

SB 421
Relating to civil commitments

SB 421 authorizes a district attorney to initiation commitment proceeding if there is reason to believe a person is an extremely dangerous mentally ill person. The measure allows the court to order the person under the jurisdiction of the Psychiatric Security Review Board and committed to the state hospital or a secure intensive community inpatient facility. The measure establishes the protocol for admitting, reviewing, and discharging civil commitments of “extremely dangerous mentally ill” individuals.

The measure has a General Fund appropriation of \$36,100 General Fund to the Psychiatric Security Review Board for additional hearings and appeals costs, and \$169,571 General Fund to the Oregon Health Authority to cover additional length of stay costs for patients committed and awaiting review and discharge by the Psychiatric Security Review Board.

There is a minimal fiscal impact to the Judicial Department, Public Defense Services Commission, and District Attorney’s and their deputies.

The Public Safety Subcommittee recommends SB 421 be amended and reported out do pass, as amended.

**77th OREGON LEGISLATIVE ASSEMBLY – 2013 Session
BUDGET REPORT AND MEASURE SUMMARY**

JOINT COMMITTEE ON WAYS AND MEANS

MEASURE: SB 421-B

Carrier – House: Rep. Nathanson

Carrier – Senate: Sen. Prozanski

Action: Do Pass the A-Engrossed Measure as Amended and be Printed B-Engrossed

Vote:

House

Yeas:

Nays:

Exc:

Senate

Yeas:

Nays:

Exc:

Prepared By: Kate Nass, Department of Administrative Services

Reviewed By: John Terpening, Legislative Fiscal Office

Meeting Date: June 19, 2013

Agency

Oregon Health Authority

Psychiatric Security Review Board

Biennium

2013-15

Budget Summary***Oregon Health Authority**

	2011-13 Legislatively Approved Budget ⁽¹⁾	2013-15 Current Service Level	2013-15 Committee Recommendation	Committee Change from 2011-13 Leg. Approved	
				\$\$ Change	% Change
General Fund	\$ 0	\$ 0	\$ 169,571	\$ 169,571	100.0%
Total	\$ 0	\$ 0	\$ 169,571	\$ 169,571	100.0%

Position Summary

Authorized Positions	0	0	0	0
Full-time Equivalent (FTE) positions	0.00	0.00	0.00	0.00

Budget Summary***Psychiatric Security Review Board**

	2011-13 Legislatively Approved Budget ⁽¹⁾	2013-15 Current Service Level	2013-15 Committee Recommendation	Committee Change from 2011-13 Leg. Approved	
				\$\$ Change	% Change
General Fund	\$ 0	\$ 0	\$ 36,100	\$ 36,100	100.0%
Total	\$ 0	\$ 0	\$ 36,100	\$ 36,100	100.0%

Position Summary

Authorized Positions	0	0	0	0
Full-time Equivalent (FTE) positions	0.00	0.00	0.00	0.00

⁽¹⁾ Includes adjustments through December 2012

* Excludes Capital Construction expenditures

Summary of Revenue Changes

Senate Bill 421 adds \$169,571 General Fund to the Oregon Health Authority's budget and \$36,100 General Fund to the Psychiatric Security Review Board's budget for the 2013-15 biennium.

Summary of Human Services Subcommittee Action

Senate Bill 421 authorizes a district attorney to petition the court to initiate commitment proceedings if there is reason to believe a person is an extremely dangerous mentally ill person, and if committed by the court, the person may be supervised by the Psychiatric Security Review Board (PSRB). A person must be committed to the state hospital or a secure intensive community inpatient facility and PSRB must hold a hearing six months after the commitment and then every two years to determine the status of the commitment.

The bill adds \$36,100 General Fund appropriation to the Psychiatric Security Review Board's 2013-15 biennium budget to cover the administrative costs associated with the estimated 12 individuals that are anticipated to be admitted as a civil commitment under this bill. This includes board member hearing reimbursements, Attorney General fees, and other hearings costs for the estimated 12 hearing days and six appeals per biennium. Additionally, the bill adds \$169,571 General Fund appropriation to the Oregon Health Authority's 2013-15 biennium budget to cover the additional length of stay costs at the Oregon State Hospital as those committed await PSRB hearings and discharge placement.

