TITLE 35

MENTAL HEALTH

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

Chapter 426

1981 REPLACEMENT PART

Mentally Ill and Sexually Dangerous

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MENTALLY ILL
(Definitions)

426.005 Definitions for ORS 426.005 to 426.390. As used in ORS 426.005 to 426.390, unless the context requires otherwise:

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

(2) "Mentally ill person" means a person who, because of a mental disorder, is either:

(a) Dangerous to himself or others; or

(b) Unable to provide for his basic personal needs and is not receiving such care as is necessary for his health or safety.

(3) "Facility" means a state mental hospital, community hospital, residential facility, detoxification center, day treatment facility, or such other facility as the Mental Health Division determines suitable, any of which may provide diagnosis and evaluation, medical care, detoxification, social services, or rehabilitation for committed mentally ill persons.

(4) "Director of the facility" means a superintendent of a state mental hospital, the chief of psychiatric services in a community hospital, or the person in charge of treatment and rehabilitation programs at other treatment facilities. [1961 c.706 §25; 1973 c 838 §1]

(Hospitals)

426.010 State hospitals for mentally ill persons. Except as otherwise ordered by the Mental Health Division pursuant to ORS 179.325, the Oregon State Hospital in Salem, Marion County, the F. H. Dammasch State Hospital authorized to be located within a 20-mile radius of the county courthouse of Multnomah County, and the Eastern Oregon Hospital and Training Center in Pendleton, Umatilla County, shall be used as state hospitals for the care and treatment of mentally ill persons who are assigned to the care of such institutions by the Mental Health Division or who have previously been committed to such institutions. [Amended by 1955 c 651 §3, 1965 c 339 §23; 1965 c 595 §2]

426.020 Superintendents; chief medical officer. The superintendents of the hospitals mentioned in ORS 426.010 shall be persons the Mental Health Division considers qualified to administer the hospital. If the superintendent of any hospital is a physician licensed by the State Board of Medical Examiners, he shall serve as chief medical officer. If he is not a physician, the assistant director or his designee shall appoint a physician to serve as chief medical officer who shall be in the unclassified service. [Amended by 1955 c 651 §4; 1969 c.391 §1, 1973 c 807 §2]

426.030 F. H. Dammasch State Hospital authorized and established. A hospital for the care and treatment of mentally ill persons hereby is authorized and directed to be located, constructed, operated and maintained in the area situated within a 20-mile radius of the county courthouse of Multnomah County, Oregon. The institution authorized by this section hereby is established as a state hospital and shall be known as the F. H. Dammasch State Hospital. [Amended by 1955 c 651 §5, 1957 c 43 §1]

426.060 Commitment to Mental Health Division; authority of division to direct placement; transfer authority; delegation. (1) Commitments to the Mental Health Division shall be made by the judge of any court having probate jurisdiction or, if the circuit court is not the probate court, the circuit court if its jurisdiction has been extended to include commitment of the mentally ill pursuant to ORS 3.275 in any county of this state.

(2) The Mental Health Division may, in its discretion and for reasons which are satisfactory to the division, direct any court committed person to the facility best able to treat him. The authority of the division on such matters shall be final.

(3) At any time, for good cause and in the best interest of the mentally ill person, the division may transfer a committed person from one facility to another.

(4) The division, pursuant to its rules, may delegate to a community mental health program director the responsibility for assignment of mentally ill persons to suitable facilities or transfer between such facilities under conditions which the division may define. [Amended by 1955 c 651 §6; 1963 c 254 §1, 1967 c.534 §19, 1973 c 838 §2, 1975 c 690 §1]

(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 voluntarily 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 provided as soon as possible, but in no event later than 24 hours prior to the hearing, to the allegedly mentally ill person and to that person's counsel. Copies shall likewise be provided to counsel assisting the court, to the examiners, and to the court for use in questioning witnesses. The provisions of ORS 44.040 (1)(d) shall not apply to the use of such reports in connection with such hearings. The court may consider as evidence the statements attributed by the maker of the report to witnesses concerning their own observations in the absence of objection or if such persons are produced as witnesses at the hearing available for cross-examination.

