

Enrolled Senate Bill 421

Sponsored by Senator PROZANSKI (at the request of Kristie Kilcullen and John Kilcullen) (Pre-session filed.)

CHAPTER

AN ACT

Relating to civil commitments; creating new provisions; amending ORS 426.095, 426.110, 426.135, 426.160, 426.241 and 426.250 and section 69, chapter 360, Oregon Laws 2013 (Enrolled Senate Bill 426); repealing sections 23, 25, 31, 35 and 45, chapter 360, Oregon Laws 2013 (Enrolled Senate Bill 426); appropriating money; and declaring an emergency.

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

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

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

(a) A person is “extremely dangerous” if the person:

(A) Is at least 18 years of age;

(B) Is exhibiting symptoms or behaviors of a mental disorder substantially similar to those that preceded the act described in subsection (3)(a)(C) of this section; and

(C) Because of a mental disorder:

(i) Presents a serious danger to the safety of other persons by reason of an extreme risk that the person will inflict grave or potentially lethal physical injury on other persons; and

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

(b) “Mental disorder” does not include:

(A) A disorder manifested solely by repeated criminal or otherwise antisocial conduct;
or

(B) A disorder constituting solely a personality disorder.

(c) A mental disorder is “resistant to treatment” if, after receiving care from a licensed psychiatrist and exhausting all reasonable psychiatric treatment, or after refusing psychiatric treatment, the person continues to be significantly impaired in the person’s ability to make competent decisions and to be aware of and control extremely dangerous behavior.

(2)(a) A district attorney may petition the court to initiate commitment proceedings described in this section if there is reason to believe a person is an extremely dangerous mentally ill person. The petition shall immediately be served upon the person.

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

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

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

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

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

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

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

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

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

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

(A) The person is extremely dangerous;

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

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

(i) Caused the death of another person;

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

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

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

(v) Forcibly compelled sexual intercourse, oral-genital contact or the penetration of another person's anus or vagina; or

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

(b) The court shall further commit the person to a state hospital for custody, care and treatment if the court finds, by clear and convincing evidence, that the person cannot be controlled in the community with proper care, medication, supervision and treatment on conditional release.

(c) The court shall specify in the order whether any person who would be considered a victim as defined in ORS 131.007 of the act described in paragraph (a)(C) of this subsection, if the act had been criminally prosecuted, requests notification of any order or hearing, conditional release, discharge or escape of the person committed under this section.

(d) The court shall be fully advised of all drugs and other treatment known to have been administered to the alleged extremely dangerous mentally ill person that may substantially affect the ability of the person to prepare for, or to function effectively at, the hearing.

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

(4) The findings of the court that a person committed an act described in subsection (3)(a)(C) of this section may not be admitted in a criminal prosecution.

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

(6)(a) The board shall hold a hearing six months after the initial commitment described in subsection (3) of this section, and thereafter six months after a further commitment described in section 3 of this 2013 Act, to determine the placement of the person and whether the person is eligible for conditional release or early discharge. The board shall provide written notice of the hearing to the person, the person's legal counsel and the office of the district attorney who filed the initial petition under subsection (2) of this section within a reasonable time prior to the hearing. The board shall further notify the person of the following:

- (A) The nature of the hearing and possible outcomes;
- (B) The right to appear at the hearing and present evidence;
- (C) The right to be represented by legal counsel and, if the person is without funds to retain legal counsel, the right to have the court appoint legal counsel;
- (D) The right to subpoena witnesses;
- (E) The right to cross-examine witnesses who appear at the hearing; and
- (F) The right to examine all reports, documents and information that the board considers, including the right to examine the reports, documents and information prior to the hearing if available.

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

(c) If the board determines at the hearing that the person still suffers from a mental disorder that is resistant to treatment and continues to be extremely dangerous, but finds that the person can be controlled in the community with proper care, medication, supervision and treatment if conditionally released, the board shall conditionally release the person.

