

# TITLE 35

## MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES; ALCOHOL AND DRUG ABUSE

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### Chapter 426

1993 EDITION

#### Mentally Ill and Sexually Dangerous

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**MENTALLY ILL**

**(Definitions)**

**426.005 Definitions for ORS 426.005 to 426.390.** (1) As used in ORS 426.005 to 426.390, unless the context requires otherwise:

(a) "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.

(b) "Division" means the Mental Health and Developmental Disability Services Division.

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

(d) "Mentally ill person" means a person who, because of a mental disorder, is one or more of the following:

- (A) Dangerous to self or others.
- (B) Unable to provide for basic personal needs and is not receiving such care as is necessary for health or safety.
- (C) A person who:

(i) Is chronically mentally ill, as defined in ORS 426.495;

(ii) Within the previous three years, has twice been placed in a hospital or approved inpatient facility by the division under ORS 426.060;

(iii) Is exhibiting symptoms or behavior substantially similar to those that preceded and led to one or more of the hospitalizations or inpatient placements referred to in subparagraph (ii) of this subparagraph; and

(iv) Unless treated, will continue, to a reasonable medical probability, to physically or mentally deteriorate so that the person will become a person described under either or both subparagraph (A) or (B) of this paragraph.

(e) "Nonhospital facility" means any facility, other than a hospital, that is approved by the Mental Health and Developmental Disability Services Division to provide adequate security, psychiatric, nursing and other services to persons under ORS 426.232 or 426.233.

(f) "Prehearing period of detention" means a period of time calculated from the initiation of custody during which a person

may be detained under ORS 426.228, 426.231, 426.232 or 426.233.

(2) Whenever a community mental health and developmental disabilities program director, director of the facility, superintendent of a state hospital or administrator of a facility is referred to, the reference includes any designee such person has designated to act on the person's behalf in the exercise of duties. [1961 c.706 §25; 1973 c.838 §1; 1987 c.903 §5; 1989 c.993 §3; 1993 c.484 §11]

**Note:** The amendments to 426.005 by section 11, chapter 484, Oregon Laws 1993, take effect July 1, 1994. See section 28, chapter 484, Oregon Laws 1993. The text that is effective until July 1, 1994, is set forth for the user's convenience.

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

(1) "Division" means the Mental Health and Developmental Disability Services Division.

(2) "Mentally ill person" means a person who, because of a mental disorder, is one or more of the following:

- (a) Dangerous to self or others.
- (b) Unable to provide for basic personal needs and is not receiving such care as is necessary for health or safety.
- (c) A person who:

(A) Is chronically mentally ill, as defined in ORS 426.495;

(B) Within the previous three years, has twice been placed in a hospital or approved inpatient facility by the division under ORS 426.060;

(C) Is exhibiting symptoms or behavior substantially similar to those that preceded and led to one or more of the hospitalizations or inpatient placements referred to in subparagraph (B) of this paragraph; and

(D) Unless treated, will continue, to a reasonable medical probability, to physically or mentally deteriorate so that the person will become a person described under either or both paragraph (a) or (b) of this subsection.

(3) "Facility" means a state mental hospital, community hospital, residential facility, detoxification center, day treatment facility, or such other facility as the Mental Health and Developmental Disability Services 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.

(5) Whenever a community mental health and developmental disabilities program director, director of the facility, superintendent of a state hospital or administrator of a facility is referred to, the reference includes any designee such person has designated to act on the person's behalf in the exercise of duties.

**(Hospitals)**

**426.010 State hospitals for mentally ill persons.** Except as otherwise ordered by the Mental Health and Developmental Disability Services 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 Eastern Oregon Psychiatric 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 and Developmental Disability Services Division or who have previously been committed to such institutions. [Amended by 1955 c.651 §3; 1965 c.339 §23; 1965 c.595 §2; 1983 c.505 §1]

**426.020 Superintendents; chief medical officer.** The superintendents of the hospitals mentioned in ORS 426.010 shall be persons the Mental Health and Developmental Disability Services Division considers qualified to administer the hospital. If the superintendent of any hospital is a physician licensed by the Board of Medical Examiners for the State of Oregon, the superintendent shall serve as chief medical officer. If the superintendent is not a physician, the assistant director or the designee of the assistant director 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; 1987 c.158 §76]

**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 and Developmental Disability Services Division; authority of division to direct placement; transfer authority; delegation.** (1) Commitments to the Mental Health and Developmental Disability Services Division shall be made only by the judge of a circuit court in a county of this state.

(2) The following is a nonexclusive list of powers the Mental Health and Developmental Disability Services Division may exercise concerning the placement of persons committed or persons receiving emergency care and treatment under ORS 426.070, 426.228 to 426.235 or 426.237:

(a) In its discretion and for reasons which are satisfactory to the division, the division may direct any court committed person to the facility best able to treat the

person. The authority of the division on such matters shall be final.

(b) 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. When transferring a person under this paragraph, the division shall make the transfer:

(A) If the transfer is from a facility in one class to a facility of the same class, as provided by rule of the division;

(B) If the transfer is from a facility in one class to a facility in a less restrictive class, by following the procedures for trial visits under ORS 426.273; and

(C) If the transfer is from a facility in one class to a facility in a more restrictive class, by following the procedures under ORS 426.275.

(c) At any time, for good cause and in the best interest of the mentally ill person, the division may transfer a person receiving emergency care and treatment under ORS 426.070 or 426.228 to 426.235, or intensive treatment under ORS 426.237, between hospitals and nonhospital facilities approved by the division to provide emergency care or treatment as defined by rule of the division.

(d) Pursuant to its rules, the division may delegate to a community mental health and developmental disabilities 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; 1987 c.903 §6; 1993 c.484 §12]

**Note:** The amendments to 426.060 by section 12, chapter 484, Oregon Laws 1993, take effect July 1, 1994. See section 28, chapter 484, Oregon Laws 1993. The text that is effective until July 1, 1994, is set forth for the user's convenience.

**426.060.** (1) Commitments to the Mental Health and Developmental Disability Services Division shall be made only by the judge of a circuit court in a county of this state.

(2) The following is a nonexclusive list of powers the Mental Health and Developmental Disability Services Division may exercise concerning the placement of persons committed:

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

(b) 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.

(c) Pursuant to its rules, the division may delegate to a community mental health and developmental disabilities 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.

**(Commitment Procedure)**

**426.070 Initiation; notification required; recommendation to court; citation.** (1) Any of the following may initiate commitment procedures under this section by giving the notice described under subsection (2) of this section:

- (a) Two persons;
- (b) The county health officer; or
- (c) Any magistrate.

(2) For purposes of subsection (1) of this section, the notice must comply with the following:

- (a) It must be in writing under oath;
- (b) It must be given to the community mental health and developmental disabilities program director or a designee of the director in the county where the allegedly mentally ill person resides; and
- (c) It must state that a person within the county other than the person giving the notice is a mentally ill person and is in need of treatment, care or custody.

(3) Upon receipt of a notice under subsections (1) and (2) of this section, the community mental health and developmental disabilities program director, or designee of the director, shall:

(a) Immediately notify the judge of the court having jurisdiction for that county under ORS 426.060 of the notification described in subsections (1) and (2) of this section.

(b) Immediately notify the Mental Health and Developmental Disability Services Division if commitment is proposed because the person appears to be a mentally ill person, as defined in ORS 426.005 (1)(d)(C). When such notice is received, the division may verify, to the extent known by the division, whether or not the person meets the criteria described in ORS 426.005 (1)(d)(C)(i) and (ii) and so inform the director or designee of the director.

(c) Initiate an investigation under ORS 426.074 to determine whether there is probable cause to believe that the person is in fact a mentally ill person.

(4) Upon completion, a recommendation based upon the investigation report under ORS 426.074 shall be promptly submitted to the court.

(5) When the court receives notice under subsection (3) of this section:

(a) 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 be-

fore it at a time and place as it may direct, for a hearing under ORS 426.095 to determine whether the person is mentally ill. The person shall be given the opportunity to appear voluntarily at the hearing unless the person fails to appear or unless the person is detained pursuant to paragraph (b) of this subsection.

(b) The judge may cause the allegedly mentally ill person to be taken into custody pending the investigation or hearing by issuing a warrant of detention under this subsection. A judge may only issue a warrant under this subsection if the court finds that there is probable cause to believe that failure to take the person into custody would pose serious harm or danger to the person or to others.

(A) To cause the custody of a person under this paragraph, the judge must issue a warrant of detention to the community mental health and developmental disabilities program director or designee, the sheriff of the county or designee, directing that person to take the allegedly mentally ill person into custody and produce the person at the time and place stated in the warrant.

(B) At the time the person is taken into custody, the person shall be informed by the community mental health and developmental disabilities program director, the sheriff or a designee of the following:

(i) The person's rights with regard to representation by or appointment of counsel as described in ORS 426.100; and

(ii) The warning under ORS 426.123.

(C) The court may make any orders for the care and custody of the person prior to the hearing as it considers necessary. [Amended by 1957 c.329 §1; 1967 c.534 §20; 1973 c.838 §3; 1975 c.690 §2; 1979 c.408 §1; 1983 c.740 §149; 1987 c.903 §7; 1989 c.993 §4; 1993 c.484 §26]

**Note:** The amendments to 426.070 by section 26, chapter 484, Oregon Laws 1993, take effect July 1, 1994. See section 28, chapter 484, Oregon Laws 1993. The text that is effective until July 1, 1994, is set forth for the user's convenience.

**426.070.** (1) Any of the following may initiate commitment procedures under this section by giving the notice described under subsection (2) of this section:

- (a) Two persons;
- (b) The county health officer; or
- (c) Any magistrate.

(2) For purposes of subsection (1) of this section, the notice must comply with the following:

- (a) It must be in writing under oath;
- (b) It must be given to the community mental health and developmental disabilities program director or a designee of the director in the county where the allegedly mentally ill person resides; and
- (c) It must state that a person within the county other than the person giving the notice is a mentally ill person and is in need of treatment, care or custody.

(3) Upon receipt of a notice under subsections (1) and (2) of this section, the community mental health and developmental disabilities program director, or designee of the director, shall:

(a) Immediately notify the judge of the court having jurisdiction for that county under ORS 426.060 of the notification described in subsections (1) and (2) of this section.

(b) Immediately notify the Mental Health and Developmental Disability Services Division if commitment is proposed because the person appears to be a mentally ill person, as defined in ORS 426.005 (2)(c). When such notice is received, the division may verify, to the extent known by the division, whether or not the person meets the criteria described in ORS 426.005 (2)(c)(A) and (B) and so inform the director or designee of the director.

(c) Initiate an investigation under ORS 426.074 to determine whether there is probable cause to believe that the person is in fact a mentally ill person.

(4) Upon completion, a recommendation based upon the investigation report under ORS 426.074 shall be promptly submitted to the court.

(5) When the court receives notice under subsection (3) of this section:

(a) 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 under ORS 426.095 to determine whether the person is mentally ill. The person shall be given the opportunity to appear voluntarily at the hearing unless the person fails to appear or unless the person is detained pursuant to paragraph (b) of this subsection.

(b) The judge may cause the allegedly mentally ill person to be taken into custody pending the investigation or hearing by issuing a warrant of detention under this subsection. A judge may only issue a warrant under this subsection if the court finds that there is probable cause to believe that failure to take the person into custody would pose serious harm or danger to the person or to others.

(A) To cause the custody of a person under this paragraph, the judge must issue a warrant of detention to the community mental health and developmental disabilities program director or designee, the sheriff of the county or designee, directing that person to take the allegedly mentally ill person into custody and produce the person at the time and place stated in the warrant.

(B) At the time the person is taken into custody, the person shall be informed by the community mental health and developmental disabilities program director, the sheriff or a designee of the following:

(i) The person's rights with regard to representation by or appointment of counsel as described in ORS 426.100; and

(ii) The warning under ORS 426.123.

