

**PROPOSED AMENDMENTS TO
SENATE BILL 840**

1 On page 1 of the printed bill, delete lines 6 through 30 and delete pages
2 2 through 20 and insert:

3 **“SECTION 1.** ORS 426.005 is amended to read:

4 “426.005. (1) As used in ORS 426.005 to 426.390, unless the context requires
5 otherwise:

6 “(a) ‘Community mental health program director’ means the director of
7 an entity that provides the services described in ORS 430.630 (3) to (5).

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

12 “(c) ‘Facility’ means a state mental hospital, community hospital, resi-
13 dential facility, detoxification center, day treatment facility or such other
14 facility as the authority determines suitable that provides diagnosis and
15 evaluation, medical care, detoxification, social services or rehabilitation to
16 persons **who are in custody during a prehearing period of detention or**
17 **who have been** committed to the Oregon Health Authority under ORS
18 426.130.

19 **“(d) ‘Licensed independent practitioner’ means:**

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

21 **“(B) A nurse practitioner certified under ORS 678.375 and authorized**
22 **to write prescriptions under ORS 678.390.**

1 “[(d)] (e) ‘Nonhospital facility’ means any facility, other than a hospital,
2 that is approved by the authority to provide adequate security, psychiatric,
3 nursing and other services to persons under ORS 426.232 or 426.233.

4 “[(e)] (f) ‘Person with mental illness’ means a person who, because of a
5 mental disorder, is one or more of the following:

6 “(A) Dangerous to self or others.

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

9 “(C) A person:

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

11 “(ii) Who, within the previous three years, has twice been placed in a
12 hospital or approved inpatient facility by the authority or the Department
13 of Human Services under ORS 426.060;

14 “(iii) Who is exhibiting symptoms or behavior substantially similar to
15 those that preceded and led to one or more of the hospitalizations or inpa-
16 tient placements referred to in sub-subparagraph (ii) of this subparagraph;
17 and

18 “(iv) Who, unless treated, will continue, to a reasonable medical proba-
19 bility, to physically or mentally deteriorate so that the person will become
20 a person described under either subparagraph (A) or (B) of this paragraph
21 or both.

22 “[(f)] (g) ‘Prehearing period of detention’ means a period of time calcu-
23 lated from the initiation of custody during which a person may be detained
24 under ORS 426.228, 426.231, 426.232 or 426.233.

25 “(2) Whenever a community mental health program director, director of
26 the facility, superintendent of a state hospital or administrator of a facility
27 is referred to, the reference includes any designee such person has designated
28 to act on the person’s behalf in the exercise of duties.

29 “**SECTION 2.** ORS 426.070 is amended to read:

30 “426.070. (1) Any of the following may initiate commitment procedures

1 under this section by giving the notice described under subsection (2) of this
2 section:

3 “(a) Two persons;

4 “(b) The county health officer; or

5 “(c) Any magistrate.

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

8 “(a) It must be in writing under oath;

9 “(b) It must be given to the community mental health program director
10 or a designee of the director in the county where the person alleged to have
11 a mental illness resides;

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

15 “(d) If the commitment proceeding is initiated by two persons under sub-
16 section (1)(a) of this section, it may include a request that the court notify
17 the two persons:

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

19 “(B) Of the court’s determination under ORS 426.130 (1); and

20 “(e) If the notice contains a request under paragraph (d) of this sub-
21 section, it must also include the addresses of the two persons making the
22 request.

23 “(3) Upon receipt of a notice under subsections (1) and (2) of this section
24 or when notified by a circuit court that the court received notice under ORS
25 426.234, the community mental health program director, or designee of the
26 director, shall:

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

30 “(b) Immediately notify the Oregon Health Authority if commitment is

1 proposed because the person appears to be a person with mental illness, as
2 defined in ORS 426.005 [(1)(e)(C)] (1)(f)(C). When such notice is received, the
3 authority may verify, to the extent known by the authority, whether or not
4 the person meets the criteria described in ORS 426.005 [(1)(e)(C)(i)]
5 (1)(f)(C)(i) and (ii) and so inform the community mental health program di-
6 rector or designee of the director.

