

B-Engrossed
Senate Bill 840

Ordered by the House May 21
Including Senate Amendments dated April 20 and House Amendments
dated May 21

Sponsored by Senator BATES; Senator MONNES ANDERSON, Representatives FREDERICK, GREENLICK (at the request of Oregon Association of Hospitals and Health Systems)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Authorizes licensed independent practitioner to initiate or approve prehearing detention in hospital or nonhospital facility of person who is subject of civil commitment proceedings. Defines "licensed independent practitioner."

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to persons with chronic mental illness; amending ORS 426.005, 426.070, 426.072, 426.074,
3 426.075, 426.095, 426.120, 426.155, 426.180, 426.225, 426.228, 426.231, 426.232, 426.233, 426.234,
4 426.235, 426.237, 426.292, 426.335 and 426.495; and declaring an emergency.

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

6 **SECTION 1.** ORS 426.005 is amended to read:

7 426.005. (1) As used in ORS 426.005 to 426.390, unless the context requires otherwise:

8 (a) "Community mental health program director" means the director of an entity that provides
9 the services described in ORS 430.630 (3) to (5).

10 (b) "Director of the facility" means a superintendent of a state mental hospital, the chief of
11 psychiatric services in a community hospital or the person in charge of treatment and rehabilitation
12 programs at other treatment facilities.

13 (c) "Facility" means a state mental hospital, community hospital, residential facility,
14 detoxification center, day treatment facility or such other facility as the authority determines suit-
15 able that provides diagnosis and evaluation, medical care, detoxification, social services or rehabil-
16 itation to persons **who are in custody during a prehearing period of detention or who have**
17 **been** committed to the Oregon Health Authority under ORS 426.130.

18 (d) "**Licensed independent practitioner**" means:

19 (A) **A physician, as defined in ORS 677.010; or**

20 (B) **A nurse practitioner certified under ORS 678.375 and authorized to write pre-**
21 **scriptions under ORS 678.390.**

22 [(d)] (e) "Nonhospital facility" means any facility, other than a hospital, that is approved by the
23 authority to provide adequate security, psychiatric, nursing and other services to persons under ORS
24 426.232 or 426.233.

25 [(e)] (f) "Person with mental illness" means a person who, because of a mental disorder, is one
26 or more of the following:

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 (A) Dangerous to self or others.

2 (B) Unable to provide for basic personal needs and is not receiving such care as is necessary
3 for health or safety.

4 (C) A person:

5 (i) With a chronic mental illness, as defined in ORS 426.495;

6 (ii) Who, within the previous three years, has twice been placed in a hospital or approved in-
7 patient facility by the authority or the Department of Human Services under ORS 426.060;

8 (iii) Who is exhibiting symptoms or behavior substantially similar to those that preceded and led
9 to one or more of the hospitalizations or inpatient placements referred to in sub-subparagraph (ii)
10 of this subparagraph; and

11 (iv) Who, unless treated, will continue, to a reasonable medical probability, to physically or
12 mentally deteriorate so that the person will become a person described under either subparagraph
13 (A) or (B) of this paragraph or both.

14 [(f)] (g) "Prehearing period of detention" means a period of time calculated from the initiation
15 of custody during which a person may be detained under ORS 426.228, 426.231, 426.232 or 426.233.

16 (2) Whenever a community mental health program director, director of the facility, superinten-
17 dent of a state hospital or administrator of a facility is referred to, the reference includes any
18 designee such person has designated to act on the person's behalf in the exercise of duties.

19 **SECTION 2.** ORS 426.070 is amended to read:

20 426.070. (1) Any of the following may initiate commitment procedures under this section by giv-
21 ing the notice described under subsection (2) of this section:

22 (a) Two persons;

23 (b) The county health officer; or

24 (c) Any magistrate.

25 (2) For purposes of subsection (1) of this section, the notice must comply with the following:

26 (a) It must be in writing under oath;

27 (b) It must be given to the community mental health program director or a designee of the di-
28 rector in the county where the person alleged to have a mental illness resides;

29 (c) It must state that a person within the county other than the person giving the notice is a
30 person with mental illness and is in need of treatment, care or custody;

31 (d) If the commitment proceeding is initiated by two persons under subsection (1)(a) of this sec-
32 tion, it may include a request that the court notify the two persons:

33 (A) Of the issuance or nonissuance of a warrant under this section; or

34 (B) Of the court's determination under ORS 426.130 (1); and

35 (e) If the notice contains a request under paragraph (d) of this subsection, it must also include
36 the addresses of the two persons making the request.

37 (3) Upon receipt of a notice under subsections (1) and (2) of this section or when notified by a
38 circuit court that the court received notice under ORS 426.234, the community mental health pro-
39 gram director, or designee of the director, shall:

40 (a) Immediately notify the judge of the court having jurisdiction for that county under ORS
41 426.060 of the notification described in subsections (1) and (2) of this section.

42 (b) Immediately notify the Oregon Health Authority if commitment is proposed because the
43 person appears to be a person with mental illness, as defined in ORS 426.005 [(1)(e)(C)] (1)(f)(C).
44 When such notice is received, the authority may verify, to the extent known by the authority,
45 whether or not the person meets the criteria described in ORS 426.005 [(1)(e)(C)(i)] (1)(f)(C)(i) and

1 (ii) and so inform the community mental health program director or designee of the director.

2 (c) Initiate an investigation under ORS 426.074 to determine whether there is probable cause to
3 believe that the person is in fact a person with mental illness.

4 (4) Upon completion, a recommendation based upon the investigation report under ORS 426.074
5 shall be promptly submitted to the court. If the community mental health program director deter-
6 mines that probable cause does not exist to believe that a person released from detention under ORS
7 426.234 (2)(c) or (3)(b) is a person with mental illness, the community mental health program director
8 may recommend assisted outpatient treatment in accordance with ORS 426.133.

9 (5) When the court receives notice under subsection (3) of this section:

10 (a) If the court, following the investigation, concludes that there is probable cause to believe
11 that the person investigated is a person with mental illness, it shall, through the issuance of a ci-
12 tation as provided in ORS 426.090, cause the person to be brought before it at a time and place as
13 it may direct, for a hearing under ORS 426.095 to determine whether the person is a person with
14 mental illness. The person shall be given the opportunity to appear voluntarily at the hearing unless
15 the person fails to appear or unless the person is detained pursuant to paragraph (b) of this sub-
16 section.

17 (b)(A) If the court finds that there is probable cause to believe that failure to take the person
18 into custody pending the investigation or hearing would pose serious harm or danger to the person
19 or to others, the court may issue a warrant of detention to the community mental health program
20 director or designee or the sheriff of the county or designee directing the director, sheriff or a
21 designee to take the person alleged to have a mental illness into custody and produce the person
22 at the time and place stated in the warrant.

23 (B) At the time the person is taken into custody, the person shall be informed by the community
24 mental health program director, the sheriff or a designee of the following:

25 (i) The person's rights with regard to representation by or appointment of counsel as described
26 in ORS 426.100;

27 (ii) The warning under ORS 426.123; and

28 (iii) The person's right, if the community mental health program director, sheriff or designee
29 reasonably suspects that the person is a foreign national, to communicate with an official from the
30 consulate of the person's country. A community mental health program director, sheriff or designee
31 is not civilly or criminally liable for failure to provide the information required by this sub-
32 subparagraph. Failure to provide the information required by this sub-subparagraph does not in itself
33 constitute grounds for the exclusion of evidence that would otherwise be admissible in a proceeding.

