

# Chapter 427

## 1979 REPLACEMENT PART

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## GENERAL

**427.005 Definitions.** As used in this chapter, unless the context requires otherwise:

(1) "Adaptive behavior" means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected for age and cultural group.

(2) "Assistant director" means the Assistant Director for Mental Health.

(3) "Care" means supportive services, including, but not limited to, provision of room and board; supervision; protection; and assistance in bathing, dressing, grooming, eating, management of money, transportation or recreation.

(4) "Developmental period" means the period of time between birth and the 18th birthday.

(5) "Director of the facility" means the superintendent of a state training center, or the person in charge of care, treatment and training programs at other facilities.

(6) "Division" means the Mental Health Division of the Department of Human Resources.

(7) "Facility" means a state training center, community hospital, group home, activity center, intermediate care facility, community mental health clinic, or such other facility or program as the division approves to provide necessary services to mentally retarded persons.

(8) "Incapacitated" means a person is unable, without assistance, to properly manage or take care of himself or his personal affairs.

(9) "Intellectual functioning" means functioning as assessed by one or more of the individually administered general intelligence tests developed for the purpose.

(10) "Mental retardation" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period. Persons of borderline intelligence may be considered mentally retarded if there is also serious impairment of adaptive behavior. Definitions and classifications shall be consistent with the "Manual on Terminology and Classification in Mental Retardation" of the American Association on Mental Deficiency, 1977 Revision. Mental

retardation is synonymous with mental deficiency.

(11) "Minor" means an unmarried person under 18 years of age.

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

(13) "Resident" means a person admitted to a state training center either voluntarily or after commitment to the division.

(14) "Significantly subaverage" means a score on a test of intellectual functioning that is two or more standard deviations below the mean for the test.

(15) "State training center" means Fairview Training Center; that part of Eastern Oregon Hospital and Training Center operated for the care, treatment and training of mentally retarded persons; and any other facility operated by the division for the care, treatment and training of the mentally retarded.

(16) "Training" means the systematic, planned maintenance, development or enhancement of self-care, social or independent living skills; or the planned sequence of systematic interactions, activities, structured learning situations or education designed to meet each resident's specified needs in the areas of physical, emotional, intellectual and social growth.

(17) "Treatment" means the provision of specific physical, mental, social interventions and therapies which halt, control or reverse processes that cause, aggravate or complicate malfunctions or dysfunctions. [1959 c.331 §10; 1961 c.706 §27; 1965 c.339 §1; subsection (2) enacted as 1965 c.595 §5; 1967 c.299 §1; 1979 c.683 §2]

### TRAINING CENTERS FOR THE MENTALLY RETARDED

#### **427.010 Training centers for mentally retarded; care provided; superintendents.**

(1) Except as otherwise ordered by the Mental Health Division pursuant to ORS 179.325, the Fairview Training Center in Salem, Marion County, and a part of the Eastern Oregon Hospital and Training Center in Pendleton, Umatilla County, shall be used for the care, treatment and training of such mentally retarded persons as are assigned to the care of such institutions by the division according to

procedures defined in ORS 427.185 or who are residents on October 3, 1979.

(2) Upon receipt of an application approved by the division or its designee, pursuant to its rules, a mentally retarded person may be entitled to admission to a state training center for emergency, respite or part-time care. Part-time care means presence of the person at the facility less than 24 hours per day and may include day or night care. Admission for emergency care or respite care shall in no case exceed 90 days. Admission for part-time care may exceed 90 days. The fee schedule for such care, training and treatment in a training center shall be established by the division in the same manner as for other residents. The fees shall be charged and collected by the Mental Health Division in the same manner as charges are collected under ORS 179.610 to 179.770.

(3) The superintendents of the training centers named in subsection (1) of this section shall be persons the division considers qualified to administer the training centers. If the superintendent of any training center is a physician licensed by the State Board of Medical Examiners, he shall serve as chief medical officer. If he is not a physician, the superintendent shall appoint a physician to serve as chief medical officer who shall be in the unclassified service. [Amended by 1953 c.155 §7; 1965 c.339 §2; 1965 c.595 §3; 1969 c.391 §9; 1971 c.75 §1; 1973 c.262 §1; 1973 c.807 §3; 1979 c.683 §6]

