

(To Resolve Conflicts)

A-Engrossed Senate Bill 390

Ordered by the House May 20
Including House Amendments dated May 20 to resolve conflicts

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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.

Authorizes specified disclosure from record of commitment proceeding. Requires court to protect identity of subject of proceedings by using initials, alias or other convention.
Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to court records of commitment proceedings; creating new provisions; amending ORS
3 426.160 and 427.293 and section 12, chapter 826, Oregon Laws 2009; and declaring an emergency.

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

5 **SECTION 1.** ORS 426.160 is amended to read:

6 426.160. (1) The [*judge shall cause to be recorded in the court records a full account of proceedings*
7 *had at all hearings and examinations*] **court having jurisdiction over any proceeding** conducted
8 pursuant to ORS 426.005, 426.060 to 426.170, 426.217, 426.228, 426.255 to 426.292, 426.300 to 426.309,
9 [426.335,] 426.385 and 426.395[, *together with the judgments and orders of the court and a copy of the*
10 *orders issued. The account of the proceedings and transcripts of testimony if taken thereat shall be*
11 *delivered to the court clerk or court administrator who shall cause it to be sealed and neither the ac-*
12 *count of the proceedings nor the transcript of testimony if taken shall be disclosed to any person*] **may**
13 **not disclose any part of the record of the proceeding to any person** except:

14 [(1) *The court shall, pursuant to rules adopted by the Department of State Police, transmit the*
15 *minimum information necessary, as defined in ORS 181.740, to the Department of State Police bureau*
16 *of criminal identification for persons described in ORS 181.740 (1)(a) or (b) to enable the department*
17 *to access and maintain the information and transmit the information to the federal government as re-*
18 *quired under federal law;*]

19 [(2)] (a) As provided in ORS 426.070 (5)(c), 426.130 (3) or 426.170;

20 [(3) *Upon*] (b) **On** request of the person subject to the [*proceedings, the legal representatives, or*
21 *the attorney of the person; or*] **proceeding;**

22 [(4)] (c) **On request of the person's legal representative or the attorney for the person or**
23 **the state; or**

24 (d) Pursuant to court order.

25 (2) **In any proceeding described in subsection (1) of this section that is before the Su-**

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 **preme Court or the Court of Appeals, the limitations on disclosure imposed by this section**
2 **apply to the appellate court record and to the trial court record while it is in the appellate**
3 **court's custody. The appellate court may disclose information from the trial or appellate**
4 **court record in a decision, as defined in ORS 19.450, provided that the court uses initials, an**
5 **alias or some other convention for protecting against public disclosure the identity of the**
6 **allegedly mentally ill person.**

7 **SECTION 2.** ORS 426.160, as amended by section 1 of this 2011 Act, is amended to read:

8 426.160. (1) The court having jurisdiction over any proceeding conducted pursuant to ORS
9 426.005, 426.060 to 426.170, 426.217, 426.228, 426.255 to 426.292, 426.300 to 426.309, 426.385 and
10 426.395 may not disclose any part of the record of the proceeding to any person except:

11 **(a) The court shall, pursuant to rules adopted by the Department of State Police, trans-**
12 **mit the minimum information necessary, as defined in ORS 181.740, to the Department of**
13 **State Police bureau of criminal identification for persons described in ORS 181.740 (1)(a) or**
14 **(b) to enable the department to access and maintain the information and transmit the in-**
15 **formation to the federal government as required under federal law;**

16 [(a)] **(b)** As provided in ORS 426.070 (5)(c), 426.130 (3) or 426.170;

17 [(b)] **(c)** On request of the person subject to the proceeding;

18 [(c)] **(d)** On request of the person's legal representative or the attorney for the person or the
19 state; or

20 [(d)] **(e)** Pursuant to court order.

21 (2) In any proceeding described in subsection (1) of this section that is before the Supreme Court
22 or the Court of Appeals, the limitations on disclosure imposed by this section apply to the appellate
23 court record and to the trial court record while it is in the appellate court's custody. The appellate
24 court may disclose information from the trial or appellate court record in a decision, as defined in
25 ORS 19.450, provided that the court uses initials, an alias or some other convention for protecting
26 against public disclosure the identity of the allegedly mentally ill person.

