commitment; release procedure |
| | | 426.223 Retaking persons committed to division; assistance of peace officers and others |

(Commitment Procedure)**426.070 Notification to court of investigation; recommendation to court; citation; custody; care; clinical record; liability for giving notice or investigating.**

(1) 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 a mentally ill person and is in need of treatment, care or custody, the community mental health program director, or his designee, shall immediately notify the judge of the court having probate jurisdiction for that county 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 under ORS 3.275, of the notification of mental illness and shall immediately investigate to determine whether there is probable cause to believe that the person is in fact a mentally ill person. The community mental health program director or his designee, the two petitioning persons, 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 the notification, provided he acts in good faith, on probable cause and without malice.

(2) The investigation conducted should, where appropriate, include an interview or examination of the allegedly mentally ill person in his home or other place familiar to the individual. If the allegedly mentally ill person consents, the investigation should also, where possible, include an interview with the individual's relatives, neighbors and physician. The person conducting the investigation shall in no way be held criminally or civilly liable for conducting the investigation, provided he acts in good faith, on probable cause and without malice. Upon completion, a recommendation based upon the investigation report shall be promptly submitted to the court.

(3) If the court, following the investigation, concludes that there is probable cause to believe that the person investigated is a mentally ill person, it shall, through the issuance of a citation as provided in ORS 426.090, cause the person to be brought before it at a time and place as it may direct, for a hearing to determine whether the person is mentally ill. The person shall be given the opportunity to appear voluntari-

ly at the hearing unless he fails to appear or unless he is detained pursuant to subsection (5) of this section. The hearing may be held in a hospital, the person's home, or in some other place convenient to the court and the allegedly mentally ill person. If a person is detained pursuant to subsection (5) of this section, a hearing shall be held within three judicial days of the commencement of his detention. The court may, for good cause, allow the person to be detained up to an additional 72 hours if additional time is requested by him or his legal counsel. The court may make any orders for the care and custody of the person prior to the hearing as it deems necessary.

(4) A copy of the investigation report shall be made available to the allegedly mentally ill person as soon as possible after it is completed but in any case prior to the hearing.

(5) If the court finds that there is probable cause to believe that failure to take the allegedly mentally ill person into custody pending the investigation or hearing would pose an imminent and serious danger to the person or to others, the judge may issue a warrant of detention to the community mental health program director or the sheriff of the county, directing that person or his designee to take the person into his custody and produce him at the time and place stated in the warrant. At the time the person is taken into custody, he shall be informed by the community mental health program director, the sheriff or a designee of either of his right to legal counsel, to have legal counsel appointed if he is unable to afford legal counsel, and, if requested, to have legal counsel immediately appointed.

(6) A person taken into custody under subsection (5) of this section shall receive the care, custody and treatment required for his mental and physical health and safety, and the treating physician shall report any care, custody and treatment to the court as required in ORS 426.075. All methods of treatment, including the prescription and administration of drugs, shall be the sole responsibility of the treating physician. However, the person shall not be subject to electro-shock therapy or unduly hazardous or unusual treatment procedures. The treating physician shall be notified immediately of any use of mechanical restraints on the person. Every use of a mechanical restraint and the reasons therefor shall be made a

part of the clinical record of the person over the signature of the treating physician.

[Amended by 1957 c.329 s.1, 1967 c.534 s.20; 1973 c.838 s.3; 1975 c.690 s.2]

Note: See note under 426.005.

426.075 Notice to court of any treatment prior to hearing. The court shall be fully advised by the community mental health program director, or when the person has been detained under subsection (5) of ORS 426.070, ORS 426.175 or 426.215, by the treating physician of all drugs and other treatment known to have been administered to the allegedly mentally ill person which may substantially affect his ability to prepare for or function effectively at the hearing.

[1973 c.838 s.8; 1975 c.690 s.3]

Note: See note under 426.005.

426.080 Execution and return of citation or warrant of detention. The person serving a warrant of detention or the citation provided for by ORS 426.090 shall, immediately after service thereof, make a return upon the original warrant or citation showing the time, place and manner of such service and file it with the clerk of the court. In executing the warrant of detention or citation, the person has all the powers provided by ORS 133.235 and 161.235 to 161.245 and may require the assistance of any peace officer or other person.

[Amended by 1971 c.743 s.366, 1973 c.836 s.348, 1973 c.838 s.4a]

Note: See note under 426.005.

426.090 Citation; service; counsel. The judge shall cause a citation to issue to the allegedly mentally ill person stating the nature of the information filed concerning him and the specific reasons he is believed to be mentally ill. The citation shall further contain a notice of the time and place of the commitment hearing, the right to legal counsel, the right to have legal counsel appointed if the person is unable to afford legal counsel, and, if requested, to have legal counsel immediately appointed, the right to subpoena witnesses in behalf of himself to the hearing and other information as the court may direct. The citation shall be served upon the person by delivering a duly certified copy of the original thereof to him in person prior to the hearing. The person shall have an opportunity to consult with legal counsel prior to being brought before the court.

[Amended by 1957 c.329 s.2; 1967 c.459 s.1, 1971 c.368 s.1; 1973 c.838 s.5; 1975 c.690 s.4]

Note: See note under 426.005.

426.095 Right to cross-examine; admissibility of investigation report. The allegedly mentally ill person shall have the right to cross-examine all witnesses, the person conducting the investigation, the examining physicians or other qualified persons recommended by the division who have examined the person. Neither the investigation report nor any part thereof shall be introduced in evidence without the express consent of the allegedly mentally ill person.

[1973 c.838 s.9; 1975 c.690 s.5]

Note: See note under 426.005

426.100 Advice of court; appointment of legal counsel; fee; continuance of hearing. (1) At the time the allegedly mentally ill person is brought before the court, the court shall advise him of the reason he has been brought before the court, the nature of the proceedings and the possible results of the proceedings. The court shall also advise the allegedly mentally ill person that he is entitled to subpoena witnesses on his behalf and to legal counsel during the proceedings, and that if he does not have funds with which to retain legal counsel, the court will appoint legal counsel to represent him without cost. If the allegedly mentally ill person does not request legal counsel, his legal guardian, relative or friend may request the assistance of legal counsel on his behalf.