34 (C) The court may make any orders for the care and custody of the person prior to the hearing
35 as it considers necessary.

36 (c) If the notice includes a request under subsection (2)(d)(A) of this section, the court shall
37 notify the two persons of the issuance or nonissuance of a warrant under this subsection.

38 **SECTION 3.** ORS 426.072 is amended to read:

39 426.072. (1) A hospital or nonhospital facility [*and a treating physician*] must comply with [*the*
40 *following*] **subsection (2) of this section** when a person alleged to have a mental illness is placed
41 in custody at the hospital or nonhospital facility:

42 (a) By a warrant of detention under ORS 426.070;

43 (b) By a peace officer under ORS 426.228 or other individual authorized under ORS 426.233; or

44 (c) By a [*physician*] **licensed independent practitioner** under ORS 426.232.

45 (2) In circumstances described under subsection (1) of this section, the hospital or nonhospital

1 facility and *[treating physician]* a **treating licensed independent practitioner** must comply with the
2 following:

3 (a) The person shall receive the care, custody and treatment required for mental and physical
4 health and safety;

5 (b) The treating *[physician]* **licensed independent practitioner** shall report any care, custody
6 and treatment to the court as required in ORS 426.075;

7 (c) All methods of treatment, including the prescription and administration of drugs, shall be the
8 sole responsibility of the treating *[physician]* **licensed independent practitioner**. However, the
9 person shall not be subject to electroshock therapy or unduly hazardous treatment and shall receive
10 usual and customary treatment in accordance with medical standards in the community;

11 (d) The treating *[physician]* **licensed independent practitioner** shall be notified immediately of
12 any use of mechanical restraints on the person. Every use of a mechanical restraint and the reasons
13 therefor shall be made a part of the clinical record of the person over the signature of the treating
14 *[physician]* **licensed independent practitioner**; and

15 (e) The treating *[physician]* **licensed independent practitioner** shall give the person the warn-
16 ing under ORS 426.123 at times the treating *[physician]* **licensed independent practitioner** deter-
17 mines the person will reasonably understand the notice. This paragraph only requires the notice to
18 be given as often as the *[physician]* **licensed independent practitioner** determines is necessary to
19 assure that the person is given an opportunity to be aware of the notice.

20 (3) The Oregon Health Authority shall adopt rules necessary to carry out this section, including
21 rules regarding the content of the medical record compiled during the current period of custody.

22 **SECTION 4.** ORS 426.074 is amended to read:

23 426.074. The following is applicable to an investigation initiated by a community mental health
24 program director, or a designee of the director, as part of commitment procedures under ORS
25 426.070 and 426.228 to 426.235:

26 (1) If the person alleged to have a mental illness is held in custody before the hearing the in-
27 vestigation shall be completed at least 24 hours before the hearing under ORS 426.095, otherwise the
28 investigation shall comply with the following time schedule:

29 (a) If the person can be located, the investigator shall contact the person within three judicial
30 days from the date the community mental health program director or a designee receives a notice
31 under ORS 426.070 alleging that the person has a mental illness and is in need of treatment.

32 (b) Within 15 days from the date the community mental health program director or a designee
33 receives a notice under ORS 426.070, one of the following shall occur:

34 (A) The investigation shall be completed and submitted to the court.

35 (B) An application for extension shall be made to the court under paragraph (c) of this sub-
36 section.

37 (c) The community mental health program director, a designee or the investigator may file for
38 an extension of the time under paragraph (b) of this subsection only if one of the following occurs:

39 (A) A treatment option less restrictive than involuntary in-patient commitment is actively being
40 pursued.

41 (B) The person alleged to have a mental illness cannot be located.

42 (d) A court may grant an extension under paragraph (c) of this subsection for a time and upon
43 the terms and conditions the court considers appropriate.

44 (2) This subsection establishes a nonexclusive list of provisions applicable to the content of the
45 investigation, as follows:

1 (a) The investigation conducted should, where appropriate, include an interview or examination
2 of the person alleged to have a mental illness in the home of the person or other place familiar to
3 the person.

4 (b) Whether or not the person consents, the investigation should include interviews with any
5 individuals that the investigator has probable cause to believe have pertinent information regarding
6 the investigation. If the person objects to the contact with any individual, the objection shall be
7 noted in the investigator's report.

8 (c) The investigator shall be allowed access to [*physicians*] **licensed independent**
9 **practitioners**, nurses or social workers and to medical records compiled during the current invol-
10 untary prehearing period of detention to determine probable cause and to develop alternatives to
11 commitment. If commitment is proposed because the person appears to be a person with mental ill-
12 ness as defined in ORS 426.005 [(1)(e)(C)] (1)(f)(C), the investigator shall be allowed access to med-
13 ical records necessary to verify the existence of criteria described in ORS 426.005 [(1)(e)(C)]
14 (1)(f)(C). The investigator shall include pertinent parts of the medical record in the investigation
15 report. Records and communications described in this paragraph and related communications are
16 not privileged under ORS 40.230, 40.235, 40.240 or 40.250.

17 (3) A copy of the investigation report shall be provided as soon as possible, but in no event later
18 than 24 hours prior to the hearing, to the person and to the person's counsel. Copies shall likewise
19 be provided to counsel assisting the court, to the examiners and to the court for use in questioning
20 witnesses.

21 **SECTION 5.** ORS 426.075 is amended to read:

22 426.075. This section establishes procedures that are required to be followed before the hearing
23 if a court, under ORS 426.070, orders a hearing under ORS 426.095. The following apply as described:

24 (1) The court shall be fully advised of all drugs and other treatment known to have been ad-
25 ministered to the person alleged to have a mental illness that may substantially affect the ability
26 of the person to prepare for or function effectively at the hearing. The following shall advise the
27 court as required by this subsection:

28 (a) When not otherwise provided by paragraph (b) of this subsection, the community mental
29 health program director or designee.

30 (b) When the person has been detained by a warrant of detention under ORS 426.070, 426.180,
31 426.228, 426.232 or 426.233, the treating [*physician*] **licensed independent practitioner**.

32 (2) The court shall appoint examiners under ORS 426.110 sufficiently in advance of the hearing
33 so that the examiners may begin their preparation for the hearing. The records established by the
34 Oregon Health Authority by rule and the investigation report shall be made available to the exam-
35 iners at least 24 hours before the hearing in order that the examiners may review the medical re-
36 cord and have an opportunity to inquire of the medical personnel concerning the treatment of the
37 person alleged to have a mental illness during the detention period prior to the hearing.

38 (3) The medical record described in subsection (2) of this section shall be made available to
39 counsel for the person alleged to have a mental illness at least 24 hours prior to the hearing.

40 (4) When requested by a party to the action, the party's attorney shall subpoena [*physicians*]
41 **licensed independent practitioners** who are or have been treating the person. Any treating [*phy-*
42 *sician*] **licensed independent practitioner** subpoenaed under this subsection shall be subpoenaed
43 as an expert witness.