DETAIL OF JOINT COMMITTEE ON WAYS AND MEANS ACTION

Oregon Health Authority
Kate Nass -- 503-378-3742

DESCRIPTION	GENERAL FUND	LOTTERY FUNDS	OTHER FUNDS		FEDERAL FUNDS		TOTAL ALL FUNDS	POS	FTE	
			LIMITED	NONLIMITED	LIMITED	NONLIMITED				
2011-13 Legislatively Approved Budget at Dec 2012 *	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	0	0.00	
2013-15 ORBITS printed Current Service Level (CSL)*	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	0	0.00	
<u>SUBCOMMITTEE ADJUSTMENTS (from CSL)</u>										
SCR 020-05 - Addictions & Mental Health										
Personal Services	\$ 147,205	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 147,205	0	0.00	
Services and Supplies	\$ 22,366	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 22,366			
TOTAL ADJUSTMENTS	\$ 169,571	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 169,571	0	0.00	
SUBCOMMITTEE RECOMMENDATION *	\$ 169,571	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 169,571	0	0.00	
% Change from 2011-13 Leg Approved Budget	100.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	
% Change from 2013-15 Current Service Level	100.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	

Psychiatric Security Review Board
Kate Nass -- 503-378-3742

DESCRIPTION	GENERAL FUND	LOTTERY FUNDS	OTHER FUNDS		FEDERAL FUNDS		TOTAL ALL FUNDS	POS	FTE	
			LIMITED	NONLIMITED	LIMITED	NONLIMITED				
2011-13 Legislatively Approved Budget at Dec 2012 *	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	0	0.00	
2013-15 ORBITS printed Current Service Level (CSL)*	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	0	0.00	
<u>SUBCOMMITTEE ADJUSTMENTS (from CSL)</u>										
SCR 010-00 - General Program										
Personal Services	\$ 15,600	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 15,600	0	0.00	
Services and Supplies	\$ 20,500	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 20,500			
TOTAL ADJUSTMENTS	\$ 36,100	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 36,100	0	0.00	
SUBCOMMITTEE RECOMMENDATION *	\$ 36,100	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 36,100	0	0.00	
% Change from 2011-13 Leg Approved Budget	100.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	
% Change from 2013-15 Current Service Level	100.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	

**PROPOSED AMENDMENTS TO
A-ENGROSSED SENATE BILL 421**

1 On page 1 of the printed A-engrossed bill, line 2, after “ORS” delete the
2 rest of the line and insert “426.095, 426.110, 426.135, 426.160, 426.241 and
3 426.250; appropriating money;”.

4 Delete lines 5 through 23 and delete pages 2 and 3 and insert:

5 **“SECTION 1. Sections 2 and 3 of this 2013 Act are added to and**
6 **made a part of ORS chapter 426.**

7 **“SECTION 2. (1) For the purposes of this section and section 3 of**
8 **this 2013 Act:**

9 **“(a) A person is ‘extremely dangerous’ if the person:**

10 **“(A) Is at least 18 years of age;**

11 **“(B) Is exhibiting symptoms or behaviors of a mental disorder sub-**
12 **stantially similar to those that preceded the act described in sub-**
13 **section (3)(a)(C) of this section; and**

14 **“(C) Because of a mental disorder:**

15 **“(i) Presents a serious danger to the safety of other persons by**
16 **reason of an extreme risk that the person will inflict grave or poten-**
17 **tially lethal physical injury on other persons; and**

18 **“(ii) Unless committed, will continue to represent an extreme risk**
19 **to the safety of other persons in the foreseeable future.**

20 **“(b) ‘Mental disorder’ does not include:**

21 **“(A) A disorder manifested solely by repeated criminal or otherwise**
22 **antisocial conduct; or**

1 **“(B) A disorder constituting solely a personality disorder.**

2 **“(c) A mental disorder is ‘resistant to treatment’ if, after receiving**
3 **care from a licensed psychiatrist and exhausting all reasonable psy-**
4 **chiatric treatment, or after refusing psychiatric treatment, the person**
5 **continues to be significantly impaired in the person’s ability to make**
6 **competent decisions and to be aware of and control extremely dan-**
7 **gerous behavior.**

8 **“(2)(a) A district attorney may petition the court to initiate com-**
9 **mitment proceedings described in this section if there is reason to**
10 **believe a person is an extremely dangerous mentally ill person. The**
11 **petition shall immediately be served upon the person.**

12 **“(b) The person shall be advised in writing of:**

13 **“(A) The allegation that the person is an extremely dangerous**
14 **mentally ill person and may be committed to the jurisdiction of the**
15 **Psychiatric Security Review Board for a maximum period of 24**
16 **months; and**