**427.012** [Formerly 428.548, repealed by 1979 c.683 §37]

**427.015** [1961 c.661 §2; 1967 c.534 §21; repealed by 1979 c.683 §37]

**427.020 Review of plan of care for residents of state training centers; certification for continued care and training; notice to resident.** (1) State training centers shall annually review the plan of care for each resident and certify the resident's eligibility and need for continued residential care and training and shall present each certification with clear and convincing justification for continued residential care and training to the State Training Center Review Board for review and action pursuant to this section. If the board does not approve of the certification or, if the resident objects to continued residential care and training, the resident shall be released pursuant to ORS 427.300 or, if the division considers release not to be in the best interest of the resident, the superintendent of the state training center where the person is a

resident shall initiate commitment proceedings pursuant to ORS 427.235 to 427.270, 427.280 and 427.285. The board may require the physical presence of any resident during the review. However, the board shall require the physical presence of each resident at least once every three years of residence in a state training center.

(2) The plan of care for each resident shall include, but not be limited to, the following:

- (a) Current diagnosis;
- (b) Level of functioning;
- (c) Current habilitation and health programs in which the resident is participating;
- (d) Statement as to continued eligibility and continued need for residential care;
- (e) Statement of long-term and short-term goals for the resident; and
- (f) Verification that the person has been advised of the facility's statement of rights and the policies governing his immediate living area.

(3) The state training center shall notify the resident orally. In addition, the resident, the resident's parent, guardian or person entitled to custody shall be notified by certified mail of the intent to certify the need for the resident's continued commitment. The notification shall include the following:

- (a) Time, place and location of the hearing of the State Training Center Review Board;
- (b) Explanation of the possible consequences of the proceedings; and
- (c) Explanation of the resident's right to appear before the board on the resident's own behalf or to be represented at the proceeding by the resident's parent, guardian, the person entitled to custody or other person, including counsel, of the resident's choosing.

(4) In the event the resident, because of severe disability, is unable to receive and acknowledge the communication required by subsection (3) of this section, that fact shall be documented in the resident's record and conveyed to the board. [1979 c.683 §28]

**427.025** [1961 c.661 §3; 1965 c.339 §3; 1967 c.534 §22; repealed by 1979 c.683 §37]

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

**427.031 Rights of residents of state training centers.** (1) Every resident shall have the right to exercise all civil rights in the same manner, and with the same effect, as

one not admitted to a state training center, 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) Pursuant to rules of the division, a statement of rights guaranteed to residents admitted to state training centers shall be prominently posted in all facilities housing such residents. Each resident shall be encouraged and assisted to understand and exercise these rights which shall include, but not be limited to, 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 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) Be represented by counsel whenever his substantial rights may be affected;
- (h) Petition for a writ of habeas corpus;
- (i) Not be required to perform labor tasks of the facility except those essential for treatment and training; and
- (j) Be given reasonable compensation for all work performed other than personal housekeeping duties.

(3) Every resident shall have the right to the least hazardous treatment procedures available in the least restrictive state training center living area according to personal need and provisions of law.

(4) Mechanical restraints shall not be applied to a resident of a state training center unless it is determined by the chief medical officer of the facility or his designee to be required for the safety and welfare of the person or the safety of others. 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 chief medical officer of the facility or his designee. [1979 c.683 §29]

**427.035** [1961 c.661 §4; 1965 c.339 §4; repealed by 1979 c.683 §37]

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

**427.041 Leave of absence for training center resident; damages caused by resident while on leave.** The superintendent of a state training center for the care, treatment and training of the mentally retarded may grant a temporary leave of absence to any resident of the state training center pursuant to the rules of the division. The state training center, the superintendent and the chief medical officer thereof, and the Assistant Director for Mental Health shall not be liable for a resident's expenses while on temporary leave of absence nor shall they be liable for any damages whatsoever that are sustained by a person on account of the actions or misconduct of a resident while on leave of absence. [Formerly 427.150]

**427.045** [1961 c.661 §§5, 6, 1965 c.339 §5; repealed by 1979 c.683 §37]

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

**427.051 Effect of admission to training center on competency.** No person admitted to a state training center for the treatment and training of the mentally retarded shall be considered by virtue of the admission to be incompetent. [Formerly 427.305]

**427.055** [1961 c.661 §§7, 8; 1965 c.339 §6; repealed by 1979 c.683 §37]

**427.059** [1961 c.661 §§9, 10; 1965 c.339 §7; repealed by 1979 c.683 §37]

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

**427.061 Payment for care and treatment in state training centers.** (1) If any mentally retarded person is admitted to and detained in a state training center under ORS 427.255, the Mental Health Division shall charge to and collect from appropriate persons the costs in the same manner as it would for other residents of the state training center under the provisions of ORS 179.610 to 179.770.