44 **SECTION 6.** ORS 426.095 is amended to read:

45 426.095. The following is applicable to a commitment hearing held by a court under ORS 426.070:

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

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

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

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

9 (c) If requested under this paragraph, the court, for good cause, may postpone the hearing for
10 not more than five judicial days in order to allow preparation for the hearing. The court may make
11 orders for the care and custody of the person during a postponement as it deems necessary. If a
12 person is detained before a hearing under ORS 426.070, 426.180, 426.228, 426.232, 426.233 or 426.702
13 and the hearing is postponed under this paragraph, the court, for good cause, may allow the person
14 to be detained during the postponement if the postponement is requested by the person or the legal
15 counsel of the person. Any of the following may request a postponement under this paragraph:

16 (A) The person alleged to have a mental illness or the person alleged to be an extremely dan-
17 gerous person with mental illness.

18 (B) The legal counsel or guardian of the person.

19 (C) The individual representing the state's interest.

20 (3) The person alleged to have a mental illness and the individual representing the state's in-
21 terest shall have the right to cross-examine all the following:

22 (a) Witnesses.

23 (b) The individual conducting the investigation.

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

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

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

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

32 (c) The testimony of any treating *[physicians]* **licensed independent practitioners**, nurses or
33 social workers for the prehearing period of detention. Any treating *[physician]* **licensed independ-**
34 **ent practitioner**, nurse or social worker who is subpoenaed as a witness for the proceeding shall
35 testify as an expert witness under the provisions of ORS 40.410, 40.415, 40.420 and 40.425 and is
36 subject to treatment as an expert witness in the payment of witness fees and costs.

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

39 (A) Introduction of the report under this paragraph does not require the consent of the person
40 alleged to have a mental illness.

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

44 (C) Neither the investigation report nor any part thereof shall be introduced into evidence under
45 this paragraph unless the investigator is present during the proceeding to be cross-examined or un-

1 less the presence of the investigator is waived by the person alleged to have a mental illness or
2 counsel for the person.

3 **SECTION 7.** ORS 426.120 is amended to read:

4 426.120. (1) Examiners appointed under ORS 426.110 shall do **all of** the following:

5 (a) Examine the person as to mental condition[;].

6 (b) Initiate the examination process prior to the hearing. Any failure to comply with this par-
7 agraph shall not, in itself, constitute sufficient grounds to challenge the examination conducted by
8 an examiner[;].

9 (c) Make their separate reports in writing, under oath, to the court[; *and*].

10 (d) Upon completion of the hearing, file the reports with the clerk of the court.

11 (2) The following is a nonexclusive list of requirements relating to the content of examination
12 reports prepared under subsection (1) of this section:

13 (a) If the examiners find, and show by their reports, that the person examined is a person with
14 mental illness, the reports shall include a recommendation as to the type of treatment facility best
15 calculated to help the person recover from mental illness.

16 (b) Each report shall also advise the court whether in the opinion of the examiner the person
17 with mental illness would cooperate with and benefit from a program of voluntary treatment.

18 (c) Reports shall contain the information required by the Oregon Health Authority by rule. The
19 authority shall adopt rules necessary to carry out this paragraph.

20 (3) The examiner shall be allowed access to [*physicians,*] **licensed independent practitioners,**
21 nurses or social workers and to medical records compiled during the current involuntary prehearing
22 period of detention and the investigation report. Records and communications described in this
23 subsection and related communications are not privileged under ORS 40.230, 40.235, 40.240 or 40.250.

24 **SECTION 8.** ORS 426.155 is amended to read:

25 426.155. (1) The provisions of this section apply to the release of information about a person who
26 is held in custody either pending a commitment proceeding under ORS 426.070, 426.140, 426.228,
27 426.232, 426.233 or 426.237 (1)(b) or while committed or recommitted under ORS 426.005 to 426.390.

28 (2) Notwithstanding the provisions of ORS 179.495, 179.505 or 192.502 (2) and notwithstanding
29 any other provision of ORS 426.005 to 426.390, a facility or nonhospital facility where a person is
30 held shall establish procedures for releasing information as required under subsections (3) and (4)
31 of this section.

32 (3)(a) If a person described in subsection (1) of this section authorizes disclosure as provided in
33 subsection (5) of this section, upon request of a member of the family of the person, or any other
34 designee of the person, a facility or nonhospital facility where the person is held shall provide the
35 family member or the designee with the following information:

36 (A) The person's diagnosis;

37 (B) The person's prognosis;

38 (C) The medications prescribed for the person and the side effects of medications prescribed, if
39 any;

40 (D) The person's progress;

41 (E) Information about any civil commitment process, including the date, time and location of the
42 person's commitment hearing; and

43 (F) Where and when the person may be visited.

44 (b) If a request for information is made under this subsection and the person is unable to au-
45 thorize disclosure as provided in subsection (5) of this section, the requester shall be provided notice

1 of the presence of the person in any facility or nonhospital facility. Information shall not be provided
2 under this paragraph if the [*physician of*] **licensed independent practitioner who is treating** the
3 person determines that it would not be in the person's best interest to provide the information or
4 if providing the information is prohibited by federal law.

5 (4) Upon the admission of any person to a facility or nonhospital facility under ORS 426.005 to
6 426.390, the facility or nonhospital facility shall make reasonable attempts to notify the person's
7 next of kin, or any other designee of the person, of the person's admission, unless the person re-
8 quests that this information not be provided. The facility or nonhospital facility shall make reason-
9 able attempts to notify the person's next of kin, or any other designee of the person, of the person's
10 release, transfer, serious illness, injury or death upon request of the family member or designee,
11 unless the person requests that this information not be provided. The person shall be advised by the
12 facility or nonhospital facility that the person has the right to request that this information not be
13 provided.

14 (5) The person who is held in custody shall be notified by the facility or nonhospital facility that
15 information about the person has been requested. Except as provided in subsection (3) of this sec-
16 tion, the consent of the person who is held is required for release of information under subsections
17 (3) and (4) of this section. If, when initially informed of the request for information, the person is
18 unable to give voluntary and informed consent to authorize the release of information, notation of
19 the attempt shall be made in the person's treatment record and daily efforts shall be made to secure
20 the person's consent or refusal of authorization.

21 (6) Notwithstanding any other provision of this section, an individual eligible to receive infor-
22 mation under subsection (3) of this section may not receive information unless the individual first
23 agrees to make no further disclosure of the information. The agreement may be made orally.

24 (7) A facility or nonhospital facility that releases information under subsection (3) or (4) of this
25 section shall:

26 (a) Notify the person who is held to whom, when and what information was released; and

27 (b) Note in the medical record of the person who is held:

28 (A) The basis for finding that the person gave voluntary and informed consent;

29 (B) The oral or written consent of the person who is held;

30 (C) To whom, when and what information was released;

31 (D) The agreement to the requirements of subsection (6) of this section by the requester; and

32 (E) Any determination made by the [*person's physician*] **licensed independent practitioner** un-
33 der subsection (3)(b) of this section regarding the provision of notice of the presence of the person
34 in any facility or nonhospital facility.

35 (8) A facility or nonhospital facility, including the staff of such facilities and nonhospital facili-
36 ties, that releases information under this section or rules adopted under ORS 426.236 may not be
37 held civilly or criminally liable for damages caused or alleged to be caused by the release of infor-
38 mation or the failure to release information as long as the release was done in good faith and in
39 compliance with subsections (3) and (4) of this section or rules adopted under ORS 426.236.