(d) If the board determines at the hearing that the person no longer suffers from a mental disorder that is resistant to treatment or is no longer extremely dangerous, the board shall discharge the person. The discharge of a person committed under this section does not preclude commitment of the person pursuant to ORS 426.005 to 426.390.

(7)(a) At any time during the commitment to a state hospital, the superintendent of the state hospital may request a hearing to determine the status of the person's commitment under the jurisdiction of the board. The request shall be accompanied by a report setting forth the facts supporting the request. If the request is for conditional release, the request shall be accompanied by a verified conditional release plan. The hearing shall be conducted as described in subsection (6) of this section.

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

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

(8)(a) If the board orders the conditional release of a person under subsection (6)(c) of this section, the board shall order conditions of release that may include a requirement to report to any state or local mental health facility for evaluation. The board may further re-

quire cooperation with, and acceptance of, psychiatric or psychological treatment from the facility. Conditions of release may be modified by the board from time to time.

(b) When a person is referred to a state or local mental health facility for an evaluation under this subsection, the facility shall perform the evaluation and submit a written report of its findings to the board. If the facility finds that treatment of the person is appropriate, the facility shall include its recommendations for treatment in the report to the board.

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

(d) Copies of all reports submitted to the board pursuant to this subsection shall be furnished to the person and to the person's legal counsel, if applicable. The confidentiality of these reports is determined pursuant to ORS 192.501 to 192.505.

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

(9)(a) If at any time while the person is conditionally released it appears that the person has violated the terms of the conditional release, the board may order the person returned to a state hospital for evaluation or treatment. A written order of the board is sufficient warrant for any law enforcement officer to take the person into custody. A sheriff, municipal police officer, parole or probation officer or other peace officer shall execute the order, and the person shall be returned to the state hospital as soon as practicable.

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

(c) Within 30 days following the return of the person to a state hospital, the board shall conduct a hearing to determine if, by a preponderance of the evidence, the person is no longer fit for conditional release. The board shall provide written notice of the hearing to the person, the person's legal counsel and the office of the district attorney who filed the initial petition under subsection (2) of this section within a reasonable time prior to the hearing. The notice shall advise the person of the nature of the hearing, the right to have the court appoint legal counsel and the right to subpoena witnesses, examine documents considered by the board and cross-examine all witnesses who appear at the hearing.

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

(b) Upon receiving the notice described in this subsection, the district attorney may request an order from the court in the county where the criminal charges were initiated for an evaluation to determine if the person is fit to proceed in the criminal proceeding. The court may order the state hospital or the state or local mental health facility providing treatment to the person to perform the evaluation. The hospital or facility shall provide copies of the evaluation to the district attorney, the person and the person's legal counsel, if applicable.

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

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

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

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

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

(b) The board may additionally certify that the person cannot be controlled in the community with proper care, medication, supervision and treatment on conditional release and must be committed to a state hospital. The board, pursuant to its rules, may delegate to the superintendent of the state hospital or the director of the state or local mental health facility providing treatment to the person the responsibility for making the additional certification.

(2) The certification shall immediately be served upon the person by the superintendent of the state hospital or the director of the state or local mental health facility providing treatment to the person. The superintendent or director shall inform the court in writing that service has been made and the date thereof.

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

(a) That the board, hospital or facility has requested that commitment be continued for an additional 24 months.

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

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

(d) That the person may protest a further period of commitment either orally or in writing by signing the form accompanying the certification.

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

(f) That the person is entitled to have a psychologist or psychiatrist, other than a member of the staff at the facility where the person is being treated, examine the person and report to the court the results of the examination at the hearing.

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

(h) That if the person is without funds to retain legal counsel or an examining psychologist or psychiatrist for the hearing, the court will appoint legal counsel or an examining psychologist or psychiatrist.