17 **“(B) The right to a hearing to determine whether the person is an**
18 **extremely dangerous mentally ill person, unless the person consents**
19 **to the commitment by waiving the right to a hearing in writing after**
20 **consultation with legal counsel.**

21 **“(c) A person against whom a petition described in this subsection**
22 **is filed shall have the following:**

23 **“(A) The right to obtain suitable legal counsel possessing skills and**
24 **experience commensurate with the nature of the allegations and**
25 **complexity of the case and, if the person is without funds to retain**
26 **legal counsel, the right to have the court appoint legal counsel;**

27 **“(B) The right to subpoena witnesses and to offer evidence on behalf**
28 **of the person at the hearing;**

29 **“(C) The right to cross-examine any witnesses who appear at the**
30 **hearing; and**

1 **“(D) The right to examine all reports, documents and information**
2 **that the court considers, including the right to examine the reports,**
3 **documents and information prior to the hearing, if available.**

4 **“(d) The court shall appoint an examiner as described in ORS**
5 **426.110 to evaluate the person.**

6 **“(3)(a) Upon receipt of a petition filed under subsection (2) of this**
7 **section, the court shall schedule a hearing. At the hearing, the court**
8 **shall order the person committed as an extremely dangerous mentally**
9 **ill person under the jurisdiction of the Psychiatric Security Review**
10 **Board for a maximum of 24 months if the court finds, by clear and**
11 **convincing evidence, that:**

12 **“(A) The person is extremely dangerous;**

13 **“(B) The person suffers from a mental disorder that is resistant to**
14 **treatment; and**

15 **“(C) Because of the mental disorder that is resistant to treatment,**
16 **the person committed one of the following acts:**

17 **“(i) Caused the death of another person;**

18 **“(ii) Caused serious physical injury to another person by means of**
19 **a dangerous weapon;**

20 **“(iii) Caused physical injury to another person by means of a**
21 **firearm as defined in ORS 166.210 or an explosive as defined in ORS**
22 **164.055;**

23 **“(iv) Engaged in oral-genital contact with a child under 14 years of**
24 **age;**

25 **“(v) Forcibly compelled sexual intercourse, oral-genital contact or**
26 **the penetration of another person’s anus or vagina; or**

27 **“(vi) Caused a fire or explosion that damaged the protected property**
28 **of another, as those terms are defined in ORS 164.305, or placed an-**
29 **other person in danger of physical injury, and the fire or explosion**
30 **was not the incidental result of normal and usual daily activities.**

1 **“(b) The court shall further commit the person to a state hospital**
2 **for custody, care and treatment if the court finds, by clear and con-**
3 **vincing evidence, that the person cannot be controlled in the commu-**
4 **nity with proper care, medication, supervision and treatment on**
5 **conditional release.**

6 **“(c) The court shall specify in the order whether any person who**
7 **would be considered a victim as defined in ORS 131.007 of the act de-**
8 **scribed in paragraph (a)(C) of this subsection, if the act had been**
9 **criminally prosecuted, requests notification of any order or hearing,**
10 **conditional release, discharge or escape of the person committed under**
11 **this section.**

12 **“(d) The court shall be fully advised of all drugs and other treat-**
13 **ment known to have been administered to the alleged extremely dan-**
14 **gerous mentally ill person that may substantially affect the ability of**
15 **the person to prepare for, or to function effectively at, the hearing.**

16 **“(e) The provisions of ORS 40.230, 40.235, 40.240, 40.250 and 179.505**
17 **do not apply to the use of the examiner’s report and the court may**
18 **consider the report as evidence.**

19 **“(4) The findings of the court that a person committed an act de-**
20 **scribed in subsection (3)(a)(C) of this section may not be admitted in**
21 **a criminal prosecution.**

22 **“(5) A person committed under this section shall remain under the**
23 **jurisdiction of the board for a maximum of 24 months unless the board**
24 **conducts a hearing and makes the findings described in subsection**
25 **(6)(d) of this section.**

26 **“(6)(a) The board shall hold a hearing six months after the initial**
27 **commitment described in subsection (3) of this section, and thereafter**
28 **six months after a further commitment described in section 3 of this**
29 **2013 Act, to determine the placement of the person and whether the**
30 **person is eligible for conditional release or early discharge. The board**