40 (9) The provisions of subsections (3) and (4) of this section do not limit the ability or obligation
41 of facilities, nonhospital facilities, [*physicians*] **licensed independent practitioners**, mental health
42 care providers or licensed mental health professionals to provide information as otherwise allowed
43 or required by law.

44 **SECTION 9.** ORS 426.180 is amended to read:

45 426.180. (1) ORS 426.180 to 426.210 apply to the commitment of an individual in Indian country

1 if the state does not have jurisdiction over the individual.

2 (2) As used in this section and ORS 426.200 and 426.210, "hospital" means a hospital that is li-
3 censed under ORS chapter 441, other than an institution listed in ORS 426.010.

4 (3) If the court of a tribe having jurisdiction over an individual issues an order finding that the
5 individual is dangerous to self or to any other person and is in need of immediate care, custody or
6 treatment for mental illness, a person may request that the individual be taken by a tribal police
7 officer or other peace officer to a hospital or nonhospital facility by submitting to the officer a
8 certified copy of the order and an affidavit that includes:

9 (a) The name and address of the nearest relative or legal guardian of the individual; and

10 (b) A medical history completed by one of the following, who may not be related to the indi-
11 vidual by blood or marriage:

12 (A) The tribe's mental health authority, if the tribe has entered into an agreement with the state
13 pursuant to ORS 430.630 (9)(a)(B);

14 [(B) A physician licensed by the Oregon Medical Board; or]

15 [(C)] **(B)** A qualified mental health professional[.]; **or**

16 **(C) A licensed independent practitioner.**

17 (4) Upon receipt of the order and affidavit described in subsection (3) of this section, the tribal
18 police officer or other peace officer shall immediately transport the individual to a hospital or a
19 nonhospital facility and present the individual to the hospital or nonhospital facility accompanied
20 by the court order and affidavit.

21 (5) The director of the hospital or nonhospital facility may refuse to admit the individual if [*the*
22 *director or an attending physician*] **a licensed independent practitioner**, after reviewing the docu-
23 ments accompanying the individual, is not satisfied that an emergency exists or that the individual
24 is dangerous to self or others and in need of immediate care, custody or treatment for mental illness.

25 (6) If the hospital or nonhospital facility admits the individual, the director or [*attending physi-*
26 *cian*] **a licensed independent practitioner** shall notify the community mental health program di-
27 rector for the area and the circuit court with jurisdiction in the area where the facility is located.
28 Upon receipt of the notice, the community mental health program director shall initiate commitment
29 proceedings in accordance with ORS 426.070.

30 (7) If an individual is admitted to a hospital or nonhospital facility under this section, any
31 [*physician*] **licensed independent practitioner who is** treating the individual shall give the indi-
32 vidual the warning under ORS 426.123.

33 (8) This section may be applied as provided by agreement with the governing body of the res-
34 ervation. Payment of costs for a commitment made under this section shall be as provided under
35 ORS 426.250.

36 (9) The director of the hospital or nonhospital facility or [*attending physician*] **licensed inde-**
37 **pendent practitioner** shall notify the appropriate tribe regarding all actions taken under ORS
38 426.180 to 426.210 no later than 24 hours after the action is taken, except for information protected
39 from disclosure by state or federal law.

40 **SECTION 10.** ORS 426.225 is amended to read:

41 426.225. (1) If any person who has been committed to the Oregon Health Authority under ORS
42 426.127 or 426.130 (1)(a)(B) or (C) requests, during this period of commitment, voluntary admission
43 to a state hospital, the superintendent shall cause the person to be examined immediately by a
44 [*physician*] **licensed independent practitioner**. If the [*physician*] **licensed independent practi-**
45 **tioner** finds the person to be in need of immediate care or treatment for mental illness, the person

1 shall be voluntarily admitted [*upon request of the person*].

2 (2) If any person who has been committed to the authority under ORS 426.127 or 426.130 (1)(a)(B)
3 or (C) requests, during this period of commitment, voluntary admission to a facility approved by the
4 authority, the administrator of the facility shall cause the person to be examined immediately by a
5 [*physician*] **licensed independent practitioner**. If the [*physician*] **licensed independent practi-**
6 **tioner** finds the person to be in need of immediate care or treatment for mental illness, and the
7 authority grants approval, the person shall be voluntarily admitted [*upon request of the person*].

8 **SECTION 11.** ORS 426.228 is amended to read:

9 426.228. (1) A peace officer may take into custody a person who the officer has probable cause
10 to believe is dangerous to self or to any other person and is in need of immediate care, custody or
11 treatment for mental illness. As directed by the community mental health program director, a peace
12 officer shall remove a person taken into custody under this section to the nearest hospital or non-
13 hospital facility approved by the Oregon Health Authority. The officer shall prepare a written report
14 and deliver it to the [*treating physician*] **licensed independent practitioner who is treating the**
15 **person**. The report shall state:

16 (a) The reason for custody;

17 (b) The date, time and place the person was taken into custody; and

18 (c) The name of the community mental health program director and a telephone number where
19 the director may be reached at all times.

20 (2) A peace officer shall take a person into custody when the community mental health program
21 director, pursuant to ORS 426.233, notifies the peace officer that the director has probable cause to
22 believe that the person is imminently dangerous to self or to any other person. As directed by the
23 community mental health program director, the peace officer shall remove the person to a hospital
24 or nonhospital facility approved by the authority. The community mental health program director
25 shall prepare a written report that the peace officer shall deliver to the [*treating physician*] **licensed**
26 **independent practitioner who is treating the person**. The report shall state:

27 (a) The reason for custody;

28 (b) The date, time and place the person was taken into custody; and

29 (c) The name of the community mental health program director and a telephone number where
30 the director may be reached at all times.

31 (3) If more than one hour will be required to transport the person to the hospital or nonhospital
32 facility from the location where the person was taken into custody, the peace officer shall obtain,
33 if possible, a certificate from a [*physician licensed by the Oregon Medical Board*] **licensed inde-**
34 **pendent practitioner** stating that the travel will not be detrimental to the person's physical health
35 and that the person is dangerous to self or to any other person and is in need of immediate care
36 or treatment for mental illness. The [*physician*] **licensed independent practitioner** shall have per-
37 sonally examined the person within 24 hours prior to signing the certificate.

38 (4) When a peace officer or other authorized individual, acting under this section, delivers a
39 person to a hospital or nonhospital facility, a [*physician licensed by the Oregon Medical Board*] **li-**
40 **icensed independent practitioner** shall examine the person immediately. If the [*physician*] **licensed**
41 **independent practitioner** finds the person to be in need of emergency care or treatment for mental
42 illness, [*the physician*] **the licensed independent practitioner** shall proceed under ORS 426.232,
43 otherwise the person shall not be retained in custody. If the person is to be released from custody,
44 the peace officer or the community mental health program director shall return the person to the
45 place where the person was taken into custody unless the person declines that service.

1 (5) A peace officer may transfer a person in custody under this section to the custody of an in-
2 dividual authorized by the county governing body under ORS 426.233 (3). The peace officer may meet
3 the authorized individual at any location that is in accordance with ORS 426.140 to effect the
4 transfer. When transferring a person in custody to an authorized individual, the peace officer shall
5 deliver the report required under subsections (1) and (2) of this section to the authorized individual.