(2) If no request for legal counsel is made, the court shall appoint legal counsel unless counsel is expressly, knowingly and intelligently refused by the person.

(3) If the person is unable to afford legal counsel, the court shall provide by order for payment of a reasonable attorney fee by the county of residence of the allegedly mentally ill person. In all cases legal counsel shall be present at the hearing and examination and may examine all witnesses offering testimony, and otherwise represent the person.

(4) If the allegedly mentally ill person, his legal counsel or guardian, or the two examiners request, the court may, for good cause, postpone the hearing for not more than 72 hours in order to allow preparation for the hearing. The court may make orders for the care and custody of the person during a postponement as it deems necessary.

[Amended by 1967 c.458 s.1; 1971 c.368 s.2; 1973 c.838 s.6; 1975 c.690 s.6]

Note: See note under 426.005.

426.110 Appointment of examining physicians; or other qualified persons.

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 lieu of one of the physicians, the court may appoint one qualified person as recommended by the division, to examine the person. If the allegedly mentally ill person requests in writing that one additional examining physician or qualified person as recommended by the division 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, or other qualified person as recommended by the division nominated in such request; however, the court shall not appoint more than one such additional examining physician or qualified person, who shall be a resident of the State of Oregon.

[Amended by 1973 c.838 s.10]

Note: See note under 426 005

426.120 Examination report. The persons appointed to conduct the examination shall examine the person as to his mental condition and make their separate reports in writing, under oath, to the court, which reports immediately shall be filed with the clerk of the court. If the examining persons find, and show by their reports, that the person examined is a mentally ill person, the reports shall include a recommendation as to the type of treatment facility best calculated to help the person recover from his mental illness. Each report shall also advise the court whether in the opinion of the examiner the mentally ill person would cooperate with and benefit from a program of voluntary treatment.

[Amended by 1973 c 838 s.11, 1975 c 690 s.7]

Note: See note under 426 005

426.130 Discharge; voluntary treatment; conditional release; commitment.

After hearing all of the evidence, and reviewing the findings of the examining persons, the court shall determine whether the person is mentally ill. If in the opinion of the court the person is not mentally ill, he shall be discharged forthwith. If in the opinion of the court the person is mentally ill

beyond a reasonable doubt, the court may order as follows:

(1) If the mentally ill person is willing and able to participate in treatment on a voluntary basis, and the court finds that he will probably do so, the court shall order the release of the individual and dismiss the case.

(2) If the legal guardian, relative or friend of the mentally ill person requests that he be allowed to care for the mentally ill person during the period of commitment not to exceed 180 days in a place satisfactory to the judge, and shows that he is able to care for the mentally ill person and that there are adequate financial resources available for the care of the mentally ill person, the court may order that the mentally ill person be conditionally released and placed in his care and custody. The order may be revoked and the mentally ill person committed to the division for the balance of the 180-day commitment period whenever, in the opinion of the court, it is in the best interest of the mentally ill person.

(3) If in the opinion of the court voluntary treatment or conditional release is not in the best interest of the mentally ill person, the court may order the commitment of the individual to the division for treatment. The commitment shall be for a period of time not to exceed 180 days.

[Amended by 1973 c.838 s.12, 1975 c.690 s.8]

Note: See note under 426.005

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 a crime or a violation of a municipal ordinance are incarcerated, unless the person represents an immediate and serious danger to hospital staff or facilities.

(2) No allegedly 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 community hospital, the sheriff having the person in his custody shall select some suitable person to act as attendant in quarters suitable for the comfortable, safe and humane confinement of the person.

[Amended by 1973 c.838 s 23; 1975 c.690 s 9]

Note: See note under 426 005.

426.150 Transportation to treatment facility. (1) Upon receipt of the order of commitment, the division or its designee shall take the mentally ill person into its custody, and insure the safekeeping and proper care of the person until delivery is made to an assigned treatment facility or its representative. The representative of the treating facility to which the person has been assigned, accompanied by any assistants the division or its designee 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 mentally ill person, together with the certified record required by ORS 426.170. The representative shall issue appropriate receipts therefor and immediately proceed to transport the committed mentally ill person safely to the facility to which the person has been assigned by the division and there make delivery of him and the record to the director or a designated employe of the facility. In taking custody of the person, the division, its designee, or the representative of the facility has all the powers provided by ORS 133.225 and 161.255 and may require the assistance of any peace officer or other person.

(2) The committing judge, upon approval of the examining physicians or other qualified persons as recommended by the division 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 facility when the committing judge determines that means of transportation would not be detrimental to the welfare of the mentally ill person or to the public.
 [Amended by 1963 c.325 s.1; 1973 c.838 s.24; 1975 c.690 s.10]

Note: See note under 426.005

426.160 Record of proceedings. The judge shall cause to be recorded in the court records a full account of proceedings had at all hearings and examinations conducted pursuant to ORS 426.005, 426.060 to 426.170, 426.215, 426.217, 426.255 to 426.290, 426.300 to 426.309, 426.385 and 426.395, together with the judgments and orders 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 s.1; 1969 c 148 s.1; 1973 c.838 s.21]

Note: See note under 426.005.

426.170 Delivery of certified copy of record. If any person is adjudged mentally ill and ordered committed to the division, a copy of the complete record in the case, certified to by the clerk of the county, shall be given to the health officer of the county, or to the sheriff, for delivery to the director of the facility to which such mentally ill person is assigned. 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.

[Amended by 1973 c.838 s.25]

Note: See note under 426.005.

(Emergency and Voluntary Commitments)

426.175 Emergency hospitalization by physician; legal counsel; 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 where the physician has admitting privileges 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. At the time the person is admitted or retained, he shall be informed by the admitting physician of his right to legal counsel, to have legal counsel appointed if the person is unable to afford legal counsel, and, if requested, to have the legal counsel immediately appointed.