(C) The court may make any orders for the care and custody of the person prior to the hearing as it considers necessary.

**426.072 Custody; care; responsibilities of treating physician.** (1) A hospital or nonhospital facility and a treating physician must comply with the following when an allegedly mentally ill person is placed in custody at the hospital or nonhospital facility:

(a) By a warrant of detention under ORS 426.070;

(b) By a peace officer under ORS 426.228;

or

(c) By a physician under ORS 426.232.

(2) In circumstances described under subsection (1) of this section, the hospital or nonhospital facility and treating physician must comply with the following:

(a) The person shall receive the care, custody and treatment required for mental and physical health and safety;

(b) The treating physician shall report any care, custody and treatment to the court as required in ORS 426.075;

(c) 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 treatment and shall receive usual and customary treatment in accordance with medical standards in the community;

(d) 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; and

(e) The treating physician shall give the person the warning under ORS 426.123 at times the treating physician determines the person will reasonably understand the notice. This paragraph only requires the notice to be given as often as the physician determines is necessary to assure that the person is given an opportunity to be aware of the notice.

(3) The Mental Health and Developmental Disability Services Division shall adopt rules necessary to carry out this section, including rules regarding the content of the medical record compiled during the current period of custody. [1987 c.903 §9; 1993 c.484 §13]

**Note:** The amendments to 426.072 by section 13, chapter 484, Oregon Laws 1993, take effect July 1, 1994. See section 28, chapter 484, Oregon Laws 1993. The text that is effective until July 1, 1994, is set forth for the user's convenience.

**426.072.** (1) A facility and a treating physician must comply with the following when an allegedly mentally ill person is placed in custody at the facility:

(a) By a warrant of detention under ORS 426.070;

or

(b) By a peace officer under ORS 426.215.

(2) In circumstances described under subsection (1) of this section, the facility and treating physician must comply with the following:

(a) The person shall receive the care, custody and treatment required for mental and physical health and safety;

(b) The treating physician shall report any care, custody and treatment to the court as required in ORS 426.075;

(c) 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 treatment and shall receive usual and customary treatment in accordance with medical standards in the community;

(d) 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; and

(e) The treating physician shall give the person the warning under ORS 426.123 at times the treating physician determines the person will reasonably understand the notice. This paragraph only requires the notice to be given as often as the physician determines is necessary to assure that the person is given an opportunity to be aware of the notice.

(3) The Mental Health and Developmental Disabilities Services Division shall adopt rules necessary to carry out this section, including rules regarding the content of the medical record compiled during the current period of custody.

**426.074 Investigation; procedure; report.** The following is applicable to an investigation initiated by a community mental health and developmental disabilities program director, or a designee of the director, as part of commitment procedures under ORS 426.070 and 426.228 to 426.235:

(1) If the allegedly mentally ill person is held in custody before the hearing the investigation shall be completed at least 24 hours before the hearing under ORS 426.095, otherwise the investigation shall comply with the following time schedule:

(a) If the allegedly mentally ill person can be located, the investigator shall contact the person within three judicial days from the date the community mental health and developmental disabilities program director or a designee receives a notice under ORS 426.070 alleging that the person is mentally ill.

(b) Within 15 days from the date the community mental health and developmental disabilities program director or a designee receives a notice under ORS 426.070 alleging that a person is mentally ill, one of the following shall occur:

(A) The investigation shall be completed and submitted to the court.

(B) An application for extension shall be made to the court under paragraph (c) of this subsection.

(c) The community mental health and developmental disabilities program director, a designee or the investigator may file for an extension of the time under paragraph (b) of this subsection only if one of the following occurs:

(A) A treatment option less restrictive than involuntary in-patient commitment is actively being pursued.

(B) The allegedly mentally ill person cannot be located.

(d) A court may grant an extension under paragraph (c) of this subsection for a time and upon the terms and conditions the court considers appropriate.

(2) This subsection establishes a nonexclusive list of provisions applicable to the content of the investigation, as follows:

(a) The investigation conducted should, where appropriate, include an interview or examination of the allegedly mentally ill person in the home of the person or other place familiar to the person.

(b) Whether or not the allegedly mentally ill person consents, the investigation should include interviews with any persons that the investigator has probable cause to believe have pertinent information regarding the investigation. If the allegedly mentally ill person objects to the contact with any person, the objection shall be noted in the investigator's report.

(c) The investigator shall be allowed access to physicians and to medical records compiled during the current involuntary pre-hearing period of detention to determine probable cause and to develop alternatives to commitment. If commitment is proposed because the person appears to be a mentally ill person as defined in ORS 426.005 (1)(d)(C), the investigator shall be allowed access to medical records necessary to verify the existence of criteria described in ORS 426.005 (1)(d)(C). The investigator shall include pertinent parts of the medical record in the investigation report. Records and communications described in this paragraph and communications related thereto are not privileged under ORS 40.230 or 40.235.

(3) 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. [1987 c.903 §10; 1989 c.993 §5; 1993 c.484 §14]

**Note:** The amendments to 426.074 by section 14, chapter 484, Oregon Laws 1993, take effect July 1, 1994. See section 28, chapter 484, Oregon Laws 1993. The text that is effective until July 1, 1994, is set forth for the user's convenience.

**426.074.** The following is applicable to an investigation initiated by a community mental health and developmental disabilities program director, or a designee of the director, as part of commitment procedures under ORS 426.070, 426.175 and 426.215:

(1) If the allegedly mentally ill person is held in custody before the hearing the investigation shall be completed at least 24 hours before the hearing under ORS 426.095, otherwise the investigation shall comply with the following time schedule:

(a) If the allegedly mentally ill person can be located, the investigator shall contact the person within three judicial days from the date the community mental health and developmental disabilities program director or a designee receives a notice under ORS 426.070 alleging that the person is mentally ill.

(b) Within 15 days from the date the community mental health and developmental disabilities program director or a designee receives a notice under ORS 426.070 alleging that a person is mentally ill, one of the following shall occur:

(A) The investigation shall be completed and submitted to the court.

(B) An application for extension shall be made to the court under paragraph (c) of this subsection.

(c) The community mental health and developmental disabilities program director, a designee or the investigator may file for an extension of the time under paragraph (b) of this subsection only if one of the following occurs:

(A) A treatment option less restrictive than involuntary in-patient commitment is actively being pursued.

(B) The allegedly mentally ill person cannot be located.

(d) A court may grant an extension under paragraph (c) of this subsection for a time and upon the terms and conditions the court considers appropriate.

(2) This subsection establishes a nonexclusive list of provisions applicable to the content of the investigation, as follows:

(a) The investigation conducted should, where appropriate, include an interview or examination of the allegedly mentally ill person in the home of the person or other place familiar to the person.

(b) Whether or not the allegedly mentally ill person consents, the investigation should include interviews with any persons that the investigator has probable cause to believe have pertinent information regarding the investigation. If the allegedly mentally ill person objects to the contact with any person, the objection shall be noted in the investigator's report.

(c) The investigator shall be allowed access to physicians and to medical records compiled during the current involuntary prehearing period of detention to determine probable cause and to develop alternatives to commitment. If commitment is proposed because the person appears to be a mentally ill person as defined in ORS 426.005 (2)(c), the investigator shall be allowed access to medical records necessary to verify the existence of criteria described in ORS 426.005 (2)(c). The investigator shall include pertinent parts of the medical record in the investigation report. Records and communications described in this paragraph and communications related thereto are not privileged under ORS 40.230 or 40.235.

(3) 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.

**426.075 Notice and records of treatment prior to hearing; procedures.** This section establishes procedures that are required to be followed before the hearing if a

court, under ORS 426.070, orders a hearing under ORS 426.095. The following apply as described:

(1) The court shall be fully advised of all drugs and other treatment known to have been administered to the allegedly mentally ill person that may substantially affect the ability of the person to prepare for or function effectively at the hearing. The following shall advise the court as required by this subsection:

(a) When not otherwise provided by paragraph (b) of this subsection, the community mental health and developmental disabilities program director or designee.

(b) When the person has been detained by a warrant of detention under ORS 426.070, 426.180, 426.228, 426.232 or 426.233, the treating physician.

(2) The court shall appoint examiners under ORS 426.110 sufficiently long before the hearing so that they may begin their preparation for the hearing. The records established by the Mental Health and Developmental Disability Services Division by rule and the investigation report shall be made available to the examiners at least 24 hours before the hearing in order that the examiners may review the medical record and have an opportunity to inquire of the medical personnel concerning the treatment of the allegedly mentally ill person relating to the detention period prior to the hearing.

(3) The medical record described in subsection (2) of this section shall be made available to counsel for the allegedly mentally ill person at least 24 hours prior to the hearing.

(4) When requested by a party to the action, the party's attorney shall subpoena physicians who are or have been treating the allegedly mentally ill person. Any treating physician subpoenaed under this subsection shall be subpoenaed as an expert witness. [1973 c.838 §8; 1975 c.690 §3; 1979 c.408 §2; 1987 c.903 §12; 1989 c.189 §1; 1993 c.484 §15]

**Note:** The amendments to 426.075 by section 15, chapter 484, Oregon Laws 1993, take effect July 1, 1994. See section 28, chapter 484, Oregon Laws 1993. The text that is effective until July 1, 1994, is set forth for the user's convenience.

**426.075.** This section establishes procedures that are required to be followed before the hearing if a court, under ORS 426.070, orders a hearing under ORS 426.095. The following apply as described:

(1) The court shall be fully advised of all drugs and other treatment known to have been administered to the allegedly mentally ill person that may substantially affect the ability of the person to prepare for or function effectively at the hearing. The following shall advise the court as required by this subsection:

(a) When not otherwise provided by paragraph (b) of this subsection, the community mental health and developmental disabilities program director or designee.

(b) When the person has been detained by a warrant of detention under ORS 426.070 or under ORS 426.175, 426.180 or 426.215, the treating physician.

(2) The court shall appoint examiners under ORS 426.110 sufficiently long before the hearing so that they may begin their preparation for the hearing. The records established by the Mental Health and Developmental Disability Services Division by rule and the investigation report shall be made available to the examiners at least 24 hours before the hearing in order that the examiners may review the medical record and have an opportunity to inquire of the medical personnel concerning the treatment of the allegedly mentally ill person relating to the detention period prior to the hearing.

(3) The medical record described in subsection (2) of this section shall be made available to counsel for the allegedly mentally ill person at least 24 hours prior to the hearing.

(4) When requested by a party to the action, the party's attorney shall subpoena physicians who are or have been treating the allegedly mentally ill person. Any treating physician subpoenaed under this subsection shall be subpoenaed as an expert witness.

**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 the person and the specific reasons the person is believed to be mentally ill. The citation shall further contain a notice of the time and place of the commitment hearing, the right to legal counsel, the right to have legal counsel appointed if the person is unable to afford legal counsel, and, if requested, to have legal counsel immediately appointed, the right to subpoena witnesses in behalf of the person 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 the person 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 Commitment hearing; postponement; right to cross-examine; admissibility of investigation report.** The following is applicable to a commitment hearing held by a court under ORS 426.070:

(1) 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.

(2) The court shall hold the hearing at the time established according to the following:

(a) Except as provided by paragraph (b) or (c) of this subsection, a hearing shall be held five judicial days from the day a court under ORS 426.070 issues a citation provided under ORS 426.090.

(b) Except as provided by paragraph (c) of this subsection, if a person is detained by a warrant of detention under ORS 426.070, a hearing shall be held within five judicial days of the commencement of detention.

(c) If requested under this paragraph, the court, for good cause, may postpone the hearing for not more than five judicial days 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. If a person is detained before a hearing under ORS 426.070, 426.180, 426.228, 426.232 or 426.233 and the hearing is postponed under this paragraph, the court, for good cause, may allow the person to be detained during the postponement if the postponement is requested by the person or the legal counsel of the person. Any of the following may request a postponement under this paragraph:

(A) The allegedly mentally ill person.

