

SENATE AMENDMENTS TO SENATE BILL 421

By COMMITTEE ON JUDICIARY

April 30

1 On page 1 of the printed bill, line 2, after “ORS” delete the rest of the line and insert “426.100,
2 426.160 and 426.250;”.

3 In line 3, delete “426.300;”.

4 Delete lines 6 through 30 and insert:

5 **“SECTION 2. (1) As used in this section, ‘extremely dangerous’ means that a person:**

6 **“(a) Is exhibiting symptoms or behaviors substantially similar to those that preceded an**
7 **act described in subsection (3)(b) of this section;**

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

11 **“(c) Unless committed, will continue to represent an extreme risk to the safety of other**
12 **persons in the foreseeable future.**

13 **“(2) A district attorney may petition the court to initiate commitment proceedings de-**
14 **scribed in this section if there is reason to believe a person is an extremely dangerous**
15 **mentally ill person.**

16 **“(3) Upon receipt of a petition filed under subsection (2) of this section, the court shall**
17 **hold a hearing. After the hearing, the court shall order the person committed as an ex-**
18 **tremely dangerous mentally ill person under the jurisdiction of the Psychiatric Security Re-**
19 **view Board if the court finds, by clear and convincing evidence, that:**

20 **“(a) The person suffers from a mental disorder;**

21 **“(b) The person committed one of the following acts while suffering from the mental**
22 **disorder:**

23 **“(A) Caused the death of another person;**

24 **“(B) Caused serious physical injury to another person by means of a dangerous weapon;**

25 **“(C) Caused physical injury to another person by means of a firearm as defined in ORS**
26 **166.210 or an explosive as defined in ORS 164.055;**

27 **“(D) Engaged in oral-genital contact with a child under 14 years of age;**

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

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

33 **“(c) The person is extremely dangerous.**

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

1 “(5)(a) A person committed under subsection (3) of this section shall be committed to a
2 state hospital or, if the person is under 18 years of age, to a secure intensive community
3 inpatient facility for custody, care and treatment.

4 “(b) The person shall remain committed in a state hospital or facility unless the board
5 conducts a hearing and makes the findings described in subsection (6)(b) of this section.

6 “(c) The person shall remain under the jurisdiction of the board unless the board con-
7 ducts a hearing and makes the findings described in subsection (6)(c) of this section.

8 “(6) The board shall hold a hearing six months after the commitment described in sub-
9 section (3) of this section, and thereafter every 24 months, to determine the status of the
10 person’s commitment under the jurisdiction of the board.

11 “(a) If the board determines at the hearing that the person still suffers from a mental
12 disorder and is still extremely dangerous, the person shall remain committed to a state
13 hospital or, if the person is under 18 years of age, to a secure intensive community inpatient
14 facility.

15 “(b) If the board determines at the hearing that the person still suffers from a mental
16 disorder and continues to be a danger to others, but is not extremely dangerous, and that
17 the person can be controlled with proper care, medication, supervision and treatment if
18 conditionally released, the board shall conditionally release the person.

19 “(c) If the board determines at the hearing that the person no longer suffers from a
20 mental disorder or, if so affected, no longer presents a danger to others that requires
21 treatment, the board shall discharge the person.

22 “(7)(a) At any time during the commitment to a state hospital or secure intensive com-
23 munity inpatient facility, the superintendent of the state hospital or the director of the se-
24 cure intensive community in-patient facility may request a hearing described in subsection
25 (6) of this section to determine the status of the person’s commitment under the jurisdiction
26 of the board.

27 “(b) If the person had unadjudicated criminal charges at the time of the person’s initial
28 commitment, the superintendent or director shall notify the district attorney who initiated
29 the charges of the request for the hearing.

30 “(8)(a) If the board orders conditional release of a person under subsection (6)(b) of this
31 section, the board shall order conditions of release that may include a requirement to report
32 to any state or local mental health facility for evaluation and cooperation with and accept-
33 ance of psychiatric or psychological treatment from the facility. Conditions of release may
34 be modified by the board from time to time.

35 “(b) If at any time while the person is (conditionally) released it appears that the person
36 has violated the terms of the conditional release or that the mental health of the person has
37 changed, the board may order the person returned for evaluation or treatment to a state
38 hospital or, if the person is under 18 years of age, to a secure intensive community inpatient
39 facility.

40 “(c) Within 30 days following the return of the person to a state hospital or secure in-
41 tensive community inpatient facility, the board shall conduct a hearing as described in sub-
42 section (6) of this section to determine the status of the person’s commitment under the
43 jurisdiction of the board.