1 shall provide written notice of the hearing to the person, the person's
2 legal counsel and the office of the district attorney who filed the initial
3 petition under subsection (2) of this section within a reasonable time
4 prior to the hearing. The board shall further notify the person of the
5 following:

6 “(A) The nature of the hearing and possible outcomes;

7 “(B) The right to appear at the hearing and present evidence;

8 “(C) The right to be represented by legal counsel and, if the person
9 is without funds to retain legal counsel, the right to have the court
10 appoint legal counsel;

11 “(D) The right to subpoena witnesses;

12 “(E) The right to cross-examine witnesses who appear at the hear-
13 ing; and

14 “(F) The right to examine all reports, documents and information
15 that the board considers, including the right to examine the reports,
16 documents and information prior to the hearing if available.

17 “(b) If the board determines at the hearing that the person still
18 suffers from a mental disorder that is resistant to treatment and
19 continues to be extremely dangerous, and that the person cannot be
20 controlled in the community with proper care, medication, supervision
21 and treatment if conditionally released, the person shall remain com-
22 mitted to a state hospital.

23 “(c) If the board determines at the hearing that the person still
24 suffers from a mental disorder that is resistant to treatment and
25 continues to be extremely dangerous, but finds that the person can
26 be controlled in the community with proper care, medication, super-
27 vision and treatment if conditionally released, the board shall condi-
28 tionally release the person.

29 “(d) If the board determines at the hearing that the person no
30 longer suffers from a mental disorder that is resistant to treatment

1 or is no longer extremely dangerous, the board shall discharge the
2 person. The discharge of a person committed under this section does
3 not preclude commitment of the person pursuant to ORS 426.005 to
4 426.390.

5 “(7)(a) At any time during the commitment to a state hospital, the
6 superintendent of the state hospital may request a hearing to deter-
7 mine the status of the person’s commitment under the jurisdiction of
8 the board. The request shall be accompanied by a report setting forth
9 the facts supporting the request. If the request is for conditional re-
10 lease, the request shall be accompanied by a verified conditional re-
11 lease plan. The hearing shall be conducted as described in subsection
12 (6) of this section.

13 “(b) The board may make the findings described in subsection (6)(c)
14 of this section and conditionally release the person without a hearing
15 if the office of the district attorney who filed the initial petition under
16 subsection (2) of this section does not object to the conditional release.

17 “(c) At any time during conditional release, a state or local mental
18 health facility providing treatment to the person may request a hear-
19 ing to determine the status of the person’s commitment under the
20 jurisdiction of the board. The hearing shall be conducted as described
21 in subsection (6) of this section.

22 “(8)(a) If the board orders the conditional release of a person under
23 subsection (6)(c) of this section, the board shall order conditions of
24 release that may include a requirement to report to any state or local
25 mental health facility for evaluation. The board may further require
26 cooperation with, and acceptance of, psychiatric or psychological
27 treatment from the facility. Conditions of release may be modified by
28 the board from time to time.

29 “(b) When a person is referred to a state or local mental health
30 facility for an evaluation under this subsection, the facility shall per-

1 form the evaluation and submit a written report of its findings to the
2 board. If the facility finds that treatment of the person is appropriate,
3 the facility shall include its recommendations for treatment in the
4 report to the board.

5 “(c) Whenever treatment is provided to the person by a state or
6 local mental health facility under this subsection, the facility shall
7 furnish reports to the board on a regular basis concerning the progress
8 of the person.

9 “(d) Copies of all reports submitted to the board pursuant to this
10 subsection shall be furnished to the person and to the person’s legal
11 counsel, if applicable. The confidentiality of these reports is deter-
12 mined pursuant to ORS 192.501 to 192.505.

13 “(e) The state or local mental health facility providing treatment
14 to the person under this subsection shall comply with the conditional
15 release order and any modifications of the conditions ordered by the
16 board.

17 “(9)(a) If at any time while the person is conditionally released it
18 appears that the person has violated the terms of the conditional re-
19 lease, the board may order the person returned to a state hospital for
20 evaluation or treatment. A written order of the board is sufficient
21 warrant for any law enforcement officer to take the person into cus-
22 tody. A sheriff, municipal police officer, parole or probation officer or
23 other peace officer shall execute the order, and the person shall be
24 returned to the state hospital as soon as practicable.

25 “(b) The director of a state or local mental health facility providing
26 treatment to a person under subsection (8) of this section may request
27 that the board issue a written order for a person on conditional release
28 to be taken into custody if there is reason to believe that the person
29 can no longer be controlled in the community with proper care,
30 medication, supervision and treatment.