(2) If any person is adjudged mentally retarded as provided by ORS 427.255, and the person receives care, treatment and training in a state training center, he, or other persons or agencies legally responsible for his support, may be required to pay the cost of his care at the state training center, as provided by ORS 179.610 to 179.770. [1979 c.683 §32]

**427.062** [1969 c.632 §§2, 3, 4; repealed by 1979 c.683 §37]

**427.065** [Formerly 427 050; 1965 c.339 §8; 1975 c.155 §4; 1979 c 683 §12; renumbered 427.195]

**427.067** [Formerly 427.060; repealed by 1979 c.683 §37]

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

**427.075** [1969 c.38 §2; repealed by 1979 c.683 §37]

**427.080** [Repealed by 1961 c.661 §20]

**427.085** [1961 c.661 §15; 1967 c.534 §23; 1969 c 591 §299; repealed by 1979 c.683 §37]

**427.090** [Amended by 1961 c 661 §16; 1965 c.339 §9; repealed by 1979 c 683 §37]

**427.100** [Amended by 1965 c.339 §10; repealed by 1979 c.683 §37]

## DIAGNOSTIC EVALUATIONS

**427.104 Diagnosis and Evaluation Service; duties and powers.** The division with funds appropriated for that purpose by the legislature, shall establish and operate a Diagnosis and Evaluation Service for the mentally retarded. The Diagnosis and Evaluation Service shall provide all or part of diagnostic evaluations, as defined in ORS 427.105, when complete evaluations are not available through community mental health programs, and the Diagnosis and Evaluation Service shall:

(1) Provide consultation and training to community mental health programs in the development of local diagnosis and evaluation services;

(2) Develop and periodically revise division standards and procedures for diagnosis and evaluation services;

(3) Coordinate diagnostic evaluations state wide to minimize duplication of tests and examinations;

(4) Approve applications for admission to the training centers;

(5) Provide necessary information to the State Training Center Review Board when a decision of the Diagnosis and Evaluation Service regarding admission to a state training center is appealed by the person, his parents or legal guardian;

(6) Provide consultation to appropriate agencies and individuals regarding persons evaluated; and

(7) Process and coordinate all placements of residents from state training centers. [1953 c.631 §1; 1965 c.339 §21; 1971 c.74 §1; 1979 c.683 §13]

**427.105 Diagnostic evaluations; contents; purpose.** (1) Pursuant to rules of the division, a diagnostic evaluation shall include, but not be limited to, the following:

(a) A social history;

(b) A psychological evaluation, including an appropriate individual test of intellectual capacity, an academic achievement test, a social development assessment and an adaptive behavior assessment;

(c) A medical evaluation including prenatal, natal, early postnatal and other past and family history, a complete physical examination including tests of visual function, and any specialized examinations necessary;

(d) A speech and hearing screening; and

(e) A dental screening.

(2) The diagnostic evaluation shall also attempt to determine the existence of related conditions such as epilepsy, cerebral palsy, autism and specific learning disorders and to outline the most appropriate services for the treatment and training of the person, whether those services are immediately available or not.

(3) A facility approved by the division to conduct diagnostic evaluations may contract with qualified persons to perform components of the evaluation. [1979 c.683 §14]

**427.106** [1953 c.631 §2; 1965 c.339 §22; 1969 c.53 §1; repealed by 1979 c 683 §37]

**427.108 Fee schedules for diagnosis and evaluation services.** The division shall establish fee schedules for services under ORS 427.104. All fees collected under this section shall be deposited in the Mental Health Services Account. [1953 c.631 §3; 1977 c.384 §6; 1979 c.683 §15]

**427.110** [Repealed by 1953 c 155 §7]

**427.112 Certain facilities to charge for performing diagnostic evaluations.** A general hospital, community mental health program, or other facility, except a state training center, providing diagnostic evaluations under ORS 427.105 shall charge to and collect from the person, third party payors, or other persons or agencies otherwise legally responsible therefor, the costs of the diagnostic evaluation or emergency care, custody and treatment, as the facility would for any other client or resident. [1979 c.683 §30]