44 “(d) At any time during conditional release, the state or local mental health facility
45 providing treatment to the person may request a hearing as described in subsection (6) of

1 **this section to determine the status of the person’s commitment under the jurisdiction of**
2 **the board. If the person had unadjudicated criminal charges at the time of the person’s ini-**
3 **tial commitment, the director of the facility shall notify the district attorney that initiated**
4 **the charges of the request for the hearing.**

5 **“(9)(a) If the board discharges a person under subsection (6)(c) of this section and the**
6 **person had unadjudicated criminal charges at the time of the person’s initial commitment:**

7 **“(A) The board shall notify the district attorney that initiated the charges of the dis-**
8 **charge; and**

9 **“(B) The district attorney may request an evaluation to determine if the person is fit to**
10 **proceed with the criminal proceeding.**

11 **“(b) The person may not waive an evaluation to determine if the person is fit to proceed**
12 **with the criminal proceeding described in paragraph (a)(B) of this subsection.**

13 **“SECTION 3.** ORS 426.100 is amended to read:

14 **“426.100. (1) At the time the allegedly mentally ill person is brought before the court, the court**
15 **shall advise the person of the following:**

16 **“(a) The reason for being brought before the court;**

17 **“(b) The nature of the proceedings;**

18 **“(c) The possible results of the proceedings;**

19 **“(d) The right to subpoena witnesses; and**

20 **“(e) The person’s rights regarding representation by or appointment of counsel.**

21 **“(2) Subsection (3) of this section establishes the rights of allegedly mentally ill persons **and****
22 **allegedly extremely dangerous mentally ill persons** in each of the following circumstances:

23 **“(a) When the person is held by warrant of detention issued under ORS 426.070.**

24 **“(b) In commitment hearings under ORS 426.095.**

25 **“(c) When the person is detained as provided under ORS 426.228, 426.232 or 426.233.**

26 **“(d) In recommitment hearings under ORS 426.307.**

27 **“(e) **In commitment hearings, hearings for conditional release and discharge hearings****
28 **under section 2 of this 2013 Act.**

29 **“(3) When provided under subsection (2) of this section, [*an allegedly mentally ill*] a person has**
30 **the following rights relating to representation by or appointment of counsel:**

31 **“(a) The right to obtain suitable legal counsel possessing skills and experience commensurate**
32 **with the nature of the allegations and complexity of the case during the proceedings.**

33 **“(b) If the person is determined to be financially eligible for appointed counsel at state expense,**
34 **the court will appoint legal counsel to represent the person. If a person is appointed counsel at state**
35 **expense, payment of expenses and compensation relating to legal counsel shall be made as provided**
36 **under ORS 426.250.**

37 **“(c) If the [*allegedly mentally ill*] person does not request legal counsel, the legal guardian, rel-**
38 **ative or friend may request the assistance of suitable legal counsel on behalf of the person.**

39 **“(d) If no request for legal counsel is made, the court shall appoint suitable legal counsel unless**
40 **counsel is expressly, knowingly and intelligently refused by the person.**

41 **“(e) If the person is being involuntarily detained before a hearing on the issue of commitment,**
42 **the right under paragraph (a) of this subsection to contact an attorney or under paragraph (b) of this**
43 **subsection to have an attorney appointed may be exercised as soon as reasonably possible.**

44 **“(f) In all cases suitable legal counsel shall be present at the hearing and may be present at**
45 **examination and may examine all witnesses offering testimony, and otherwise represent the person.**

1 “(4) The responsibility for representing the state’s interest in commitment proceedings, includ-
2 ing, but not limited to, preparation of the state’s case and appearances at commitment hearings is
3 as follows:

4 “(a) The Attorney General’s office shall have the responsibility relating to proceedings initiated
5 by state hospital staff that are any of the following:

6 “(A) Recommitment proceedings under ORS 426.307; or

7 “(B) Proceedings under ORS 426.228, 426.232 or 426.233.

8 “(b) The district attorney if requested to do so by the governing body of the county.

9 “(c) In lieu of the district attorney under paragraph (b) of this subsection, a counsel designated
10 by the governing body of a county shall take the responsibility. A county governing body may des-
11 ignate counsel to take responsibility under this paragraph either for single proceedings or for all
12 such proceedings the county will be obligated to pay for under ORS 426.250. If a county governing
13 body elects to proceed under this paragraph, the county governing body shall so notify the district
14 attorney. The expenses of an attorney appointed under this paragraph shall be paid as provided
15 under ORS 426.250.

16 “**SECTION 4.** ORS 426.160 is amended to read:

17 “426.160. (1) The court having jurisdiction over any proceeding conducted pursuant to ORS
18 426.005, 426.060 to 426.170, 426.217, 426.228, 426.255 to 426.292, 426.300 to 426.309, 426.385 and
19 426.395, **or the Psychiatric Security Review Board, the superintendent of the state hospital**
20 **or the director of the secure intensive community inpatient facility having jurisdiction over**
21 **or custody of a person committed pursuant to section 2 of this 2013 Act**, may not disclose any
22 part of the record of the proceeding **or commitment** to any person except:

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

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

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

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

30 or

31 “(e) Pursuant to court order.

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

38 Delete pages 2 through 4.

39 On page 5, delete lines 1 through 35.

40 In line 36, delete “6” and insert “5”.

41 On page 6, line 27, delete “7” and insert “6”.