(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 serious harm or 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 re-

straints 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 §1; 1967 c 534 §20; 1973 c 838 §3; 1975 c.690 §2; 1979 c.408 §1]

426.075 Notice and records of 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 ORS 426.070 (5), 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. The medical record of treatment shall be made available in order that the examiners may review the medical record of treatment and have an opportunity to inquire of the medical personnel concerning the treatment of the allegedly mentally ill person relating to a specific detention period prior to the hearing. Such record shall be made available to counsel for the allegedly mentally ill person at least 24 hours prior to the hearing. [1973 c 838 §8, 1975 c.690 §3, 1979 c 408 §2]

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 §366, 1973 c 836 §348, 1973 c 838 §4a]

426.090 Citation; service. The judge shall cause a citation to issue to the allegedly mentally ill person stating the nature of the information filed concerning him 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 subpena 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 §2; 1967 c.459 §1; 1971 c.368 §1, 1973 c.838 §5, 1975 c.690 §4]

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 §9; 1975 c 690 §5]

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 the person of the reason for being 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 of the right to subpena witnesses and to obtain 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 the person does not have funds with which to retain legal counsel, the court will appoint legal counsel to represent the person without cost. If the allegedly mentally ill person does not request legal counsel, the legal guardian, relative or friend may request the assistance of suitable legal counsel on behalf of the person.

(2) If no request for legal counsel is made, the court shall appoint suitable 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 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 ill person. In all cases suitable legal counsel shall be present at the hearing and examination and may examine all witnesses offering testimony, and otherwise represent the person.

(4) The governing body of a county shall designate either the district attorney or coun-

sel appointed pursuant to ORS 203.145 to assist the court in the conduct of the hearing if the court requests assistance; provided, however, that if the person designated shall have a conflict of interest in a particular case, the court may then appoint private counsel to render such assistance.

(5) If the allegedly mentally ill person, the 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 §1, 1971 c 368 §2, 1973 c 838 §6, 1975 c 690 §6, 1977 c 259 §1, 1979 c 574 §§1, 2, 1979 c 867 §10]

Note: The amendments to 426 100 by section 133, chapter 3, Oregon Laws 1981 (special session), become operative January 1, 1983. See section 5, chapter 3, Oregon Laws 1981 (special session) 426.100, as amended, is set forth for the users' convenience

426.100. (1) At the time the allegedly mentally ill person is brought before the court, the court shall advise the person of the reason for being 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 of the right to subpena witnesses and to obtain 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 the person does not have funds with which to retain legal counsel, the court will appoint legal counsel to represent the person without cost If the allegedly mentally ill person does not request legal counsel, the legal guardian, relative or friend may request the assistance of suitable legal counsel on behalf of the person

(2) If no request for legal counsel is made, the court shall appoint suitable 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 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 by a county court shall be paid by the county of residence of the allegedly mentally ill person The expenses and compensation so allowed by a circuit court shall be paid by the state from funds available for the purpose In all cases suitable legal counsel shall be present at the hearing and examination and may examine all witnesses offering testimony, and otherwise represent the person

(4) The governing body of a county shall designate either the district attorney or counsel appointed pursuant to ORS 203 121 to assist the court in the conduct of the hearing if the court requests assistance If the person so designated has a conflict of interest in a particular case, the court may appoint private counsel to render such assistance

(5) If the allegedly mentally ill person, the 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

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 §10]

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 §11; 1975 c.690 §7]

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 dis-

charged forthwith. If, based upon clear and convincing evidence, it is the opinion of the court that the person is mentally ill, 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 §12, 1975 c 690 §8, 1979 c 408 §3]

426.135 Counsel on appeal; costs of appeal. If a person determined to be mentally ill as provided in ORS 426.130 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 §12]

Note: The amendments to 426 135 by section 134, chapter 3, Oregon Laws 1981 (special session), become operative January 1, 1983 See section 5, chapter 3, Oregon Laws 1981 (special session) 426 135, as amended, is set forth for the users' convenience

426.135. If a person determined to be mentally ill as provided in ORS 426 130 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 as provided in ORS 138 500

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 commitment 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 staff or physical facilities of a hospital or other facility approved by the division for the care, custody and treatment of the person.

(2) No allegedly mentally ill person who has been taken into custody shall be confined, either before or after the commitment hearing, without an attendant in direct charge of him; and, if not confined in a community hospital, the sheriff or community mental health program director 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 and approved by the division. [Amended by 1973 c 838 §23, 1975 c 690 §9, 1977 c 764 §1]

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 §1, 1973 c 838 §24; 1975 c 690 §10]

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 §1, 1969 c.148 §1; 1973 c 838 §21]

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 §25]

(Emergency and Voluntary Admissions)

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 or other facility which maintains adequate staff and facilities for care and treatment of the mentally ill and is approved by the division.

