

**PROPOSED AMENDMENTS TO
SENATE BILL 421**

1 On page 1 of the printed bill, line 2, after “ORS” delete the rest of the
2 line and insert “426.100, 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’**
6 **means that a person:**

7 **“(a) Is exhibiting symptoms or behaviors substantially similar to**
8 **those that preceded an act described in subsection (3)(b) of this sec-**
9 **tion;**

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

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

15 **“(2) A district attorney may petition the court to initiate commit-**
16 **ment proceedings described in this section if there is reason to believe**
17 **a person is an extremely dangerous mentally ill person.**

18 **“(3) Upon receipt of a petition filed under subsection (2) of this**
19 **section, the court shall hold a hearing. After the hearing, the court**
20 **shall order the person committed as an extremely dangerous mentally**
21 **ill person under the jurisdiction of the Psychiatric Security Review**
22 **Board if the court finds, by clear and convincing evidence, that:**

1 **“(a) The person suffers from a mental disorder;**
2 **“(b) The person committed one of the following acts while suffering**
3 **from the mental disorder:**
4 **“(A) Caused the death of another person;**
5 **“(B) Caused serious physical injury to another person by means of**
6 **a dangerous weapon;**
7 **“(C) Caused physical injury to another person by means of a firearm**
8 **as defined in ORS 166.210 or an explosive as defined in ORS 164.055;**
9 **“(D) Engaged in oral-genital contact with a child under 14 years of**
10 **age;**
11 **“(E) Forcibly compelled sexual intercourse, oral-genital contact or**
12 **the penetration of another person’s anus or vagina; or**
13 **“(F) Caused a fire or explosion that damaged the protected property**
14 **of another, as those terms are defined in ORS 164.305, or placed an-**
15 **other person in danger of physical injury, and the fire or explosion**
16 **was not the incidental result of normal and usual daily activities; and**
17 **“(c) The person is extremely dangerous.**
18 **“(4) The findings of the court that a person committed an act de-**
19 **scribed in subsection (3)(b) of this section may not be admitted in a**
20 **criminal prosecution.**
21 **“(5)(a) A person committed under subsection (3) of this section shall**
22 **be committed to a state hospital or, if the person is under 18 years of**
23 **age, to a secure intensive community inpatient facility for custody,**
24 **care and treatment.**
25 **“(b) The person shall remain committed in a state hospital or fa-**
26 **cility unless the board conducts a hearing and makes the findings de-**
27 **scribed in subsection (6)(b) of this section.**
28 **“(c) The person shall remain under the jurisdiction of the board**
29 **unless the board conducts a hearing and makes the findings described**
30 **in subsection (6)(c) of this section.**

1 **“(6) The board shall hold a hearing six months after the commit-**
2 **ment described in subsection (3) of this section, and thereafter every**
3 **24 months, to determine the status of the person’s commitment under**
4 **the jurisdiction of the board.**

5 **“(a) If the board determines at the hearing that the person still**
6 **suffers from a mental disorder and is still extremely dangerous, the**
7 **person shall remain committed to a state hospital or, if the person is**
8 **under 18 years of age, to a secure intensive community inpatient fa-**
9 **cility.**

10 **“(b) If the board determines at the hearing that the person still**
11 **suffers from a mental disorder and continues to be a danger to others,**
12 **but is not extremely dangerous, and that the person can be controlled**
13 **with proper care, medication, supervision and treatment if condi-**
14 **tionally released, the board shall conditionally release the person.**

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

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

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

29 **“(8)(a) If the board orders conditional release of a person under**
30 **subsection (6)(b) of this section, the board shall order conditions of**

1 release that may include a requirement to report to any state or local
2 mental health facility for evaluation and cooperation with and ac-
3 ceptance of psychiatric or psychological treatment from the facility.
4 Conditions of release may be modified by the board from time to time.

5 “(b) If at any time while the person is conditionally released it ap-
6 pears that the person has violated the terms of the conditional release
7 or that the mental health of the person has changed, the board may
8 order the person returned for evaluation or treatment to a state hos-
9 pital or, if the person is under 18 years of age, to a secure intensive
10 community inpatient facility.