(2) The allegedly mentally ill person shall be examined immediately by the physician, and a written record shall be made setting forth his condition and need for emergency hospitalization. The physician shall immediately notify in writing the court having probate jurisdiction and the community mental health program director in the county in which the person is hospitalized

and shall make every effort to notify the patient's next of kin of the patient's location and condition. In no case shall the person be held in a hospital longer than five days without a hearing held under ORS 426.070 to 426.130. The court may, for good cause, allow the person to be detained up to an additional 72 hours if additional time is requested by him or his legal counsel. A person detained under this section shall have an investigation performed and have the same right to legal counsel and treatment as a person held under a warrant of detention under ORS 426.070.

(3) The person shall only be admitted and retained in a hospital either licensed by the Health Division or operated by the United States Government and which maintains adequate staff and facilities for care of the mentally ill. A hospital licensed by the Health Division, except a state mental hospital, shall charge to and collect from the person hospitalized, his estate, his health insurance, third party payors or other persons or agencies otherwise legally responsible therefor, the costs of the emergency care. The costs of the emergency care until the person is committed or released not recovered by the hospital within 30 days of commitment or release shall be paid by the county of residence of the person or, if the person has no residence within the state, by the county in which the person is taken into custody, unless otherwise provided by law. Funds subsequently recovered by the hospital for emergency care shall be paid to the county which paid the costs of the emergency care within 30 days after receipt by the hospital.

(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 s.1; 1975 c.690 s.11]

Note: 426.175 was not added to and made a part of 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 alleged to be mentally ill by affidavit of two other persons may be admitted to a state hospital for the mentally ill for emergency treatment, care and custo-

dy, 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 a medical history, including the name, condition, sex and age of the person, and also the name and address of the nearest relative or legal guardian, if any, of the person. The certificates, applications and medical histories shall be made upon forms prescribed by the division and shall be executed by the county health officer or by two physicians licensed by the Board of Medical Examiners, none of whom shall be related to the person by blood or marriage.

[Amended by 1953 c.442 s.2; 1975 c.690 s.12]

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 s.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 the person is not so mentally ill as to be in need of treatment, care or custody, the superintendent of the state hospital shall immediately discharge the person. All costs incurred in connection with the proceeding, including the costs of transportation, commitment and delivery of the person, shall be paid by the county of which the person is a resident; or, if the person is not a resident of this state, then by the county from which the emergency admission was made.

[Amended by 1963 c.325 s.2; 1975 c.690 s.13]

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; legal counsel; 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, custody or treatment for mental illness. If a peace officer takes a person into custody under this section, he shall immediately remove him to the nearest hospital maintaining adequate staff and facilities as required under subsection (4) of this section. If more than one hour will be required to transport the person to the hospital from the location where the person was taken into custody, the peace officer shall, if possible, obtain a certificate from a physician licensed to practice medicine and surgery by the Board of Medical Examiners for the State of Oregon stating that the travel will not be detrimental to the person's physical health and that the person is dangerous to himself or to any other person and is in need of immediate care or treatment for mental illness. The physician shall personally examine the allegedly mentally ill person within 24 hours prior to signing the certificate.

(2) The superintendent or administrator of the hospital shall cause the person to be

examined immediately 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. If the person is admitted, the community mental health program director of the county of residence of the person shall immediately be notified of the admission to the hospital and shall provide or arrange for an investigation as provided under ORS 426.070. At the time of admission, the admitting physician shall inform the person of his right to legal counsel, to have legal counsel appointed if the person is unable to afford legal counsel, and, if requested, to have the legal counsel immediately appointed.

(3) The peace officer, after taking a person into custody under this section, shall immediately notify 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, the judge shall immediately commence proceedings pursuant to ORS 426.070 to 426.130.

(4) The superintendent or administrator of a hospital maintaining adequate staff and facilities for the care and treatment of persons alleged to be mentally ill and approved by the division may receive and retain therein as a patient the person alleged to be in need of immediate care or treatment for mental illness for no longer than five days without a hearing held under ORS 426.070 to 426.130. The court may, for good cause, allow the person to be detained up to an additional 72 hours if additional time is requested by him or his legal counsel. The hospital, except a state mental hospital or a hospital operated by the United States Government, shall charge to and collect from the person hospitalized, his estate, his health insurance, third party payors or other persons or agencies otherwise legally responsible therefor, the costs of the emergency care and treatment. The costs of the emergency care until the person is committed or released not recovered by the hospital within 30 days of commitment or release 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. Funds subsequently recovered by the hospital for emergency care shall be paid to

the county which paid the costs of the emergency care within 30 days after receipt by the hospital.

(5) A person hospitalized under this section shall receive the care, custody and treatment required for his mental and physical health and safety, and the treating physician shall report any care, custody and treatment to the court as required in ORS 426.075. All methods of treatment, including the prescription and administration of drugs, shall be the sole responsibility of the treating physician. However, the person shall not be subject to electro-shock therapy, or unduly hazardous or unusual treatment procedures. The treating physician shall be notified immediately of any use of mechanical restraints on the person. Every use of a mechanical restraint and the reasons therefor shall be made a part of the clinical record of the person over the signature of the treating physician.

(6) No peace officer, hospital, physician or judge shall in any way 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 s 1, 1973 c.838 s.32; 1975 c 690 s 14]

Note: See note under 426 005

426.217 Change of status of committed patient to voluntary patient; effect of change. At any time after commitment by the court, the person, with the approval of the division or its designee, may change his status to that of a voluntary patient. Notwithstanding ORS 426.220, any person who alters his status to that of a voluntary patient under this section shall be released from the treating facility within 72 hours of his request for release.

[1973 c 838 s 14; 1975 c 690 s 15]

Note: See note under 426 005

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 s.2; 1963 c.325 s.3; 1967 c 371 s.1; 1969 c.273 s 1]

426.222[1953 c 597 s.1; 1961 c.385 s 1, 1969 c.391 s 3, 1969 c 638 s 4, repealed by 1975 c 690 s.28]

426.223 Retaking persons committed to division; assistance of peace officers and others. In retaking custody of a mentally ill person who has been committed to the division under ORS 426.130 and who has, without lawful authority, left the custody of the facility to which he has been assigned under ORS 426.060, the facility director or his designee has all the powers provided by ORS 133.225 and 161.255 and may require the assistance of any peace officer or other person.