(B) The legal counsel or guardian of the allegedly mentally ill person.

(C) The person representing the state's interest.

(3) The allegedly mentally ill person and the person representing the state's interest shall have the right to cross-examine all the following:

(a) Witnesses.

(b) The person conducting the investigation.

(c) The examining physicians or other qualified persons recommended by the division who have examined the person.

(4) The provisions of ORS 40.230 and 40.235 shall not apply to and the court may consider as evidence any of the following:

(a) Medical records for the current involuntary prehearing period of detention.

(b) Statements attributed by the maker of the medical records or the investigation 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.

(c) The testimony of any treating physicians for the prehearing period of detention. Any treating physician who is subpoenaed as a witness for the proceeding shall testify as an expert witness under the provisions of ORS 40.410, 40.415, 40.420 and 40.425 and is subject to treatment as an expert witness in the payment of witness fees and costs.

(d) The investigation report prepared under ORS 426.074. Subject to the following, the investigation report shall be introduced in evidence:

(A) Introduction of the report under this paragraph does not require the consent of the allegedly mentally ill person.

(B) Upon objection by any party to the action, the court shall exclude any part of the investigation report that may be excluded under the Oregon Evidence Code on grounds other than those set forth in ORS 40.230 or 40.235.

(C) Neither the investigation report nor any part thereof shall be introduced into evidence under this paragraph unless the investigator is present during the proceeding to be cross-examined or unless the presence of the investigator is waived by the allegedly mentally ill person or counsel for the allegedly mentally ill person. [1973 c.838 §9; 1975 c.690 §5; 1987 c.903 §13; 1993 c.484 §16]

**Note:** The amendments to 426.095 by section 16, chapter 484, Oregon Laws 1993, take effect July 1, 1994. See section 28, chapter 484, Oregon Laws 1993. The text that is effective until July 1, 1994, is set forth for the user's convenience.

**426.095.** The following is applicable to a commitment hearing held by a court under ORS 426.070:

(1) 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.

(2) The court shall hold the hearing at the time established according to the following:

(a) Except as provided by paragraph (b) or (c) of this subsection, a hearing shall be held five judicial days from the day a court under ORS 426.070 issues a citation provided under ORS 426.090.

(b) Except as provided by paragraph (c) of this subsection, if a person is detained by a warrant of detention under ORS 426.070, a hearing shall be held within five judicial days of the commencement of detention.

(c) If requested under this paragraph, the court, for good cause, may postpone the hearing for not more than five judicial days 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. If a person is detained before a hearing under ORS 426.070, 426.175, 426.180 or 426.215 and the hearing is postponed under this paragraph, the court, for good cause, may allow the person to be detained during the postponement if the postponement is requested by the person or the legal counsel of the person. Any of the following may request a postponement under this paragraph:

(A) The allegedly mentally ill person.

(B) The legal counsel or guardian of the allegedly mentally ill person.

(C) The person representing the state's interest.

(3) The allegedly mentally ill person and the person representing the state's interest shall have the right to cross-examine all the following:

(a) Witnesses.

(b) The person conducting the investigation.

(c) The examining physicians or other qualified persons recommended by the division who have examined the person.

(4) The provisions of ORS 40.230 and 40.235 shall not apply to and the court may consider as evidence any of the following:

(a) Medical records for the current involuntary prehearing period of detention.

(b) Statements attributed by the maker of the medical records or the investigation 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.

(c) The testimony of any treating physicians for the prehearing period of detention. Any treating physician who is subpoenaed as a witness for the proceeding shall testify as an expert witness under the provisions of ORS 40.410, 40.415, 40.420 and 40.425 and is subject to treatment as an expert witness in the payment of witness fees and costs.

(d) The investigation report prepared under ORS 426.074. Subject to the following, the investigation report shall be introduced in evidence:

(A) Introduction of the report under this paragraph does not require the consent of the allegedly mentally ill person.

(B) Upon objection by any party to the action, the court shall exclude any part of the investigation report that may be excluded under the Oregon Evidence Code on grounds other than those set forth in ORS 40.230 or 40.235.

(C) Neither the investigation report nor any part thereof shall be introduced into evidence under this paragraph unless the investigator is present during the proceeding to be cross-examined or unless the presence of the investigator is waived by the allegedly mentally ill person or counsel for the allegedly mentally ill person.

**426.100 Advice of court; appointment of legal counsel; fee; representation of state's interest.** (1) At the time the allegedly mentally ill person is brought before the court, the court shall advise the person of the following:

(a) The reason for being brought before the court;

(b) The nature of the proceedings;

(c) The possible results of the proceedings;

(d) The right to subpoena witnesses; and

(e) The person's rights regarding representation by or appointment of counsel.

(2) Subsection (3) of this section establishes the rights of allegedly mentally ill persons in each of the following circumstances:

(a) When the person is held by warrant of detention issued under ORS 426.070.

(b) In commitment hearings under ORS 426.095.

(c) When the person is detained as provided under ORS 426.228, 426.232 or 426.233.

(d) In recommitment hearings under ORS 426.307.

(3) When provided under subsection (2) of this section, an allegedly mentally ill person has the following rights relating to representation by or appointment of counsel:

(a) The right to obtain suitable legal counsel possessing skills and experience commensurate with the nature of the allegations and complexity of the case during the proceedings.

(b) 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 a person is unable to afford legal counsel, payment of expenses and compensation relating to legal counsel shall be made as provided under ORS 426.250.

(c) 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.

(d) 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.

(e) If the person is being involuntarily detained before a hearing on the issue of commitment, the right under paragraph (a) of this subsection to contact an attorney or under paragraph (b) of this subsection to have an attorney appointed may be exercised as soon as reasonably possible.

(f) In all cases suitable legal counsel shall be present at the hearing and may be present at examination and may examine all witnesses offering testimony, and otherwise represent the person.

(4) The responsibility for representing the state's interest in commitment proceedings, including, but not limited to, preparation of the state's case and appearances at commitment hearings is as follows:

(a) The Attorney General's office shall have the responsibility relating to proceedings initiated by state hospital staff that are any of the following:

(A) Recommitment proceedings under ORS 426.307; or

(B) Proceedings under ORS 426.228, 426.232 or 426.233.

(b) The district attorney if requested to do so by the governing body of the county.

(c) In lieu of the district attorney under paragraph (b) of this subsection, a counsel designated by the governing body of a county

shall take the responsibility. A county governing body may designate counsel to take responsibility under this paragraph either for single proceedings or for all such proceedings the county will be obligated to pay for under ORS 426.250. If a county governing body elects to proceed under this paragraph, the county governing body shall so notify the district attorney. The expenses of an attorney appointed under this paragraph shall be paid as provided under ORS 426.250. [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; 1981 s.s. c.3 §133; 1987 c.903 §14; 1993 c.484 §17]

**Note:** The amendments to 426.100 by section 17, chapter 484, Oregon Laws 1993, take effect July 1, 1994. See section 28, chapter 484, Oregon Laws 1993. The text that is effective until July 1, 1994, is set forth for the user's 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 following:

(a) The reason for being brought before the court;

(b) The nature of the proceedings;

(c) The possible results of the proceedings;

(d) The right to subpoena witnesses; and

(e) The person's rights regarding representation by or appointment of counsel.

(2) Subsection (3) of this section establishes the rights of allegedly mentally ill persons in each of the following circumstances:

(a) When the person is held by warrant of detention issued under ORS 426.070.

(b) In commitment hearings under ORS 426.095.

(c) When the person is detained as provided under ORS 426.175 or 426.215.

(d) In recommitment hearings under ORS 426.307.

(3) When provided under subsection (2) of this section, an allegedly mentally ill person has the following rights relating to representation by or appointment of counsel:

(a) The right to obtain suitable legal counsel possessing skills and experience commensurate with the nature of the allegations and complexity of the case during the proceedings.

(b) 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 a person is unable to afford legal counsel, payment of expenses and compensation relating to legal counsel shall be made as provided under ORS 426.250.

(c) 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.

(d) 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.

(e) If the person is being involuntarily detained before a hearing on the issue of commitment, the right under paragraph (a) of this subsection to contact an attorney or under paragraph (b) of this subsection to have an attorney appointed may be exercised as soon as reasonably possible.

(f) In all cases suitable legal counsel shall be present at the hearing and may be present at examination and may examine all witnesses offering testimony, and otherwise represent the person.

(4) The responsibility for representing the state's interest in commitment proceedings, including, but not limited to, preparation of the state's case and appearances at commitment hearings is as follows:

(a) The Attorney General's office shall have the responsibility relating to proceedings initiated by state hospital staff that are any of the following:

(A) Recommitment proceedings under ORS 426.307; or

(B) Proceedings under ORS 426.175.

(b) The district attorney if requested to do so by the governing body of the county.

(c) In lieu of the district attorney under paragraph (b) of this subsection, a counsel designated by the governing body of a county shall take the responsibility. A county governing body may designate counsel to take responsibility under this paragraph either for single proceedings or for all such proceedings the county will be obligated to pay for under ORS 426.250. If a county governing body elects to proceed under this paragraph, the county governing body shall so notify the district attorney. The expenses of an attorney appointed under this paragraph shall be paid as provided under ORS 426.250.

**426.110 Appointment of examiners; qualifications; fees.** The following requirements relating to the appointment of examiners for purposes of a hearing under ORS 426.095 apply as described:

(1) The judge shall appoint one qualified examiner. If requested, the judge shall appoint one additional qualified examiner. A request for an additional examiner under this subsection must be made in writing and must be made by the allegedly mentally ill person or the attorney for the allegedly mentally ill person.

(2) To be qualified for purposes of this section, an examiner must meet all of the following qualifications:

(a) The person must agree to be an examiner.

(b) The person must be one of the following:

(A) A physician licensed by the Board of Medical Examiners for the State of Oregon who is competent to practice psychiatry as provided by the Mental Health and Developmental Disability Services Division by rule.

(B) Certified as a mental health examiner qualified to make examinations for involuntary commitment proceedings by the Mental Health and Developmental Disability Services Division. The division has authority to establish, by rule, requirements for certification as a mental health examiner for purposes of this subparagraph.

(3) The cost of examiners under this section shall be paid as provided under ORS 426.250. [Amended by 1973 c.838 §10; 1987 c.158 §77; 1987 c.903 §15]

**426.120 Examination report.** (1) Persons appointed under ORS 426.110 to conduct the examination shall do the following:

(a) Examine the person as to mental condition;

(b) Initiate the examination process prior to the hearing. Any failure to comply with this paragraph shall not, in itself, constitute sufficient grounds to challenge the examination conducted by an examiner;

(c) Make their separate reports in writing, under oath, to the court; and

(d) Upon completion of the hearing, file the reports with the clerk of the court.

(2) The following is a nonexclusive list of requirements relating to the content of examination reports prepared under subsection (1) of this section:

(a) 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 mental illness.

(b) 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.

(c) Reports shall contain the information required by the Mental Health and Developmental Disability Services Division by rule. The Mental Health and Developmental Disability Services Division shall adopt rules necessary to carry out this paragraph.

(3) The examiner shall be allowed access to physicians, medical records compiled during the current involuntary prehearing period of detention and the investigation report. Records and communications described in this subsection and communications related thereto are not privileged under ORS 40.230 or 40.235. [Amended by 1973 c.838 §11; 1975 c.690 §7; 1987 c.903 §16]

**426.123 Observation of person in custody; evidence.** (1) Whenever specifically required under ORS 426.070, 426.072, 426.180 or 426.234, a person shall be given a warning that observations of the person by the staff of the facility where the person is in custody may be used as evidence in subsequent court proceedings to determine whether the person should be or should continue to be committed as a mentally ill person.

(2) The warning described under subsection (1) of this section shall be given both orally and in writing.