11 “(c) Within 30 days following the return of the person to a state
12 hospital or secure intensive community inpatient facility, the board
13 shall conduct a hearing as described in subsection (6) of this section
14 to determine the status of the person’s commitment under the juris-
15 diction of the board.

16 “(d) At any time during conditional release, the state or local
17 mental health facility providing treatment to the person may request
18 a hearing as described in subsection (6) of this section to determine
19 the status of the person’s commitment under the jurisdiction of the
20 board. If the person had unadjudicated criminal charges at the time
21 of the person’s initial commitment, the director of the facility shall
22 notify the district attorney that initiated the charges of the request
23 for the hearing.

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

27 “(A) The board shall notify the district attorney that initiated the
28 charges of the discharge; and

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

1 **“(b) The person may not waive an evaluation to determine if the**
2 **person is fit to proceed with the criminal proceeding described in par-**
3 **agraph (a)(B) of this subsection.**

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

5 “426.100. (1) At the time the allegedly mentally ill person is brought be-
6 fore the court, the court shall advise the person of the following:

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

8 “(b) The nature of the proceedings;

9 “(c) The possible results of the proceedings;

10 “(d) The right to subpoena witnesses; and

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

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

16 “(a) When the person is held by warrant of detention issued under ORS
17 426.070.

18 “(b) In commitment hearings under ORS 426.095.

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

21 “(d) In recommitment hearings under ORS 426.307.

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

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

27 “(a) The right to obtain suitable legal counsel possessing skills and ex-
28 perience commensurate with the nature of the allegations and complexity of
29 the case during the proceedings.

30 “(b) If the person is determined to be financially eligible for appointed

1 counsel at state expense, the court will appoint legal counsel to represent
2 the person. If a person is appointed counsel at state expense, payment of
3 expenses and compensation relating to legal counsel shall be made as pro-
4 vided under ORS 426.250.

5 “(c) If the [*allegedly mentally ill*] person does not request legal counsel,
6 the legal guardian, relative or friend may request the assistance of suitable
7 legal counsel on behalf of the person.

8 “(d) If no request for legal counsel is made, the court shall appoint suit-
9 able legal counsel unless counsel is expressly, knowingly and intelligently
10 refused by the person.

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

15 “(f) In all cases suitable legal counsel shall be present at the hearing and
16 may be present at examination and may examine all witnesses offering tes-
17 timony, and otherwise represent the person.

18 “(4) The responsibility for representing the state’s interest in commitment
19 proceedings, including, but not limited to, preparation of the state’s case and
20 appearances at commitment hearings is as follows:

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

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

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

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

27 “(c) In lieu of the district attorney under paragraph (b) of this subsection,
28 a counsel designated by the governing body of a county shall take the re-
29 sponsibility. A county governing body may designate counsel to take re-
30 sponsibility under this paragraph either for single proceedings or for all such

1 proceedings the county will be obligated to pay for under ORS 426.250. If a
2 county governing body elects to proceed under this paragraph, the county
3 governing body shall so notify the district attorney. The expenses of an at-
4 torney appointed under this paragraph shall be paid as provided under ORS
5 426.250.

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

7 “426.160. (1) The court having jurisdiction over any proceeding conducted
8 pursuant to ORS 426.005, 426.060 to 426.170, 426.217, 426.228, 426.255 to
9 426.292, 426.300 to 426.309, 426.385 and 426.395, **or the Psychiatric Security**
10 **Review Board, the superintendent of the state hospital or the director**
11 **of the secure intensive community inpatient facility having jurisdic-**
12 **tion over or custody of a person committed pursuant to section 2 of**
13 **this 2013 Act,** may not disclose any part of the record of the proceeding **or**
14 **commitment** to any person except:

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

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

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

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

25 “(e) Pursuant to court order.

26 “(2) In any proceeding described in subsection (1) of this section that is
27 before the Supreme Court or the Court of Appeals, the limitations on dis-
28 closure imposed by this section apply to the appellate court record and to
29 the trial court record while it is in the appellate court’s custody. The ap-
30 pellate court may disclose information from the trial or appellate court re-

1 cord in a decision, as defined in ORS 19.450, provided that the court uses
2 initials, an alias or some other convention for protecting against public dis-
3 closure the identity of the allegedly mentally ill person.”.

4 Delete pages 2 through 4.

5 On page 5, delete lines 1 through 35.

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

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

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