[1975,c 690 s 25]

426.224 [1953 c.597 s.2; 1961 c.385 s 2; 1969 c.391 s.4; 1969 c.638 s.5; repealed by 1975 c.690 s 28]

426.226[1953 c.597 s.3, 1969 c.391 s 5, 1969 c 638 s 6; repealed by 1975 c 690 s.28]

426.230[Amended by 1955 c.651 s 7, repealed by 1957 c.388 s.17]

(Costs)

426.240 Care and costs pending commitment and after commitment. (1) A hospital or other facility, except a state mental hospital, providing emergency care, custody and treatment for an allegedly mentally ill person detained under ORS 426.070 or

426.140 shall charge to and collect from the person, his estate, his health insurance, third party payors or other persons or agencies otherwise legally responsible therefor, the costs of the emergency care, custody and treatment. The costs of emergency care, custody and treatment provided until the person was committed, released or changed to voluntary status not recovered by the hospital or other facility within 30 days of commitment, release or change in status shall be paid by the county of residence of the person, or, if the person has no residence within the state, by the county in which the person is taken into custody, unless otherwise provided by law. Funds subsequently recovered by the hospital for emergency care, custody and treatment shall be paid to the county which paid the costs of the emergency care, custody and treatment within 30 days after receipt by the hospital or other facility.

(2) If any person is admitted to and detained in a state mental hospital under ORS 426.070, 426.140, 426.175 or 426.215, the Department of Revenue shall charge to and collect from the person, his estate, his health insurance, third party payors or other persons or agencies otherwise legally responsible therefor, the costs as it would for other patients of the state mental hospitals under the provisions of ORS 179.610 to 179.770. All costs of examination, care and custody provided by the state mental hospitals until the person is committed, released or transferred to voluntary status not recovered by the Department of Revenue within 90 days of commitment, release or transfer to voluntary status 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. Funds subsequently recovered by the Department of Revenue under this subsection shall be paid to the county which paid the costs within 30 days after receipt by the department.

(3) If any person is adjudged mentally ill as provided by ORS 426.130, and the person receives care and treatment in a state mental hospital, he, or those legally responsible for his support, may be required to pay the cost of his hospitalization at the state hospital, as provided by ORS 179.610 to 179.770, if financially able so to do.

[Amended by 1959 c.652 s.22, 1975 c.690 s 16]

426.250 Payment of examining physicians or other qualified person. Any physician or qualified person recommended by the division 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 determines reasonable for the examination. Witnesses summoned to give testimony shall receive the same fees as are paid in civil cases. The costs of the examination and the care and custody of the person, until delivery is made under ORS 426.150, or until discharged by the court, 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.

[Amended by 1965 c 420 s 2, 1975 c 690 s.17]

426.255 County to pay costs. Costs of hearings conducted pursuant to ORS 426.307, and the fees for physicians, other qualified persons, and attorneys appointed thereunder, shall be charged to the county of the person's residence in the same manner provided by ORS 426.310, whether the hearing is held in the county of residence or county of the treating facility.

[1973 c.838 s.19]

Note: See note under 426 005

~~426.260~~[Amended by 1955 c.651 s 8, repealed by 1957 c.160 s 6]

~~426.270~~[Amended by 1955 c 651 s 9, repealed by 1957 c.160 s 6]

(Trial Visits)

426.280 Trial visits; exemption from liability for visits. The division may grant a trial visit to a patient for any period of time, up to 180 days, under such general conditions as it shall prescribe during such patient's period of commitment. The physician and the facility granting a trial visit to a patient, the superintendent or director thereof, the Administrator of the Mental Health Division and the chief medical officer of the facility shall not be liable for a patient's expenses while on trial visit, nor shall the superintendent or director of any such facility, the physician responsible for the patient's release, the Administrator of the Mental Health Division or the chief medical officer of the facility 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 s 1; 1961 c 706 s 26, 1969 c 597 s.91, 1973 c 838 s 26]

Note: See note under 426 005.

426.290 Readmission of patient on trial visit. (1) If a written complaint against a person on trial visit from the division is received by the division and the complaint is sworn to by two citizens of Oregon before an officer qualified to administer an oath, the director of a facility for the mentally ill designated by the division shall take custody of the person. The division, pursuant to its rules, may delegate to a community mental health program director the responsibility for assignment of a person returned from trial visit to a suitable facility. In taking custody of the person named in the complaint, the director of the facility designated by the division or his designee has all the powers provided by ORS 133.225 and 161.255 and may require the assistance of any peace officer or other person. If the acts complained of indicate to the examining physician of the receiving facility that the person should no longer be permitted to remain on trial visit, the person shall be admitted thereto.

(2) Upon voluntary application to be admitted thereto, every person on trial visit must be received by the facility from which he was released on trial visit.

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

(4) Every person returned from trial visit against his will after a trial visit of at least 90 days shall be informed of his right to a hearing, to legal counsel, to have legal counsel appointed if he is unable to afford legal counsel, and, if requested, to have legal counsel immediately appointed. The hearing shall be held within seven days of the return.

[Amended by 1959 c 513 s 1, 1961 c 228 s 2; 1969 c 391 s 6, 1973 c 838 s.27; 1975 c 690 s 18]

Note: See note under 426 005

(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 s.2; 1967 c.460 s.1; 1969 c 391 s 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. Wit-

nesses summoned and giving testimony shall receive the same fees as are paid in civil cases.

[1967 c 460 s.2]

426.300 Discharge of patients; application for public assistance. (1) The division shall, by filing a written certificate with the last committing court and the court of residence, discharge any patient from court commitment, 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 in its opinion the individual is no longer a mentally ill person or when in its opinion the transfer of the individual to a voluntary status is in the best interest of the treatment of the patient.

