

# Senate Bill 575

Sponsored by Senator MORRISETTE

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Allows physician assistant to authorize commitment of person who is mentally ill.

## A BILL FOR AN ACT

1  
2 Relating to persons who are mentally ill; creating new provisions; and amending ORS 426.005,  
3 426.072, 426.074, 426.120, 426.228, 426.231, 426.232, 426.233, 426.234 and 426.335.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 426.005 is amended to read:

6 426.005. (1) As used in ORS 426.005 to 426.390, unless the context requires otherwise:

7 (a) "Department" means the Department of Human Services.

8 (b) "Director of the facility" means a superintendent of a state mental hospital, the chief of  
9 psychiatric services in a community hospital or the person in charge of treatment and rehabilitation  
10 programs at other treatment facilities.

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

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

17 (A) Dangerous to self or others.

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

20 (C) A person:

21 (i) With a chronic mental illness, as defined in ORS 426.495;

22 (ii) Who, within the previous three years, has twice been placed in a hospital or approved in-  
23 patient facility by the department under ORS 426.060;

24 (iii) Who is exhibiting symptoms or behavior substantially similar to those that preceded and led  
25 to one or more of the hospitalizations or inpatient placements referred to in sub-subparagraph (ii)  
26 of this subparagraph; and

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

30 (e) "Nonhospital facility" means any facility, other than a hospital, that is approved by the de-  
31 partment to provide adequate security, psychiatric, nursing and other services to persons under ORS  
32 426.232 or 426.233.

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.  
New sections are in **boldfaced** type.

1 (f) “Prehearing period of detention” means a period of time calculated from the initiation of  
 2 custody during which a person may be detained under ORS 426.228, 426.231, 426.232 or 426.233.

3 (g) “Physician” means a physician licensed under ORS chapter 677.

4 (h) “Physician assistant” means a physician assistant licensed under ORS chapter 677.

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

9 **SECTION 2.** ORS 426.072 is amended to read:

10 426.072. (1) A hospital or nonhospital facility and a treating physician must comply with *[the*  
 11 *following]* **subsection (2) of this section** when an allegedly mentally ill person is placed in custody  
 12 at the hospital or nonhospital facility:

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

14 (b) By a peace officer under ORS 426.228 or other person authorized under ORS 426.233; or

15 (c) By a physician **or physician assistant** under ORS 426.232.

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

18 (a) The person *[shall]* **must** receive the care, custody and treatment required for mental and  
 19 physical health and safety;

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

22 (c) All methods of treatment, including the prescription and administration of drugs, *[shall be]*  
 23 **are** the sole responsibility of the treating physician. However, the person *[shall]* **may** not be subject  
 24 to electroshock therapy or unduly hazardous treatment and *[shall]* **must** receive usual and custom-  
 25 ary treatment in accordance with medical standards in the community;

26 (d) The treating physician *[shall]* **must** be notified immediately of any use of mechanical re-  
 27 straints on the person. Every use of a mechanical restraint and the reasons therefor *[shall]* **must**  
 28 be made a part of the clinical record of the person over the signature of the treating physician; and

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

33 (3) The Department of Human Services shall adopt rules necessary to carry out this section,  
 34 including rules regarding the content of the medical record compiled during the current period of  
 35 custody.

36 **SECTION 3.** ORS 426.074 is amended to read:

37 426.074. The following is applicable to an investigation initiated by a community mental health  
 38 and developmental disabilities program director, or a designee of the director, as part of commitment  
 39 procedures under ORS 426.070 and 426.228 to 426.235:

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

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

1 mentally ill.

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

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

6 (B) An application for extension shall be made to the court under paragraph (c) of this sub-  
7 section.

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

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

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

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

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

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

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

24 (c) The investigator shall be allowed access to physicians, **physician assistants**, nurses or so-  
25 cial workers and to medical records compiled during the current involuntary prehearing period of  
26 detention to determine probable cause and to develop alternatives to commitment. If commitment is  
27 proposed because the person appears to be a mentally ill person as defined in ORS 426.005 (1)(d)(C),  
28 the investigator shall be allowed access to medical records necessary to verify the existence of cri-  
29 teria described in ORS 426.005 (1)(d)(C). The investigator shall include pertinent parts of the medical  
30 record in the investigation report. Records and communications described in this paragraph and  
31 communications related thereto are not privileged under ORS 40.230, 40.235, 40.240 or 40.250.