(3) Failure to give a warning under this section does not in itself constitute grounds for the exclusion of evidence that would oth-

erwise be admissible in a proceeding. [1987 c.903 §11; 1993 c.484 §18]

**Note:** The amendments to 426.123 by section 18, chapter 484, Oregon Laws 1993, take effect July 1, 1994. See section 28, chapter 484, Oregon Laws 1993. The text that is effective until July 1, 1994, is set forth for the user's convenience.

**426.123.** (1) Whenever specifically required under ORS 426.070, 426.072, 426.175, 426.180 or 426.215, a person shall be given a warning that observations of the person by the staff of the facility where the person is in custody may be used as evidence in subsequent court proceedings to determine whether the person should be or should continue to be committed as a mentally ill person.

(2) The warning described under subsection (1) of this section shall be given both orally and in writing.

(3) Failure to give a warning under this section does not in itself constitute grounds for the exclusion of evidence that would otherwise be admissible in a proceeding.

**426.125 Qualifications and requirements for conditional release.** The following qualifications, requirements and other provisions relating to a conditional release under ORS 426.130 apply as described:

(1) A court may only order conditional release if all of the following occur:

(a) The conditional release is requested by the legal guardian, relative or friend of the mentally ill person.

(b) The person requesting the conditional release requests to be allowed to care for the mentally ill person during the period of commitment in a place satisfactory to the judge.

(c) The person requesting the release establishes all of the following to the satisfaction of the court:

(A) Ability to care for the mentally ill person.

(B) That there are adequate financial resources available for the care of the mentally ill person.

(2) If the court determines to allow conditional release, the court shall order that the mentally ill person be conditionally released and placed in the care of the requester. The court shall establish any terms and conditions on the conditional release that the court determines appropriate.

(3) Any conditional release ordered under this section is subject to the provisions under ORS 426.275. [1987 c.903 §18]

**426.127 Outpatient commitment.** The following provisions are applicable to outpatient commitment under ORS 426.130 as described:

(1) The division may only place a person in an outpatient commitment if an adequate treatment facility is available.

(2) Conditions for the outpatient commitment shall be set at the time of the hearing under ORS 426.095 by the community mental

health and developmental disabilities program director, or a designee for the director, for the county in which the hearing takes place. The conditions shall include, but not be limited to, the following:

(a) Provision for outpatient care.

(b) A designation of a facility, service or other provider to provide care or treatment.

(3) A copy of the conditions shall be given to all of the persons described in ORS 426.278.

(4) Any outpatient commitment ordered under this section is subject to the provisions under ORS 426.275.

(5) The community mental health and developmental disabilities program director or designee, for the county where a person is on outpatient commitment, may modify the conditions for outpatient commitment when a modification is in the best interest of the person. The director or designee shall send notification of such changes and the reasons for the changes to all those who received a copy of the original conditions under ORS 426.278. [1987 c.903 §19; 1989 c.171 §52]

**426.130 Discharge; release for voluntary treatment; conditional release; commitment; prohibition relating to firearms; period of commitment.** (1) 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:

(a) Not mentally ill, the person shall be discharged forthwith.

(b) Mentally ill based upon clear and convincing evidence, the court:

(A) Shall order the release of the individual and dismiss the case if:

(i) The mentally ill person is willing and able to participate in treatment on a voluntary basis; and

(ii) The court finds that the person will probably do so.

(B) May order conditional release under this subparagraph subject to the qualifications and requirements under ORS 426.125. If the court orders conditional release under this subparagraph, the court shall establish a period of commitment for the conditional release.

(C) May order commitment of the individual to the division for treatment if, in the opinion of the court, subparagraph (A) or (B) of this paragraph is not in the best interest of the mentally ill person. If the court orders commitment under this subparagraph:

(i) The court shall establish a period of commitment.

(ii) The division may place the committed person in outpatient commitment under ORS 426.127.

(D) Shall order that the person be prohibited from purchasing or possessing a firearm if, in the opinion of the court, there is a reasonable likelihood the person would constitute a danger to self or others or to the community at large as a result of the person's mental or psychological state as demonstrated by past behavior or participation in incidents involving unlawful violence or threats of unlawful violence, or by reason of a single incident of extreme, violent, unlawful conduct. When a court makes an order under this subparagraph, the court shall cause a copy of the order to be delivered to the sheriff of the county who will enter the information into the Law Enforcement Data System.

(2) A court that orders a conditional release or a commitment under this section shall establish a period of commitment for the person subject to the order. Any period of commitment ordered for commitment or conditional release under this section 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; 1987 c.903 §17; 1989 c.839 §36; 1993 c.735 §9]

**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 by the appellate court as provided in ORS 135.055 if the circuit court is the appellate court or as provided in ORS 138.500 if the Court of Appeals or Supreme Court is the appellate court. The compensation, costs and expenses so allowed shall be paid as provided in ORS 138.500. [1979 c.867 §12; 1981 s.s. c.3 §134; 1985 c.502 §25]

**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 enclosure 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 the person; and, if not confined in a community hospital, the sheriff or community mental health and developmental disabilities program director having the person in 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 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 the person and the record to the director or a designated employee 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, 426.217, 426.228, 426.255 to 426.292, 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 court clerk or court administrator 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, the legal representatives, or the attorney of the person; or
- (3) Pursuant to court order. [Amended by 1965 c.420 §1; 1969 c.148 §1; 1973 c.838 §21; 1993 c.223 §11; 1993 c.484 §19]

Note: The amendments to 426.160 by section 19, chapter 484, Oregon Laws 1993, take effect July 1, 1994. See section 28, chapter 484, Oregon Laws 1993. The text, including amendments by section 11, chapter 223, Oregon Laws 1993, that is effective until July 1, 1994, is set forth for the user's convenience.

**426.160.** 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 426.292, 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 court clerk or court administrator 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, the legal representatives, or the attorney of the person; or
- (3) Pursuant to court order.

**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 court clerk or court administrator, 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 and Developmental Disability Services Division. [Amended by 1973 c.838 §25; 1993 c.223 §12]

**(Emergency and Voluntary Admissions)**

**426.175** [1969 c.371 §1; 1975 c.690 §11; 1977 c.764 §2; 1987 c.903 §20; 1991 c.901 §1; repealed by 1993 c.484 §27]

Note: The repeal of 426.175 by section 27, chapter 484, Oregon Laws 1993, takes effect July 1, 1994. See section 28, chapter 484, Oregon Laws 1993. The text that is effective until July 1, 1994, is set forth for the user's convenience.

**426.175.** (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 the physician believes to be dangerous to self or to any other person and who the physician believes is in need of emergency care or treatment for mental illness. At the time the person is admitted or retained, the person shall be informed by the admitting physician of all the following:

(a) The person's rights with regard to representation by or appointment of counsel as described in ORS 426.100.

(b) The warning under ORS 426.123.

(2) The allegedly mentally ill person shall be examined immediately by the physician, and a written record shall be made setting forth the condition of the person and need for emergency hospitalization. The physician shall immediately notify in writing the court having jurisdiction under ORS 426.060 and the community mental health and developmental disabilities 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 judicial days without a hearing held under ORS 426.070 to 426.130. The court, for good cause, may allow postponement and detention during postponement as provided under ORS 426.095. 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)(a) A physician licensed by the Board of Medical Examiners for the State of Oregon may hold, for up to 12 hours in a health care facility licensed under ORS chapter 431 and described in subsection (3) of this section, a person for transporting to a treatment facility if:

(A) The physician believes the person is dangerous to self or any other person and is in need of emergency care or treatment for mental illness;

(B) The physician is not related to the person by blood or marriage; and

(C) An admitting physician at the receiving facility consents to the transporting.

(b) Before transporting the person, the physician shall prepare a written statement that:

(A) The physician has examined the person within the preceding 12 hours;

(B) An admitting physician at the receiving facility has consented to transporting the person for examination and admission if appropriate; and

(C) The physician believes the person is dangerous to self or any other person and is in need of emergency care or treatment for mental illness.

(c) The written statement required by paragraph (b) of this subsection authorizes a peace officer or the designee of a community mental health and development disabilities program director to transport a person to the treatment facility indicated on the statement.

**426.180 Emergency commitment of certain Native Americans.** (1) This section applies to commitments of a person from a reservation for land-based tribes of Native Americans when, under federal law, the state does not have jurisdiction of commitments on the reservation.

(2) When this section is applicable as provided under subsection (1) of this section, 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 includes or is accompanied by all of the following:

(a) The circumstances constituting the emergency.

(b) Written application for admission to the hospital, executed in duplicate.

(c) A certificate to the effect that the person is so mentally ill as to be in need of immediate hospitalization.

(d) A medical history, including the name, condition, sex and age of the person.

(e) The name and address of the nearest relative or legal guardian, if any, of the person.

(3) 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.

(4) When a person is admitted to a state hospital under this section, any physician treating the person shall give the person the warning under ORS 426.123.

(5) This section may be applied as provided by agreement with the ruling body of the reservation. Payment of costs for a commitment made under this section shall be as provided under ORS 426.250. [Amended by 1953 c.442 §2; 1975 c.690 §12; 1987 c.903 §21]

**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 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 the chief medical officer 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, the superintendent 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 the person has been received. If, after completion of the examination, the physicians certify that the person is so mentally ill as to be in need of treatment, care or custody, the superintendent shall, if the superintendent 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 jurisdiction under ORS 426.060 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. Costs shall be paid as provided under ORS 426.250. [Amended by 1963 c.325 §2; 1975 c.690 §13; 1987 c.903 §22]

**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 five judicial days following admission. The court, for good cause, may allow a postponement and detention during the postponement as provided under ORS 426.095. [Amended by 1987 c.903 §23]

**426.215** [1965 c.628 §1; 1973 c.838 §32; 1975 c.690 §14; 1977 c.764 §3; 1979 c.408 §4; 1985 c.743 §§1,2,3; 1987 c.368 §1; 1987 c.903 §§24,25; repealed by 1993 c.484 §27]

**Note:** The repeal of 426.215 by section 27, chapter 484, Oregon Laws 1993, takes effect July 1, 1994. See section 28, chapter 484, Oregon Laws 1993. The text that is effective until July 1, 1994, is set forth for the user's convenience.

**426.215.** (1) Any peace officer may take into custody any person who the officer has probable cause to believe is dangerous to self or to any other person and who the officer has probable cause to believe is in need of immediate care, custody or treatment for mental illness.

(2) When the mental health and developmental disabilities program director operating pursuant to ORS 430.610 to 430.700 or a designee thereof under authorization of a county governing body directs a peace officer to do so, the peace officer shall take into custody a person who the director or designee has probable cause to believe is dangerous to self or to any other person and who the director or designee has probable cause to believe is in need of immediate care, custody or treatment for mental illness.

(3) A designee must be recommended by the community mental health and developmental disabilities program director, meet the standards established by the Mental Health and Developmental Disability Services Division and be approved by the county governing body

before assuming the authority permitted under this section.

(4) A person taken into custody under this section shall be immediately removed to the nearest hospital or other facility maintaining adequate staff and facilities as required under subsection (7) of this section. If more than one hour will be required to transport 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 self 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.

(5) 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 the person shall not be retained in further custody under this section. If the person is admitted, the community mental health and developmental disabilities program director of the county where the person is taken into custody shall immediately be notified of the admission and shall provide or arrange for an investigation as provided under ORS 426.074. In a county having a population of 100,000 or more, and when feasible in a county with a lesser population, the person who directs the peace officer to take a person into custody pursuant to subsection (1) of this section shall not also conduct the investigation. At the time of admission, the admitting physician shall inform the person of all the following:

(a) The person's rights with regard to representation by or appointment of counsel as provided under ORS 426.100.

(b) The warning under ORS 426.123.