(2) The division 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 s.4; 1967 c.549 s.8; 1973 c 838 s 22]

Note: See note under 426.005

426.301 Release of committed patient; certification of mental illness; service of certificate; content; effect of failure to protest further commitment. (1) At the end of the 180-day period of commitment, any person whose status has not been changed to voluntary shall be released unless the division certifies to the court in the county where the treating facility is located that the person is still mentally ill and in need of further treatment. The division, pursuant to its rules, may delegate to the director of the treating facility the responsibility for making the certification. The director of the treating facility shall consult with the community mental health program director of the county of residence prior to making the certification. If the certification is made, the person will not be released, but the director of the treating facility shall immediately issue a copy of the certification to the person and to the community mental health program director of the county of residence.

(2) The certification shall be served upon the person by the director of the facility wherein the person is confined or his designee. The director of the facility shall inform the court in writing that service has been made and the date thereof.

(3) The certification shall advise the person:

(a) That the division or facility has requested that his commitment be continued for an additional period of time;

(b) That he may consult with legal counsel and that legal counsel will be provided for him without cost to him if he is unable to afford legal counsel;

(c) That he may protest this further commitment within 14 days, and if he does not his commitment will be continued for an indefinite period of time up to 180 days;

(d) That if he does protest a further period of commitment, he is entitled to a hearing before the court on whether his commitment should be continued;

(e) That he may protest either orally or in writing by signing the form accompanying the certification; that he is entitled to have a physician or other qualified person as recommended by the division, other than a member of the staff at the facility where he is confined, examine him and report to the court the results of his examination;

(f) That he may subpoena witnesses and offer evidence on his own behalf at the hearing; and

(g) That if he is without funds to retain legal counsel or an examining physician or qualified person as recommended by the division, the court will appoint legal counsel, a physician or other qualified person at no cost to him.

(4) The person serving the certification shall read and deliver the certification to the person and ask him whether he protests a further period of commitment. The person may protest further commitment either orally or by signing a simple protest form to be given to the person with the certification. If the person does not protest a further period of commitment within 14 days of service of the certification, the division or facility shall so notify the court and the court shall, without further hearing, order the commitment of the person for an additional indefinite period of time up to 180 days.

[1973 c.838 s 15; 1975 c.690 s 19]

Note: See note under 426 005

426.303 Effect of protest of further commitment. When the person protests a further period of commitment the division or facility designated in accordance with ORS 426.301 shall immediately notify the court and the court shall have the person brought before it and shall again advise him that the division or facility has requested that his commitment be continued for an additional period of time and that if he does not protest

this commitment his commitment will be continued for an indefinite period of time up to 180 days. He shall also be informed of the rights set forth in ORS 426.301.

[1973 c.838 s.16; 1975 c.690 s.20]

Note: See note under 426.005.

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

426.307 Hearing; continuance; attorney; examination; order of further commitment. If the person requests a hearing, the hearing shall be conducted as promptly as possible and at a time and place as the court may direct. If the person requests a continuance in order to prepare for the hearing or to obtain legal counsel to represent him, the court may grant a continuance for up to 72 hours for this purpose. In the event the person requests the appointment of legal counsel and is without funds to retain legal counsel, the court shall appoint legal counsel to represent him at no cost to the person. If no request for legal counsel is made, the court shall appoint legal counsel to represent the person unless legal counsel is expressly, knowingly and intelligently refused by the person. If the person requests an examination by a physician or other qualified person as recommended by the division and is without funds to retain a physician or other qualified person for purposes of the examination, the court shall appoint a physician or other qualified person, other than a member of the staff from the facility where the person is confined, to examine the person at no expense to him and to report to the court the results of the examination. The court shall then conduct a hearing and after hearing the evidence and reviewing the recommendations of the treating and examining physicians or other qualified persons, the court shall determine whether the person is still a mentally ill person and in need of further treatment. If in the opinion of the court the individual is still a mentally ill person beyond a reasonable doubt and in need of further treatment, the court may order his commitment to the division for an additional indefinite period of time up to 180 days. At the end of the 180-day period, the person shall be released unless the division or facility again certifies to the committing court that the person is still a mentally ill person and in need of further treatment, in which event the procedures set forth in ORS 426.301 to 426.307 shall be followed.

[1973 c.838 s 17; 1975 c.690 s 21]

Note: See note under 426 005

426.309 Effect of ORS 426.217 and 426.301 to 426.307 on other discharge procedure. ORS 426.217 and 426.301 to 426.307 do not restrict or limit the discharge procedures set forth in ORS 426.300.

[1973 c.838 s.20]

Note: See note under 426.005

(Miscellaneous)

426.310 Reimbursement of county in case of nonresident patients. If the mentally ill person is a resident of some other county in this state, the county making the commitment shall be reimbursed by the county of which the person 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 person to the division or its designee 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 person was a resident.

[Amended by 1975 c 690 s 22]

426.320 Payment of certain expenses by the state. When a mentally ill person is assigned to or transferred to a state mental hospital, all actual and necessary expenses incurred by the agent or attendant from the state hospital and his assistants, together with those of the person for transportation to the hospital, shall be paid by the state in the manner provided in ORS 426.330.

[Amended by 1975 c 690 s.23]

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 warrant upon the State Treasurer against the fund appropriated to cover the cost of transporting the mentally diseased.

[Amended by 1975 c.614 s 14]

426.340[Repealed by 1975 c.690 s 28]

426.350[Amended by 1961 c 152 s 1; repealed by 1971 c.64 s.12]

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 767.145, 767.150 to 767.215 and 767.760 to 767.795 in providing the services.