32 (3) A copy of the investigation report shall be provided as soon as possible, but in no event later  
33 than 24 hours prior to the hearing, to the allegedly mentally ill person and to that person's counsel.  
34 Copies shall likewise be provided to counsel assisting the court, to the examiners and to the court  
35 for use in questioning witnesses.

36 **SECTION 4.** ORS 426.120 is amended to read:

37 426.120. (1) Persons appointed under ORS 426.110 to conduct the examination shall do the fol-  
38 lowing:

39 (a) Examine the person as to mental condition;

40 (b) Initiate the examination process prior to the hearing. Any failure to comply with this par-  
41 agraph *[shall]* **is** not, in itself, *[constitute]* sufficient grounds to challenge the examination conducted  
42 by an examiner;

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

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

45 (2) The following is a nonexclusive list of requirements relating to the content of examination

1 reports prepared under subsection (1) of this section:

2 (a) If the *[examining persons]* **examiners** find, and show by their reports, that the person ex-  
3 amined is a mentally ill person, the reports shall include a recommendation as to the type of treat-  
4 ment facility best calculated to help the person recover from mental illness.

5 (b) *[Each report]* **An examiner** shall also advise the court whether in the opinion of the exam-  
6 iner the mentally ill person would cooperate with and benefit from a program of voluntary treat-  
7 ment.

8 (c) *[Reports shall contain]* **An examiner shall include in the report** the information required  
9 by the Department of Human Services by rule. The department shall adopt rules necessary to carry  
10 out this paragraph.

11 (3) The examiner shall be allowed access to physicians, **physician assistants**, nurses or social  
12 workers and to medical records compiled during the current involuntary prehearing period of de-  
13 tention and the investigation report. Records and communications described in this subsection and  
14 communications related thereto are not privileged under ORS 40.230, 40.235, 40.240 or 40.250.

15 **SECTION 5.** ORS 426.228 is amended to read:

16 426.228. (1) A peace officer may take into custody a person who the officer has probable cause  
17 to believe is dangerous to self or to any other person and is in need of immediate care, custody or  
18 treatment for mental illness. As directed by the community mental health and developmental disa-  
19 bilities program director, a peace officer shall remove a person taken into custody under this section  
20 to the nearest hospital or nonhospital facility approved by the Department of Human Services. The  
21 officer shall prepare a written report and deliver it to the treating physician. The report *[shall]*  
22 **must** state:

23 (a) The reason for custody;

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

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

27 (2) A peace officer shall take a person into custody when the community mental health and de-  
28 velopmental disabilities program director, pursuant to ORS 426.233, notifies the peace officer that  
29 the director has probable cause to believe that the person is imminently dangerous to self or to any  
30 other person. As directed by the community mental health and developmental disabilities program  
31 director, the peace officer shall remove the person to a hospital or nonhospital facility approved by  
32 the department. The community mental health and developmental disabilities program director shall  
33 prepare a written report that the peace officer shall deliver to the treating physician. The report  
34 *[shall]* **must** state:

35 (a) The reason for custody;

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

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

39 (3) If more than one hour will be required to transport the person to the hospital or nonhospital  
40 facility from the location where the person was taken into custody, the peace officer shall obtain,  
41 if possible, a certificate from a physician **or physician assistant** *[licensed by the Oregon Medical*  
42 *Board]* stating that the travel will not be detrimental to the person's physical health and that the  
43 person is dangerous to self or to any other person and is in need of immediate care or treatment for  
44 mental illness. The physician **or physician assistant** shall have personally examined the allegedly  
45 mentally ill person within 24 hours prior to signing the certificate.