**427.120** [Amended by 1953 c.155 §7; 1959 c.331 §8; 1965 c.339 §11; repealed by 1979 c 683 §37]

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

**427.140** [Repealed by 1957 c.388 §17]

**427.150** [1953 c.155 §5; 1963 c.411 §1; 1965 c.339 §12; 1969 c.597 §93; 1979 c.683 §27; renumbered 427.041]

### ADMISSION TO TRAINING CENTERS

**427.175 Admission to training centers.** Pursuant to reasonable rules of the division and in conformity with ORS 427.180 to 427.190, the superintendent of a state training center shall admit as a resident and take custody of any person who meets the admission requirements set out in ORS 427.180. [Formerly 427.220]

#### **427.180 Requirements for admission.**

(1) A person shall be admitted to a state training center only after:

(a) He has either been committed to the division as a mentally retarded person under ORS 427.290, or an application for admission has been filed either by him or by another in the manner set forth in ORS 427.185;

(b) He has undergone a diagnostic evaluation as defined in ORS 427.105 and the completed evaluation has been provided to the Diagnosis and Evaluation Service established under ORS 427.104; and

(c) Either the Diagnosis and Evaluation Service or, upon appeal, the assistant director finds that he meets the requirements set out in subsection (2) of this section and approves him for admission.

(2) A person shall be approved for admission under paragraph (c) of subsection (1) of this section if the following conditions exist:

(a) The person is mentally retarded;

(b) Programs and services needed by the person are available in a training center and comparable services are not available in community mental health programs or other human service agencies;

(c) Admission to a state training center is the best available plan and in the best interest of the person, his family and the community; and

(d) Space is available or may become available within a reasonable time in an appropriate unit of a state training center. [1979 c.683 §8]

**427.185 Diagnostic evaluation; costs of transportation and maintenance during evaluation.** (1) A person seeking admission to a state training center shall apply on forms and in the manner established by the division, to the community mental health program serving the area in which the applicant currently resides. If the person seeking admission is a minor or is incapacitated, the application shall be made by the person's parents or guardian or by the person entitled to custody.

(2) Upon receipt of an application, the community mental health program shall provide or arrange a diagnostic evaluation, meeting the requirements set forth in ORS 427.105, of the person on whose behalf the application for admission is made at a facility approved by the division. The community mental health program or its designee shall schedule a date for the diagnostic evaluation and notify the applicant or person having custody. No person shall be kept in residence in a training center for a diagnostic evaluation longer than 10 business days.

(3) The costs of transportation to the community mental health program or designated facility shall be paid by the applicant. The cost of maintenance for any period of residence in a training center shall be determined as provided for in ORS 179.610 to 179.770 and paid by the applicant or other persons or agencies legally responsible. [Formerly 427.225]

**427.190 Determination of eligibility and priority for admission; notice of admission; appeal.** (1) Upon receipt of a completed diagnostic evaluation, the community mental health program shall forward the completed application and the completed diagnostic evaluation to the Diagnosis and Evaluation Service.

(2) Upon receipt of a completed application and diagnostic evaluation from the community mental health program, the Diagnosis and Evaluation Service shall promptly determine the eligibility and priority for admission in accordance with ORS 427.180 and 427.195.

(3) When space in an appropriate unit of a training center becomes available for a person otherwise eligible for admission under ORS 427.180, the Diagnosis and Evaluation Service shall notify the applicant or, if the person is committed, the director of the community mental health program in the county of the person's residence that the person has been accepted for admission. The notice shall establish the date when the admission is to be

made. If the person does not appear at the designated training center within 15 days after the date established for admission, his application may be canceled by the Diagnosis and Evaluation Service.

(4) A person applying for admission to a state training center or, if he is a minor or incapacitated, the person applying for admission on his behalf may appeal any decision of the Diagnosis and Evaluation Service regarding admission to the assistant director. The appeal shall be filed within 30 days of receipt of notice of the decision and shall set forth the reasons for the appeal. The assistant director shall convene the State Training Center Review Board, established under ORS 427.205, within 30 days of receipt of the appeal. The board shall advise the assistant director regarding disposition of the appeal, and the assistant director shall make his decision on the appeal within 30 days of the meeting of the board. The decision of the assistant director shall be final. [1979 c.683 §10]

**427.195 Schedule of admissions; priority admissions; costs of transportation and maintenance.** (1) Persons are entitled to admission to state training centers in the order in which completed applications are received and filed by the Diagnosis and Evaluation Service, whether the person has been committed to the division or is voluntarily requesting admission. However, pursuant to rules of the division, persons may be admitted on a priority basis if their behavior or condition is a threat to their welfare or safety or to the safety of others.