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

10 “(4) Upon completion, a recommendation based upon the investigation
11 report under ORS 426.074 shall be promptly submitted to the court. If the
12 community mental health program director determines that probable cause
13 does not exist to believe that a person released from detention under ORS
14 426.234 (2)(c) or (3)(b) is a person with mental illness, the community mental
15 health program director may recommend assisted outpatient treatment in
16 accordance with ORS 426.133.

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

18 “(a) If the court, following the investigation, concludes that there is
19 probable cause to believe that the person investigated is a person with
20 mental illness, it shall, through the issuance of a citation as provided in ORS
21 426.090, cause the person to be brought before it at a time and place as it
22 may direct, for a hearing under ORS 426.095 to determine whether the person
23 is a person with mental illness. The person shall be given the opportunity
24 to appear voluntarily at the hearing unless the person fails to appear or
25 unless the person is detained pursuant to paragraph (b) of this subsection.

26 “(b)(A) If the court finds that there is probable cause to believe that
27 failure to take the person into custody pending the investigation or hearing
28 would pose serious harm or danger to the person or to others, the court may
29 issue a warrant of detention to the community mental health program di-
30 rector or designee or the sheriff of the county or designee directing the di-

1 rector, sheriff or a designee to take the person alleged to have a mental
2 illness into custody and produce the person at the time and place stated in
3 the warrant.

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

7 “(i) The person’s rights with regard to representation by or appointment
8 of counsel as described in ORS 426.100;

9 “(ii) The warning under ORS 426.123; and

10 “(iii) The person’s right, if the community mental health program direc-
11 tor, sheriff or designee reasonably suspects that the person is a foreign na-
12 tional, to communicate with an official from the consulate of the person’s
13 country. A community mental health program director, sheriff or designee is
14 not civilly or criminally liable for failure to provide the information required
15 by this sub-subparagraph. Failure to provide the information required by this
16 sub-subparagraph does not in itself constitute grounds for the exclusion of
17 evidence that would otherwise be admissible in a proceeding.

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

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

23 **“SECTION 3.** ORS 426.072 is amended to read:

24 “426.072. (1) A hospital or nonhospital facility [*and a treating physician*]
25 must comply with [*the following*] **subsection (2) of this section** when a
26 person alleged to have a mental illness is placed in custody at the hospital
27 or nonhospital facility:

28 “(a) By a warrant of detention under ORS 426.070;

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

1 “(c) By a physician under ORS 426.232.

2 “(2) In circumstances described under subsection (1) of this section, the
3 hospital or nonhospital facility and [*treating physician*] **a treating licensed**
4 **independent practitioner** must comply with the following:

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

7 “(b) The treating [*physician*] **licensed independent practitioner** shall
8 report any care, custody and treatment to the court as required in ORS
9 426.075;

10 “(c) All methods of treatment, including the prescription and adminis-
11 tration of drugs, shall be the sole responsibility of the treating [*physician*]
12 **licensed independent practitioner**. However, the person shall not be sub-
13 ject to electroshock therapy or unduly hazardous treatment and shall receive
14 usual and customary treatment in accordance with medical standards in the
15 community;

16 “(d) The treating [*physician*] **licensed independent practitioner** shall
17 be notified immediately of any use of mechanical restraints on the person.
18 Every use of a mechanical restraint and the reasons therefor shall be made
19 a part of the clinical record of the person over the signature of the treating
20 [*physician*] **licensed independent practitioner**; and

21 “(e) The treating [*physician*] **licensed independent practitioner** shall
22 give the person the warning under ORS 426.123 at times the treating [*physi-*
23 *cian*] **licensed independent practitioner** determines the person will rea-
24 sonably understand the notice. This paragraph only requires the notice to
25 be given as often as the [*physician*] **licensed independent practitioner** de-
26 termines is necessary to assure that the person is given an opportunity to
27 be aware of the notice.