27 **SECTION 3.** ORS 427.293 is amended to read:

28 427.293. (1) [*The court shall cause to be recorded in the court records:*]

29 [(a) A full account of all proceedings] **In any proceeding** conducted under ORS 427.235 to
30 427.290[;]

31 [(b) Reports submitted to the court under ORS 427.270;]

32 [(c) The judgments and orders of the court; and]

33 [(d) A copy of the judgments and orders issued.], **the court may not disclose any part of the**
34 **record, including any report submitted to the court under ORS 427.270 to any person except:**

35 **(a) On request of the person subject to the proceeding;**

36 **(b) On request of the person's legal representative or the attorney for the person or the**
37 **state; or**

38 **(c) Pursuant to court order.**

39 [(2) *The account of the proceedings, including any transcript of testimony, and reports submitted*
40 *to the court under ORS 427.270 shall be delivered to the court clerk or court administrator who shall*
41 *cause them to be sealed. The account of the proceedings, the reports and any transcript of testimony*
42 *may not be disclosed to any person except:*]

43 [(a) *The court shall, pursuant to rules adopted by the Department of State Police, transmit the*
44 *minimum information necessary, as defined in ORS 181.740, to the Department of State Police bureau*
45 *of criminal identification for persons described in ORS 181.740 (1)(c) to enable the department to*

1 *maintain the information and transmit the information to the federal government as required under*
2 *federal law;]*

3 [(b) *Upon request of the person subject to the proceedings or the legal representative or attorney*
4 *of the person; or]*

5 [(c) *Pursuant to an order of the court.*]

6 **(2) In any proceeding described in subsection (1) of this section that is before the Su-**
7 **preme Court or the Court of Appeals, the limitations on disclosure imposed by this section**
8 **apply to the appellate court record and to the trial court record while it is in the appellate**
9 **court's custody. The appellate court may disclose information from the trial or appellate**
10 **court record in a decision, as defined in ORS 19.450, provided that the court uses initials, an**
11 **alias or some other convention for protecting against public disclosure the identity of the**
12 **person who is alleged to have mental retardation.**

13 **SECTION 4.** ORS 427.293, as amended by section 3 of this 2011 Act, is amended to read:

14 427.293. (1) In any proceeding conducted under ORS 427.235 to 427.290, the court may not dis-
15 close any part of the record, including any report submitted to the court under ORS 427.270 to any
16 person except:

17 **(a) The court shall, pursuant to rules adopted by the Department of State Police, trans-**
18 **mit the minimum information necessary, as defined in ORS 181.740, to the Department of**
19 **State Police bureau of criminal identification for persons described in ORS 181.740 (1)(c) to**
20 **enable the department to maintain the information and transmit the information to the**
21 **federal government as required under federal law;**

22 [(a)] **(b)** On request of the person subject to the proceeding;

23 [(b)] **(c)** On request of the person's legal representative or the attorney for the person or the
24 state; or

25 [(c)] **(d)** Pursuant to court order.

26 (2) In any proceeding described in subsection (1) of this section that is before the Supreme Court
27 or the Court of Appeals, the limitations on disclosure imposed by this section apply to the appellate
28 court record and to the trial court record while it is in the appellate court's custody. The appellate
29 court may disclose information from the trial or appellate court record in a decision, as defined in
30 ORS 19.450, provided that the court uses initials, an alias or some other convention for protecting
31 against public disclosure the identity of the person who is alleged to have mental retardation.

32 **SECTION 5.** Section 12, chapter 826, Oregon Laws 2009, as amended by section 21, chapter 826,
33 Oregon Laws 2009, is amended to read:

34 **Sec. 12.** (1) [*Section 1 of this 2009 Act*] **ORS 181.740** applies to records and information in the
35 possession of the Department of Human Services, the Oregon Health Authority, the Psychiatric Se-
36 curity Review Board or the Judicial Department on or after [*the effective date of this 2009 Act*]
37 **January 1, 2010**, irrespective of when the record or information was created.

38 (2)(a) When the Department of Human Services determines that the department has received a
39 sufficient legislative appropriation or federal funding to carry out the provisions of [*section 1 of this*
40 *2009 Act*] **ORS 181.740**, the department shall adopt a rule so indicating. The department shall notify
41 Legislative Counsel when the rule is adopted.

42 (b) When the Oregon Health Authority determines that the authority has received a sufficient
43 legislative appropriation or federal funding to carry out the provisions of [*section 1 of this 2009*
44 *Act*] **ORS 181.740**, the authority shall adopt a rule so indicating. The authority shall notify Legis-
45 lative Counsel when the rule is adopted.

1 (c) When the Chief Justice of the Supreme Court determines that the Judicial Department has
2 received a sufficient legislative appropriation or federal funding to carry out the provisions of [*sec-*
3 *tion 1 of this 2009 Act*] **ORS 181.740**, the Chief Justice shall issue an order so indicating. The Chief
4 Justice shall notify Legislative Counsel when the order is issued.

5 (d) When the Psychiatric Security Review Board determines that the board has received a suf-
6 ficient legislative appropriation or federal funding to carry out the provisions of [*section 1 of this*
7 *2009 Act*] **ORS 181.740**, the board shall adopt a rule so indicating. The board shall notify Legislative
8 Counsel when the rule is adopted.