1 (4) When a peace officer or other authorized person, acting under this section, delivers a person  
2 to a hospital or nonhospital facility, a physician [*licensed by the Oregon Medical Board*] **or physi-**  
3 **cian assistant** shall examine the person immediately. If the physician **or physician assistant** finds  
4 the person to be in need of emergency care or treatment for mental illness, the physician **or phy-**  
5 **sician assistant** shall proceed under ORS 426.232, otherwise the person shall not be retained in  
6 custody. If the person is to be released from custody, the peace officer or the community mental  
7 health and developmental disabilities program director shall return the person to the place where  
8 the person was taken into custody unless the person declines that service.

9 (5) A peace officer may transfer a person in custody under this section to the custody of a per-  
10 son authorized by the county governing body under ORS 426.233 (3). The peace officer may meet the  
11 authorized person at any location that is in accordance with ORS 426.140 to effect the transfer.  
12 When transferring a person in custody to an authorized person, the peace officer shall deliver the  
13 report required under subsections (1) and (2) of this section to the authorized person.

14 (6) A person authorized under ORS 426.233 (3) shall take a person into custody when directed  
15 to do so by a peace officer or by a community mental health and developmental disabilities program  
16 director under ORS 426.233.

17 (7) A person authorized under ORS 426.233 (3) shall perform the duties of the peace officer or  
18 the community mental health and developmental disabilities program director required by this sec-  
19 tion and ORS 426.233 if the peace officer or the director has not already done so.

20 (8) A person authorized under ORS 426.233 (3) may transfer a person in custody under this  
21 section to the custody of another person authorized under ORS 426.233 (3) or a peace officer. The  
22 authorized person transferring custody may meet another authorized person or a peace officer at  
23 any location that is in accordance with ORS 426.140 to effect the transfer.

24 (9)(a) When a peace officer takes a person into custody under this section, and the peace officer  
25 reasonably suspects that the person is a foreign national, the peace officer shall inform the person  
26 of the person's right to communicate with an official from the consulate of the person's country.

27 (b) A peace officer is not civilly or criminally liable for failure to provide the information re-  
28 quired by this subsection. Failure to provide the information required by this subsection does not  
29 in itself constitute grounds for the exclusion of evidence that would otherwise be admissible in a  
30 proceeding.

31 **SECTION 6.** ORS 426.231 is amended to read:

32 426.231. (1) A physician [*licensed by the Oregon Medical Board*] **or physician assistant** may hold  
33 a person for transportation to a treatment facility for up to 12 hours in a health care facility li-  
34 censed under ORS chapter 431 and approved by the Department of Human Services if:

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

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

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

39 (2) Before transporting the person, the physician **or physician assistant** shall prepare a written  
40 statement that:

41 (a) The physician **or physician assistant** has examined the person within the preceding 12  
42 hours;

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

45 (c) The physician **or physician assistant** believes the person is dangerous to self or to any

1 other person and is in need of emergency care or treatment for mental illness.

2 (3) The written statement required by subsection (2) of this section authorizes a peace officer,  
3 a person authorized under ORS 426.233 or the designee of a community mental health and develop-  
4 mental disabilities program director to transport a person to the treatment facility indicated on the  
5 statement.

6 **SECTION 7.** ORS 426.232 is amended to read:

7 426.232. (1) When a physician **or physician assistant** [*licensed to practice medicine by the Oregon*  
8 *Medical Board*] believes **that** a person who is brought to a hospital or nonhospital facility by a  
9 peace officer under ORS 426.228[,] **or** a person authorized under ORS 426.233 or **that** a person who  
10 is at a hospital or nonhospital facility is dangerous to self or to any other person and is in need of  
11 emergency care or treatment for mental illness, the physician **or physician assistant** may do one  
12 of the following:

13 (a) After consulting with a physician or a qualified mental health professional, as defined by rule  
14 of the Department of Human Services, detain the person and cause the person to be admitted or, if  
15 the person is already admitted, cause the person to be retained in a hospital where the physician  
16 **or physician assistant** has admitting privileges or is on staff. Neither the physician **or physician**  
17 **assistant** nor the qualified mental health professional may be related by blood or marriage to the  
18 person.