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

1 **“SECTION 4.** ORS 426.074 is amended to read:

2 “426.074. The following is applicable to an investigation initiated by a
3 community mental health program director, or a designee of the director, as
4 part of commitment procedures under ORS 426.070 and 426.228 to 426.235:

5 “(1) If the person alleged to have a mental illness is held in custody be-
6 fore the hearing the investigation shall be completed at least 24 hours before
7 the hearing under ORS 426.095, otherwise the investigation shall comply with
8 the following time schedule:

9 “(a) If the person can be located, the investigator shall contact the person
10 within three judicial days from the date the community mental health pro-
11 gram director or a designee receives a notice under ORS 426.070 alleging that
12 the person has a mental illness and is in need of treatment.

13 “(b) Within 15 days from the date the community mental health program
14 director or a designee receives a notice under ORS 426.070, one of the fol-
15 lowing shall occur:

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

17 “(B) An application for extension shall be made to the court under para-
18 graph (c) of this subsection.

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

22 “(A) A treatment option less restrictive than involuntary in-patient com-
23 mitment is actively being pursued.

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

25 “(d) A court may grant an extension under paragraph (c) of this sub-
26 section for a time and upon the terms and conditions the court considers
27 appropriate.

28 “(2) This subsection establishes a nonexclusive list of provisions applica-
29 ble to the content of the investigation, as follows:

30 “(a) The investigation conducted should, where appropriate, include an

1 interview or examination of the person alleged to have a mental illness in
2 the home of the person or other place familiar to the person.

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

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

19 “(3) A copy of the investigation report shall be provided as soon as pos-
20 sible, but in no event later than 24 hours prior to the hearing, to the person
21 and to the person’s counsel. Copies shall likewise be provided to counsel
22 assisting the court, to the examiners and to the court for use in questioning
23 witnesses.

24 **“SECTION 5.** ORS 426.075 is amended to read:

25 “426.075. This section establishes procedures that are required to be fol-
26 lowed before the hearing if a court, under ORS 426.070, orders a hearing
27 under ORS 426.095. The following apply as described:

28 “(1) The court shall be fully advised of all drugs and other treatment
29 known to have been administered to the person alleged to have a mental
30 illness that may substantially affect the ability of the person to prepare for

1 or function effectively at the hearing. The following shall advise the court
2 as required by this subsection:

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

5 “(b) When the person has been detained by a warrant of detention under
6 ORS 426.070, 426.180, 426.228, 426.232 or 426.233, the treating [*physician*] **li-**
7 **censed independent practitioner.**

8 “(2) The court shall appoint examiners under ORS 426.110 sufficiently in
9 advance of the hearing so that the examiners may begin their preparation
10 for the hearing. The records established by the Oregon Health Authority by
11 rule and the investigation report shall be made available to the examiners
12 at least 24 hours before the hearing in order that the examiners may review
13 the medical record and have an opportunity to inquire of the medical per-
14 sonnel concerning the treatment of the person alleged to have a mental ill-
15 ness during the detention period prior to the hearing.

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

19 “(4) When requested by a party to the action, the party’s attorney shall
20 subpoena [*physicians*] **licensed independent practitioners** who are or have
21 been treating the person. Any treating [*physician*] **licensed independent**
22 **practitioner** subpoenaed under this subsection shall be subpoenaed as an
23 expert witness.

24 “**SECTION 6.** ORS 426.095 is amended to read:

25 “426.095. The following is applicable to a commitment hearing held by a
26 court under ORS 426.070:

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

30 “(2) The court shall hold the hearing at the time established according

1 to the following:

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

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

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

18 “(A) The person alleged to have a mental illness or the person alleged to
19 be an extremely dangerous person with mental illness.

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

21 “(C) The individual representing the state’s interest.