6 (6) An individual authorized under ORS 426.233 (3) shall take a person into custody when di-
7 rected to do so by a peace officer or by a community mental health program director under ORS
8 426.233.

9 (7) An individual authorized under ORS 426.233 (3) shall perform the duties of the peace officer
10 or the community mental health program director required by this section and ORS 426.233 if the
11 peace officer or the director has not already done so.

12 (8) An individual authorized under ORS 426.233 (3) may transfer a person in custody under this
13 section to the custody of another individual authorized under ORS 426.233 (3) or a peace officer. The
14 individual transferring custody may meet another authorized individual or a peace officer at any
15 location that is in accordance with ORS 426.140 to effect the transfer.

16 (9)(a) When a peace officer takes a person into custody under this section, and the peace officer
17 reasonably suspects that the person is a foreign national, the peace officer shall inform the person
18 of the person's right to communicate with an official from the consulate of the person's country.

19 (b) A peace officer is not civilly or criminally liable for failure to provide the information re-
20 quired by this subsection. Failure to provide the information required by this subsection does not
21 in itself constitute grounds for the exclusion of evidence that would otherwise be admissible in a
22 proceeding.

23 **SECTION 12.** ORS 426.231 is amended to read:

24 426.231. (1) A [*physician licensed by the Oregon Medical Board*] **licensed independent practi-**
25 **tioner** may hold a person for transportation to a treatment facility for up to 12 hours in a health
26 care facility licensed under ORS chapter 441 and approved by the Oregon Health Authority if:

27 (a) The [*physician*] **licensed independent practitioner** believes the person is dangerous to self
28 or to any other person and is in need of emergency care or treatment for mental illness;

29 (b) The [*physician*] **licensed independent practitioner** is not related to the person by blood or
30 marriage; and

31 (c) [*An admitting physician*] **A licensed independent practitioner with admitting privileges**
32 at the receiving facility consents to the transporting.

33 (2) Before transporting the person, the [*physician*] **licensed independent practitioner** shall
34 prepare a written statement that:

35 (a) The [*physician*] **licensed independent practitioner** has examined the person within the
36 preceding 12 hours;

37 (b) [*An admitting physician*] **A licensed independent practitioner with admitting privileges**
38 at the receiving facility has consented to the transporting of the person for examination and ad-
39 mission if appropriate; and

40 (c) The [*physician*] **licensed independent practitioner** believes the person is dangerous to self
41 or to any other person and is in need of emergency care or treatment for mental illness.

42 (3) The written statement required by subsection (2) of this section authorizes a peace officer,
43 an individual authorized under ORS 426.233 or the designee of a community mental health program
44 director to transport a person to the treatment facility indicated on the statement.

45 **SECTION 13.** ORS 426.232 is amended to read:

1 426.232. (1) If a [*physician licensed to practice medicine by the Oregon Medical Board*] **licensed**
2 **independent practitioner** believes a person who is brought to a hospital or nonhospital facility by
3 a peace officer under ORS 426.228 or by an individual authorized under ORS 426.233, or believes a
4 person who is at a hospital or nonhospital facility, is dangerous to self or to any other person and
5 is in need of emergency care or treatment for mental illness, [*the physician*] **and the licensed in-**
6 **dependent practitioner is not related to the person by blood or marriage, the licensed inde-**
7 **pendent practitioner** may do one of the following:

8 (a) [*After consulting with a physician or a qualified mental health professional, as defined by rule*
9 *of the Oregon Health Authority,*] Detain the person and cause the person to be admitted or, if the
10 person is already admitted, cause the person to be retained in a hospital where the [*physician*] **li-**
11 **censed independent practitioner** has admitting privileges or is on staff. [*Neither the physician nor*
12 *the qualified mental health professional may be related by blood or marriage to the person.*]

13 (b) Approve the person for emergency care or treatment at a nonhospital facility approved by
14 the authority.

15 (2) When approving a person for emergency care or treatment at a nonhospital facility under
16 this section, the [*physician*] **licensed independent practitioner** shall notify immediately the com-
17 munity mental health program director in the county where the person was taken into custody and
18 maintain the person, if the person is being held at a hospital, for as long as is feasible given the
19 needs of the person for mental or physical health or safety. However, under no circumstances may
20 the person be held for longer than five judicial days.

21 **SECTION 14.** ORS 426.233 is amended to read:

22 426.233. (1)(a) A community mental health program director operating under ORS 430.610 to
23 430.695 or a designee of the director, under authorization of a county governing body, may take one
24 of the actions listed in paragraph (b) of this subsection when the community mental health program
25 director or designee has probable cause to believe a person:

26 (A) Is dangerous to self or to any other person and is in need of immediate care, custody or
27 treatment for mental illness; or

28 (B)(i) Is a person with mental illness placed on conditional release under ORS 426.125, outpatient
29 commitment under ORS 426.127 or trial visit under ORS 426.273; and

30 (ii) Is dangerous to self or to any other person or is unable to provide for basic personal needs
31 and is not receiving the care that is necessary for health and safety and is in need of immediate
32 care, custody or treatment for mental illness.

33 (b) The community mental health program director or designee under the circumstances set out
34 in paragraph (a) of this subsection may:

35 (A) Notify a peace officer to take the person into custody and direct the officer to remove the
36 person to a hospital or nonhospital facility approved by the Oregon Health Authority;

37 (B) Authorize involuntary admission of, or, if already admitted, cause to be involuntarily re-
38 tained in a nonhospital facility approved by the authority, a person approved for care or treatment
39 at a nonhospital facility by a [*physician*] **licensed independent practitioner** under ORS 426.232;

40 (C) Notify an individual authorized under subsection (3) of this section to take the person into
41 custody and direct the authorized individual to remove the person in custody to a hospital or non-
42 hospital facility approved by the authority;

43 (D) Direct an individual authorized under subsection (3) of this section to transport a person in
44 custody from a hospital or a nonhospital facility approved by the authority to another hospital or
45 nonhospital facility approved by the authority as provided under ORS 426.235; or

1 (E) Direct an individual authorized under subsection (3) of this section to transport a person in
2 custody from a facility approved by the authority to another facility approved by the authority as
3 provided under ORS 426.060.

4 (2) A designee under subsection (1) of this section must be recommended by the community
5 mental health program director, meet the standards established by rule of the authority and be ap-
6 proved by the county governing body before assuming the authority permitted under subsection (1)
7 of this section.

8 (3) The county governing body may, upon recommendation by the community mental health
9 program director, authorize any individual to provide custody and secure transportation services for
10 a person in custody under ORS 426.228. In authorizing an individual under this subsection, the
11 county governing body shall grant the individual the authority to do the following:

12 (a) Accept custody from a peace officer of a person in custody under ORS 426.228;

13 (b) Take custody of a person upon notification by the community mental health program director
14 under the provisions of this section;

15 (c) Remove a person in custody to an approved hospital or nonhospital facility as directed by
16 the community mental health program director;

17 (d) Transfer a person in custody to another individual authorized under this subsection or a
18 peace officer;

19 (e) Transfer a person in custody from a hospital or nonhospital facility to another hospital fa-
20 cility or nonhospital facility when directed to do so by the community mental health program di-
21 rector; and

22 (f) Retain a person in custody at the approved hospital or nonhospital facility until a
23 *[physician]* **licensed independent practitioner** makes a determination under ORS 426.232.