(4) No physician, hospital or judge shall be held criminally or civilly liable for actions pursuant to this section, provided he acts in good faith, on probable cause and without malice. [1969 c 371 §1, 1975 c 690 §11, 1977 c 764 §2]

Note: 426 175 was enacted into law by the Legislative Assembly but was not added to or made a part of

426 005 to 426.350 by legislative action See the Preface to Oregon Revised Statutes for further explanation

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 custody, provided such affidavit sets forth the circumstances constituting the emergency and is accompanied by written application for admission to the hospital, executed in duplicate, and by a certificate to the effect that the person is so mentally ill as to be in need of immediate hospitalization, together with 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 §2, 1975 c.690 §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 §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 §2, 1975 c 690 §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 or other facility maintaining adequate staff and facilities as required under subsection (4) of this section. If more than one hour will be required to trans-

port the person to the hospital or other facility 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 or other facility shall cause the person to be examined immediately by a 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 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 or other facility maintaining adequate staff and physical 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 judicial 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.

(5) A person admitted 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 electroshock 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 or other facility, 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 §1, 1973 c.838 §32, 1975 c 690 §14; 1977 c 764 §3, 1979 c 408 §4]

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 §14, 1975 c.690 §15]

426.220 Voluntary admission; release procedure. (1) Pursuant to rules and regulations promulgated by the Mental Health Division, the superintendent of any state hospital for the treatment and care of the mentally ill may admit and hospitalize therein as a patient, any person who may be suffering from nervous disorder or mental illness, and who voluntarily has made written application for such admission. No person under the age of 18 years shall be admitted as a patient to any such state hospital unless an application therefor in his behalf has been executed by his parent, adult next of kin or legal guardian. Except when a period of longer hospitalization has been imposed as a condition of admission, pursuant to rules and regulations of the division, no person voluntarily admitted to any state hospital shall be detained therein more than 72 hours after he, if at least 18 years of

age, has given notice in writing of his desire to be discharged therefrom, or, if the patient is under the age of 18 years, after notice in writing has been given by his parent, adult next of kin or legal guardian that such parent, adult next of kin or legal guardian desires that such person be discharged therefrom.

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

(3) Upon admission or discharge of a minor to or from a state hospital the superintendent shall immediately notify the parent or guardian. [Amended by 1953 c 127 §2, 1963 c 325 §3, 1967 c 371 §1, 1969 c.273 §1]

426.222 [1953 c 597 §1, 1961 c 385 §1; 1969 c 391 §3, 1969 c.638 §4; repealed by 1975 c 690 §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 §25]

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

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

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

(Costs)

426.240 [Amended by 1959 c 652 §22; 1975 c 690 §16; repealed by 1977 c 764 §4 (426 241 enacted in lieu of 426 240)]

426.241 Payment of custody and treatment costs. (1) The cost of emergency care, custody and treatment provided by a hospital or other facility approved by the division, except a state mental hospital, for an allegedly mentally ill person admitted or detained under ORS 426.070, 426.140, 426.175 or 426.215, or for a mentally ill person admitted or detained under ORS 426.150, 426.223 or 426.290, shall be paid by the county of which the person is a resident from state funds provided it for this purpose. The county is responsible for the cost when state funds available therefor are exhausted. The hospital or other facility shall charge to and collect from the person, third party payors or other persons or agencies otherwise legally responsible therefor, the costs of the emergency care, custody and treatment, as it would for any other patient, and any funds received shall be applied as an offset to the cost of the services provided under this section.

(2) If any person is admitted to or detained in a state mental hospital under ORS 426.070, 426.140, 426.175, 426.180 to 426.210 or 426.215 for emergency care, custody or treatment, the Mental Health Division shall charge to and collect from the person, 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.

(3) If any person is adjudged mentally ill under the provisions of ORS 426.130, and the person receives care and treatment in a state mental hospital, the person, third party payors or other persons or agencies otherwise legally responsible therefor, shall be required to pay for the costs of the hospitalization at the state hospital, as provided by ORS 179.610 to 179.770, if financially able to do so.