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

21 (2) When approving a person for emergency care or treatment at a nonhospital facility under  
22 this section, the physician **or physician assistant** shall notify immediately the community mental  
23 health and developmental disabilities program director in the county where the person was taken  
24 into custody and maintain the person, if the person is being held at a hospital, for as long as is  
25 feasible given the needs of the person for mental or physical health or safety. [*However, under no*  
26 *circumstances may the person be held for longer than five judicial days.*] **Except when a person is**  
27 **being held under ORS 426.237 (1)(b), a person may not be held under this section for more**  
28 **than five judicial days without a hearing being held under ORS 426.070 to 426.130.**

29 **SECTION 8.** ORS 426.233 is amended to read:

30 426.233. (1)(a) A community mental health and developmental disabilities program director op-  
31 erating under ORS 430.610 to 430.695 or a designee thereof, under authorization of a county gov-  
32 erning body, may take one of the actions listed in paragraph (b) of this subsection when the  
33 community mental health and developmental disabilities program director or designee has probable  
34 cause to believe a person:

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

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

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

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

44 (A) Notify a peace officer to take the person into custody and direct the officer to remove the  
45 person to a hospital or nonhospital facility approved by the Department of Human Services;

1 (B) Authorize involuntary admission of, or, if already admitted, cause to be involuntarily re-  
2 tained in a nonhospital facility approved by the department, a person approved for care or treatment  
3 at a nonhospital facility by a physician **or physician assistant** under ORS 426.232;

4 (C) Notify a person authorized under subsection (3) of this section to take the person into cus-  
5 tody and direct the authorized person to remove the person in custody to a hospital or nonhospital  
6 facility approved by the department;

7 (D) Direct a person authorized under subsection (3) of this section to transport a person in  
8 custody from a hospital or a nonhospital facility approved by the department to another hospital or  
9 nonhospital facility approved by the department as provided under ORS 426.235; or

10 (E) Direct a person authorized under subsection (3) of this section to transport a person in  
11 custody from a facility approved by the department to another facility approved by the department  
12 as provided under ORS 426.060.

13 (2) A designee under subsection (1) of this section must be recommended by the community  
14 mental health and developmental disabilities program director, meet the standards established by  
15 rule of the department and be approved by the county governing body before assuming the authority  
16 permitted under subsection (1) of this section.

17 (3) The county governing body may, upon recommendation by the community mental health and  
18 developmental disabilities program director, authorize any person to provide custody and secure  
19 transportation services for a person in custody under ORS 426.228. In authorizing a person under  
20 this subsection, the county governing body shall grant the person the authority to do the following:

21 (a) Accept custody from a peace officer of a person in custody under ORS 426.228;

22 (b) Take custody of a person upon notification by the community mental health and develop-  
23 mental disabilities program director under the provisions of this section;

24 (c) Remove a person in custody to an approved hospital or nonhospital facility as directed by  
25 the community mental health and developmental disabilities program director;

26 (d) Transfer a person in custody to another person authorized under this subsection or a peace  
27 officer;

28 (e) Transfer a person in custody from a hospital or nonhospital facility to another hospital fa-  
29 cility or nonhospital facility when directed to do so by the community mental health and develop-  
30 mental disabilities program director; and

31 (f) Retain a person in custody at the approved hospital or nonhospital facility until a physician  
32 **or physician assistant** makes a determination under ORS 426.232.

33 (4) A person authorized under subsection (3) of this section must be recommended by the com-  
34 munity mental health and developmental disabilities program director, meet the standards estab-  
35 lished by rule of the department and be approved by the governing body before assuming the  
36 authority granted under this section.

37 (5) The costs of transporting a person as authorized under ORS 426.060, 426.228 or 426.235 by  
38 a person authorized under subsection (3) of this section [*shall be*] **are** the responsibility of the  
39 county whose peace officer or community mental health and developmental disabilities program di-  
40 rector directs the authorized person to take custody of a person and to transport the person to a  
41 facility approved by the department, but the county [*shall*] **is** not be responsible for costs that ex-  
42 ceed the amount provided by the state for that transportation. A person authorized to act under  
43 subsection (3) of this section shall charge the cost of emergency medical transportation to, and  
44 collect that cost from, the person, third party payers or otherwise legally responsible persons or  
45 agencies in the same manner that costs for the transportation of other persons are charged and

1 collected.