[1961 c.513 ss 1, 2, 3; 1969 c.597 s 92, 1971 c 655 s.246]

(Rights of Patients)

426.375[1967 c.460 s 5; repealed by 1973 c 838 s 29]

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 s.6]

426.385 Patient rights; denial; mechanical restraints. (1) Every mentally ill

person committed to the division shall have the right to:

(a) Communicate freely in person, by sending and receiving sealed mail and by reasonable access to telephones;

(b) Wear his own clothing;

(c) Keep his personal possessions, including toilet articles;

(d) Religious freedom;

(e) A private storage area with free access thereto;

(f) Be furnished with a reasonable supply of writing materials and stamps;

(g) A written treatment plan, kept current with his progress;

(h) Be represented by counsel whenever his substantial rights may be affected;

(i) Petition for a writ of habeas corpus;

(j) Not be required to perform routine labor tasks of the facility except those essential for his treatment;

(k) Be given reasonable compensation for all work performed other than personal housekeeping duties;

(L) Such other rights as may be specified by regulation; and

(m) Exercise all civil rights in the same manner and with the same effect as one not admitted to the facility, 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) Mentally ill persons committed to the division shall have the right to be free from potentially unusual or hazardous treatment procedures, including labotomy and electroshock therapy, unless they have given their express and informed consent. Subject to the applicable provisions of ORS 426.700 to 426.755 and 677.190, this right may be denied to such persons for good cause only by the director of the facility in which the person is confined, or his designee, but only after consultation with and approval of an independent examining physician. Any denial shall be entered into the patient's treatment record and shall include the reasons for the denial.

(3) Mechanical restraints shall not be applied to a person admitted to a facility unless it is determined by the chief medical officer of the facility 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 over the signa-

ture of the chief medical officer of the facility or his designee.

[1967 c.460 s.4; 1973 c.838 s.28]

Note: See note under 426.005.

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 126.003 to 126.413 and 126.805 to 126.880 or 179.640.

[1967 c 460 s.7; 1973 c.823 s.137]

426.395 Posting of statement of patient rights. A simple and clear statement of rights guaranteed to patients committed to the division shall be prominently posted in each room frequented by patients in all facilities housing such patients. A copy of the statement shall be given to each patient upon admission and sent, upon request, to his legal counsel, guardian, relative or friend.

[1973 c.838 s 31]

Note: See note under 426.005.

DRUG AND ALCOHOL ADDICTION

426.410[1969 c.638 s.1; repealed by 1975 c.690 s 28]

426.450 Admission of alcoholic to treatment facility; notice to parent or guardian. Any person may voluntarily apply for admission to any treatment facility, as defined in ORS 430.306, operated pursuant to rules of the Mental Health Division. The director of the treatment facility shall determine whether the person shall be admitted as a patient, or referred to another appropriate treatment facility or denied referral or admission. If the person is under 18 years of age or an incompetent, the director of the treatment facility shall notify the person's parents or guardian of the admission or referral.

[1971 c.622 s.6]

426.460 When person must be taken to treatment facility; admission or referral; when jail custody may be used; notice to court; confidentiality of records.

(1) Any person who is intoxicated or under the influence of narcotic or other dangerous drugs in a public place may be taken or sent to his home or to a treatment facility by the police. However, if the person is incapacitated, his health appears to be in immediate danger, or the police have reasonable cause to believe the person is dangerous to himself

or to any other person, he shall be taken by the police to an appropriate treatment facility. A person shall be deemed incapacitated when in the opinion of the police officer or director of the treatment facility he is unable to make a rational decision as to acceptance of assistance.

(2) The director of the treatment facility shall determine whether a person shall be admitted as a patient, or referred to another treatment facility or denied referral or admission. If he is incapacitated or his health appears to be in immediate danger, or if the director has reasonable cause to believe the person is dangerous to himself or to any other person, he must be admitted.

(3) In the absence of any appropriate treatment facility, an intoxicated person or a person under the influence of narcotic and other dangerous drugs who would otherwise be taken by the police to a treatment facility may be taken to the city or county jail where he may be held until he is no longer intoxicated, under the influence of narcotic and other dangerous drugs or incapacitated.

(4) Within 24 hours after admission, the director of the treatment facility or officer in charge of the jail shall notify in writing a court having probate jurisdiction in the county where the treatment facility or jail is located of the admission of the person. Unless the person has within 48 hours applied for voluntary admission to the treatment facility he shall be discharged.

(5) An intoxicated person or person under the influence of narcotic and other dangerous drugs, when taken into custody by the police for a criminal offense, shall immediately be taken to the nearest appropriate treatment facility when his condition requires emergency medical treatment.

(6) The records of a patient at a treatment facility shall not be revealed to any person other than the director and staff of the treatment facility without the consent of the patient. A patient's request that no disclosure be made of his admission to a treatment facility shall be honored unless he is incapacitated or disclosure of his admission is required by ORS 426.450 or by subsection (4) of this section.

(7) As used in this section, "treatment facility" has the meaning given that term by section 2, chapter 795, Oregon Laws 1973. [1971 c.622 s.7; 1973 c.795 s.3]

Note: The Legislative Counsel has not, pursuant to 173.160, undertaken to substitute specific ORS references for the words "section 2 of this 1973 Act" in 426.460. Section 2, chapter 795, Oregon Laws 1973, was deleted by amendment

426.470 Liability of public officers. No peace officer, treatment facility and staff, physician or judge shall be held criminally or civilly liable for actions pursuant to ORS 426.450 to 426.470, 430.100 and 430.315 to 430.335 provided he acts in good faith, on probable cause and without malice.

[1971 c.622 s.8]

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 s.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 s.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 concern-

ing 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 133.235 and 161.235 to 161.245 and may require the assistance of any peace officer or other person.

[1963 c.467 s.3; 1971 c.743 s.367; 1973 c.836 s.349]

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 s.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 s.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 s.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 recognition at the discretion of the judge issuing the warrant as provided in ORS 135.230 to 135.290. Any patient shall also be entitled to deposit security to secure his appearance at the time and place specified in the warrant in the same manner as a person released under the provisions of ORS 135.230 to 135.290.

[1963 c.467 s.7; 1973 c.836 s.350]

426.580 Appointment of counsel; advice to patient; 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. Prior to the commencement of proceedings thereunder, the patient shall be advised of such right.

(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 ss.8, 9; 1973 c.443 s.1]

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 s.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 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 s.11; 1973 c.443 s.2]

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 s.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 s.13]

426.640 Petition for reexamination after commitment; advice to patient; report to psychiatrists; release.

(1) Any patient committed to a facility 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 patient shall be advised of this right at the time of his commitment and at the time he becomes eligible for reexamination and a hearing. Upon advising the patient, the division shall make an entry into the patient's treatment record indicating that he has been so advised. The superintendent of the facility designated under ORS 426.670 to receive the patient may file independently a petition for reexamination and a hearing for discharge any time he deems the patient is no longer sexually dangerous.