(4) The person serving the certification shall read and deliver the certification to the person and ask whether the person protests a further period of commitment. The person may protest a further period of commitment and request a hearing either orally or by signing a simple protest form to be given to the person with the certification. If the person does not protest a further period of commitment within 14 days of service of the certification, the

board, hospital or facility shall so notify the court, and the court shall, without further hearing, order the commitment of the person to the jurisdiction of the board for a maximum of 24 months. The court shall further order that the person be committed to a state hospital if a certification under subsection (1)(b) of this section has been made.

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

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

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

(b) If the person requests a continuance in order to prepare for the hearing or to obtain legal counsel to represent the person, the court may grant postponement and detention during postponement as described in ORS 426.095 (2)(c).

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

(d) If the person requests an examination by a psychologist or psychiatrist and is without funds to retain a psychologist or psychiatrist for purposes of the examination, the court shall appoint a psychologist or psychiatrist, other than a member of the staff from the facility where the person is being treated, to examine the person at no expense to the person and to report to the court the results of the examination.

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

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

(g) At the end of the 24-month period, the person shall be discharged unless the board, hospital or facility again certifies to the committing court that the person is still an extremely dangerous mentally ill person and in need of further treatment, in which event the procedures set forth in this section shall be followed.

SECTION 4. ORS 426.095 is amended to read:

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

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

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

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

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

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

(A) The allegedly mentally ill **person or extremely dangerous mentally ill** person.

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

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

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

(a) Witnesses.

(b) The person conducting the investigation.

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

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

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

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

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

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

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

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

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

SECTION 5. ORS 426.110 is amended to read:

426.110. The following requirements relating to the appointment of examiners for purposes of a hearing under ORS 426.095 **or sections 2 and 3 of this 2013 Act** apply as described:

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

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

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

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

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

(B) Certified **by the authority or the Psychiatric Security Review Board** as a mental health examiner qualified to make examinations for involuntary commitment proceedings [*by the authority*]. The authority **or the Psychiatric Security Review Board** may establish, by rule, requirements for certification as a mental health examiner for purposes of this subparagraph.

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

SECTION 6. ORS 426.135 is amended to read:

426.135. If a person determined to be mentally ill as provided in ORS 426.130, **or determined to be an extremely dangerous mentally ill person under section 2 or 3 of this 2013 Act**, appeals the determination or disposition based thereon, and is determined to be financially eligible for appointed counsel at state expense, upon request of the person or upon its own motion, the court shall appoint suitable legal counsel to represent the person. The compensation for legal counsel and costs and expenses necessary to the appeal shall be determined and paid by the public defense services executive director as provided in ORS 135.055 if the circuit court is the appellate court or as provided in ORS 138.500 if the Court of Appeals or Supreme Court is the appellate court. The compensation, costs and expenses shall be paid as provided in ORS 138.500.

SECTION 7. ORS 426.160 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 **and sections 2 and 3 of this 2013 Act** may not disclose any part of the record of the proceeding **or commitment** 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;

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

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

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

or

(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 8. ORS 426.241 is amended to read:

426.241. (1) The cost of emergency psychiatric care, custody and treatment related to or resulting from such psychiatric condition, provided by a hospital or other facility approved by the Oregon Health Authority and the community mental health program director of the county in which the facility is located, except a state mental hospital, for an allegedly mentally ill person admitted or detained under ORS 426.070, 426.140, 426.228, 426.232 or 426.233, or for a mentally ill person admitted or detained under ORS 426.150, 426.223, 426.273, 426.275 or 426.292, shall be paid by the county of which the person is a resident from state funds provided it for this purpose. The county is responsible for the cost when state funds available therefor are exhausted. The hospital or other facility shall charge to and collect from the person, third party payers or other persons or agencies otherwise legally responsible therefor, the costs of the emergency care, custody and treatment, as it would for any other patient, and any funds received shall be applied as an offset to the cost of the services provided under this section.