22 “(3) The person alleged to have a mental illness and the individual re-
23 presenting the state’s interest shall have the right to cross-examine all the
24 following:

25 “(a) Witnesses.

26 “(b) The individual conducting the investigation.

27 “(c) The examining physicians or other qualified professionals recom-
28 mended by the Oregon Health Authority who have examined the person.

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

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

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

7 “(c) The testimony of any treating [*physicians*] **licensed independent**
8 **practitioners**, nurses or social workers for the prehearing period of de-
9 tention. Any treating [*physician*] **licensed independent practitioner**, nurse
10 or social worker who is subpoenaed as a witness for the proceeding shall
11 testify as an expert witness under the provisions of ORS 40.410, 40.415, 40.420
12 and 40.425 and is subject to treatment as an expert witness in the payment
13 of witness fees and costs.

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

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

18 “(B) Upon objection by any party to the action, the court shall exclude
19 any part of the investigation report that may be excluded under the Oregon
20 Evidence Code on grounds other than those set forth in ORS 40.230, 40.235,
21 40.240 or 40.250.

22 “(C) Neither the investigation report nor any part thereof shall be intro-
23 duced into evidence under this paragraph unless the investigator is present
24 during the proceeding to be cross-examined or unless the presence of the
25 investigator is waived by the person alleged to have a mental illness or
26 counsel for the person.

27 “**SECTION 7.** ORS 426.120 is amended to read:

28 “426.120. (1) Examiners appointed under ORS 426.110 shall do **all of** the
29 following:

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

1 “(b) Initiate the examination process prior to the hearing. Any failure
2 to comply with this paragraph shall not, in itself, constitute sufficient
3 grounds to challenge the examination conducted by an examiner[;].

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

6 “(d) Upon completion of the hearing, file the reports with the clerk of the
7 court.

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

10 “(a) If the examiners find, and show by their reports, that the person ex-
11 amined is a person with mental illness, the reports shall include a recom-
12 mendation as to the type of treatment facility best calculated to help the
13 person recover from mental illness.

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

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

20 “(3) The examiner shall be allowed access to [*physicians,*] **licensed inde-**
21 **pendent practitioners,** nurses or social workers and to medical records
22 compiled during the current involuntary prehearing period of detention and
23 the investigation report. Records and communications described in this
24 subsection and related communications are not privileged under ORS 40.230,
25 40.235, 40.240 or 40.250.

26 “**SECTION 8.** ORS 426.155 is amended to read:

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

1 “(2) Notwithstanding the provisions of ORS 179.495, 179.505 or 192.502 (2)
2 and notwithstanding any other provision of ORS 426.005 to 426.390, a facility
3 or nonhospital facility where a person is held shall establish procedures for
4 releasing information as required under subsections (3) and (4) of this sec-
5 tion.

6 “(3)(a) If a person described in subsection (1) of this section authorizes
7 disclosure as provided in subsection (5) of this section, upon request of a
8 member of the family of the person, or any other designee of the person, a
9 facility or nonhospital facility where the person is held shall provide the
10 family member or the designee with the following information:

11 “(A) The person’s diagnosis;

12 “(B) The person’s prognosis;

13 “(C) The medications prescribed for the person and the side effects of
14 medications prescribed, if any;

15 “(D) The person’s progress;

16 “(E) Information about any civil commitment process, including the date,
17 time and location of the person’s commitment hearing; and

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

19 “(b) If a request for information is made under this subsection and the
20 person is unable to authorize disclosure as provided in subsection (5) of this
21 section, the requester shall be provided notice of the presence of the person
22 in any facility or nonhospital facility. Information shall not be provided un-
23 der this paragraph if the [*physician of*] **licensed independent practitioner**
24 **who is treating** the person determines that it would not be in the person’s
25 best interest to provide the information or if providing the information is
26 prohibited by federal law.