(2) 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.

(3) Two qualified psychiatrists shall be appointed by the court to examine the patient. Each psychiatrist shall report independently 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.

(4) Upon a finding by the court that the patient is no longer a sexually dangerous person, the court shall order the patient discharged. If the patient is discharged and has been convicted or subsequently is convicted of a crime for the same acts which served as a basis of the complaint filed under ORS 426.520, the term of any sentence imposed upon the patient for the crime shall be reduced by the amount of time the patient was committed to a state institution under ORS 426.620.

[1963 c.467 s.14, 1973 c.443 s.3, 1975 c.380 s.8]

426.650 Voluntary commitment to state institution. (1) Pursuant to rules 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 in need of medical or mental therapeutic treatment as a sexually dangerous person 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. 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 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 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 s.15; 1969 c.391 s.8, 1973 c.443 s.4; 1973 c.827 s.43; 1974 s.s. c.36 s.11]

426.660[1963 c.467 s.16, repealed by 1973 c.443 s.5]

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 s.17; 1965 c.481 s.1]

426.680 Trial visits. The superintendent of the facility designated under ORS 426.670 to receive commitments for medical or mental therapeutic treatment of sexually dangerous persons may grant a trial visit to a patient. Trial visit here shall correspond to trial visit as described in ORS 426.280 and 426.290.

[1973 c.443 s.7]

PSYCHOSURGERY REGULATION (Definitions)

426.700 Definitions for ORS 426.700 to 426.755. As used in ORS 426.700 to 426.755, unless the context requires otherwise:

(1) "Electro-convulsive therapy" means a nonsurgical and generalized electrical stimulation of the brain, designed to induce a convulsion.

(2) "Experimental" means a technique or procedure about which there is not sufficient data to recommend it as a recognized treatment of choice, or to predict accurately the outcome of its performance.

(3) "Intracranial brain stimulation" means the surgical implantation of electrodes within the brain for the purpose of directly stimulating specific brain structures to produce alteration of the thoughts, emotions, or behavior in a human being. Intracranial brain stimulation does not include electro-convulsive therapy.

(4) "Operation" means psychosurgery or intracranial brain stimulation.

(5) "Patient" means any person upon whom psychosurgery or intracranial brain stimulation is intended to be performed, including but not limited to persons confined voluntarily or involuntarily in any state institutions or private hospitals.

(6) "Psychosurgery" means any operation designed to irreversibly lesion or destroy brain tissue for the primary purpose of altering the thoughts, emotions or behavior of a human being. "Psychosurgery" does not include procedures which may irreversibly lesion or destroy brain tissues when undertaken to cure well-defined disease states such as brain tumor, epileptic foci and certain chronic pain syndromes.

(7) "Review board" means the Psychosurgery Review Board.

[1973 c.616 s.1]

(Regulations)

426.705 Psychosurgery and intracranial brain stimulation regulated. No person, institution or hospital shall perform or cause to be performed psychosurgery or intracranial brain stimulation on any patient without complying with ORS 426.700 to 426.755 and 677.190.

[1973 c.616 s.2]

426.710 Petition to perform surgery or stimulation; notice; hearing. (1) Any institution, hospital or licensed physician intending to perform psychosurgery or intracranial brain stimulation for the primary purpose of altering the thoughts, emotions or behavior of a human being shall file a petition with the review board alleging that a patient is in need of such treatment, that the patient or his legal guardian, if any, has consented thereto, and that the proposed operation has legitimate clinical value.

(2) Within 10 days of the filing of the petition under subsection (1) of this section, the review board shall:

(a) Schedule a hearing to be held within 20 days to determine if the patient or his legal guardian has given his informed, voluntary consent.

(b) Give notice of the hearing at least seven days prior thereto to the patient, the legal guardian, if any, the legal counsel, if any, and the petitioner.

(c) Conduct the consent hearing.
[1973 c.616 s.6]

426.715 Determination of voluntary and informed consent. (1) At the hearing held pursuant to subsection (2) of ORS 426.710, the review board shall determine whether or not the patient or his legal guardian has given his voluntary and informed consent.

(2) For the review board to determine under subsection (1) of this section that the consent given was voluntary and informed, it must appear that:

(a) A fair explanation was made of the procedures to be followed, including an identification of those which are experimental;

(b) A description was given of the attendant discomforts and risks, if any;

(c) A description was given of the benefits to be expected, if any;

(d) A disclosure was made of appropriate alternative treatments, if any, that would be advantageous for the subject;

(e) An offer was made to answer any inquiries concerning the treatment;

(f) Notice was given that the patient is free to withdraw his consent and to discontinue the authorized treatment at any time;

(g) Disclosure was made of the relationship between the patient and the institution, hospital or physician obtaining the consent; and

(h) Notice was given that the patient or his legal guardian, if any, had a right to consult with and be advised or represented

by legal counsel, and if he could not afford one, legal counsel would be appointed for him pursuant to subsection (2) of ORS 426.735.

(3) If at any time during the hearing held under this section, the patient or his legal guardian requests an opportunity to consult or be represented by legal counsel, such a request shall be granted.

(4) At the conclusion of the hearing held under this section, the patient or his legal guardian, if any, shall be asked if he still consents to the proposed psychosurgery or intracranial brain stimulation.

(5) If the patient appears to be incapable of giving an informed and voluntary consent to the proposed operation, the necessary consent shall be required to be given or withheld by the patient's legal guardian.

[1973 c.616 s.7]

426.720 Determination on clinical merit and appropriateness of operation.

(1) Subsequent to the hearing held under ORS 426.710, if the review board has found that the patient or his legal guardian has given his voluntary and informed consent to the proposed operation the review board shall review the proposed operation and make a determination of whether or not the operation has clinical merit and is an appropriate treatment for the specific patient.

