

Enrolled Senate Bill 390

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CHAPTER

AN ACT

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

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

SECTION 1. ORS 426.160 is amended to read:

426.160. (1) The *[judge shall cause to be recorded in the court records a full account of proceedings had at all hearings and examinations]* **court having jurisdiction over any proceeding** 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, *[426.335,]* 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]* **may not disclose any part of the record of the proceeding to any person** except:

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

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

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

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

(d) Pursuant to court order.

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

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

426.160. (1) The court having jurisdiction over any proceeding 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 may not disclose any part of the record of the proceeding to any person except:

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

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

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

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

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

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

SECTION 3. ORS 427.293 is amended to read:

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

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

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

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

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

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

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

(c) Pursuant to court order.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) January 2, 2012.

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

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

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

(ii) January 2, 2012.

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

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

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

(ii) January 2, 2012.

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

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

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

(ii) January 2, 2012.

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

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

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

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

[(ii) January 2, 2012.]

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

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

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

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

(B) January 2, 2012.

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

426.160. (1) The court having jurisdiction over any proceeding 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 may not disclose any part of the record of the proceeding to any person except:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) January 2, 2012.

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

Passed by Senate March 17, 2011

Received by Governor:

Repassed by Senate May 31, 2011

.....M.,....., 2011

Approved:

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Robert Taylor, Secretary of Senate

.....M.,....., 2011

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Peter Courtney, President of Senate

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John Kitzhaber, Governor

Passed by House May 25, 2011

Filed in Office of Secretary of State:

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Bruce Hanna, Speaker of House

.....M.,....., 2011

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Arnie Roblan, Speaker of House

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Kate Brown, Secretary of State