(4) For purposes of this section and ORS 426.310 "resident" means resident of the county in which the person maintains a current mailing address or, if the person does not maintain a current mailing address within the state, the county in which the person is found, or the county in which a court committed mentally ill person has been conditionally released. [1977 c 764 §5 (enacted in lieu of 426.240); 1979 c 392 §1, 1981 c.750 §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 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 §2, 1975 c.690 §17; 1977 c 764 §6]

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 §19]

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

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

(Trial Visits)

426.280 Trial visits; exemption from liability for visits. 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 Assistant Director for Mental Health 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 Assistant Director for Mental Health 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 §1, 1961 c 706 §26, 1969 c 597 §91, 1973 c 838 §26]

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 §1; 1961 c.228 §2, 1969 c.391 §6, 1973 c 838 §27, 1975 c 690 §18]

(Competency and Discharge)

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

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

(3) When a person committed to a state hospital has been declared incompetent pursuant to subsection (2) of this section and is

discharged from the hospital, the superintendent of the hospital shall advise the court which entered the order of incompetency whether or not, in the opinion of the chief medical officer of the hospital on the basis of medical evidence, the person is competent. The superintendent shall make a reasonable effort to notify the discharged person of the advice to the court. If the court is advised that the person is competent, the court shall enter an order to that effect. If the court is advised that the person is not competent, upon petition of the person, his guardian, relative or creditor or other interested person, the court shall hold a hearing to determine whether or not the discharged person is competent. The court shall serve a copy of any order entered pursuant to this subsection on the person and forward a copy of such order to the committing court. [1965 c 628 §2; 1967 c.460 §1; 1969 c.391 §7]

426.297 Payment of expenses for proceeding under ORS 426.295. (1) The expenses of a proceeding under ORS 426.295 (2) 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 ORS 426.295 (3) 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 426.380 to 426.390 shall be allowed a reasonable professional fee by order of the court. Witnesses summoned and giving testimony shall receive the same fees as are paid in civil cases. [1967 c 460 §2]

426.300 Discharge of patients; application for public assistance. (1) The 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 §4; 1967 c.549 §8, 1973 c 838 §22]

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 subpena 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 §15; 1975 c.690 §19]

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 §16, 1975 c 690 §20]

426.305 [1955 c.522 §4, 1963 c.325 §5, repealed by 1965 c 628 §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 by clear and convincing evidence 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 §17, 1975 c 690 §21; 1979 c 408 §5]

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 §20]

(Miscellaneous)

426.310 Reimbursement of county in case of nonresident patients. (1) 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 rea-

sonable and actual expenses incurred and paid by the county by reason of the care, custody, treatment, investigation examination and commitment hearing 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.

(2) If an allegedly mentally ill person is a resident of some other county in this state, a county attempting a commitment shall be reimbursed by the county of which the person is a resident, as defined in ORS 426.241, for all actual, reasonable expenses incurred and paid by the county attempting commitment by reason of the care, custody, treatment, investigation examination and commitment hearing. [Amended by 1975 c.690 §22; 1977 c 764 §7, 1979 c.392 §2]

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 §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 §14]

426.340 [Repealed by 1975 c.690 §28]

426.350 [Amended by 1961 c 152 §1; repealed by 1971 c 64 §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 Assistant Director for Mental Health, 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 assistant director shall, in compliance with ORS 183.310 to 183.550, promulgate rules 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 chapter 767 in providing the services. [1961 c 513 §§1, 2, 3, 1969 c.597 §92, 1971 c 655 §246; 1977 c 253 §40]

(Rights of Patients)

426.375 [1967 c.460 §5, repealed by 1973 c 838 §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 §6]

426.385 Patient rights; denial; psychosurgery prohibited; 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 the clothing of the person;

(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) A written treatment plan, kept current with the progress of the person;

(h) Be represented by counsel whenever the substantial rights of the person 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 treatment;

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

(L) Such other rights as may be specified by rule; 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 the person 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 electro-shock therapy, unless they have given their express and informed consent. This right may be denied to such persons for good cause only by the director of the facility in which the person is confined, 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. No patient shall be subjected to psychosurgery, as defined in ORS 677.190 (23)(b).

(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 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 signature of the chief medical officer of the facility or designee. [1967 c 460 §4, 1973 c 838 §28, 1981 c 372 §3]

426.390 Construction. Nothing in ORS 426.295, 426.297, 426.380 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 §7, 1973 c 823 §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 §31]

DRUG AND ALCOHOL ADDICTION

426.410 [1969 c.638 §1; repealed by 1975 c 690 §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 §6]

426.460 When person must be taken to treatment facility; admission or referral; when jail custody may be used; confidentiality of records. (1) Any person who is intoxicated or under the influence of controlled substances in a public place may be taken or sent home or to a treatment facility by the police. However, if the person is incapacitated, the health of the person appears to be in immediate danger, or the police have reasonable cause to believe the person is dangerous to self or to any other person, the person 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 the person 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 the person is incapacitated or the health of the person appears to be in immediate danger, or if the director has reasonable cause to believe the person is dangerous to self or to any other person, the person must be admitted. The person shall be discharged within 48 hours unless the person has applied for voluntary admission to the treatment facility.