(2) A person committed to the division and approved for admission by the Diagnosis and Evaluation Service shall be conveyed to the designated training center by a member of his family or other persons legally responsible for him. The expense of the transportation of the person to the designated training center shall be paid by the county in which the petition of commitment is filed.

(3) The costs of transportation for a voluntary applicant to the designated training center shall be paid by the applicant or, if the applicant is a minor or incapacitated person, by the parents or person entitled to custody of him.

(4) The cost of maintenance for the period of residence shall be determined as provided for in ORS 179.610 to 179.770 and paid by the appropriate persons or agencies, whether the

resident was committed to the division or voluntarily applied for admission to the training center. [Formerly 427.065]

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

**427.205 State Training Center Review Board; appointment of members; terms; compensation and expenses; duties.** (1) The Assistant Director for Mental Health shall appoint a State Training Center Review Board composed of three members. The Oregon Association for Retarded Citizens, the Fairview Parents Association and the Oregon Developmental Disabilities Council or their successor organizations shall each recommend three persons to the assistant director. The assistant director shall select one person from each list to serve as a member of the board. Each board member shall have had at least five years of involvement and active interest in programs for mentally retarded persons. None shall be an employe of the division.

(2) The term of office of each member is two years. The assistant director may remove any member for misconduct or neglect of duty. Replacement of board members shall be accomplished by the same procedure as that used in subsection (1) of this section for selection. The assistant director shall request a new list of three persons from the organization whose nominee for board member is to be replaced.

(3) A member of the board not otherwise employed full time by the state shall be paid on a per diem basis an amount equal to four percent of the gross monthly salary of a member of the State Board of Parole for each day during which the member is engaged in the performance of his official duties, including necessary travel time. In addition, subject to ORS 292.220 to 292.250 regulating travel and other expenses of state officers and employes, he shall be reimbursed for actual and necessary travel and other expenses incurred by him in the performance of his official duties.

(4) The board shall perform the following duties:

(a) Review decisions of the Diagnosis and Evaluation Service regarding admissions to training centers that have been appealed by the applicant or, if a minor or incapacitated person, by the person applying on his behalf and advise the assistant director regarding the appropriateness for the admission.

(b) Review decisions of the division pursuant to subsection (2) of ORS 427.300 when

the resident, his parent, guardian or person entitled to custody has appealed the decision and advised the assistant director regarding the appropriateness of the decision.

(c) Annually review state training center plans for continuing residential care and training of residents pursuant to ORS 427.020.

(5) The board shall operate pursuant to rules promulgated by the division. [1979 c.683 §11]

427.210 [1959 c.331 §1; 1965 c.339 §13; 1973 c.827 §44; repealed by 1979 c.683 §37]

### INVOLUNTARY COMMITMENTS OF MENTALLY RETARDED

**427.215 Definitions for ORS 427.020, 427.031, 427.061, 427.112 and 427.235 to 427.290.** As used in ORS 427.020, 427.031, 427.061, 427.112 and 427.235 to 427.290, unless the context requires otherwise, "mentally retarded person" applies only to a person who, because of mental retardation, is or is alleged to be either:

(1) Dangerous to himself or others; or

(2) Unable to provide for his basic personal needs and not receiving care as is necessary for his health, safety or habilitation. [1979 c.683 §16]

427.220 [1959 c.331 §2; 1961 c.661 §17; 1965 c.339 §14; 1973 c.277 §1; 1979 c.683 §7; renumbered 427.175]

427.225 [1961 c.661 §19; 1965 c.339 §15; 1973 c.277 §2; 1979 c.683 §9; renumbered 427.185]

427.230 [1959 c.331 §6; 1965 c.339 §16; 1973 c.277 §3; repealed by 1979 c.683 §37]

**427.235 Notice to court of need for commitment; investigation; report and recommendation.** (1) Any two persons may notify the judge of the court having probate jurisdiction for the county or the circuit court, if it is not the probate court but its jurisdiction has been extended to include commitment of the mentally retarded under ORS 3.275, that a person within the county is a mentally retarded person in need of commitment for residential care, treatment and training. Such notice shall be in writing and sworn to before an officer qualified to administer an oath and shall set forth the facts sufficient to show the need for investigation. The circuit court shall forward notice to the community mental health program director in the county if it finds the notice sufficient to show the need for

investigation. The director or his designee shall immediately investigate to determine whether the person is in fact a mentally retarded person. However, if the petition for commitment is from a state training center, the duties of the community mental health program director under ORS 427.235 to 427.270, 427.280 and 427.285 shall be the responsibility of the superintendent of the state training center or his designee.