27 “(4) Upon the admission of any person to a facility or nonhospital facility
28 under ORS 426.005 to 426.390, the facility or nonhospital facility shall make
29 reasonable attempts to notify the person’s next of kin, or any other designee
30 of the person, of the person’s admission, unless the person requests that this

1 information not be provided. The facility or nonhospital facility shall make
2 reasonable attempts to notify the person's next of kin, or any other designee
3 of the person, of the person's release, transfer, serious illness, injury or death
4 upon request of the family member or designee, unless the person requests
5 that this information not be provided. The person shall be advised by the
6 facility or nonhospital facility that the person has the right to request that
7 this information not be provided.

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

17 “(6) Notwithstanding any other provision of this section, an individual
18 eligible to receive information under subsection (3) of this section may not
19 receive information unless the individual first agrees to make no further
20 disclosure of the information. The agreement may be made orally.

21 “(7) A facility or nonhospital facility that releases information under
22 subsection (3) or (4) of this section shall:

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

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

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

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

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

30 “(D) The agreement to the requirements of subsection (6) of this section

1 by the requester; and

2 “(E) Any determination made by the [*person’s physician*] **licensed inde-**
3 **pendent practitioner** under subsection (3)(b) of this section regarding the
4 provision of notice of the presence of the person in any facility or nonhos-
5 pital facility.

6 “(8) A facility or nonhospital facility, including the staff of such facilities
7 and nonhospital facilities, that releases information under this section or
8 rules adopted under ORS 426.236 may not be held civilly or criminally liable
9 for damages caused or alleged to be caused by the release of information or
10 the failure to release information as long as the release was done in good
11 faith and in compliance with subsections (3) and (4) of this section or rules
12 adopted under ORS 426.236.

13 “(9) The provisions of subsections (3) and (4) of this section do not limit
14 the ability or obligation of facilities, nonhospital facilities, [*physicians*] **li-**
15 **censed independent practitioners**, mental health care providers or licensed
16 mental health professionals to provide information as otherwise allowed or
17 required by law.

18 “**SECTION 9.** ORS 426.180 is amended to read:

19 “426.180. (1) ORS 426.180 to 426.210 apply to the commitment of an indi-
20 vidual in Indian country if the state does not have jurisdiction over the in-
21 dividual.

22 “(2) As used in this section and ORS 426.200 and 426.210, ‘hospital’ means
23 a hospital that is licensed under ORS chapter 441, other than an institution
24 listed in ORS 426.010.

25 “(3) If the court of a tribe having jurisdiction over an individual issues
26 an order finding that the individual is dangerous to self or to any other
27 person and is in need of immediate care, custody or treatment for mental
28 illness, a person may request that the individual be taken by a tribal police
29 officer or other peace officer to a hospital or nonhospital facility by sub-
30 mitting to the officer a certified copy of the order and an affidavit that in-

1 cludes:

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

4 “(b) A medical history completed by one of the following, who may not
5 be related to the individual by blood or marriage:

6 “(A) The tribe’s mental health authority, if the tribe has entered into an
7 agreement with the state pursuant to ORS 430.630 (9)(a)(B);

8 “[*(B) A physician licensed by the Oregon Medical Board; or*]

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

10 **“(C) A licensed independent practitioner.**

11 “(4) Upon receipt of the order and affidavit described in subsection (3) of
12 this section, the tribal police officer or other peace officer shall immediately
13 transport the individual to a hospital or a nonhospital facility and present
14 the individual to the hospital or nonhospital facility accompanied by the
15 court order and affidavit.

16 “(5) The director of the hospital or nonhospital facility may refuse to
17 admit the individual if [*the director or an attending physician*] **a physician**
18 **licensed by the Oregon Medical Board**, after reviewing the documents
19 accompanying the individual, is not satisfied that an emergency exists or
20 that the individual is dangerous to self or others and in need of immediate
21 care, custody or treatment for mental illness.