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

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

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

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

(b) The authority may require the following to provide the authority with any information that the authority determines is necessary to review a request for denial of payment made under this subsection or to conduct a review of emergency psychiatric services for the purpose of planning or defining authority rules:

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

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

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

SECTION 9. ORS 426.250, as amended by section 4, chapter 25, Oregon Laws 2012, is amended to read:

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

(1) Any physician or qualified person recommended by the Oregon Health Authority who is employed under ORS 426.110 to make an examination as to the mental condition of a person alleged to be mentally ill shall be allowed a fee as the court in its discretion determines reasonable for the examination.

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

(3) If a person with a right to a counsel under ORS 426.100 **or section 2 or 3 of this 2013 Act** is determined to be financially eligible for appointed counsel at state expense, the public defense services executive director shall determine and pay, as provided in ORS 135.055, the reasonable expenses related to the representation of the person and compensation for legal counsel. The ex-

penses and compensation so allowed shall be paid by the public defense services executive director from funds available for the purpose.

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

(5) All costs incurred in connection with a proceeding under ORS 426.180 **or section 2 or 3 of this 2013 Act**, including the costs of transportation, commitment and delivery of the person, shall be paid by the county of which the person is a resident. If the person is not a resident of this state, then the costs incurred in connection with the proceeding shall be paid by the county from which the emergency admission was made.

(6) All costs incurred in connection with a proceeding under ORS 426.180 for the commitment of a person from a reservation, including the cost of transportation, commitment and delivery of the person, shall be paid by the governing body of the reservation of which the person is a resident.

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

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

SECTION 12. If Senate Bill 426 becomes law, sections 23 (amending ORS 426.095), 25 (amending ORS 426.110), 31 (amending ORS 426.135), 35 (amending ORS 426.160) and 45 (amending ORS 426.241), chapter 360, Oregon Laws 2013 (Enrolled Senate Bill 426), are repealed.

SECTION 13. If Senate Bill 426 becomes law, section 2 of this 2013 Act is amended to read:

Sec. 2. (1) For the purposes of this section and section 3 of this 2013 Act:

(a) A person is "extremely dangerous" if the person:

(A) Is at least 18 years of age;

(B) Is exhibiting symptoms or behaviors of a mental disorder substantially similar to those that preceded the act described in subsection (3)(a)(C) of this section; and

(C) Because of a mental disorder:

(i) Presents a serious danger to the safety of other persons by reason of an extreme risk that the person will inflict grave or potentially lethal physical injury on other persons; and

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

(b) "Mental disorder" does not include:

(A) A disorder manifested solely by repeated criminal or otherwise antisocial conduct; or

(B) A disorder constituting solely a personality disorder.

(c) A mental disorder is "resistant to treatment" if, after receiving care from a licensed psychiatrist and exhausting all reasonable psychiatric treatment, or after refusing psychiatric treatment, the person continues to be significantly impaired in the person's ability to make competent decisions and to be aware of and control extremely dangerous behavior.

(2)(a) A district attorney may petition the court to initiate commitment proceedings described in this section if there is reason to believe a person is an extremely dangerous [*mentally ill*] person **with mental illness**. The petition shall immediately be served upon the person.

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

(A) The allegation that the person is an extremely dangerous [*mentally ill*] person **with mental illness** and may be committed to the jurisdiction of the Psychiatric Security Review Board for a maximum period of 24 months; and

(B) The right to a hearing to determine whether the person is an extremely dangerous [*mentally ill*] person **with mental illness**, unless the person consents to the commitment by waiving the right to a hearing in writing after consultation with legal counsel.

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

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

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

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

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

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

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

(A) The person is extremely dangerous;

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

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

(i) Caused the death of another person;

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

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

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

(v) Forcibly compelled sexual intercourse, oral-genital contact or the penetration of another person's anus or vagina; or

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

(b) The court shall further commit the person to a state hospital for custody, care and treatment if the court finds, by clear and convincing evidence, that the person cannot be controlled in the community with proper care, medication, supervision and treatment on conditional release.