(2) In making its determination of whether or not the proposed operation has value in the specific clinical situation, the review board may study pertinent literature, reports and legislation, conduct consultations and interviews with persons knowledgeable in the field and conduct onsite visitations. In the event the review board determines that the proposed operation lacks clinical merit, the petition shall be denied and the petitioner notified by registered mail.

(3) If the review board finds that the proposed operation has legitimate clinical value, it shall review the clinical data of the patient proposed for the psychosurgery or intracranial brain stimulation operation. The review board shall determine whether or not such treatment is appropriate for the patient. In order for the review board to determine that such an operation is appropriate, it must appear that:

(a) All conventional therapies have been attempted;

(b) The criteria for selection of the patient have been met;

(c) The operation offers hope of saving life, reestablishing health or alleviating suffering; and

(d) All other viable alternative methods of treatment have been tried and have failed to produce satisfactory results.

(4) The review board may undertake a specific diagnostic evaluation as to the suitability of the patient for the proposed operation and the review board may establish the procedure for such evaluation.

(5) The review board shall make a written order embodying its conclusions. The order shall specify whether or not the psychosurgery or intracranial brain stimulation as requested in the petition may be performed.

(6) A copy of the order of the review board shall be served personally or by registered mail on:

- (a) The petitioner;
- (b) The patient;
- (c) The legal guardian, if any; and
- (d) The patient's or legal guardian's legal counsel, if any.

[1973 c.616 s.8]

426.725 Oath; deposition; subpoena.

The review board may administer oaths, take depositions and issue subpoenas to compel the attendance of witnesses and the production of documents or other written information necessary to carry out the purposes of ORS 426.700 to 426.755 and 677.190. If any person fails to comply with a subpoena issued under this section or refuses to testify on matters on which he lawfully may be interrogated, the procedure set out in ORS 183.440 shall be followed to compel obedience.

[1973 c.616 s.9]

426.730 Request for appointment of guardian; preference in appointment. (1) If the patient does not have a legal guardian, and the review board believes that the patient is incapable of giving an informed and voluntary consent to the proposed operation, the review board shall request that a legal guardian be appointed.

(2) Preference in appointment of a legal guardian under subsection (1) of this section shall be in the following order:

- (a) The patient's spouse.
- (b) The patient's nearest next of kin.
- (c) A personal friend of the patient.
- (d) A public guardian if one exists in the county, under the provisions of ORS 126.905 to 126.965.

(e) Any other person deemed appropriate by the court.

[1973 c.616 s.10]

426.735 Representation by legal counsel; appointment; payment of fees.

(1) Any patient or legal guardian, if any, may be represented by legal counsel in the hearing held under ORS 426.715.

(2) If the patient or legal guardian requests to be represented by legal counsel but cannot afford one, the circuit court of the county in which the patient resides shall appoint:

(a) The county public defender to represent him, when the office of county public defender has been created under ORS 151.010 to 151.090.

(b) A member of the Oregon State Bar to represent him, when the office of the county public defender has not been created.

(3) The fee of the legal counsel appointed under paragraph (b) of subsection (2) of this section shall be paid out of funds appropriated by the county for the payment of appointed counsel.

[1973 c.616 s.11]

426.740 Written report on operation required. Upon completion of the psychosurgery or intracranial brain stimulation operation, the petitioner and any physician who performs the operation shall make a written report of their results to the review board.

[1973 c.616 s.12]

426.745 Liability of board members and person performing operation; liability of institution or hospital. (1) A member of the review board which permits psychosurgery or intracranial brain stimulation is presumed to be acting in good faith. Unless it is alleged and proved that his action violated the standard of reasonable professional care and judgment under the circumstances, he is immune from civil or criminal liability that otherwise might be incurred.

(2) A person who relies on the review board's permission to perform the psychosurgery or intracranial brain stimulation and performs such treatment is presumed to be acting in good faith. Unless it is alleged and proved that such person violated the standard of reasonable care and judgment under the circumstances, he is immune from civil or criminal liability that otherwise might be incurred.

(3) Any person, institution or hospital who performs psychosurgery or intracranial brain stimulation without obtaining permission of the Psychosurgery Review Board under ORS 426.705 to 426.740 and subsections (1) and (2) of this section shall be

subject to civil liability for any damages which the patient suffers from the psychosurgery or intracranial brain stimulation.
[1973 c.616 ss.13, 14, 15]

(Board)

426.750 Psychosurgery Review Board; term; vacancy; members. (1) There is created the Psychosurgery Review Board consisting of nine persons appointed by the Governor.

(2) The term of office of each member is four years, but a member serves at the pleasure of the Governor. Before the expiration of the term of a member, the Governor shall appoint a successor whose term begins on July 1 next following. A member is eligible for reappointment. If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

(3) Of the membership of the board:

(a) One shall be a physician licensed by the Board of Medical Examiners for the State of Oregon, practicing neurology, certified by the American Board of Neurology and Psychiatry, and nominated pursuant to ORS 426.755;

(b) Two shall be physicians licensed by the Board of Medical Examiners for the State of Oregon, practicing neurosurgery, certified by the American Board of Neurosurgery, and nominated pursuant to ORS 426.755;

(c) Two shall be physicians licensed by the Board of Medical Examiners for the State of Oregon, practicing psychiatry, certified by the American Board of Neurology and Psychiatry, and nominated pursuant to ORS 426.755;

(d) One shall be a clinical psychologist;

(e) One shall be a neuroscientist actively engaged in research on the nervous system; and

(f) Two shall be members of the general public one of whom shall be a member of the Oregon State Bar.

(4) All decisions of the review board shall be made by the affirmative vote of not less than six members.

(5) No individual directly involved in conducting psychosurgery or intracranial brain stimulation on human beings shall be a member of the review board.

[1973 c.616 s.3]

426.755 Nomination of members. Not later than June 1 of each year, the Oregon Medical Association shall nominate three qualified physicians for each physician member of the Psychosurgery Review Board whose term expires in that year, and shall certify its nominees to the Governor. The Governor shall consider these nominees in selecting successors to retiring board members.

[1973 c.616 s.4]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Thomas G. Clifford, 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,
October 1, 1975.

Thomas G. Clifford
Legislative Counsel