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

28 “(7) If an individual is admitted to a hospital or nonhospital facility under
29 this section, any [*physician*] **licensed independent practitioner who is**
30 treating the individual shall give the individual the warning under ORS

1 426.123.

2 “(8) This section may be applied as provided by agreement with the gov-
3 erning body of the reservation. Payment of costs for a commitment made
4 under this section shall be as provided under ORS 426.250.

5 “(9) The director of the hospital or nonhospital facility or [*attending*
6 *physician*] **licensed independent practitioner** shall notify the appropriate
7 tribe regarding all actions taken under ORS 426.180 to 426.210 no later than
8 24 hours after the action is taken, except for information protected from
9 disclosure by state or federal law.

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

11 “426.225. (1) If any person who has been committed to the Oregon Health
12 Authority under ORS 426.127 or 426.130 (1)(a)(B) or (C) requests, during this
13 period of commitment, voluntary admission to a state hospital, the super-
14 intendent shall cause the person to be examined immediately by a
15 [*physician*] **licensed independent practitioner**. If the [*physician*] **licensed**
16 **independent practitioner** finds the person to be in need of immediate care
17 or treatment for mental illness, the person shall be voluntarily admitted
18 [*upon request of the person*].

19 “(2) If any person who has been committed to the authority under ORS
20 426.127 or 426.130 (1)(a)(B) or (C) requests, during this period of commitment,
21 voluntary admission to a facility approved by the authority, the administra-
22 tor of the facility shall cause the person to be examined immediately by a
23 [*physician*] **licensed independent practitioner**. If the [*physician*] **licensed**
24 **independent practitioner** finds the person to be in need of immediate care
25 or treatment for mental illness, and the authority grants approval, the person
26 shall be voluntarily admitted [*upon request of the person*].

27 **“SECTION 11.** ORS 426.228 is amended to read:

28 “426.228. (1) A peace officer may take into custody a person who the of-
29 ficer has probable cause to believe is dangerous to self or to any other person
30 and is in need of immediate care, custody or treatment for mental illness.

1 As directed by the community mental health program director, a peace offi-
2 cer shall remove a person taken into custody under this section to the
3 nearest hospital or nonhospital facility approved by the Oregon Health Au-
4 thority. The officer shall prepare a written report and deliver it to the
5 [treating physician] **licensed independent practitioner who is treating the**
6 **person.** The report shall state:

7 “(a) The reason for custody;

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

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

11 “(2) A peace officer shall take a person into custody when the community
12 mental health program director, pursuant to ORS 426.233, notifies the peace
13 officer that the director has probable cause to believe that the person is
14 imminently dangerous to self or to any other person. As directed by the
15 community mental health program director, the peace officer shall remove
16 the person to a hospital or nonhospital facility approved by the authority.
17 The community mental health program director shall prepare a written re-
18 port that the peace officer shall deliver to the [treating physician] **licensed**
19 **independent practitioner who is treating the person.** The report shall
20 state:

21 “(a) The reason for custody;

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

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

25 “(3) If more than one hour will be required to transport the person to the
26 hospital or nonhospital facility from the location where the person was taken
27 into custody, the peace officer shall obtain, if possible, a certificate from a
28 physician licensed by the Oregon Medical Board stating that the travel will
29 not be detrimental to the person’s physical health and that the person is
30 dangerous to self or to any other person and is in need of immediate care

1 or treatment for mental illness. The physician shall have personally exam-
2 ined the person within 24 hours prior to signing the certificate.

3 “(4) When a peace officer or other authorized individual, acting under this
4 section, delivers a person to a hospital or nonhospital facility, a physician
5 licensed by the Oregon Medical Board shall examine the person immediately.
6 If the physician finds the person to be in need of emergency care or treat-
7 ment for mental illness, [*the physician*] **a licensed independent practi-**
8 **tioner** shall proceed under ORS 426.232, otherwise the person shall not be
9 retained in custody. If the person is to be released from custody, the peace
10 officer or the community mental health program director shall return the
11 person to the place where the person was taken into custody unless the
12 person declines that service.