(c) The court shall specify in the order whether any person who would be considered a victim as defined in ORS 131.007 of the act described in paragraph (a)(C) of this subsection, if the act had been criminally prosecuted, requests notification of any order or hearing, conditional release, discharge or escape of the person committed under this section.

(d) The court shall be fully advised of all drugs and other treatment known to have been administered to the alleged extremely dangerous [*mentally ill*] person **with mental illness** that may substantially affect the ability of the person to prepare for, or to function effectively at, the hearing.

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

(4) The findings of the court that a person committed an act described in subsection (3)(a)(C) of this section may not be admitted in a criminal prosecution.

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

(6)(a) The board shall hold a hearing six months after the initial commitment described in subsection (3) of this section, and thereafter six months after a further commitment described in section 3 of this 2013 Act, to determine the placement of the person and whether the person is eligible for conditional release or early discharge. The board shall provide written notice of the hearing to the person, the person's legal counsel and the office of the district attorney who filed the initial petition under subsection (2) of this section within a reasonable time prior to the hearing. The board shall further notify the person of the following:

- (A) The nature of the hearing and possible outcomes;
- (B) The right to appear at the hearing and present evidence;
- (C) The right to be represented by legal counsel and, if the person is without funds to retain legal counsel, the right to have the court appoint legal counsel;
- (D) The right to subpoena witnesses;
- (E) The right to cross-examine witnesses who appear at the hearing; and
- (F) The right to examine all reports, documents and information that the board considers, including the right to examine the reports, documents and information prior to the hearing if available.

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

(c) If the board determines at the hearing that the person still suffers from a mental disorder that is resistant to treatment and continues to be extremely dangerous, but finds that the person can be controlled in the community with proper care, medication, supervision and treatment if conditionally released, the board shall conditionally release the person.

(d) If the board determines at the hearing that the person no longer suffers from a mental disorder that is resistant to treatment or is no longer extremely dangerous, the board shall discharge the person. The discharge of a person committed under this section does not preclude commitment of the person pursuant to ORS 426.005 to 426.390.

(7)(a) At any time during the commitment to a state hospital, the superintendent of the state hospital may request a hearing to determine the status of the person's commitment under the jurisdiction of the board. The request shall be accompanied by a report setting forth the facts supporting the request. If the request is for conditional release, the request shall be accompanied by a verified conditional release plan. The hearing shall be conducted as described in subsection (6) of this section.

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

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

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

(b) When a person is referred to a state or local mental health facility for an evaluation under this subsection, the facility shall perform the evaluation and submit a written report of its findings

to the board. If the facility finds that treatment of the person is appropriate, the facility shall include its recommendations for treatment in the report to the board.

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

(d) Copies of all reports submitted to the board pursuant to this subsection shall be furnished to the person and to the person's legal counsel, if applicable. The confidentiality of these reports is determined pursuant to ORS 192.501 to 192.505.

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

(9)(a) If at any time while the person is conditionally released it appears that the person has violated the terms of the conditional release, the board may order the person returned to a state hospital for evaluation or treatment. A written order of the board is sufficient warrant for any law enforcement officer to take the person into custody. A sheriff, municipal police officer, parole or probation officer or other peace officer shall execute the order, and the person shall be returned to the state hospital as soon as practicable.

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

(c) Within 30 days following the return of the person to a state hospital, the board shall conduct a hearing to determine if, by a preponderance of the evidence, the person is no longer fit for conditional release. The board shall provide written notice of the hearing to the person, the person's legal counsel and the office of the district attorney who filed the initial petition under subsection (2) of this section within a reasonable time prior to the hearing. The notice shall advise the person of the nature of the hearing, the right to have the court appoint legal counsel and the right to subpoena witnesses, examine documents considered by the board and cross-examine all witnesses who appear at the hearing.

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

(b) Upon receiving the notice described in this subsection, the district attorney may request an order from the court in the county where the criminal charges were initiated for an evaluation to determine if the person is fit to proceed in the criminal proceeding. The court may order the state hospital or the state or local mental health facility providing treatment to the person to perform the evaluation. The hospital or facility shall provide copies of the evaluation to the district attorney, the person and the person's legal counsel, if applicable.