1 “(c) Within 30 days following the return of the person to a state
2 hospital, the board shall conduct a hearing to determine if, by a pre-
3 ponderance of the evidence, the person is no longer fit for conditional
4 release. The board shall provide written notice of the hearing to the
5 person, the person’s legal counsel and the office of the district attor-
6 ney who filed the initial petition under subsection (2) of this section
7 within a reasonable time prior to the hearing. The notice shall advise
8 the person of the nature of the hearing, the right to have the court
9 appoint legal counsel and the right to subpoena witnesses, examine
10 documents considered by the board and cross-examine all witnesses
11 who appear at the hearing.

12 “(10)(a) If the person had unadjudicated criminal charges at the
13 time of the person’s initial commitment under this section and the
14 state hospital or the state or local mental health facility providing
15 treatment to the person intends to recommend discharge of the person
16 at an upcoming hearing, the superintendent of the state hospital or
17 the director of the facility shall provide written notice to the board
18 and the district attorney of the county where the criminal charges
19 were initiated of the discharge recommendation at least 45 days before
20 the hearing. The notice shall be accompanied by a report describing
21 the person’s diagnosis and the treatment the person has received.

22 “(b) Upon receiving the notice described in this subsection, the
23 district attorney may request an order from the court in the county
24 where the criminal charges were initiated for an evaluation to deter-
25 mine if the person is fit to proceed in the criminal proceeding. The
26 court may order the state hospital or the state or local mental health
27 facility providing treatment to the person to perform the evaluation.
28 The hospital or facility shall provide copies of the evaluation to the
29 district attorney, the person and the person’s legal counsel, if appli-
30 cable.

1 “(c) The person committed under this section may not waive an
2 evaluation ordered by the court to determine if the person is fit to
3 proceed with the criminal proceeding as described in this subsection.

4 “(11) The board shall make reasonable efforts to notify any person
5 described in subsection (3)(c) of this section of any order or hearing,
6 conditional release, discharge or escape of the person committed under
7 this section.

8 “(12) The board shall adopt rules to carry out the provisions of this
9 section and section 3 of this 2013 Act.

10 “(13) Any time limitation described in ORS 131.125 to 131.155 does
11 not run during a commitment described in this section or a further
12 commitment described in section 3 of this 2013 Act.

13 “SECTION 3. (1)(a) At the end of the 24-month period of commit-
14 ment described in section 2 of this 2013 Act, any person who remains
15 committed under the jurisdiction of the Psychiatric Security Review
16 Board shall be discharged, unless the board certifies to the court in
17 the county where the state hospital or state or local mental health
18 facility providing treatment to the person is located that the person
19 is still extremely dangerous and suffers from a mental disorder that
20 is resistant to treatment. The board, pursuant to its rules, may dele-
21 gate to the superintendent of the state hospital or the director of the
22 state or local mental health facility providing treatment to the person
23 the responsibility for making the certification. If the certification is
24 made, the person will not be released.

25 “(b) The board may additionally certify that the person cannot be
26 controlled in the community with proper care, medication, supervision
27 and treatment on conditional release and must be committed to a
28 state hospital. The board, pursuant to its rules, may delegate to the
29 superintendent of the state hospital or the director of the state or local
30 mental health facility providing treatment to the person the responsi-

1 **bility for making the additional certification.**

2 **“(2) The certification shall immediately be served upon the person**
3 **by the superintendent of the state hospital or the director of the state**
4 **or local mental health facility providing treatment to the person. The**
5 **superintendent or director shall inform the court in writing that ser-**
6 **vice has been made and the date thereof.**

7 **“(3) The certification shall advise the person of all the following:**

8 **“(a) That the board, hospital or facility has requested that com-**
9 **mitment be continued for an additional 24 months.**

10 **“(b) That the person may protest this further commitment within**
11 **14 days, and that, if the person does not protest, the commitment will**
12 **be continued for a maximum of 24 months.**

13 **“(c) That the person may consult with legal counsel when deciding**
14 **whether to protest the further commitment and that legal counsel will**
15 **be provided for the person without cost if the person is without funds**
16 **to retain legal counsel.**

17 **“(d) That the person may protest a further period of commitment**
18 **either orally or in writing by signing the form accompanying the cer-**
19 **tification.**

20 **“(e) That if the person does protest a further period of commitment,**
21 **the person is entitled to a hearing before the court to determine**
22 **whether commitment should be continued.**

23 **“(f) That the person is entitled to have a psychologist or psychia-**
24 **trist, other than a member of the staff at the facility where the person**
25 **is being treated, examine the person and report to the court the re-**
26 **sults of the examination at the hearing.**

27 **“(g) That the person may subpoena witnesses and offer evidence on**
28 **behalf of the person at the hearing.**

29 **“(h) That if the person is without funds to retain legal counsel or**
30 **an examining psychologist or psychiatrist for the hearing, the court**

1 will appoint legal counsel or an examining psychologist or psychiatrist.