24 (4) An individual authorized under subsection (3) of this section must be recommended by the
25 community mental health program director, meet the standards established by rule of the authority
26 and be approved by the governing body before assuming the authority granted under this section.

27 (5) The costs of transporting a person under ORS 426.060, 426.228 or 426.235 by an individual
28 authorized under subsection (3) of this section shall be the responsibility of the county whose peace
29 officer or community mental health program director directs the authorized individual to take cus-
30 tody of a person and to transport the person to a facility approved by the authority, but the county
31 shall not be responsible for costs that exceed the amount provided by the state for that transporta-
32 tion. An individual authorized to act under subsection (3) of this section shall charge the cost of
33 emergency medical transportation to, and collect that cost from, the person, third party payers or
34 other legally or financially responsible individuals or entities in the same manner that costs for the
35 transportation of other persons are charged and collected.

36 **SECTION 15.** ORS 426.234 is amended to read:

37 426.234. (1) At the time a person alleged to have a mental illness is admitted to or retained in
38 a hospital or nonhospital facility under ORS 426.232 or 426.233, a *[physician]* **licensed independent**
39 **practitioner**, nurse or qualified mental health professional at the hospital or nonhospital facility
40 shall:

41 (a) Inform the person of the person's right to representation by or appointment of counsel as
42 described in ORS 426.100;

43 (b) Give the person the warning under ORS 426.123;

44 (c) Immediately examine the person;

45 (d) Set forth, in writing, the condition of the person and the need for emergency care or treat-

1 ment; and

2 (e) If the *[physician]* **licensed independent practitioner**, nurse or qualified mental health pro-
3 fessional reasonably suspects that the person is a foreign national, inform the person of the person's
4 right to communicate with an official from the consulate of the person's country. A *[physician]* **li-**
5 **censed independent practitioner**, nurse or qualified mental health professional is not civilly or
6 criminally liable for failure to provide the information required by this paragraph. Failure to provide
7 the information required by this paragraph does not in itself constitute grounds for the exclusion
8 of evidence that would otherwise be admissible in a proceeding.

9 (2)(a) At the time the person is admitted to or retained in a hospital under ORS 426.232, the
10 *[physician]* **licensed independent practitioner** shall contact the community mental health program
11 director of the county in which the person resides, if the county of residence is different from the
12 county in which the hospital is located. The community mental health program director may request
13 that the *[physician]* **licensed independent practitioner** notify the circuit court in the county in
14 which the person resides. If the community mental health program director does not make the re-
15 quest, the *[physician]* **licensed independent practitioner** shall notify, immediately and in writing,
16 the circuit court in the county in which the person is hospitalized.

17 (b) At the time the person is admitted to a hospital under ORS 426.232 after being brought to
18 the hospital by a peace officer under ORS 426.228, the *[physician]* **licensed independent practi-**
19 **tioner** shall contact the community mental health program director of the county in which the
20 person is hospitalized. The community mental health program director of the county in which the
21 person is hospitalized may request that the *[physician]* **licensed independent practitioner** notify
22 the circuit court in the county in which the person is hospitalized. If the community mental health
23 program director does not make the request, the *[physician]* **licensed independent practitioner**
24 shall notify, immediately and in writing, the circuit court in the county in which the person was
25 taken into custody.

26 (c) If, at any time prior to the hearing under ORS 426.070 to 426.130, the *[physician]* **licensed**
27 **independent practitioner** responsible for a person admitted or retained under ORS 426.232 deter-
28 mines that the person is not dangerous to self or to any other person and is not in need of emer-
29 gency care or treatment for mental illness, the *[physician]* **licensed independent practitioner** may
30 release the person from the detention authorized by ORS 426.232. The *[physician]* **licensed inde-**
31 **pendent practitioner** shall immediately notify the circuit court notified under this subsection and
32 the community mental health program director of the person's release from detention.

33 (3)(a) At the time the person is admitted to or retained in a nonhospital facility under ORS
34 426.233, the community mental health program director in the county where the person was taken
35 into custody shall contact the community mental health program director of the county in which the
36 person resides, if the county of residence is different from the county in which the person was taken
37 into custody. The community mental health program director of the county in which the person re-
38 sides may request that the community mental health program director of the county in which the
39 person was taken into custody notify the circuit court in the county where the person resides.
40 Otherwise, the community mental health program director of the county in which the person was
41 taken into custody shall notify, immediately and in writing, the circuit court in the county in which
42 the person was taken into custody.

43 (b) If, at any time prior to the hearing under ORS 426.070 to 426.130, a community mental health
44 program director, after consultation with a *[physician]* **licensed independent practitioner**, deter-
45 mines that a person admitted or retained under ORS 426.233 is not dangerous to self or to any other

1 person and is not in need of immediate care, custody or treatment for mental illness, the community
2 mental health program director may release the person from detention. The community mental
3 health program director shall immediately notify the circuit court originally notified under para-
4 graph (a) of this subsection of the person's release from detention.

5 (4) When the judge of the circuit court receives notice under subsection (2) or (3) of this section,
6 the judge immediately shall commence proceedings under ORS 426.070 to 426.130. In a county having
7 a population of 100,000 or more, and when feasible in a county with a lesser population, the com-
8 munity mental health program director or designee who directs the peace officer or other authorized
9 individual to take a person into custody under ORS 426.233 shall not also conduct the investigation
10 as provided for under ORS 426.074. Except when a person is being held under ORS 426.237 (1)(b), a
11 person shall not be held under ORS 426.232 or 426.233 for more than five judicial days without a
12 hearing being held under ORS 426.070 to 426.130.

13 (5) When the judge of the circuit court receives notice under subsection (2)(c) or (3)(b) of this
14 section that a person has been released, and unless the court receives the recommendation required
15 by ORS 426.070 (4), the judge shall dismiss the case no later than 14 days after the date the person
16 was initially detained.

17 **SECTION 16.** ORS 426.235 is amended to read:

18 426.235. (1) The community mental health program director may transfer a person in custody
19 under ORS 426.232, 426.233 or 426.237 (1)(b) to a hospital or nonhospital facility approved by the
20 Oregon Health Authority at any time during the period of detention.

21 (2) A person in custody at a hospital may be transferred from the hospital only with the consent
22 of the *[treating physician]* **licensed independent practitioner who is treating the person** and
23 when the director of a nonhospital facility approved by the authority agrees to admit the person.

24 (3) A person in custody at a nonhospital facility approved by the authority may be transferred
25 to a hospital approved by the authority only when a *[physician]* **licensed independent practitioner**
26 with admitting privileges agrees to admit the person.

27 (4) In transporting a person between a hospital and nonhospital facility under this section, the
28 community mental health program director has all the powers provided in ORS 133.225 and 161.255
29 and may compel the assistance of any peace officer or other authorized individual.

30 (5) When a person is transferred under this section, the community mental health program di-
31 rector shall notify immediately the court notified under ORS 426.234 (2) or (3) of the fact of the
32 transfer and of the location of the person.