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

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

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

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

SECTION 14. If Senate Bill 426 becomes law, section 3 of this 2013 Act is amended to read:

Sec. 3. (1)(a) At the end of the 24-month period of commitment described in section 2 of this 2013 Act, any person who remains committed under the jurisdiction of the Psychiatric Security Review Board shall be discharged, unless the board certifies to the court in the county where the state hospital or state or local mental health facility providing treatment to the person is located that the person is still extremely dangerous and suffers from a mental disorder that is resistant to treatment. The board, pursuant to its rules, may delegate to the superintendent of the state hospital or the director of the state or local mental health facility providing treatment to the person the responsibility for making the certification. If the certification is made, the person will not be released.

(b) The board may additionally certify that the person cannot be controlled in the community with proper care, medication, supervision and treatment on conditional release and must be committed to a state hospital. The board, pursuant to its rules, may delegate to the superintendent of the state hospital or the director of the state or local mental health facility providing treatment to the person the responsibility for making the additional certification.

(2) The certification shall immediately be served upon the person by the superintendent of the state hospital or the director of the state or local mental health facility providing treatment to the person. The superintendent or director shall inform the court in writing that service has been made and the date thereof.

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

(a) That the board, hospital or facility has requested that commitment be continued for an additional 24 months.

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

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

(d) That the person may protest a further period of commitment either orally or in writing by signing the form accompanying the certification.

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

(f) That the person is entitled to have a psychologist or psychiatrist, other than a member of the staff at the facility where the person is being treated, examine the person and report to the court the results of the examination at the hearing.

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

(h) That if the person is without funds to retain legal counsel or an examining psychologist or psychiatrist for the hearing, the court will appoint legal counsel or an examining psychologist or psychiatrist.

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

(5) When the person protests a further period of commitment and requests a hearing, the board, hospital or facility shall immediately notify the court, and the court shall have the person brought before it and shall again advise the person that the board, hospital or facility has requested that commitment be continued for an additional period of time and that if the person does not protest

this commitment the commitment will be continued for a maximum of 24 months. The person shall also be informed of the rights set forth in subsection (3) of this section.

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

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

(b) If the person requests a continuance in order to prepare for the hearing or to obtain legal counsel to represent the person, the court may grant postponement and detention during postponement as described in ORS 426.095 (2)(c).

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

(d) If the person requests an examination by a psychologist or psychiatrist and is without funds to retain a psychologist or psychiatrist for purposes of the examination, the court shall appoint a psychologist or psychiatrist, other than a member of the staff from the facility where the person is being treated, to examine the person at no expense to the person and to report to the court the results of the examination.

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

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

(g) At the end of the 24-month period, the person shall be discharged unless the board, hospital or facility again certifies to the committing court that the person is still an extremely dangerous [*mentally ill*] person **with mental illness** and in need of further treatment, in which event the procedures set forth in this section shall be followed.

SECTION 15. If Senate Bill 426 becomes law, ORS 426.095, as amended by section 4 of this 2013 Act, is amended to read:

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

(1) The hearing may be held in a hospital, the person's home or in some other place convenient to the court and the [*allegedly mentally ill*] person **alleged to have a mental illness**.

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

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

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

(c) If requested under this paragraph, the court, for good cause, may postpone the hearing for not more than five judicial days in order to allow preparation for the hearing. The court may make orders for the care and custody of the person during a postponement as it deems necessary. If a person is detained before a hearing under ORS 426.070, 426.180, 426.228, 426.232 or 426.233 or section 3 of this 2013 Act and the hearing is postponed under this paragraph, the court, for good cause, may allow the person to be detained during the postponement if the postponement is requested by

the person or the legal counsel of the person. Any of the following may request a postponement under this paragraph:

(A) The *[allegedly mentally ill person or extremely dangerous mentally ill]* person **alleged to have a mental illness or the person alleged to be an extremely dangerous person with mental illness.**

(B) The legal counsel or guardian of the *[allegedly mentally ill person or extremely dangerous mentally ill]* person.