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

(4) An intoxicated person or person under the influence of controlled substances, when taken into custody by the police for a criminal offense, shall immediately be taken to the nearest appropriate treatment facility when the condition of the person requires emergency medical treatment.

(5) 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 admission to a treatment facility shall be honored unless the patient is incapacitated or disclosure of admission is required by ORS 426.450 .

(6) As used in this section, "treatment facility" has the meaning given that term by section 2, chapter 795, Oregon Laws 1973. [1971 c 622 §7, 1973 c 795 §3, 1979 c 744 §22, 1981 c 809 §1]

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 §8]

CHRONICALLY MENTALLY ILL

426.490 Policy. It is declared to be the policy and intent of the Legislative Assembly that the State of Oregon shall assist in improving the quality of life of chronically mentally ill persons within this state by insuring the availability of an appropriate range of residential opportunities and related support services. [1979 c 784 §1]

Note: 426 490 to 426.500 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 426 or any series therein by legislative action See the preface to Oregon Revised Statutes for further explanation

426.495 Definitions for ORS 426.490 to 426.500. As used in ORS 426.490 to 426.500, unless the context requires otherwise:

(1) "Case manager" means a person who works on a continuing basis with the chronically mentally ill person and is responsible for assuring the continuity of the various services called for in the discharge plan of the chronically mentally ill person including services for basic personal maintenance, mental and personal treatment, and appropriate education and employment.

(2) "Chronically mentally ill person" means an individual with a mental or emotional disturbance who:

(a) Has been hospitalized twice or more in a 24-month period; and

(b) Needs residential and support services of an indefinite duration to maintain a stable adjustment in society.

(3) "Discharge plan" means a written plan prepared jointly with the chronically mentally ill person, mental health staff and case manager prior to discharge, prescribing for the basic and special needs of the person upon release from the hospital. [1979 c 784 §2]

Note: See note under 426 490

426.500 Powers and duties of Mental Health Division. For the purpose of carrying out the policy and intent of ORS 426.490 to 426.500, the Mental Health Division of the Department of Human Resources shall:

(1) Adopt rules for the administration of ORS 426.490 to 426.500;

(2) Prepare a written discharge plan for each chronically mentally ill person who is a patient at a state mental institution or who is committed to the division pursuant to ORS 426.005 to 426.380;

(3) Insure that case managers are provided for each chronically mentally ill person described in subsection (2) of this section;

(4) Disburse from any available funds:

(a) Funds for one LINC model in the area served by F. H. Dammasch State Hospital and one LINC model in the area served by the Oregon State Hospital licensed under ORS 443.415;

(b) Discretionary funds for services necessary to implement a discharge plan, including but not limited to transportation, medication, recreation and socialization; and

(c) Funds to provide day treatment services, community psychiatric inpatient services, and work activity services for chronically mentally ill persons where needed. [1979 c 784 §3]

Note: See note under 426 490.

SEXUALLY DANGEROUS

426.510 "Sexually dangerous person" defined. As used in ORS 426.510 to 426.680, unless the context otherwise requires, "sexually dangerous person" means a person who because of repeated or compulsive acts of misconduct in sexual matters, or because of a mental disease or defect, is deemed likely to continue to perform such acts and be a danger to other persons. [1963 c 467 §1, 1977 c 377 §1]

Note: Section 5, chapter 377, Oregon Laws 1977, provides:

Sec. 5. The commitment of a person pursuant to ORS 426 510 to 426 680 (1975 Replacement Part) prior to the effective date of this 1977 Act [July 14, 1977] is not invalidated or otherwise affected by the repeal of ORS 426 510 to 426 640 by section 6 of this 1977 Act ORS 426 510 to 426 640 (1975 Replacement Part) shall be considered in full force and effect in so far as such a person is concerned until that person is discharged from the facility described in ORS 426 670 (1975 Replacement Part)

426.520 [1963 c 467 §2, repealed by 1977 c 377 §6]