(6) The peace officer or the community mental health and developmental disabilities director or designee, after authorizing the taking of a person into custody under this section, shall immediately notify a court having jurisdiction under ORS 426.060 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 or the community mental health and developmental disabilities director or designee that a person is in custody, the judge shall immediately commence proceedings pursuant to ORS 426.070 to 426.130.

(7) 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, for good cause, may allow postponement and detention during postponement as provided under ORS 426.095.

**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 the status of the person to that of a voluntary patient. Notwithstanding ORS 426.220, any person who alters status to that of a voluntary patient under this section shall be re-

leased from the treating facility within 72 hours of the request of the person 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 and Developmental Disability Services 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 behalf of the person has been executed by the parent, adult next of kin or legal guardian of the person. 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 the person, if at least 18 years of age, has given notice in writing of a desire to be discharged therefrom, or, if the patient is under the age of 18 years, after notice in writing has been given by the parent, adult next of kin or legal guardian of the person 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 in custody of or 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 the person has been assigned under ORS 426.060, or in the case of an allegedly mentally ill person who is in custody under ORS 426.070, 426.095, 426.228 to 426.235 or 426.237 at a hospital or nonhospital facility and who has, without lawful authority, left the hospital or nonhospital facility, the facility direc-

tor or 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; 1993 c.484 §20]

**Note:** The amendments to 426.223 by section 20, chapter 484, Oregon Laws 1993, take effect July 1, 1994. See section 28, chapter 484, Oregon Laws 1993. The text that is effective until July 1, 1994, is set forth for the user's convenience.

**426.223.** 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 the person has been assigned under ORS 426.060, the facility director or 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.

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

**426.225 Voluntary admission to state hospital of committed person; examination by physician.** (1) If any person who has been committed to the division under ORS 426.127 or 426.130 (1)(b)(B) or (C) requests, during this period of commitment, voluntary admission to a state hospital, the superintendent 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 voluntarily admitted upon request of the person.

(2) If any person who has been committed to the division under ORS 426.127 or 426.130 (1)(b)(B) or (C) requests, during this period of commitment, voluntary admission to a facility approved by the division, the administrator of the 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, and the division grants approval, the person shall be voluntarily admitted upon request of the person. [1989 c.993 §2]

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

### (Emergency Care and Treatment)

**426.228 Custody; authority of peace officer; transporting to facility; reports; examination of person.** (1) A peace officer may take into custody a person who the officer has probable cause to believe is dangerous to self or to any other person and is in need of immediate care, custody or treatment for mental illness. As directed by the community mental health and developmental disabilities program director, a peace officer shall remove a person taken into custody under this section to the nearest hospital or nonhospital facility approved by the Mental Health and Developmental Disability Services Division. The officer shall prepare a

written report and deliver it to the treating physician. The report shall state:

(a) The reason for custody;

(b) The date, time and place the person was taken into custody; and

(c) The name of the community mental health and developmental disabilities program director and a telephone number where the director may be reached at all times.

(2) A peace officer shall take a person into custody when the community mental health and developmental disabilities program director, pursuant to ORS 426.233, directs the peace officer to do so. As directed by the community mental health and developmental disabilities program director, the peace officer shall remove the person to a hospital or nonhospital facility approved by the division. The community mental health and developmental disabilities program director shall prepare a written report that the peace officer shall deliver to the treating physician. The report shall state:

(a) The reason for custody;

(b) The date, time and place the person was taken into custody; and

(c) The name of the community mental health and developmental disabilities program director and a telephone number where the director may be reached at all times.

(3) If more than one hour will be required to transport the person to the hospital or nonhospital facility from the location where the person was taken into custody, the peace officer shall obtain, if possible, a certificate from a physician licensed 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 self or to any other person and is in need of immediate care or treatment for mental illness. The physician shall have personally examined the allegedly mentally ill person within 24 hours prior to signing the certificate.

(4) When a peace officer, acting under this section, delivers a person to a hospital or nonhospital facility, a physician licensed by the Board of Medical Examiners for the State of Oregon shall examine the person immediately. If the physician finds the person to be in need of emergency care or treatment for mental illness, the physician shall proceed under ORS 426.232, otherwise the person shall not be retained in custody. If the person is to be released from custody, the peace officer or the community mental health and developmental disabilities program director shall return the person to the place where the person was taken into cus-

tody unless the person declines that service. [1993 c.484 §2]

Note: 426.228 to 426.238 take effect July 1, 1994. See section 28, chapter 484, Oregon Laws 1993.

Note: 426.228 to 426.238 were added to and made a part of 426.005 to 426.390 by legislative action but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

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

**426.231 Physician hold; when authorized; statement required.** (1) A physician licensed by the Board of Medical Examiners for the State of Oregon may hold a person for transportation to a treatment facility for up to 12 hours in a health care facility licensed under ORS chapter 431 and approved by the Mental Health and Developmental Disability Services Division if:

(a) The physician believes the person is dangerous to self or to any other person and is in need of emergency care or treatment for mental illness;

(b) The physician is not related to the person by blood or marriage; and

(c) An admitting physician at the receiving facility consents to the transporting.

(2) Before transporting the person, the physician shall prepare a written statement that:

(a) The physician has examined the person within the preceding 12 hours;

(b) An admitting physician at the receiving facility has consented to the transporting of the person for examination and admission if appropriate; and

(c) The physician believes the person is dangerous to self or to any other person and is in need of emergency care or treatment for mental illness.

(3) The written statement required by subsection (2) of this section authorizes a peace officer or the designee of a community mental health and developmental disabilities program director to transport a person to the treatment facility indicated on the statement. [1993 c.484 §3]

Note: See notes under 426.228.

**426.232 Physician emergency admission.** (1) When a physician licensed to practice medicine by the Board of Medical Examiners for the State of Oregon believes a person who is brought to a hospital or nonhospital facility by a peace officer under ORS 426.228 or a person who is at a hospital or nonhospital facility is dangerous to self or to any other person and is in need of emergency care or treatment for mental illness, the physician may do one of the following:

(a) After consulting with a physician or a qualified mental health professional, as de-

finied by rule of the Mental Health and Developmental Disability Services Division, admit the person or, if the person is already admitted, cause the person to be retained in a hospital where the physician has admitting privileges. Neither the physician nor the qualified mental health professional may be related by blood or marriage to the person.

(b) Approve the person for emergency care or treatment at a nonhospital facility approved by the division.

(2) When approving a person for emergency care or treatment at a nonhospital facility under this section, the physician shall notify immediately the community mental health and developmental disabilities program director in the county where the person was taken into custody and maintain the person, if the person is being held at a hospital, for as long as is feasible given the needs of the person for mental or physical health or safety. However, under no circumstances may the person be held for longer than five judicial days. [1993 c.484 §4]

Note: See notes under 426.228.

**426.233 Authority of community mental health and developmental disabilities program director.** (1)(a) A community mental health and developmental disabilities program director operating under ORS 430.610 to 430.700 or a designee thereof, under authorization of a county governing body, may take one of the actions listed in paragraph (b) of this subsection when the community mental health and developmental disabilities program director or designee has probable cause to believe a person:

(A) Is dangerous to self or to any other person and is in need of immediate care, custody or treatment for mental illness; or

(B)(i) Is a mentally ill person placed on conditional release under ORS 426.125, outpatient commitment under ORS 426.127 or trial visit under ORS 426.273; and

(ii) Is dangerous to self or to any other person or is unable to provide for basic personal needs and is not receiving the care that is necessary for health and safety and is in need of immediate care, custody or treatment for mental illness.

(b) The community mental health and developmental disabilities program director or designee under the circumstances set out in paragraph (a) of this subsection may:

(A) Direct a peace officer to take the person into custody and remove the person to a hospital or nonhospital facility approved by the Mental Health and Developmental Disability Services Division; or

(B) Authorize involuntary admission of, or, if already admitted, cause to be involun-

tarily retained in a nonhospital facility approved by the division, a person approved for care or treatment at a nonhospital facility by a physician under ORS 426.232.

(2) A designee must be recommended by the community mental health and developmental disabilities program director, meet the standards established by rule of the division and be approved by the county governing body before assuming the authority permitted under this section. [1993 c.484 §5]

Note: See notes under 426.228.

**426.234 Duties of professionals at facility where person admitted; notification; duties of court.** (1) At the time a person is admitted to or retained in a hospital or nonhospital facility under ORS 426.232 or 426.233, a physician, nurse or qualified mental health professional at the hospital or nonhospital facility shall:

(a) Inform the person of the person's right to representation by or appointment of counsel as described in ORS 426.100;

(b) Give the person the warning under ORS 426.123;

(c) Immediately examine the allegedly mentally ill person;

(d) Set forth, in writing, the condition of the person and the need for emergency care or treatment; and

(e) If the person consents, make every effort to notify the person's next of kin of the person's location and condition.

(2) At the time the person is admitted to or retained in a hospital under ORS 426.232, the physician shall notify, immediately and in writing under oath, the circuit court in the county in which the person is hospitalized.

(3) At the time the person is admitted to or retained in a nonhospital facility under ORS 426.233, the community mental health and developmental disabilities program director in the county where the person was taken into custody shall notify, immediately and in writing under oath, the circuit court in the county in which the person was taken into custody.

(4) When the judge of the circuit court receives notice under subsection (2) or (3) of this section, the judge immediately shall commence proceedings under ORS 426.070 to 426.130. In a county having a population of 100,000 or more, and when feasible in a county with a lesser population, the community mental health and developmental disabilities program director or designee who directs the peace officer to take a person into custody under ORS 426.233 shall not also conduct the investigation as provided for

under ORS 426.074. Except when a person is being held under ORS 426.237 (1)(b), a person shall not be held under ORS 426.232 or 426.233 for more than five judicial days without a hearing being held under ORS 426.070 to 426.130. [1993 c.484 §6]

Note: See notes under 426.228.

**426.235 Transfer between hospital and nonhospital facilities.** (1) The community mental health and developmental disabilities program director may transfer a person in custody under ORS 426.232, 426.233 or 426.237 (1)(b) to a hospital or nonhospital facility approved by the Mental Health and Developmental Disability Services Division at any time during the period of detention.

(2) A person in custody at a hospital may be transferred from the hospital only with the consent of the treating physician and when the director of a nonhospital facility approved by the division agrees to admit the person.

(3) A person in custody at a nonhospital facility approved by the division may be transferred to a hospital approved by the division only when a physician with admitting privileges agrees to admit the person.

(4) In transporting a person between a hospital and nonhospital facility under this section, the community mental health and developmental disabilities program director has all the powers provided in ORS 133.225 and 161.255 and may compel the assistance of any peace officer or other person.

(5) When a person is transferred under this section, the community mental health and developmental disabilities program director shall notify immediately the court notified under ORS 426.234 (2) or (3) of the fact of the transfer and of the location of the person. [1993 c.484 §7]

Note: See notes under 426.228.

**426.236 Rulemaking.** The Mental Health and Developmental Disability Services Division shall adopt rules necessary to carry out the provisions of ORS 426.228 to 426.238. [1993 c.484 §8]

Note: See notes under 426.228.

**426.237 Prehearing detention; duties of community mental health and developmental disabilities program director.** (1) During a prehearing period of detention as provided in ORS 426.070, 426.140, 426.232 or 426.233, the community mental health and developmental disabilities program director shall do one of the following:

(a) Recommend, in an investigation report as provided in ORS 426.074, that the circuit court not proceed further in the matter if the community mental health and developmental disabilities program director

does not believe the person is a mentally ill person.