9 (3)(a)(A) The Department of Human Services may not comply with [*section 1 of this 2009 Act*]
10 **ORS 181.740** until the department adopts the rule described in subsection (2)(a) of this section; and

11 (B) If the Department of Human Services adopts the rule described in subsection (2)(a) of this
12 section before January 2, 2012, the department may not comply with [*section 1 of this 2009 Act*] **ORS**
13 **181.740** until the later of:

14 (i) The date the Psychiatric Security Review Board adopts the rule described in section 13 [*of*
15 *this 2009 Act*], **chapter 826, Oregon Laws 2009**; or

16 (ii) January 2, 2012.

17 (b)(A) The Oregon Health Authority may not comply with [*section 1 of this 2009 Act*] **ORS**
18 **181.740** or the amendments to ORS 166.412 by section 17 [*of this 2009 Act*], **chapter 826, Oregon**
19 **Laws 2009**, until the authority adopts the rule described in subsection (2)(b) of this section; and

20 (B) If the Oregon Health Authority adopts the rule described in subsection (2)(b) of this section
21 before January 2, 2012, the authority may not comply with [*section 1 of this 2009 Act*] **ORS 181.740**
22 or the amendments to ORS 166.412 by section 17 [*of this 2009 Act*], **chapter 826, Oregon Laws 2009**,
23 until the later of:

24 (i) The date the Psychiatric Security Review Board adopts the rule described in section 13 [*of*
25 *this 2009 Act*], **chapter 826, Oregon Laws 2009**; or

26 (ii) January 2, 2012.

27 (c)(A) The Judicial Department may not comply with [*section 1 of this 2009 Act*] **ORS 181.740**
28 until the Chief Justice issues the order described in subsection (2)(c) of this section; and

29 (B) If the Chief Justice issues the order described in subsection (2)(c) of this section before
30 January 2, 2012, the Judicial Department may not comply with [*section 1 of this 2009 Act*] **ORS**
31 **181.740** until the later of:

32 (i) The date the Psychiatric Security Review Board adopts the rule described in section 13 [*of*
33 *this 2009 Act*], **chapter 826, Oregon Laws 2009**; or

34 (ii) January 2, 2012.

35 (d)(A) The Psychiatric Security Review Board may not comply with [*section 1 of this 2009 Act*]
36 **ORS 181.740** until the board adopts the rule described in subsection (2)(d) of this section; and

37 (B) If the board adopts the rule described in subsection (2)(d) of this section before January 2,
38 2012, the board may not comply with [*section 1 of this 2009 Act*] **ORS 181.740** until the later of:

39 (i) The date the board adopts the rule described in section 13 [*of this 2009 Act*], **chapter 826,**
40 **Oregon Laws 2009**; or

41 (ii) January 2, 2012.

42 [(4)(a) *When the Chief Justice of the Supreme Court determines that the Judicial Department has*
43 *received a sufficient legislative appropriation or federal funding to carry out the provisions of the*
44 *amendments to ORS 426.160 and 427.293 by sections 2 and 3 of this 2009 Act, the Chief Justice shall*
45 *issue an order so indicating. The Chief Justice shall notify Legislative Counsel when the order is is-*

1 *sued.]*

2 *[(b)(A) Except as provided in subparagraph (B) of this paragraph, the amendments to ORS 426.160*
3 *and 427.293 by sections 2 and 3 of this 2009 Act become operative on the date the Chief Justice issues*
4 *the order described in paragraph (a) of this subsection.]*

5 *[(B) If the Chief Justice issues the order described in paragraph (a) of this subsection before Jan-*
6 *uary 2, 2012, the amendments to ORS 426.160 and 427.293 by sections 2 and 3 of this 2009 Act become*
7 *operative on the later of:]*

8 *[(i) The date the Psychiatric Security Review Board adopts the rule described in section 13 of this*
9 *2009 Act; or]*

10 *[(ii) January 2, 2012.]*

11 **SECTION 6. (1) When the Chief Justice of the Supreme Court determines that the Judi-**
12 **cial Department has received a sufficient legislative appropriation or federal funding to carry**
13 **out the provisions of the amendments to ORS 426.160 and 427.293 by sections 2 and 4 of this**
14 **2011 Act, the Chief Justice shall issue an order so indicating. The Chief Justice shall notify**
15 **Legislative Counsel when the order is issued.**

16 **(2)(a) Except as provided in paragraph (b) of this subsection, the amendments to ORS**
17 **426.160 and 427.293 by sections 2 and 4 of this 2011 Act become operative on the date the Chief**
18 **Justice issues the order described in subsection (1) of this section.**

19 **(b) If the Chief Justice issues the order described in subsection (1) of this section before**
20 **January 2, 2012, the amendments to ORS 426.160 and 427.293 by sections 2 and 4 of this 2011**
21 **Act become operative on the later of:**