2 **SECTION 9.** ORS 426.234 is amended to read:

3 426.234. (1) At the time a person is admitted to or retained in a hospital or nonhospital facility  
4 under ORS 426.232 or 426.233, a physician, **physician assistant**, nurse or qualified mental health  
5 professional at the hospital or nonhospital facility shall:

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

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

9 (c) Immediately examine the allegedly mentally ill person;

10 (d) Set forth, in writing, the condition of the person and the need for emergency care or treat-  
11 ment; and

12 (e) If the physician, **physician assistant**, nurse or qualified mental health professional reason-  
13 ably suspects that the person is a foreign national, inform the person of the person's right to com-  
14 municate with an official from the consulate of the person's country. A physician, **physician**  
15 **assistant**, nurse or qualified mental health professional is not civilly or criminally liable for failure  
16 to provide the information required by this paragraph. Failure to provide the information required  
17 by this paragraph does not in itself constitute grounds for the exclusion of evidence that would  
18 otherwise be admissible in a proceeding.

19 (2)(a) At the time the person is admitted to or retained in a hospital under ORS 426.232, the  
20 physician **or physician assistant** shall contact the community mental health and developmental  
21 disabilities program director of the county in which the person resides, if the county of residence  
22 is different from the county in which the hospital is located. The community mental health and de-  
23 velopmental disabilities program director may request that the physician **or physician assistant**  
24 notify the circuit court in the county in which the person resides. If the community mental health  
25 and developmental disabilities program director does not make the request authorized by this para-  
26 graph, the physician **or physician assistant** shall notify, immediately and in writing, the circuit  
27 court in the county in which the person is hospitalized.

28 (b) At the time the person is admitted to a hospital under ORS 426.232 after being brought to  
29 the hospital by a peace officer under ORS 426.228, the physician **or physician assistant** shall con-  
30 tact the community mental health and developmental disabilities program director of the county in  
31 which the person is hospitalized. The community mental health and developmental disabilities pro-  
32 gram director of the county in which the person is hospitalized may request that the physician **or**  
33 **physician assistant** notify the circuit court in the county in which the person is hospitalized. If the  
34 community mental health and developmental disabilities program director does not make the request  
35 authorized by this paragraph, the physician **or physician assistant** shall notify, immediately and in  
36 writing, the circuit court in the county in which the person was taken into custody.

37 (c) If, at any time prior to the hearing under ORS 426.070 to 426.130, the physician responsible  
38 for a person admitted or retained under ORS 426.232 determines that the person is not dangerous  
39 to self or others and is not in need of emergency care or treatment for mental illness, the physician  
40 may release the person from the detention authorized by ORS 426.232. The physician shall imme-  
41 diately notify the circuit court notified under this subsection and the community mental health and  
42 developmental disabilities program director of the person's release from detention.

43 (3)(a) At the time the person is admitted to or retained in a nonhospital facility under ORS  
44 426.233, the community mental health and developmental disabilities program director in the county  
45 where the person was taken into custody shall contact the community mental health and develop-

1 mental disabilities program director of the county in which the person resides, if the county of res-  
 2 idence is different from the county in which the person was taken into custody. The community  
 3 mental health and developmental disabilities program director of the county in which the person  
 4 resides may request that the community mental health and developmental disabilities program di-  
 5 rector of the county in which the person was taken into custody notify the circuit court in the  
 6 county where the person resides. Otherwise, the community mental health and developmental disa-  
 7 bilities program director of the county in which the person was taken into custody shall notify, im-  
 8 mediately and in writing, the circuit court in the county in which the person was taken into custody.