33 **SECTION 17.** ORS 426.237 is amended to read:

34 426.237. (1) During a prehearing period of detention as provided in ORS 426.070, 426.140, 426.232
35 or 426.233, the community mental health program director shall do one of the following:

36 (a) Recommend, in an investigation report as provided in ORS 426.074, that the circuit court not
37 proceed further in the matter if the community mental health program director does not believe the
38 person is a person with mental illness or that the person is in need of assisted outpatient treatment.

39 (b) No later than three judicial days after initiation of a prehearing period of detention as pro-
40 vided in ORS 426.070, 426.140, 426.232 or 426.233, certify the detained person for a 14-day period of
41 intensive treatment if:

42 (A) The community mental health program director and a *[psychiatrist, as defined by rule by the*
43 *Oregon Health Authority,]* **licensed independent practitioner** have probable cause to believe the
44 person is a person with mental illness;

45 (B) The community mental health program director in the county where the person resides

1 verbally approves the arrangements for payment for the services at the hospital or nonhospital fa-
2 cility; and

3 (C) The community mental health program director locates a hospital or nonhospital facility
4 that:

5 (i) Is approved by the authority and the community mental health program director in the
6 county where the person resides; and

7 (ii) Can, in the opinion of the community mental health program director and *[the psychiatrist]*
8 **the licensed independent practitioner**, provide intensive care or treatment for mental illness
9 necessary and sufficient to meet the emergency psychiatric needs of the person.

10 (c) Recommend, in an investigation report as provided in ORS 426.074, that the circuit court
11 hold a hearing under ORS 426.070 to 426.130 if the community mental health program director has
12 probable cause to believe the person is a person with mental illness or that the person is in need
13 of assisted outpatient treatment.

14 (2)(a) If the circuit court adopts the recommendation of the community mental health program
15 director under subsection (1)(a) of this section, the circuit court shall enter an order releasing the
16 person and dismissing the case. Unless the person agrees to voluntary treatment, if the person is
17 being detained in a:

18 (A) Nonhospital facility, the community mental health program director shall make discharge
19 plans and ensure the discharge of the person.

20 (B) Hospital, the *[treating physician]* **licensed independent practitioner who is treating the**
21 **person** shall make discharge plans and discharge the person.

22 (b) Upon release of the person, the community mental health program director shall attempt to
23 notify the person's next of kin if the person consents to the notification.

24 (3)(a) If the detained person is certified for treatment under subsection (1)(b) of this section, the
25 community mental health program director shall:

26 (A) Deliver immediately a certificate to the court having jurisdiction under ORS 426.060; and

27 (B) Orally inform the person of the certification and deliver a copy of the certificate to the
28 person.

29 (b) The certificate required by paragraph (a) of this subsection shall include:

30 (A) A written statement under oath by the community mental health program director and the
31 *[psychiatrist]* **licensed independent practitioner** that they have probable cause to believe the per-
32 son is a person with mental illness in need of care or treatment for mental illness;

33 (B) A treatment plan that describes, in general terms, the types of treatment and medication to
34 be provided to the person during the 14-day period of intensive treatment;

35 (C) A notice of the person's right to an attorney and that an attorney will be appointed by the
36 court or as otherwise obtained under ORS 426.100 (3);

37 (D) A notice that the person has a right to request and be provided a hearing under ORS 426.070
38 to 426.130 at any time during the 14-day period; and

39 (E) The date and time the copy of the certificate was delivered to the person.

40 (c) Immediately upon receipt of a certificate under paragraph (a) of this subsection, the court
41 shall notify the person's attorney or appoint an attorney for the person if the person cannot afford
42 one. Within 24 hours of the time the certificate is delivered to the court, the person's attorney shall
43 review the certificate with the person. If the person and the person's attorney consent to the certi-
44 fication within one judicial day of the time the certificate is delivered to the circuit court and, ex-
45 cept as provided in subsection (4) of this section, the court shall postpone the hearing required by

1 ORS 426.070 to 426.130 for 14 days.

2 (d) When a person is certified for treatment under subsection (1)(b) of this section and accepts
3 the certification:

4 (A) Except as otherwise provided in this paragraph, all methods of treatment, including the
5 prescription and administration of drugs, shall be the sole responsibility of the [*treating physician*]
6 **licensed independent practitioner who is treating the person**. However, the person shall not be
7 subject to electroshock therapy or unduly hazardous treatment and shall receive usual and custom-
8 ary treatment in accordance with medical standards in the community.

9 (B) Except when the person expressly refuses treatment, the treating [*physician*] **licensed in-**
10 **dependent practitioner** shall treat the person within the scope of the treatment plan provided the
11 person under paragraph (b) of this subsection. The person's refusal of treatment constitutes suffi-
12 cient grounds for the community mental health program director to request a hearing as provided
13 in subsection (4)(a) of this section.

14 (C) If the person is in a hospital and the community mental health program director locates a
15 nonhospital facility, approved by the authority, that, in the opinion of the community mental health
16 program director and the [*treating physician*] **licensed independent practitioner who is treating**
17 **the person**, can provide care or treatment for mental illness necessary and sufficient to meet the
18 emergency psychiatric needs of the person, the treating [*physician*] **licensed independent practi-**
19 **tioner** shall discharge the person from the hospital and the community mental health program di-
20 rector shall remove the person to the nonhospital facility for the remainder of the 14-day intensive
21 treatment period. If, however, in the opinion of the treating [*physician*] **licensed independent**
22 **practitioner**, the person's condition requires the person to receive medical care or treatment, the
23 [*physician*] **licensed independent practitioner** shall retain the person in the hospital.

24 (D) If the person is in a nonhospital facility, the community mental health program director shall
25 transfer the person to a hospital approved by the authority under the following conditions:

26 (i) If, in the opinion of a [*physician*] **licensed independent practitioner**, the person's condition
27 requires the person to receive medical care or treatment in a hospital; and

28 (ii) The [*physician*] **licensed independent practitioner** agrees to admit the person to a hospital,
29 approved by the authority, where the [*physician*] **licensed independent practitioner** has admitting
30 privileges.

31 (E) If the person is transferred as provided in subparagraph (C) or (D) of this paragraph, the
32 community mental health program director shall notify the circuit court, in the county where the
33 certificate was filed, of the location of the person. The person may appeal the transfer as provided
34 by rules of the authority.

35 (e) If the person is in a hospital, the [*treating physician*] **licensed independent practitioner**
36 **who is treating the person** may discharge the person at any time during the 14-day period. The
37 treating [*physician*] **licensed independent practitioner** shall confer with the community mental
38 health program director and the person's next of kin, if the person consents to the consultation,
39 prior to discharging the person. Immediately upon discharge of the person, the treating [*physician*]
40 **licensed independent practitioner** shall notify the court in the county in which the certificate was
41 filed initially.

42 (f) If the person is in a nonhospital facility, the community mental health program director may
43 discharge the person at any time during the 14-day period. The community mental health program
44 director shall consult with the [*treating physician*] **licensed independent practitioner who is**
45 **treating the person** and the person's next of kin, if the person consents to the consultation, prior

1 to discharging the person. Immediately upon discharge of the person, the community mental health
2 program director shall notify the court in the county in which the certificate was filed initially.