(b) No later than three judicial days after initiation of a prehearing period of detention as provided in ORS 426.070, 426.140, 426.232 or 426.233, certify the detained person for a 14-day period of intensive treatment if:

(A) The community mental health and developmental disabilities program director and a psychiatrist, as defined by rule by the division, have probable cause to believe the person is a mentally ill person;

(B) The community mental health and developmental disabilities program director in the county where the person resides verbally approves the arrangements for payment for the services at the hospital or non-hospital facility; and

(C) The community mental health and developmental disabilities program director locates a hospital or nonhospital facility that:

(i) Is approved by the Mental Health and Developmental Disability Services Division and the community mental health and developmental disabilities program director in the county where the person resides; and

(ii) Can, in the opinion of the community mental health and developmental disabilities program director and the psychiatrist, provide intensive care or treatment for mental illness necessary and sufficient to meet the emergency psychiatric needs of the person.

(c) Recommend, in an investigation report as provided in ORS 426.074, that the circuit court hold a hearing under ORS 426.070 to 426.130 if the community mental health and developmental disabilities program director has probable cause to believe the person is a mentally ill person.

(2)(a) If the circuit court adopts the recommendation of the community mental health and developmental disabilities program director under subsection (1)(a) of this section, the circuit court shall enter an order releasing the person and dismissing the case. Unless the person agrees to voluntary treatment, if the person is being detained in a:

(A) Nonhospital facility, the director shall make discharge plans and insure the discharge of the person.

(B) Hospital, the treating physician shall make discharge plans and discharge the person.

(b) Upon release of the person, the community mental health and developmental disabilities program director shall attempt to notify the person's next of kin if the person consents to the notification.

(3)(a) If the detained person is certified for treatment under subsection (1)(b) of this section, the community mental health and developmental disabilities program director shall:

(A) Deliver immediately a certificate to the court having jurisdiction under ORS 426.060; and

(B) Orally inform the person of the certification and deliver a copy of the certificate to the person.

(b) The certificate required by paragraph (a) of this subsection shall include:

(A) A written statement under oath by the community mental health and developmental disabilities program director and the psychiatrist that they have probable cause to believe the person is a mentally ill person in need of care or treatment for mental illness;

(B) A treatment plan that describes, in general terms, the types of treatment and medication to be provided to the person during the 14-day period of intensive treatment;

(C) A notice of the person's right to an attorney and that an attorney will be appointed by the court or as otherwise obtained under ORS 426.100 (3);

(D) A notice that the person has a right to request and be provided a hearing under ORS 426.070 to 426.130 at any time during the 14-day period; and

(E) The date and time the copy of the certificate was delivered to the person.

(c) Immediately upon receipt of a certificate under paragraph (a) of this subsection, the court shall notify the person's attorney or appoint an attorney for the person if the person cannot afford one. Within 24 hours of the time the certificate is delivered to the court, the person's attorney shall review the certificate with the person. If the person and the person's attorney consent to the certification within one judicial day of the time the certificate is delivered to the circuit court and, except as provided in subsection (4) of this section, the court shall postpone the hearing required by ORS 426.070 to 426.130 for 14 days.

(d) When a person is certified for treatment under subsection (1)(b) of this section and accepts the certification:

(A) Except as otherwise provided in this paragraph, 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 treatment and shall receive usual and customary treatment in ac-

cordance with medical standards in the community.

(B) Except when the person expressly refuses treatment, the treating physician shall treat the person within the scope of the treatment plan provided the person under paragraph (b) of this subsection. The person's refusal of treatment constitutes sufficient grounds for the community mental health and developmental disabilities program director to request a hearing as provided in subsection (4)(a) of this section.

(C) If the person is in a hospital and the community mental health and developmental disabilities program director locates a non-hospital facility, approved by the division, that, in the opinion of the community mental health and developmental disabilities program director and the treating physician, can provide care or treatment for mental illness necessary and sufficient to meet the emergency psychiatric needs of the person, the treating physician shall discharge the person from the hospital and the community mental health and developmental disabilities program director shall remove the person to the nonhospital facility for the remainder of the 14-day intensive treatment period. If, however, in the opinion of the treating physician, the person's condition requires the person to receive medical care or treatment, the physician shall retain the person in the hospital.

(D) If the person is in a nonhospital facility, the community mental health and developmental disabilities program director shall transfer the person to a hospital approved by the division under the following conditions:

(i) If, in the opinion of a physician, the person's condition requires the person to receive medical care or treatment in a hospital; and

(ii) The physician agrees to admit the person to a hospital, approved by the division, where the physician has admitting privileges.

(E) If the person is transferred as provided in subparagraph (C) or (D) of this paragraph, the community mental health and developmental disabilities program director shall notify the circuit court, in the county where the certificate was filed, of the location of the person. The person may appeal the transfer as provided by rules of the division.

(e) If the person is in a hospital, the treating physician may discharge the person at any time during the 14-day period. The treating physician shall confer with the community mental health and developmental disabilities program director and the person's next of kin, if the person consents to the

consultation, prior to discharging the person. Immediately upon discharge of the person, the treating physician shall notify the court in the county in which the certificate was filed initially.

(f) If the person is in a nonhospital facility, the community mental health and developmental disabilities program director may discharge the person at any time during the 14-day period. The community mental health and developmental disabilities program director shall consult with the treating physician and the person's next of kin, if the person consents to the consultation, prior to discharging the person. Immediately upon discharge of the person, the community mental health and developmental disabilities program director shall notify the court in the county in which the certificate was filed initially.

(g) The person may agree to voluntary treatment at any time during the 14-day period. When a person agrees to voluntary treatment under this paragraph, the community mental health and developmental disabilities program director immediately shall notify the court in the county in which the certificate was filed initially.

(h) A person consenting to 14 days of treatment under subsection (3)(c) of this section shall not be held longer than 14 days from the time of consenting without a hearing as provided in ORS 426.070 to 426.130.

(i) When the court receives notification under paragraph (e), (f) or (g) of this subsection, the court shall dismiss the case.

(4) The judge of the circuit court shall immediately commence proceedings under ORS 426.070 to 426.130 when:

(a) The person consenting to 14 days of treatment or the community mental health and developmental disabilities program director requests a hearing. The hearing shall be held without unreasonable delay. In no case shall the person be held in a hospital or nonhospital facility longer than five judicial days after the request for a hearing is made without a hearing being held under ORS 426.070 to 426.130.

(b) The community mental health and developmental disabilities program director acts under subsection (1)(c) of this section. In no case shall the person be held longer than five judicial days without a hearing under this subsection. [1993 c.484 §9]

Note: See notes under 426.228.

**426.238 Classifying facilities.** The Mental Health and Developmental Disability Services Division may assign classifications, as defined by rule of the division, to facilities that provide care and treatment for persons

committed to the division under ORS 426.130 or provide emergency care or treatment for persons pursuant to ORS 426.070, 426.228 to 426.235 or 426.237. The division may authorize a facility to retake custody of a person who unlawfully leaves a facility as provided in ORS 426.223. [1993 c.484 §10]

Note: See notes under 426.228.

**(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; denial of payment.** (1) The cost of emergency psychiatric care, custody and treatment related to or resulting from such psychiatric condition, provided by a hospital or other facility approved by the division and the community mental health and developmental disabilities program director of the county in which the facility is located, except a state mental hospital, for an allegedly mentally ill person admitted or detained under ORS 426.070, 426.140, 426.228, 426.232 or 426.233, or for a mentally ill person admitted or detained under ORS 426.150, 426.223, 426.273, 426.275 or 426.292, 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 payers 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, 426.180 to 426.210, 426.228, 426.232 or 426.233 for emergency care, custody or treatment, the Mental Health and Developmental Disability Services Division shall charge to and collect from the person, third party payers 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 payers 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.

(5)(a) The Mental Health and Developmental Disability Services Division may deny payment for part or all of the emergency psychiatric services provided by a hospital or nonhospital facility under ORS 426.232, 426.233 or 426.237 when the division finds, upon review, that the allegedly mentally ill person's condition did not meet the admission criteria in ORS 426.232 (1), 426.233 (1) or 426.237 (1)(b)(A). The payer responsible under this section shall make a request for denial of payment for emergency psychiatric services provided under ORS 426.232, 426.233 or 426.237 in writing to the Mental Health and Developmental Disability Services Division.

(b) The division may require the following to provide the division with any information the division determines necessary to review a request for denial of payment made under this subsection and to make a finding, or to conduct review of emergency psychiatric services for the purpose of planning or defining standards in division rule:

(A) A hospital or nonhospital facility approved under ORS 426.228 to 426.235 or 426.237.

(B) A physician or a person providing emergency psychiatric services under ORS 426.228 to 426.235 or 426.237.

(c) The Mental Health and Developmental Disability Services Division shall adopt rules necessary to carry out the purposes of this subsection. [1977 c.764 §5 (enacted in lieu of 426.240); 1979 c.392 §1; 1981 c.750 §16; 1987 c.527 §1; 1993 c.484 §21]

Note: The amendments to 426.241 by section 21, chapter 484, Oregon Laws 1993, take effect July 1, 1994. See section 28, chapter 484, Oregon Laws 1993. The text that is effective until July 1, 1994, is set forth for the user's convenience.

**426.241.** (1) The cost of emergency psychiatric care, custody and treatment related to or resulting from such psychiatric condition, provided by a hospital or other facility approved by the division and the community mental health and developmental disabilities program director of the county in which the facility is located, 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, 426.273, 426.275 or 426.292, 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 payers 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 and Developmental Disability Services Division shall charge to and collect from the person, third party payers 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 payers 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.

**426.250 Payment of costs related to commitment proceedings.** The following is a nonexclusive list of responsibilities for payment of various costs related to commitment proceedings under this chapter as described:

(1) Any physician or qualified person recommended by the division who is employed under ORS 426.110 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.

(2) Witnesses subpoenaed to give testimony shall receive the same fees as are paid in criminal cases, and are subject to compulsory attendance in the same manner as provided in ORS 136.567 to 136.603. The attendance of out-of-state witnesses may be secured in the same manner as provided in ORS 136.623 to 136.637. The party who subpoenas the witness or requests the court to subpoena the witness is responsible for payment of the cost of the subpoena and payment for the attendance of the witness at a hearing. When the witness has been subpoenaed on behalf of an allegedly mentally ill person who is represented by court-appointed counsel, the fees and costs allowed for that witness shall be paid pursuant to ORS 135.055. If the costs of witnesses subpoenaed by the allegedly mentally ill person are paid as provided under this subsection, the procedure for subpoenaing witnesses shall comply with ORS 136.570.

(3) If a person with a right to a counsel under ORS 426.100 is unable to afford 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 state from funds available for the purpose.

(4) The Mental Health and Developmental Disability Services Division shall pay the costs of expenses incurred under ORS 426.100 by the Attorney General's office. Any costs for district attorneys or other counsel appointed to assume responsibility for presenting the state's case shall be paid by the county where the commitment hearing is held, subject to reimbursement under ORS 426.310.

(5) All costs incurred in connection with a proceeding under ORS 426.200, 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.

(6) All costs incurred in connection with a proceeding under ORS 426.180 for the commitment of a person from a reservation for land-based tribes of Native Americans, including the cost of transportation, commitment and delivery of the person, shall be paid by the ruling body of the reservation of which the person is a resident. [Amended by 1965 c.420 §2; 1975 c.690 §17; 1977 c.764 §6; 1987 c.606 §9; 1987 c.903 §§26,26a]

**426.255 County to pay costs.** Costs of hearings conducted pursuant to ORS 426.307, and the fees for physicians and other qualified persons 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; 1987 c.803 §23; 1987 c.903 §27]

**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; Conditional Release; Outpatient Commitment; Early Release)**

**426.273 Trial visits.** (1) During a period of commitment of a patient under ORS 426.130, the division may grant a trial visit to the patient for a period of time and under any conditions the division shall establish. The division shall only grant a trial visit under this section if the trial visit is agreed to by the community mental health and developmental disabilities program director, or the designee of the director, for the county in which the person would reside.

(2) When in the opinion of the division, the committed person can be appropriately served by outpatient care during the period

of commitment, the outpatient care may be required as a condition for trial visit for a period which, when added to the inpatient treatment period, shall not exceed the period of commitment. If outpatient care is required as a condition for a trial visit, the conditions shall include a designation of a facility, service or other provider to provide care or treatment.