2 “(4) The person serving the certification shall read and deliver the
3 certification to the person and ask whether the person protests a fur-
4 ther period of commitment. The person may protest a further period
5 of commitment and request a hearing either orally or by signing a
6 simple protest form to be given to the person with the certification.
7 If the person does not protest a further period of commitment within
8 14 days of service of the certification, the board, hospital or facility
9 shall so notify the court, and the court shall, without further hearing,
10 order the commitment of the person to the jurisdiction of the board
11 for a maximum of 24 months. The court shall further order that the
12 person be committed to a state hospital if a certification under sub-
13 section (1)(b) of this section has been made.

14 “(5) When the person protests a further period of commitment and
15 requests a hearing, the board, hospital or facility shall immediately
16 notify the court, and the court shall have the person brought before
17 it and shall again advise the person that the board, hospital or facility
18 has requested that commitment be continued for an additional period
19 of time and that if the person does not protest this commitment the
20 commitment will be continued for a maximum of 24 months. The
21 person shall also be informed of the rights set forth in subsection (3)
22 of this section.

23 “(6) If the person requests a hearing under subsections (4) and (5)
24 of this section, the following provisions apply as described:

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

27 “(b) If the person requests a continuance in order to prepare for the
28 hearing or to obtain legal counsel to represent the person, the court
29 may grant postponement and detention during postponement as de-
30 scribed in ORS 426.095 (2)(c).

1 “(c) The person has the right to representation by or appointment
2 of legal counsel subject to ORS 135.055, 151.216 and 151.219.

3 “(d) If the person requests an examination by a psychologist or
4 psychiatrist and is without funds to retain a psychologist or psychia-
5 trist for purposes of the examination, the court shall appoint a psy-
6 chologist or psychiatrist, other than a member of the staff from the
7 facility where the person is being treated, to examine the person at
8 no expense to the person and to report to the court the results of the
9 examination.

10 “(e) The provisions of ORS 40.230, 40.235, 40.240, 40.250 and 179.505
11 do not apply to the use of medical records from the current period of
12 commitment or to testimony related to such records or period of
13 commitment in connection with hearings under this section. The court
14 may consider as evidence such reports and testimony.

15 “(f) The court shall then conduct a hearing. The court may take
16 judicial notice of the findings regarding the act described in section 2
17 (3)(a)(C) of this 2013 Act made by the court at the initial commitment.
18 If, after hearing the evidence and reviewing the recommendations of
19 the board and the state hospital or the state or local mental health
20 facility providing treatment to the person, in the opinion of the court
21 the person is still extremely dangerous and suffering from a mental
22 disorder that is resistant to treatment by clear and convincing evi-
23 dence, the court may order commitment to the jurisdiction of the
24 board for an additional maximum of 24 months. The court shall fur-
25 ther commit the person to a state hospital for custody, care and
26 treatment if the court finds, by clear and convincing evidence, that
27 the person cannot be controlled in the community with proper care,
28 medication, supervision and treatment on conditional release.

29 “(g) At the end of the 24-month period, the person shall be dis-
30 charged unless the board, hospital or facility again certifies to the

1 **committing court that the person is still an extremely dangerous**
2 **mentally ill person and in need of further treatment, in which event**
3 **the procedures set forth in this section shall be followed.**

4 **“SECTION 4.** ORS 426.095 is amended to read:

5 “426.095. The following is applicable to a commitment hearing held by a
6 court under ORS 426.070:

7 “(1) The hearing may be held in a hospital, the person’s home or in some
8 other place convenient to the court and the allegedly mentally ill person.

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

11 “(a) Except as provided by paragraph (b) or (c) of this subsection, a
12 hearing shall be held five judicial days from the day a court under ORS
13 426.070 issues a citation provided under ORS 426.090.