22 **(A) The date the Psychiatric Security Review Board adopts the rule described in section**
23 **13, chapter 826, Oregon Laws 2009; or**

24 **(B) January 2, 2012.**

25 **SECTION 6a. If Senate Bill 68 becomes law, section 2 of this 2011 Act (amending ORS**
26 **426.160) is repealed and ORS 426.160, as amended by section 1 of this 2011 Act, is amended**
27 **to read:**

28 426.160. (1) The court having jurisdiction over any proceeding conducted pursuant to ORS
29 426.005, 426.060 to 426.170, 426.217, 426.228, 426.255 to 426.292, 426.300 to 426.309, 426.385 and
30 426.395 may not disclose any part of the record of the proceeding to any person except:

31 **(a) The court shall, pursuant to rules adopted by the Department of State Police, trans-**
32 **mit the minimum information necessary, as defined in ORS 181.740, to the Department of**
33 **State Police for persons described in ORS 181.740 (1)(a) or (b) to enable the department to**
34 **access and maintain the information and transmit the information to the federal government**
35 **as required under federal law;**

36 *[(a)] (b) As provided in ORS 426.070 (5)(c), 426.130 (3) or 426.170;*

37 *[(b)] (c) On request of the person subject to the proceeding;*

38 *[(c)] (d) On request of the person's legal representative or the attorney for the person or the*
39 *state; or*

40 *[(d)] (e) Pursuant to court order.*

41 **(2) In any proceeding described in subsection (1) of this section that is before the Supreme Court**
42 **or the Court of Appeals, the limitations on disclosure imposed by this section apply to the appellate**
43 **court record and to the trial court record while it is in the appellate court's custody. The appellate**
44 **court may disclose information from the trial or appellate court record in a decision, as defined in**
45 **ORS 19.450, provided that the court uses initials, an alias or some other convention for protecting**

1 against public disclosure the identity of the allegedly mentally ill person.

2 **SECTION 6b. If Senate Bill 68 becomes law, section 4 of this 2011 Act (amending ORS**
3 **427.293) is repealed and ORS 427.293, as amended by section 3 of this 2011 Act, is amended**
4 **to read:**

5 427.293. (1) In any proceeding conducted under ORS 427.235 to 427.290, the court may not dis-
6 close any part of the record, including any report submitted to the court under ORS 427.270 to any
7 person except:

8 (a) **The court shall, pursuant to rules adopted by the Department of State Police, trans-**
9 **mit the minimum information necessary, as defined in ORS 181.740, to the Department of**
10 **State Police for persons described in ORS 181.740 (1)(c) to enable the department to maintain**
11 **the information and transmit the information to the federal government as required under**
12 **federal law;**

13 [(a)] (b) On request of the person subject to the proceeding;

14 [(b)] (c) On request of the person's legal representative or the attorney for the person or the
15 state; or

16 [(c)] (d) Pursuant to court order.

17 (2) In any proceeding described in subsection (1) of this section that is before the Supreme Court
18 or the Court of Appeals, the limitations on disclosure imposed by this section apply to the appellate
19 court record and to the trial court record while it is in the appellate court's custody. The appellate
20 court may disclose information from the trial or appellate court record in a decision, as defined in
21 ORS 19.450, provided that the court uses initials, an alias or some other convention for protecting
22 against public disclosure the identity of the person who is alleged to have mental retardation.

23 **SECTION 6c.** If Senate Bill 68 becomes law, section 6 of this 2011 Act is amended to read:

24 **Sec. 6.** (1) When the Chief Justice of the Supreme Court determines that the Judicial Depart-
25 ment has received a sufficient legislative appropriation or federal funding to carry out the provisions
26 of the amendments to ORS 426.160 and 427.293 by sections [2 and 4] **6a and 6b** of this 2011 Act, the
27 Chief Justice shall issue an order so indicating. The Chief Justice shall notify Legislative Counsel
28 when the order is issued.

29 (2)(a) Except as provided in paragraph (b) of this subsection, the amendments to ORS 426.160
30 and 427.293 by sections [2 and 4] **6a and 6b** of this 2011 Act become operative on the date the Chief
31 Justice issues the order described in subsection (1) of this section.

32 (b) If the Chief Justice issues the order described in subsection (1) of this section before January
33 2, 2012, the amendments to ORS 426.160 and 427.293 by sections [2 and 4] **6a and 6b** of this 2011
34 Act become operative on the later of:

35 (A) The date the Psychiatric Security Review Board adopts the rule described in section 13,
36 chapter 826, Oregon Laws 2009; or

37 (B) January 2, 2012.

38 **SECTION 7. This 2011 Act being necessary for the immediate preservation of the public**
39 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
40 **on its passage.**

41