9 (b) If, at any time prior to the hearing under ORS 426.070 to 426.130, a community mental health  
 10 and developmental disabilities program director, after consultation with a physician, determines that  
 11 a person admitted or retained under ORS 426.233 is not dangerous to self or others and is not in  
 12 need of immediate care, custody or treatment for mental illness, the community mental health and  
 13 developmental disabilities program director may release the person from detention. The community  
 14 mental health and developmental disabilities program director shall immediately notify the circuit  
 15 court originally notified under paragraph (a) of this subsection of the person's release from de-  
 16 tention.

17 (4) When the judge of the circuit court receives notice under subsection (2) or (3) of this section,  
 18 the judge immediately shall commence proceedings under ORS 426.070 to 426.130. In a county having  
 19 a population of 100,000 or more, and when feasible in a county with a lesser population, the com-  
 20 munity mental health and developmental disabilities program director or designee who directs the  
 21 peace officer or other authorized person to take a person into custody under ORS 426.233 *[shall]*  
 22 **may** not also conduct the investigation as provided for under ORS 426.074. Except when a person  
 23 is being held under ORS 426.237 (1)(b), a person *[shall]* **may** not be held under ORS 426.232 or  
 24 426.233 for more than five judicial days without a hearing being held under ORS 426.070 to 426.130.

25 (5) When the judge of the circuit court receives notice under subsection (2)(c) or (3)(b) of this  
 26 section that a person has been released, and unless the court receives the recommendation required  
 27 by ORS 426.070 (4), the judge shall dismiss the case no later than 14 days after the date the person  
 28 was initially detained.

29 **SECTION 10.** ORS 426.335 is amended to read:

30 426.335. The following limitations on liability and circumstances are applicable to situations  
 31 within this chapter and ORS 430.397 to 430.401:

32 (1) *[None of the following shall in any way be held]* **The following persons are not** criminally  
 33 or civilly liable for the making of the notification under ORS 426.070, provided the person acts in  
 34 good faith, on probable cause and without malice:

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

37 (b) The two petitioning persons.

38 (c) The county health officer.

39 (d) Any magistrate.

40 (e) Any peace officer or parole and probation officer.

41 (f) Any physician **or physician assistant** attending the allegedly mentally ill person.

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

44 (2) The person conducting the investigation under ORS 426.070 and 426.074 *[shall not be held]*  
 45 **is not** criminally or civilly liable for conducting the investigation, provided the investigator acts in

1 good faith, on probable cause and without malice.

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

5 (4) *[No]* **A** person appointed under ORS 426.110 to conduct an examination under ORS 426.120  
6 *[shall be held]* **is not** criminally or civilly liable for actions pursuant to ORS 426.120 if the examiner  
7 acts in good faith and without malice.

8 (5) *[No]* **A** physician, **physician assistant**, hospital or judge *[shall be held]* **is not** criminally or  
9 civilly liable for actions pursuant to ORS 426.228, 426.231, 426.232, 426.234 or 426.235 if the  
10 physician, **physician assistant**, hospital or judge acts in good faith, on probable cause and without  
11 malice.

12 (6) *[No]* **A** peace officer, person authorized under ORS 426.233, community mental health director  
13 or designee, hospital or other facility, physician, **physician assistant** or judge *[shall in any way be*  
14 *held]* **is not** criminally or civilly liable for actions pursuant to ORS 426.228 to 426.235 if the indi-  
15 vidual or facility acts in good faith, on probable cause and without malice.

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

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

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

27 (b) The superintendent or director of any staff of any facility where the mentally ill person re-  
28 ceives treatment during the outpatient commitment.

29 (c) The Director of Human Services.

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

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

32 (a) *[None of the following shall be]* **The following persons are not** liable for a patient's expenses  
33 while on trial visit:

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

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

36 (C) The Director of Human Services; and

37 (D) The chief medical officer of the facility.

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

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

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

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

1 (D) The Director of Human Services; or

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

3 **SECTION 11. The amendments to ORS 426.005, 426.072, 426.074, 426.120, 426.228, 426.231,**  
4 **426.232, 426.233, 426.234 and 426.335 by sections 1 to 10 of this 2009 Act apply to mental health**  
5 **holds that take place on or after the effective date of this 2009 Act.**

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