(2) Any person who acts in good faith shall not be held civilly liable for making of the notification under subsection (1) of this section.

(3) Any investigation conducted by the community mental health program director or his designee under subsection (1) of this section shall commence with an interview or examination of the allegedly mentally retarded person, where possible, in his home or other place familiar to him. Further investigation if warranted shall include a diagnostic evaluation as defined in ORS 427.105 and may also include interviews with the allegedly mentally retarded person's relatives, neighbors, teachers and physician. The investigation shall also determine if any alternatives to commitment are available. The investigator shall also determine and recommend to the court whether the person is incapacitated and in need of a guardian or conservator.

(4) The investigation report shall be submitted to the court within 30 days of receipt of notice from the court. A copy of the investigation report and diagnostic evaluation, if any, shall also be made available to the Diagnosis and Evaluation Service of the division and to the allegedly mentally retarded person and, where he is a minor or incapacitated, to his parents or guardian as soon as possible after its completion but in any case prior to a hearing held under ORS 427.245.

(5) Any person conducting an evaluation or investigation under this section shall in no way be held civilly liable for conducting the investigation or performing the diagnostic evaluation. [1979 c.683 §17]

427.240 [1959 c.331 §3; 1965 c.339 §17; 1969 c.391 §10; 1973 c.277 §4; repealed by 1979 c.683 §37]

**427.245 Hearing to determine mental retardation; citation to appear; notice; right to legal counsel.** (1) If the court, following receipt of an investigation report under ORS 427.235, concludes that there is probable cause to believe that the subject of the investigation is in fact a mentally retarded

person, it shall, through the issuance of a citation as provided in subsection (2) of this section, cause the person to be brought before it at such time and place as it may direct for a hearing to determine whether the person is mentally retarded. The person shall be given the opportunity to appear at the hearing. If the person is detained pursuant to ORS 427.255, the court shall hold the hearing within seven business days.

(2) Upon a determination under subsection (1) of this section that probable cause exists to believe that the person is in fact a mentally retarded person, the judge shall cause a citation to issue to the person or, if he is a minor or incapacitated, to his parent or legal guardian. The citation shall state the specific reasons he is believed to be mentally retarded. The citation shall also 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, the right to have legal counsel appointed immediately if so requested, the right to subpoena witnesses in his behalf to testify at the hearing, the right to cross-examine all witnesses and such other information as the court may direct. The citation shall be served on the person by the community mental health program director or his designee delivering a duly certified copy of the original to the person prior to the hearing. The person, his parents or his legal guardian shall have the opportunity to consult with legal counsel prior to being brought before the court. The community mental health program director or his designee shall advise the person of the purpose of the citation and the possible consequences of the proceeding. [1979 c.683 §18]

**427.250** [1959 c.331 §4; 1965 c.339 §18; 1969 c.391 §11; repealed by 1979 c.683 §37]

**427.255 Detention prior to investigation or hearing; care and maintenance while under custody.** (1) If the court finds that there is probable cause to believe that failure to take an allegedly mentally retarded person into custody pending an 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 either the community mental health program director or the sheriff of the county directing that the person or his designee take the allegedly mentally retarded person into custody and produce him at the time and place stated in the warrant. At the time the person is

taken into custody, the person taking him into custody shall advise the allegedly mentally retarded person or, if he is incapacitated or a minor, his parents or guardian of the person's right to counsel, to have legal counsel appointed if he is unable to afford legal counsel, and, if requested, to have legal counsel appointed immediately.