(C) The *[person]* **individual** representing the state's interest.

(3) The *[allegedly mentally ill]* person **alleged to have a mental illness** and the *[person]* **individual** representing the state's interest shall have the right to cross-examine all the following:

(a) Witnesses.

(b) The *[person]* **individual** conducting the investigation.

(c) The examining physicians or other qualified *[persons]* **professionals** recommended by the Oregon Health Authority who have examined the person.

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

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

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

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

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

(A) Introduction of the report under this paragraph does not require the consent of the *[allegedly mentally ill]* person **alleged to have a mental illness.**

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

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

SECTION 16. If Senate Bill 426 becomes law, ORS 426.110, as amended by section 5 of this 2013 Act, is amended to read:

426.110. The following requirements relating to the appointment of examiners for purposes of a hearing under ORS 426.095 or sections 2 and 3 of this 2013 Act apply as described:

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

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

(a) *[The person must]* Agree to be an examiner.

(b) *[The person must]* Be one of the following:

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

(B) Certified by the authority or the Psychiatric Security Review Board as a mental health examiner qualified to make examinations for involuntary commitment proceedings.

(3) The authority or the Psychiatric Security Review Board may establish, by rule, requirements for certification as a mental health examiner for purposes of *[this subparagraph]* **subsection (2)(b)(B) of this section.**

[(3)] (4) The cost of examiners under this section shall be paid as provided under ORS 426.250.

SECTION 17. If Senate Bill 426 becomes law, ORS 426.135, as amended by section 6 of this 2013 Act, is amended to read:

426.135. If a person determined to be *[mentally ill]* **a person with mental illness** as provided in ORS 426.130, or determined to be an extremely dangerous *[mentally ill]* person **with mental illness** under section 2 or 3 of this 2013 Act, appeals the determination or **the** disposition *[based thereon]*, and is determined to be financially eligible for appointed counsel at state expense, upon request of the person or upon its own motion, the court shall appoint suitable legal counsel to represent the person. The compensation for legal counsel and costs and expenses necessary to the appeal shall be determined and paid by the public defense services executive director as provided in ORS 135.055 if the circuit court is the appellate court or as provided in ORS 138.500 if the Court of Appeals or Supreme Court is the appellate court. The compensation, costs and expenses shall be paid as provided in ORS 138.500.

SECTION 18. If Senate Bill 426 becomes law, ORS 426.160, as amended by section 7 of this 2013 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 and sections 2 and 3 of this 2013 Act may not disclose any part of the record of the proceeding or commitment 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;

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

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

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

or

(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 **subject to the proceeding.**

SECTION 19. If Senate Bill 426 becomes law, ORS 426.241, as amended by section 8 of this 2013 Act, is amended to read:

426.241. (1) The cost of emergency psychiatric care, custody and treatment related to or resulting from such psychiatric condition, provided by a hospital or other facility approved by the Oregon Health Authority and the community mental health program director of the county in which the facility is located, except a state *[mental]* hospital, for *[an allegedly mentally ill person]* **a person alleged to have a mental illness who is** admitted or detained under ORS 426.070, 426.140, 426.228, 426.232 or 426.233, or for a *[mentally ill]* person **with mental illness who is** admitted or detained under ORS 426.150, 426.223, 426.273, 426.275 or 426.292, shall be paid by the county of which the person is a resident from state funds provided *[it]* **to the county** for this purpose. The county is responsible for the cost when state funds *[available therefor]* **provided to the county** are exhausted. The hospital or other facility shall charge to and collect from the person, third party payers or other *[persons or agencies otherwise legally responsible therefor,]* **legally or financially responsible individuals or entities** the costs of the emergency care, custody and treatment, as it would for any

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

(2) If any person is admitted to or detained in a state *[mental]* hospital under ORS 426.070, 426.140, 426.180 to 426.210, 426.228, 426.232 or 426.233 for emergency care, custody or treatment, the authority shall charge to and collect from the person, third party payers or other *[persons or agencies otherwise legally responsible therefor,]* **legally or financially responsible individuals or entities** the costs as it would for other patients of the state *[mental]* hospitals under the provisions of ORS 179.610 to 179.770.