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

17 “(c) If requested under this paragraph, the court, for good cause, may
18 postpone the hearing for not more than five judicial days in order to allow
19 preparation for the hearing. The court may make orders for the care and
20 custody of the person during a postponement as it deems necessary. If a
21 person is detained before a hearing under ORS 426.070, 426.180, 426.228,
22 426.232 or 426.233 **or section 3 of this 2013 Act** and the hearing is postponed
23 under this paragraph, the court, for good cause, may allow the person to be
24 detained during the postponement if the postponement is requested by the
25 person or the legal counsel of the person. Any of the following may request
26 a postponement under this paragraph:

27 “(A) The allegedly mentally ill **person or extremely dangerous men-**
28 **tally ill** person.

29 “(B) The legal counsel or guardian of the allegedly mentally ill **person**
30 **or extremely dangerous mentally ill** person.

1 “(C) The person representing the state’s interest.

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

4 “(a) Witnesses.

5 “(b) The person conducting the investigation.

6 “(c) The examining physicians or other qualified persons recommended by
7 the Oregon Health Authority who have examined the person.

8 “(4) The provisions of ORS 40.230, 40.235, 40.240 and 40.250 shall not apply
9 to and the court may consider as evidence any of the following:

10 “(a) Medical records for the current involuntary prehearing period of de-
11 tention.

12 “(b) Statements attributed by the maker of the medical records or the
13 investigation report to witnesses concerning their own observations in the
14 absence of objection or if such persons are produced as witnesses at the
15 hearing available for cross-examination.

16 “(c) The testimony of any treating physicians, nurses or social workers
17 for the prehearing period of detention. Any treating physician, nurse or so-
18 cial worker who is subpoenaed as a witness for the proceeding shall testify
19 as an expert witness under the provisions of ORS 40.410, 40.415, 40.420 and
20 40.425 and is subject to treatment as an expert witness in the payment of
21 witness fees and costs.

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

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

26 “(B) Upon objection by any party to the action, the court shall exclude
27 any part of the investigation report that may be excluded under the Oregon
28 Evidence Code on grounds other than those set forth in ORS 40.230, 40.235,
29 40.240 or 40.250.

30 “(C) Neither the investigation report nor any part thereof shall be intro-

1 duced into evidence under this paragraph unless the investigator is present
2 during the proceeding to be cross-examined or unless the presence of the
3 investigator is waived by the allegedly mentally ill person or counsel for the
4 allegedly mentally ill person.

5 “**SECTION 5.** ORS 426.110 is amended to read:

6 “426.110. The following requirements relating to the appointment of ex-
7 aminers for purposes of a hearing under ORS 426.095 **or sections 2 and 3**
8 **of this 2013 Act** apply as described:

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

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

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

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

18 “(A) A physician licensed by the Oregon Medical Board who is competent
19 to practice psychiatry as provided by the Oregon Health Authority **or the**
20 **Psychiatric Security Review Board** by rule.

21 “(B) Certified as a mental health examiner qualified to make examina-
22 tions for involuntary commitment proceedings by the authority. The author-
23 ity **or the Psychiatric Security Review Board** may establish, by rule,
24 requirements for certification as a mental health examiner for purposes of
25 this subparagraph.

26 “(3) The cost of examiners under this section shall be paid as provided
27 under ORS 426.250.

28 “**SECTION 6.** ORS 426.135 is amended to read:

29 “426.135. If a person determined to be mentally ill as provided in ORS
30 426.130, **or determined to be an extremely dangerous mentally ill per-**

1 **son under section 2 or 3 of this 2013 Act**, appeals the determination or
2 disposition based thereon, and is determined to be financially eligible for
3 appointed counsel at state expense, upon request of the person or upon its
4 own motion, the court shall appoint suitable legal counsel to represent the
5 person. The compensation for legal counsel and costs and expenses necessary
6 to the appeal shall be determined and paid by the public defense services
7 executive director as provided in ORS 135.055 if the circuit court is the ap-
8 pellate court or as provided in ORS 138.500 if the Court of Appeals or Su-
9 preme Court is the appellate court. The compensation, costs and expenses
10 shall be paid as provided in ORS 138.500.”