(2) A person taken into custody under subsection (1) of this section shall be provided all care, custody, evaluation and treatment required for his mental and physical health and safety and the director of the facility retaining custody shall report any care, custody, evaluation or treatment provided the person to the court as required by ORS 427.280. Any diagnostic evaluation performed on such person shall be consistent with division rules and ORS 427.105. Any prescription or administration of drugs shall be the sole responsibility of the treating physician. The allegedly mentally retarded person shall have the right to the least hazardous treatment procedures while in custody, and the treating physician shall be notified immediately of the use of any mechanical restraints on the person. A note of each use of mechanical restraint and the reasons therefor shall be made a part of the person's clinical record over the signature of the treating physician. [1979 c.683 §19]

**427.260** [1959 c.331 §5; 1965 c.339 §19; 1973 c.277 §5; repealed by 1979 c.683 §37]

**427.265 Court to advise mentally retarded person of rights; appointment of legal counsel.** (1) At the time the allegedly mentally retarded 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 retarded person that he is entitled to subpoena witnesses on his behalf and to suitable legal counsel possessing skills and experience commensurate with the nature of the allegations and complexity of the case during the proceedings, and that if he does not have funds with which to retain suitable legal counsel, the court shall appoint such legal counsel to represent him without cost. If the allegedly mentally retarded 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 suitable legal counsel.

(3) If the person is unable to afford legal counsel, the court shall determine and allow, as provided in ORS 135.055, the reasonable expenses of the person and compensation for legal counsel. The expenses and compensation so allowed shall be paid by the county of residence of the allegedly mentally retarded person. In all cases legal counsel shall be present at the hearing and may examine all witnesses offering testimony, and otherwise represent the person.

(4) If the allegedly mentally retarded person, his legal counsel, parent, guardian, an examiner or the court requests, 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, for good cause, order the continuation of detention authorized under ORS 427.255, during a postponement. [1979 c.683 §20; 1979 c.867 §13]

**427.270 Report of diagnostic evaluation; recommendations of examining facility; appointment of experts to conduct additional examination.** (1) The examining facility conducting the diagnostic evaluation shall make its report in writing to the court. Where components of the diagnostic evaluation have been performed within the previous year according to division rules and ORS 427.105, and the records of the evaluation are available to the examining facility pursuant to ORS 179.505 and division rules, the results of such evaluation may be introduced in court in lieu of repetition of those components by the examining facility. If the facility finds, and shows by its report, that the person examined is a mentally retarded person, the report shall include a recommendation as to the type of treatment or training facility best calculated to habilitate the person. The report shall also advise the court whether in the opinion of the examining facility the mentally retarded person and, if he is a minor or incapacitated, his parents or legal guardian would cooperate with voluntary treatment or training and whether the person would benefit either from voluntary treatment or training or from appointment of a legal guardian or conservator.

(2) If the allegedly mentally retarded person or his parent, legal guardian or legal counsel requests, the judge shall appoint an additional physician or psychologist, or both, to examine the person and make separate reports in writing to the court. However, the court shall not appoint more than one additional physician and one additional psycholo-

gist to examine the person. [1979 c.683 §21]

**427.275 Fees of persons appointed by court to perform diagnostic evaluations; payment by counties; witness fees.** Any physician or psychologist employed by the judge to make a diagnostic evaluation of a person alleged to be mentally retarded shall be allowed a fee as the court in its discretion determines reasonable for the evaluation. Witnesses summoned to give testimony shall receive the same fee as is paid in civil cases. The costs of the evaluation 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. The county shall not be held responsible for the costs of prior examinations or tests reported to the court, or of diagnostic evaluations performed or arranged by the community mental health program or division. [1979 c.683 §31]

**427.280 Treatment given after citation issued; notice to court.** The court shall be fully advised by the community mental health program director or, when the person has been detained under ORS 427.255, by the director of the facility retaining custody of all treatment known to have been administered to the allegedly mentally retarded person after a citation has been issued to the person. [1979 c.683 §22]

**427.285 Necessary witnesses at hearing; cross-examination.** The investigator and other appropriate persons or professionals as necessary shall appear at the hearing and present the evidence. The allegedly mentally retarded person shall have the right to cross-examine all witnesses, the investigator and the representative. [1979 c.683 §23]

**427.290 Determination by court of mental retardation; discharge; conditional release; commitment.** After hearing all of the evidence, and reviewing the findings of the investigation and other examiners, the court shall determine whether the person is mentally retarded and because of mental retardation is either dangerous to himself or others or is unable to provide for his personal needs and is not receiving care as is necessary for his health, safety or habilitation. If in the opinion of the court the person is not mentally retarded, he shall be discharged forthwith. If in the opinion of the court the person is, by clear and convincing evidence, mentally retarded, the court may order as follows:

(1) If the mentally retarded person can give informed consent and is willing and able to participate in treatment and training on a voluntary basis, and the court finds that he will do so, the court shall order release of the person and dismiss the case.