426.530 [1963 c 467 §3, 1971 c 743 §367, 1973 c 836 §349; repealed by 1977 c 377 §6]

426.540 [1963 c 467 §4; repealed by 1977 c 377 §6]

426.550 [1963 c 467 §5, repealed by 1977 c 377 §6]

426.560 [1963 c 467 §6, repealed by 1977 c 377 §6]

426.570 [1963 c 467 §7, 1973 c 836 §350; repealed by 1977 c 377 §6]

426.580 [1963 c 467 §§8, 9, 1973 c 443 §1, repealed by 1977 c 377 §6]

426.590 [1963 c 467 §10; repealed by 1977 c 377 §6]

426.610 [1963 c 467 §11, 1973 c 443 §2, repealed by 1977 c 377 §6]

426.620 [1963 c 467 §12, repealed by 1977 c 377 §6]

426.630 [1963 c.467 §13, repealed by 1977 c 377 §6]

426.640 [1963 c 467 §14; 1973 c 443 §3, 1975 c 380 §8, repealed by 1977 c.377 §6]

426.650 Voluntary admission 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 §15, 1969 c 391 §8, 1973 c 443 §4, 1973 c 827 §43, 1974 s s c 36 §11]

426.660 [1963 c 467 §16, repealed by 1973 c 443 §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 Corrections Division institution, as part of an existing program within a Mental Health Division institution, or in specified and approved sites in the community to receive, treat, study and retain in custody, as required, such sexually dangerous persons as are committed under ORS 426.510 to 426.670. [1963 c 467 §17, 1965 c 481 §1, 1979 c 606 §1]

426.675 Determination of sexually dangerous persons; custody pending sentencing; hearing; sentencing. (1) When a defendant has been convicted of a sexual offense under ORS 163.305 to 163.465 or 163.525 and there is probable cause to believe the defendant is a sexually dangerous person, the court prior to imposing sentence may continue the time for sentencing and commit the defendant to a facility designated under ORS 426.670 for a period not to exceed 30 days for evaluation and report.

(2) If the facility reports to the court that the defendant is a sexually dangerous person and that treatment available may reduce the risk of future sexual offenses, the court shall hold a hearing to determine by clear and convincing evidence that the defendant is a sexually dangerous person. The state and the defendant shall have the right to call and cross-examine witnesses at such hearing. The defendant may waive the hearing required by this subsection.

(3) If the court finds that the defendant is a sexually dangerous person and that treatment is available which will reduce the risk of future sexual offenses, it may, in its discretion at the time of sentencing:

(a) Place the defendant on probation on the condition that the person participate in and successfully complete a treatment program for sexually dangerous persons pursuant to ORS 426.670;

(b) Impose a sentence of imprisonment with the order that the defendant be assigned by the Assistant Director for Corrections to participate in a treatment program for sexually dangerous persons pursuant to ORS 426.670. The Corrections Division and Mental Health Division shall jointly adopt administrative rules to coordinate assignment and treatment of prisoners under this subsection; or

(c) Impose any other sentence authorized by law. [1977 c.377 §3; 1979 c 606 §2]

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 defendant committed as a condition of probation where such trial visit is not inconsistent with the terms and conditions of probation. Trial visit here shall correspond to trial visit as described in ORS 426.280 and 426.290, except that the length of a trial visit may be for the duration of the period of probation, subject to the consent of the sentencing court. [1973 c.443 §7, 1977 c.377 §4]

426.700 [1973 c 616 §1; repealed by 1981 c 372 §2]

426.705 [1973 c.616 §2, repealed by 1981 c 372 §2]

426.710 [1973 c.616 §6; repealed by 1981 c 372 §2]

426.715 [1973 c 616 §7, repealed by 1981 c 372 §2]

426.720 [1973 c 616 §8, repealed by 1981 c 372 §2]

426.725 [1973 c 616 §9, repealed by 1981 c 372 §2]

426.730 [1973 c 616 §10; repealed by 1981 c 372 §2]

426.735 [1973 c 616 §11, repealed by 1981 c 372 §2]

426.740 [1973 c 616 §12, repealed by 1981 c 372 §2]

426.745 [1973 c.616 §§13, 14, 15, repealed by 1981 c.372 §2]

426.750 [1973 c.616 §3; repealed by 1981 c 372 §2]

426.755 [1973 c 616 §4; repealed by 1981 c 372 §2]

426.760 [1977 c 148 §5, repealed by 1981 c 372 §2]