(3) A copy of the conditions for trial visit shall be given to all of the persons listed in ORS 426.278.

(4) Any trial visit granted under this section is subject to the provisions under ORS 426.275.

(5) The director of the community mental health and developmental disabilities program, or designee, of the county in which a person who is on trial visit lives while on trial visit may modify the conditions for continued trial visit when such modification is in the best interest of the person. The director shall send notification of such changes and the reasons for the changes to all those who received a copy of the original conditions under ORS 426.278. [1985 c.242 §2 (enacted in lieu of 426.290); 1987 c.903 §28]

**426.275 Effect of failure to adhere to condition of placement.** The following are applicable to placements of mentally ill persons that are made as conditional release under ORS 426.125, outpatient commitments under ORS 426.127 or trial visits under ORS 426.273 as described:

(1) If the person responsible under this subsection determines that the mentally ill person is failing to adhere to the terms and conditions of the placement, the responsible person shall notify the court having jurisdiction that the mentally ill person is not adhering to the terms and conditions of the placement. If the placement is an outpatient commitment under ORS 426.127 or a trial visit under ORS 426.273, the notifications shall include a copy of the conditions for the placement. The person responsible for notifying the court under this subsection is as follows:

(a) For conditional releases under ORS 426.125, the guardian, relative or friend in whose care the mentally ill person is conditionally released.

(b) For outpatient commitments under ORS 426.127, the community mental health and developmental disabilities program director, or designee of the director, of the county in which the person on outpatient commitment lives.

(c) For trial visits under ORS 426.273, the community mental health and developmental disabilities program director, or designee of the director, of the county in which the per-

son on trial visit is to receive outpatient treatment.

(2) On its own motion, the court with jurisdiction of a mentally ill person on such placement may cause the person to be brought before it for a hearing to determine whether the person is or is not adhering to the terms and conditions of the placement. The person shall have the same rights with respect to notice, detention stay, hearing and counsel as for a hearing held under ORS 426.095. The court shall hold the hearing within five judicial days of the date the mentally ill person receives notice under this section. The court may allow postponement and detention during postponement as provided under ORS 426.095.

(3) Pursuant to the determination of the court upon hearing under this section, a person on placement shall either continue the placement on the same or modified conditions or shall be returned to the division for involuntary care and treatment on an inpatient basis subject to discharge at the end of the commitment period or as otherwise provided under this chapter.

(4) If the person on placement is living in a county other than the county of the court that established the current period of commitment under ORS 426.130 during which the trial visit, conditional release or outpatient commitment takes place, the court establishing the current period of commitment shall transfer jurisdiction to the appropriate court of the county in which the person is living while on the placement and the court receiving the transfer shall accept jurisdiction.

(5) The court may proceed as provided in ORS 426.307 or this section when the court:

(a) Receives notice under ORS 426.070 or 426.228 to 426.235; and

(b) Determines that the person is a mentally ill person on conditional release under ORS 426.125, outpatient commitment under ORS 426.127 or trial visit under ORS 426.273. [1985 c.242 §3 (enacted in lieu of 426.290); 1987 c.903 §29; 1993 c.484 §22]

**Note:** The amendments to 426.275 by section 22, chapter 484, Oregon Laws 1993, take effect July 1, 1994. See section 28, chapter 484, Oregon Laws 1993. The text that is effective until July 1, 1994, is set forth for the user's convenience.

**426.275.** The following are applicable to placements of mentally ill persons that are made as conditional release under ORS 426.125, outpatient commitments under ORS 426.127 or trial visits under ORS 426.273 as described:

(1) If the person responsible under this subsection determines that the mentally ill person is failing to adhere to the terms and conditions of the placement, the responsible person shall notify the court having jurisdiction that the mentally ill person is not adhering to the terms and conditions of the placement. If the placement is an outpatient commitment under ORS 426.127 or a trial visit under ORS 426.273, the notifications shall

include a copy of the conditions for the placement. The person responsible for notifying the court under this subsection is as follows:

(a) For conditional releases under ORS 426.125, the guardian, relative or friend in whose care the mentally ill person is conditionally released.

(b) For outpatient commitments under ORS 426.127, the community mental health and developmental disabilities program director, or designee of the director, of the county in which the person on outpatient commitment lives.

(c) For trial visits under ORS 426.273, the community mental health and developmental disabilities program director, or designee of the director, of the county in which the person on trial visit is to receive outpatient treatment.

(2) On its own motion, the court with jurisdiction of a mentally ill person on such placement may cause the person to be brought before it for a hearing to determine whether the person is or is not adhering to the terms and conditions of the placement. The person shall have the same rights with respect to notice, detention stay, hearing and counsel as for a hearing held under ORS 426.095. The court shall hold the hearing within five judicial days of the date the mentally ill person receives notice under this section. The court may allow postponement and detention during postponement as provided under ORS 426.095.

(3) Pursuant to the determination of the court upon hearing under this section, a person on placement shall either continue the placement on the same or modified conditions or shall be returned to the division for involuntary care and treatment on an inpatient basis subject to discharge at the end of the commitment period or as otherwise provided under this chapter.

(4) If the person on placement is living in a county other than the county of the court that established the current period of commitment under ORS 426.130 during which the trial visit, conditional release or outpatient commitment takes place, the court establishing the current period of commitment shall transfer jurisdiction to the appropriate court of the county in which the person is living while on the placement and the court receiving the transfer shall accept jurisdiction.

**426.278 Distribution of copies of conditions for outpatient commitment or trial visit.** The following persons shall be given a copy of the conditions of a placement of a mentally ill person that is made as an outpatient commitment under ORS 426.127 or as a trial visit under ORS 426.273:

(1) The committed person;

(2) The community mental health and developmental disabilities program director, or designee of the director, of the county in which the committed person is to receive outpatient treatment;

(3) The director of any facility, service or other provider designated to provide care or treatment;

(4) The court of current commitment; and

(5) The appropriate court of the county in which the committed person lives during the commitment period if the person is living in a different county than the county of the court that made the current commitment.

[1987 c.903 §301]

**426.280 Limitations on liability.** The following limitations on liability and circumstances are applicable to situations within this chapter:

(1) None of the following shall in any way be held criminally or civilly liable for the making of the notification under ORS 426.070, provided the person acts in good faith, on probable cause and without malice:

(a) The community mental health and developmental disabilities program director or designee of the director.

(b) The two petitioning persons.

(c) The county health officer.

(d) Any magistrate.

(e) Any peace officer or probation officer.

(f) Any physician attending the allegedly mentally ill person.

(g) The physician attached to a hospital or institution wherein the allegedly mentally ill person is a patient.

(2) The person conducting the investigation under ORS 426.070 and ORS 426.074 shall not be held criminally or civilly liable for conducting the investigation, provided the investigator acts in good faith, on probable cause and without malice.

(3) The person representing the state's interest under ORS 426.100 shall not be held criminally or civilly liable for performing responsibilities under ORS 426.100 as long as the person acts in good faith and without malice.

(4) No person appointed under ORS 426.110 to conduct an examination under ORS 426.120 shall be held criminally or civilly liable for actions pursuant to ORS 426.120 if the examiner acts in good faith and without malice.

(5) No physician, hospital or judge shall be held criminally or civilly liable for actions pursuant to ORS 426.228, 426.231, 426.232, 426.234 or 426.235 if the physician, hospital or judge acts in good faith, on probable cause and without malice.

(6) No peace officer, community mental health director or designee, hospital or other facility, physician or judge shall in any way be held criminally or civilly liable for actions pursuant to ORS 426.228 to 426.235 if the individual or facility acts in good faith, on probable cause and without malice.

(7) Any guardian, relative or friend of a mentally ill person who assumes responsibility for the mentally ill person under a conditional release under ORS 426.125 shall not be liable for any damages that are sustained by any person on account of the misconduct of the mentally ill person while on condi-

tional release if the guardian, relative or friend acts in good faith and without malice.

(8) The persons designated in this subsection shall not be liable for damages that are sustained by any person or property on account of the misconduct of a mentally ill person while the mentally ill person is on outpatient commitment under ORS 426.127 if the designated person acts without willful and wanton neglect of duty. This subsection is applicable to all of the following:

(a) The community mental health and developmental disabilities program director and the designee of the director for the county in which the committed person resides.

(b) The superintendent or director of any staff of any facility where the mentally ill person receives treatment during the outpatient commitment.

(c) The Assistant Director for Mental Health and Developmental Disability Services.

(d) The physician and the facility granting an outpatient commitment to a patient.

(9) For trial visits granted under ORS 426.273 and 426.275:

(a) None of the following shall be liable for a patient's expenses while on trial visit:

(A) The physician and the facility granting a trial visit to a patient;

(B) The superintendent or director of the facility granting a trial visit;

(C) The Assistant Director for Mental Health and Developmental Disability Services; and

(D) The chief medical officer of the facility.

(b) The following persons shall not be liable for damages that are sustained by any person on account of the misconduct of such patient while on trial visit if the person acts without willful and wanton neglect of duty:

(A) The community mental health and developmental disabilities program director for the county in which the person resides;

(B) The superintendent, director or chief medical officer of any facility granting a trial visit to a patient;

(C) The physician responsible for the patient's trial visit;

(D) The Assistant Director for Mental Health and Developmental Disability Services; or

(E) The employees and agents of persons listed in this paragraph. [Amended by 1961 c.228 §1; 1961 c.706 §26; 1969 c.597 §91; 1973 c.838 §26; 1985 c.242 §5; 1987 c.903 §31; 1993 c.484 §23]

**Note:** The amendments to 426.280 by section 23, chapter 484, Oregon Laws 1993, take effect July 1, 1994. See section 28, chapter 484, Oregon Laws 1993. The text that is effective until July 1, 1994, is set forth for the user's convenience.

**426.280.** The following limitations on liability and circumstances are applicable to situations within this chapter:

(1) None of the following shall in any way be held criminally or civilly liable for the making of the notification under ORS 426.070, provided the person acts in good faith, on probable cause and without malice:

(a) The community mental health and developmental disabilities program director or designee of the director.

(b) The two petitioning persons.

(c) The county health officer.

(d) Any magistrate.

(e) Any peace officer or probation officer.

(f) Any physician attending the allegedly mentally ill person.

(g) The physician attached to a hospital or institution wherein the allegedly mentally ill person is a patient.

(2) The person conducting the investigation under ORS 426.070 and ORS 426.074 shall not be held criminally or civilly liable for conducting the investigation, provided the investigator acts in good faith, on probable cause and without malice.

(3) The person representing the state's interest under ORS 426.100 shall not be held criminally or civilly liable for performing responsibilities under ORS 426.100 as long as the person acts in good faith and without malice.

(4) No person appointed under ORS 426.110 to conduct an examination under ORS 426.120 shall be held criminally or civilly liable for actions pursuant to ORS 426.120 if the examiner acts in good faith and without malice.

(5) No physician, hospital or judge shall be held criminally or civilly liable for actions pursuant to ORS 426.175 if the physician, hospital or judge acts in good faith, on probable cause and without malice.

(6) No peace officer, community mental health director or designee, hospital or other facility, physician or judge shall in any way be held criminally or civilly liable for actions pursuant to ORS 426.215 if the individual or facility acts in good faith, on probable cause and without malice.

(7) Any guardian, relative or friend of a mentally ill person who assumes responsibility for the mentally ill person under a conditional release under ORS 426.125 shall not be liable for any damages that are sustained by any person on account of the misconduct of the mentally ill person while on conditional release if the guardian, relative or friend acts in good faith and without malice.

(8) The persons designated in this subsection shall not be liable for damages that are sustained by any person or property on account of the misconduct of a mentally ill person while the mentally ill person is on outpatient commitment under ORS 426.127 if the designated person acts without willful and wanton neglect of duty. This subsection is applicable to all of the following:

(a) The community mental health and developmental disabilities program director and the designee of the director for the county in which the committed person resides.