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

(4) For purposes of this section and ORS 426.310, “resident” means resident of the county in which the person maintains a current mailing address or, if the person does not maintain a current mailing address within the state, the county in which the person is found, or the county in which a court-committed *[mentally ill]* person has been conditionally released.

(5)(a) The authority may deny payment for part or all of the emergency psychiatric services provided by a hospital or nonhospital facility under ORS 426.232, 426.233 or 426.237 when the authority finds, upon review, that the *[allegedly mentally ill person’s]* condition **of the person alleged to have a mental illness** did not meet the admission criteria in ORS 426.232 (1), 426.233 (1) or 426.237 (1)(b)(A). The payer responsible under this section shall make a request for denial of payment for emergency psychiatric services provided under ORS 426.232, 426.233 or 426.237 in writing to the authority.

(b) The authority may require the following to provide the authority with any information that the authority determines is necessary to review a request for denial of payment made under this subsection or to conduct a review of emergency psychiatric services for the purpose of planning or defining authority rules:

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

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

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

SECTION 20. If Senate Bill 426 becomes law, the amendments to sections 2 and 3 of this 2013 Act and ORS 426.095, 426.110, 426.135, 426.160 and 426.241 by sections 13 to 19 of this 2013 Act become operative on the effective date of chapter 360, Oregon Laws 2013 (Enrolled Senate Bill 426).

SECTION 21. If Senate Bill 426 becomes law, section 69, chapter 360, Oregon Laws 2013 (Enrolled Senate Bill 426), is amended to read:

Sec. 69. The amendments to ORS 21.010, 109.322, 135.775, 166.250, 166.291, 166.470, 179.473, 408.570, 419C.529, 421.245, 421.284, 421.296, 426.005, 426.010, 426.060, 426.070, 426.072, 426.074, 426.075, 426.090, 426.095, 426.100, 426.110, 426.120, 426.123, 426.125, 426.127, 426.130, 426.135, 426.140, 426.150, 426.155, 426.160, 426.170, 426.223, 426.228, 426.231, 426.232, 426.233, 426.234, 426.235, 426.237, 426.241, 426.250, 426.255, 426.273, 426.275, 426.278, 426.292, 426.297, 426.300, 426.301, 426.307, 426.310, 426.320, 426.335, 426.370, 426.385, 426.500, 428.310, 480.225, 677.225 and 680.205 and section 5, chapter 826, Oregon Laws 2009, by sections 1, 3 to 6, 8, 10 and 12 to 68, **chapter 360, Oregon Laws 2013 (Enrolled Senate Bill 426)**, *[of this 2013 Act]* and **sections 15 to 19 of this 2013 Act** apply to proceedings initiated under ORS 426.070, 426.228 to 426.235, 426.237, 426.300, 426.301 to 426.307 or 426.380 on or after the effective date of **chapter 360, Oregon Laws 2013 (Enrolled Senate Bill 426)** *[this 2013 Act]*.

SECTION 22. This 2013 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect on its passage.

Passed by Senate June 24, 2013

Received by Governor:

Repassed by Senate July 6, 2013

.....M,....., 2013

Approved:

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Robert Taylor, Secretary of Senate

.....M,....., 2013

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Peter Courtney, President of Senate

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John Kitzhaber, Governor

Passed by House July 2, 2013

Filed in Office of Secretary of State:

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Tina Kotek, Speaker of House

.....M,....., 2013

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Kate Brown, Secretary of State