11 On page 4, delete lines 1 through 27.

12 In line 28, delete “4” and insert “7”.

13 In line 31, delete the second comma and insert “or”.

14 In line 32, delete “or the director of the secure intensive community in-
15 patient facility”.

16 On page 5, after line 4, insert:

17 **“SECTION 8.** ORS 426.241 is amended to read:

18 “426.241. (1) The cost of emergency psychiatric care, custody and treat-
19 ment related to or resulting from such psychiatric condition, provided by a
20 hospital or other facility approved by the Oregon Health Authority and the
21 community mental health program director of the county in which the fa-
22 cility is located, except a state mental hospital, for an allegedly mentally ill
23 person admitted or detained under ORS 426.070, 426.140, 426.228, 426.232 or
24 426.233, or for a mentally ill person admitted or detained under ORS 426.150,
25 426.223, 426.273, 426.275 or 426.292, shall be paid by the county of which the
26 person is a resident from state funds provided it for this purpose. The county
27 is responsible for the cost when state funds available therefor are exhausted.
28 The hospital or other facility shall charge to and collect from the person,
29 third party payers or other persons or agencies otherwise legally responsible
30 therefor, the costs of the emergency care, custody and treatment, as it would

1 for any other patient, and any funds received shall be applied as an offset
2 to the cost of the services provided under this section.

3 “(2) If any person is admitted to or detained in a state mental hospital
4 under ORS 426.070, 426.140, 426.180 to 426.210, 426.228, 426.232 or 426.233 for
5 emergency care, custody or treatment, the authority shall charge to and
6 collect from the person, third party payers or other persons or agencies
7 otherwise legally responsible therefor, the costs as it would for other pa-
8 tients of the state mental hospitals under the provisions of ORS 179.610 to
9 179.770.

10 “(3) If any person is adjudged mentally ill under the provisions of ORS
11 426.130, **or determined to be an extremely dangerous mentally ill person**
12 **under section 2 or 3 of this 2013 Act**, and the person receives care and
13 treatment in a state mental hospital, the person, third party payers or other
14 persons or agencies otherwise legally responsible therefor, shall be required
15 to pay for the costs of the hospitalization at the state hospital, as provided
16 by ORS 179.610 to 179.770, if financially able to do so.

17 “(4) For purposes of this section and ORS 426.310 ‘resident’ means resi-
18 dent of the county in which the person maintains a current mailing address
19 or, if the person does not maintain a current mailing address within the
20 state, the county in which the person is found, or the county in which a
21 court-committed mentally ill person has been conditionally released.

22 “(5)(a) The authority may deny payment for part or all of the emergency
23 psychiatric services provided by a hospital or nonhospital facility under ORS
24 426.232, 426.233 or 426.237 when the authority finds, upon review, that the
25 allegedly mentally ill person’s condition did not meet the admission criteria
26 in ORS 426.232 (1), 426.233 (1) or 426.237 (1)(b)(A). The payer responsible un-
27 der this section shall make a request for denial of payment for emergency
28 psychiatric services provided under ORS 426.232, 426.233 or 426.237 in writing
29 to the authority.

30 “(b) The authority may require the following to provide the authority

1 with any information that the authority determines is necessary to review
2 a request for denial of payment made under this subsection or to conduct a
3 review of emergency psychiatric services for the purpose of planning or de-
4 fining authority rules:

5 “(A) A hospital or nonhospital facility approved under ORS 426.228 to
6 426.235 or 426.237.

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

9 “(c) The authority shall adopt rules necessary to carry out the purposes
10 of this subsection.”.

11 In line 5, delete “5” and insert “9”.

12 In line 23, after “2” insert “or 3”.

13 In line 33, after “2” insert “or 3”.

14 After line 40, insert:

15 **“SECTION 10. In addition to and not in lieu of any other appropri-**
16 **ation, there is appropriated to the Oregon Health Authority, for the**
17 **biennium beginning July 1, 2013, out of the General Fund, the amount**
18 **of \$169,571, for the purposes of carrying out the provisions of sections**
19 **2 and 3 and the amendments to ORS 426.095, 426.110, 426.135, 426.160,**
20 **426.241 and 426.250 by sections 4 to 9 of this 2013 Act.**

21 **“SECTION 11. In addition to and not in lieu of any other appropri-**
22 **ation, there is appropriated to the Psychiatric Security Review Board,**
23 **for the biennium beginning July 1, 2013, out of the General Fund, the**
24 **amount of \$36,100, for the purposes of carrying out the provisions of**
25 **sections 2 and 3 and the amendments to ORS 426.095, 426.110, 426.135,**
26 **426.160, 426.241 and 426.250 by sections 4 to 9 of this 2013 Act.”.**

27 In line 41, delete “6” and insert “12”.

28