(b) The superintendent or director of any staff of any facility where the mentally ill person receives treatment during the outpatient commitment.

(c) The Assistant Director for Mental Health and Developmental Disability Services.

(d) The physician and the facility granting an outpatient commitment to a patient.

(9) For trial visits granted under ORS 426.273 and 426.275:

(a) None of the following shall be liable for a patient's expenses while on trial visit:

(A) The physician and the facility granting a trial visit to a patient;

(B) The superintendent or director of the facility granting a trial visit;

(C) The Assistant Director for Mental Health and Developmental Disability Services; and

(D) The chief medical officer of the facility.

(b) The following persons shall not be liable for damages that are sustained by any person on account of the misconduct of such patient while on trial visit if the person acts without willful and wanton neglect of duty:

(A) The community mental health and developmental disabilities program director for the county in which the person resides;

(B) The superintendent, director or chief medical officer of any facility granting a trial visit to a patient;

(C) The physician responsible for the patient's trial visit;

(D) The Assistant Director for Mental Health and Developmental Disability Services; or

(E) The employees and agents of persons listed in this paragraph.

**426.290** [Amended by 1959 c.513 §1; 1961 c.228 §2; 1969 c.391 §6; 1973 c.838 §27; 1975 c.690 §18; repealed by 1985 c.242 §1 (426.273, 426.275 and 426.292 enacted in lieu of 426.290)]

**426.292 Release prior to expiration of term of commitment.** Nothing in this chapter prohibits the division from releasing a person from a hospital or other facility in which the person is being treated prior to the expiration of the period of commitment under ORS 426.130 when, in the opinion of the director of the facility or treating physician, the person is no longer mentally ill. [1985 c.242 §4 (enacted in lieu of 426.290)]

### (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 the guardian, relative or creditor of the person 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, the guardian, relative or creditor of the person 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 the affidavit of the person or other evidence that the person 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 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 ORS 44.415 (2). [1967 c.460 §2; 1989 c.980 §14]

**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 and developmental disabilities 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 and developmental disabilities 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 the designee of the director. 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 of all the following:

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

(b) That the person may consult with legal counsel and that legal counsel will be provided for the person without cost if the person is unable to afford legal counsel.

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

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

(e) That the person may protest either orally or in writing by signing the form ac-

companying the certification; that the person 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 the person is confined, examine the person and report to the court the results of the examination.

(f) That the person may subpoena witnesses and offer evidence on behalf of the person at the hearing.

(g) That if the person 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 the person.

(4) Nothing in subsection (3) of this section requires the giving of the warning under ORS 426.123.

(5) The person serving the certification shall read and deliver the certification to the person and ask whether the person 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; 1987 c.903 §32]

**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 the person that the division or facility has requested that commitment be continued for an additional period of time and that if the person does not protest this commitment the commitment will be continued for an indefinite period of time up to 180 days. The person 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 under ORS 426.301 or if the court proceeds under ORS 426.275 (5), the following provisions apply as described:

(1) The hearing shall be conducted as promptly as possible and at a time and place as the court may direct.

(2) If the person requests a continuance in order to prepare for the hearing or to ob-

tain legal counsel to represent the person, the court may grant postponement and detention during postponement as provided under ORS 426.095.

(3) The person has the right to representation by or appointment of counsel as provided under ORS 426.100 subject to ORS 135.055, 151.430 to 151.480 and applicable contracts entered into under ORS 151.460.

(4) 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 the person and to report to the court the results of the examination.

(5) The provisions of ORS 40.230 and 40.235 do not apply to the use of medical records from the current period of commitment or to testimony related to such records or period of commitment in connection with hearings under this section. The court may consider as evidence such reports and testimony.

(6) 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 commitment to the division for an additional indefinite period of time up to 180 days.

(7) 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; 1987 c.803 §24; 1987 c.903 §§33,33a; 1989 c.171 §53; 1993 c.484 §24]

**Note:** The amendments to 426.307 by section 24, chapter 484, Oregon Laws 1993, take effect July 1, 1994. See section 28, chapter 484, Oregon Laws 1993. The text that is effective until July 1, 1994, is set forth for the user's convenience.

**426.307.** If the person requests a hearing under ORS 426.301, the following provisions apply as described:

(1) The hearing shall be conducted as promptly as possible and at a time and place as the court may direct.

(2) If the person requests a continuance in order to prepare for the hearing or to obtain legal counsel to represent the person, the court may grant postponement

and detention during postponement as provided under ORS 426.095.

(3) The person has the right to representation by or appointment of counsel as provided under ORS 426.100 subject to ORS 135.055, 151.430 to 151.480 and applicable contracts entered into under ORS 151.460.

(4) 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 the person and to report to the court the results of the examination.

(5) The provisions of ORS 40.230 and 40.235 do not apply to the use of medical records from the current period of commitment or to testimony related to such records or period of commitment in connection with hearings under this section. The court may consider as evidence such reports and testimony.

(6) 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 commitment to the division for an additional indefinite period of time up to 180 days.

(7) 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.

**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 reasonable 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. The expenses reimbursed under this subsection shall include any expenses incurred to pay for representation of the state's interest under ORS 426.100 and 426.250.

(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. The expenses reimbursed under this subsection shall include any expenses incurred to pay for representation of the state's interest under ORS 426.100 and 426.250. [Amended by 1975 c.690 §22; 1977 c.764 §7; 1979 c.392 §2; 1987 c.903 §34]

**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 the assistants of the agent or attendant, 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 for the use of the superintendents of the Oregon State Hospital, the Eastern Oregon Psychiatric Center and the Eastern Oregon 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 and Developmental Disability Services 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; 1985 c.565 §67]

**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 and Developmental Disability Services 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 and Developmental Disability Services, 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]

**426.370 Withholding information obtained in certain commitment or admission investigations.** A community mental health and developmental disabilities program director or designee may withhold information obtained during an investigation under ORS 426.070, 426.228, 426.232, 426.233 or 426.234 if the community mental health and developmental disabilities program director determines:

(1) That information was not included in its investigation report or otherwise used in a material way to support a determination by the community mental health and developmental disabilities program director that there was probable cause to believe a person was a mentally ill person; and

(2) Release of the information would constitute a clear and immediate danger to any person. [1989 c.993 §6; 1993 c.484 §25]

**Note:** The amendments to 426.370 by section 25, chapter 484, Oregon Laws 1993, take effect July 1, 1994. See section 28, chapter 484, Oregon Laws 1993. The text that is effective until July 1, 1994, is set forth for the user's convenience.

**426.370.** A community mental health and developmental disabilities program director or designee may withhold information obtained during an investigation under ORS 426.070, 426.175 or 426.215 if the community mental health and developmental disabilities program director determines:

(1) That information was not included in its investigation report or otherwise used in a material way to support a determination by the community mental health and developmental disabilities program director that there was probable cause to believe a person was a mentally ill person; and

(2) Release of the information would constitute a clear and immediate danger to any person.

**Note:** 426.370 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 Preface to Oregon Revised Statutes for further explanation.

**(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 426.223 and 426.241 to 426.380 shall be entitled to the writ of habeas corpus upon proper petition by the individual 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 convulsive therapy, unless they have given their express and informed consent or authorized the treatment pursuant to ORS 127.700 to 127.735. This right may be denied to such persons for good cause as defined in administrative rule 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 (22)(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; 1983 c.486 §1; 1993 c.442 §16]

**426.390 Construction.** Nothing in ORS 426.295, 426.297 and 426.380 to 426.390 is intended to detract from the powers of a court under ORS 126.003 to 126.403, 126.805 to 126.886, 127.005 and 127.015 or ORS 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 the legal counsel, guardian, relative or friend of the patient. [1973 c.838 §31]

**(Testing)**

**426.405 Testing to identify organic disease.** The Mental Health and Developmental Disability Services Division shall develop and implement a procedure under which a person committed to the care of the division undergoes, after informed consent of the person or the guardian thereof, appropriate testing and diagnostic evaluation to identify organic diseases or conditions that cause or exacerbate the psychiatric symptoms of the person. The division shall adopt the treatment program for any person found to be suffering from an organic disease or condition that contributes to or exacerbates the psychiatric symptoms of the person to treat the disease or condition as a part of the total treatment program of the person. [1983 c.536 §1]

**Note:** 426.405 and 426.407 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 426 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**426.407 Study of testing results.** The Mental Health and Developmental Disability Services Division shall conduct a study and

provide to the Legislative Assembly the following information:

(1) The prevalence of undiagnosed and untreated organic diseases or conditions among clients of the mental health system, the degree to which these diseases or conditions cause or exacerbate psychiatric symptoms, the effectiveness of treatment in reducing or eliminating psychiatric symptoms, and the cost implications to the mental health and health systems of identifying and treating these diseases or conditions.

(2) Recommendations for changes on current medical evaluation procedures, staffing and training of mental health workers in public mental health programs.

(3) Recommendations to enable public mental health programs to design and implement the most appropriate cost-effective levels of medical evaluation for various program settings and client characteristics.

(4) Recommendations that reduce barriers to obtaining health care for mental health client groups identified in the study. [1983 c.536 §2]

Note: See note under 426.405.

### DRUG AND ALCOHOL ADDICTION

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

**426.450 Admission of person 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 and Developmental Disability Services 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 "other treatment facility" in ORS 430.306. [1971 c.622 §7; 1973 c.795 §3; 1979 c.744 §22; 1981 c.809 §1; 1985 c.565 §68]

**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 and 430.315 to 430.335 provided the actions are 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 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 426 or any series therein by legislative action. See 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" means an individual who is:

(a) Eighteen years of age or older; and

(b) Diagnosed by a psychiatrist, a licensed clinical psychologist or a nonmedical examiner certified by the Mental Health and Developmental Disability Services Division as suffering from chronic schizophrenia, a chronic major affective disorder, a chronic paranoid disorder or another chronic psychotic mental disorder other than those caused by substance abuse. For purposes of providing services in the community, the Mental Health and Developmental Disability Services Division may adopt rules consistent with this section and accepted professional practices in the fields of psychology and psychiatry more specifically to specify other criteria for determining who is chronically mentally ill.

(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; 1987 c.903 §35]

Note: See note under 426.490.

**426.500 Powers and duties of Mental Health and Developmental Disability Services Division.** For the purpose of carrying out the policy and intent of ORS 426.490 to 426.500, the Mental Health and Developmental Disability Services 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 426.223 and 426.241 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]

**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 and Developmental Disability Services 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 behalf of the person has been executed by the parent, adult next of kin or legal guardian of the person. 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 the person, if at least 18 years of age, has given notice in writing of desire to be discharged therefrom, or, if the patient is under the age of 18 years, after notice in writing has been given by the parent, adult next of kin or legal guardian of the person 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 and Developmental Disability Services Division hereby is directed and authorized to establish and operate treatment programs, either separately within an existing state Department of Corrections institution, as part of an existing program within a Mental Health and Developmental Disability Services 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; 1987 c.320 §230]

**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) Sentence the defendant to 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 Director of the Department of Corrections to participate in a treatment program for sexually dangerous persons pursuant to ORS 426.670. The Department of Corrections and Mental Health and Developmental Disability Services 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; 1987 c.320 §231; 1993 c.14 §24]

**426.680 Trial visits for probationer.** (1) 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:

(a) The trial visit is not inconsistent with the terms and conditions of probation; and

(b) The trial visit is agreed to by the community mental health and developmental disabilities program director for the county in which the person would reside.

(2) Trial visit here shall correspond to trial visit as described in ORS 426.273 to 426.292, except that the length of a trial visit may be for the duration of the period of probation, subject to the consent of the sen-

tencing court. [1973 c.443 §7; 1977 c.377 §4; 1985 c.242 §7]

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]

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