3 (g) The person may agree to voluntary treatment at any time during the 14-day period. When a
4 person agrees to voluntary treatment under this paragraph, the community mental health program
5 director immediately shall notify the court in the county in which the certificate was filed initially.

6 (h) A person consenting to 14 days of treatment under subsection (3)(c) of this section shall not
7 be held longer than 14 days from the time of consenting without a hearing as provided in ORS
8 426.070 to 426.130.

9 (i) When the court receives notification under paragraph (e), (f) or (g) of this subsection, the
10 court shall dismiss the case.

11 (4) The judge of the circuit court shall immediately commence proceedings under ORS 426.070
12 to 426.130 when:

13 (a) The person consenting to 14 days of treatment or the community mental health program di-
14 rector requests a hearing. The hearing shall be held without unreasonable delay. In no case shall
15 the person be held in a hospital or nonhospital facility longer than five judicial days after the re-
16 quest for a hearing is made without a hearing being held under ORS 426.070 to 426.130.

17 (b) The community mental health program director acts under subsection (1)(c) of this section.
18 In no case shall the person be held longer than five judicial days without a hearing under this
19 subsection.

20 **SECTION 18.** ORS 426.292 is amended to read:

21 426.292. Nothing in this chapter and ORS 430.397 to 430.401 prohibits the Oregon Health Au-
22 thority from releasing a person from a hospital or other facility in which the person is being treated
23 prior to the expiration of the period of commitment under ORS 426.130 when, in the opinion of the
24 director of the facility or [*treating physician*] **the licensed independent practitioner who is**
25 **treating the person**, the person is no longer a person with mental illness.

26 **SECTION 19.** ORS 426.335 is amended to read:

27 426.335. The following limitations on liability are applicable to actions and proceedings within
28 this chapter and ORS 430.397 to 430.401:

29 (1) The following individuals may not in any way be held criminally or civilly liable for the in-
30 itiation of commitment procedures under ORS 426.070, provided the individual acts in good faith, on
31 probable cause and without malice:

32 (a) The community mental health program director or designee of the director.

33 (b) The two petitioning persons.

34 (c) The county health officer.

35 (d) Any magistrate.

36 (e) Any peace officer or parole and probation officer.

37 (f) Any [*physician*] **licensed independent practitioner** attending the person alleged to have a
38 mental illness.

39 (g) Any [*physician*] **licensed independent practitioner** associated with the hospital or institu-
40 tion where the person alleged to have a mental illness is a patient.

41 (2) The community mental health program director or the designee of the director conducting
42 the investigation under ORS 426.070 and 426.074 shall not be held criminally or civilly liable for
43 conducting the investigation, provided the investigator acts in good faith, on probable cause and
44 without malice.

45 (3) The individual representing the state's interest under ORS 426.100 shall not be held

1 criminally or civilly liable for performing responsibilities under ORS 426.100 as long as the individ-
2 ual acts in good faith and without malice.

3 (4) An examiner appointed under ORS 426.110 may not be held criminally or civilly liable for
4 actions pursuant to ORS 426.120 if the examiner acts in good faith and without malice.

5 (5) A [*physician*] **licensed independent practitioner**, hospital or judge may not be held
6 criminally or civilly liable for actions pursuant to ORS 426.228, 426.231, 426.232, 426.234 or 426.235
7 if the [*physician*] **licensed independent practitioner**, hospital or judge acts in good faith, on prob-
8 able cause and without malice.

9 (6) A peace officer, individual authorized under ORS 426.233, community mental health director
10 or designee, hospital or other facility, [*physician*] **licensed independent practitioner** or judge may
11 not in any way be held criminally or civilly liable for actions pursuant to ORS 426.228 to 426.235
12 if the individual or facility acts in good faith, on probable cause and without malice.

13 (7) Any legal guardian, relative or friend of a person with mental illness who assumes respon-
14 sibility for the person under a conditional release under ORS 426.125 shall not be liable for any
15 damages that result from the misconduct of the person while on conditional release if the legal
16 guardian, relative or friend acts in good faith and without malice.

17 (8) The individuals designated in this subsection may not be liable for personal injuries or other
18 damages that result from the misconduct of a person with mental illness while the person is on
19 outpatient commitment under ORS 426.127 if the designated individual acts without willful and
20 wanton neglect of duty. This subsection is applicable to all of the following:

21 (a) The community mental health program director and the designee of the director for the
22 county in which the committed person resides.

23 (b) The superintendent or director of any staff of any facility where the person with mental ill-
24 ness receives treatment during the outpatient commitment.

25 (c) The Director of the Oregon Health Authority.

26 (d) The [*physician*] **licensed independent practitioner** and the facility providing care or treat-
27 ment to a person on outpatient commitment.

28 (9) For trial visits granted under ORS 426.273 and 426.275:

29 (a) The following individuals and entities may not be liable for a person's expenses while on trial
30 visit:

31 (A) The [*physician*] **licensed independent practitioner** and the facility providing care or
32 treatment to a person on a trial visit;

33 (B) The superintendent or director of the facility providing care or treatment to a person on a
34 trial visit;

35 (C) The Director of the Oregon Health Authority; and

36 (D) The chief medical officer of the facility.

37 (b) The individuals designated in this paragraph may not be liable for damages that result from
38 the misconduct of a person with mental illness while on trial visit if the designated individual acts
39 without willful and wanton neglect of duty:

40 (A) The community mental health program director for the county in which the person resides;

41 (B) The superintendent, director or chief medical officer of any facility providing care or treat-
42 ment to a patient on a trial visit;

43 (C) The [*physician*] **licensed independent practitioner** responsible for the patient's care or
44 treatment during a trial visit;

45 (D) The Director of the Oregon Health Authority; or

1 (E) The employees and agents of individuals or facilities under this paragraph.

2 **SECTION 20.** ORS 426.495 is amended to read:

3 426.495. (1) As used in ORS 426.490 to 426.500, unless the context requires otherwise:

4 (a) "Case manager" means a person who works on a continuing basis with a person with a
5 chronic mental illness and is responsible for assuring the continuity of the various services called
6 for in the discharge plan of the person with a chronic mental illness including services for basic
7 personal maintenance, mental and personal treatment, and appropriate education and employment.

8 (b) "Discharge plan" means a written plan prepared jointly with the person with a chronic
9 mental illness, mental health staff and case manager prior to discharge, prescribing for the basic
10 and special needs of the person upon release from the hospital.

11 (c) "Person with a chronic mental illness" means an individual who is:

12 (A) Eighteen years of age or older; and

13 (B) Diagnosed by a psychiatrist, a licensed clinical psychologist, **a licensed independent**
14 **practitioner as defined in ORS 426.005** or a nonmedical examiner certified by the Oregon Health
15 Authority or the Department of Human Services as having chronic schizophrenia, a chronic major
16 affective disorder, a chronic paranoid disorder or another chronic psychotic mental disorder other
17 than those caused by substance abuse.

18 (2) For purposes of providing services in the community, the authority may adopt rules consist-
19 ent with accepted professional practices in the fields of psychology and psychiatry to specify other
20 criteria for determining who is a person with a chronic mental illness.

21 **SECTION 21. This 2015 Act being necessary for the immediate preservation of the public**
22 **peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect**
23 **on its passage.**

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