(2) If a relative, a friend or legal guardian of the mentally retarded person requests that he be allowed to care for the mentally retarded person for a period of one year in a place satisfactory to the judge and shows that he is able to care for the mentally retarded person and that there are adequate financial resources available for the care of the mentally retarded person, the court may commit the mentally retarded person and order that the mentally retarded person be conditionally released and placed in his care and custody. The order may be revoked and the mentally retarded person committed to the division for the balance of the year whenever, in the opinion of the court, it is in the best interest of the mentally retarded person.

(3) If in the opinion of the court voluntary treatment and training or conditional release is not in the best interest of the mentally retarded person, the court may order the commitment of the person to the division for care, treatment or training. The commitment shall be for a period not to exceed one year with provisions for continuing commitment pursuant to ORS 427.020.

(4) If in the opinion of the court the mentally retarded person may be incapacitated, the court may appoint a legal guardian or conservator pursuant to ORS 126.103 or 126.157. The appointment of a guardian or conservator shall be a separate order from the order of commitment. [1979 c.683 §24]

**427.295 Appeal of determination; appointment of legal counsel.** If a person determined by a court to be mentally retarded appeals the determination or disposition based thereon, and is unable to afford suitable legal counsel possessing skills and experience commensurate with the nature and complexity of the case to represent the person on appeal, the court, upon request of the person or upon its own motion, shall appoint suitable legal counsel to represent the person. The compensation for legal counsel and costs and expenses necessary to the appeal shall be determined and allowed, as provided in ORS 138.500, by the appellate court. The compensation, costs and expenses so allowed shall be paid by the county of residence of the person. [1979 c.867 §15]

**427.300 Assignment to appropriate facility; notice of transfer or discharge; appeal; hearing.** (1) The division may, at its discretion, direct any court-committed mentally retarded person to the facility best able to treat and train him. The authority of the division on such matters shall be final.

(2) At any time, for good cause and in the best interest of the mentally retarded person, the division may decide to transfer a resident from one facility to another or discharge a resident as no longer in need of residential care, treatment or training in a state training center. Fifteen days prior to division action, the division shall notify the resident and his parent, guardian or person entitled to custody by certified mail of its decision. The notice shall indicate the right of the aforementioned parties to appeal this decision to the State Training Center Review Board in writing within 10 days after receipt of notice. Within 30 days from the date the appeal is received by the division, the State Training Center Review Board shall hold a hearing at which the division and the person having filed the appeal shall present their case and shall communicate its recommendation to the assistant director pursuant to paragraph (b) of subsection (4) of ORS 427.205; and the assistant director shall communicate his decision by certified mail to the appealing party.

(3) The division, pursuant to its rules, may delegate to a community mental health program director the responsibility for assignment of mentally retarded persons to suitable facilities or transfer between such facilities under conditions which the division may define. Any voluntary client or resident shall be released from the treating or training facility within 15 business days of his request for release, unless commitment procedures are initiated under ORS 427.235. [1979 c.683 §25]

**427.305** [1973 c.585 §2; 1979 c.683 §33; renumbered 427.051]

**427.306 Confinement of mentally retarded persons in certain facilities prohibited; attendants required.** (1) No person, not incarcerated upon a criminal charge, who has been alleged or adjudged a mentally retarded person 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.

(2) No person alleged or adjudged a mentally retarded person, not incarcerated on a criminal charge, shall be confined without an

attendant in charge of him. If not confined in a community hospital, the community mental health program director or 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. The person shall be detained in the least restrictive setting con-

sistent with the person's emotional and physical needs and the protection of others. [1979 c.683 §26]

427.310 [1973 c.585 §3; repealed by 1979 c.683 §37]

427.315 [1973 c.585 §6; repealed by 1979 c.683 §37]

427.320 [1973 c.585 §4; repealed by 1979 c.683 §37]

427.325 [1973 c.585 §5; repealed by 1979 c.683 §37]

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, 1979.

Thomas G. Clifford  
Legislative Counsel