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

20 “(6) An individual authorized under ORS 426.233 (3) shall take a person
21 into custody when directed to do so by a peace officer or by a community
22 mental health program director under ORS 426.233.

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

27 “(8) An individual authorized under ORS 426.233 (3) may transfer a person
28 in custody under this section to the custody of another individual authorized
29 under ORS 426.233 (3) or a peace officer. The individual transferring custody
30 may meet another authorized individual or a peace officer at any location

1 that is in accordance with ORS 426.140 to effect the transfer.

2 “(9)(a) When a peace officer takes a person into custody under this sec-
3 tion, and the peace officer reasonably suspects that the person is a foreign
4 national, the peace officer shall inform the person of the person’s right to
5 communicate with an official from the consulate of the person’s country.

6 “(b) A peace officer is not civilly or criminally liable for failure to pro-
7 vide the information required by this subsection. Failure to provide the in-
8 formation required by this subsection does not in itself constitute grounds
9 for the exclusion of evidence that would otherwise be admissible in a pro-
10 ceeding.

11 **“SECTION 12.** ORS 426.231 is amended to read:

12 “426.231. (1) A [*physician licensed by the Oregon Medical Board*] **licensed**
13 **independent practitioner** may hold a person for transportation to a treat-
14 ment facility for up to 12 hours in a health care facility licensed under ORS
15 chapter 441 and approved by the Oregon Health Authority if:

16 “(a) [*The*] **A physician licensed by the Oregon Medical Board** believes
17 the person is dangerous to self or to any other person and is in need of
18 emergency care or treatment for mental illness;

19 “(b) The physician is not related to the person by blood or marriage; and

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

22 “(2) Before transporting the person, [*the physician*] **a licensed inde-**
23 **pendent practitioner** shall prepare a written statement that:

24 “(a) [*The*] **A physician licensed by the Oregon Medical Board** has ex-
25 amined the person within the preceding 12 hours;

26 “(b) [*An admitting physician*] **A licensed independent practitioner with**
27 **admitting privileges** at the receiving facility has consented to the trans-
28 porting of the person for examination and admission if appropriate; and

29 “(c) The [*physician*] **licensed independent practitioner** believes the
30 person is dangerous to self or to any other person and is in need of emer-

1 agency care or treatment for mental illness.

2 “(3) The written statement required by subsection (2) of this section au-
3 thorizes a peace officer, an individual authorized under ORS 426.233 or the
4 designee of a community mental health program director to transport a per-
5 son to the treatment facility indicated on the statement.

6 **“SECTION 13.** ORS 426.232 is amended to read:

7 “426.232. (1) If a physician licensed to practice medicine by the Oregon
8 Medical Board believes a person who is brought to a hospital or nonhospital
9 facility by a peace officer under ORS 426.228 or by an individual authorized
10 under ORS 426.233, or believes a person who is at a hospital or nonhospital
11 facility, is dangerous to self or to any other person and is in need of emer-
12 gency care or treatment for mental illness, [*the physician*] **and the physi-**
13 **cian is not related to the person by blood or marriage, a licensed**
14 **independent practitioner** may do one of the following:

15 “(a) [*After consulting with a physician or a qualified mental health pro-*
16 *fessional, as defined by rule of the Oregon Health Authority,*] Detain the
17 person and cause the person to be admitted or, if the person is already ad-
18 mitted, cause the person to be retained in a hospital where the [*physician*]
19 **licensed independent practitioner** has admitting privileges or is on staff.
20 [*Neither the physician nor the qualified mental health professional may be*
21 *related by blood or marriage to the person.*]

22 “(b) Approve the person for emergency care or treatment at a nonhospital
23 facility approved by the authority.

24 “(2) When approving a person for emergency care or treatment at a non-
25 hospital facility under this section, the [*physician*] **licensed independent**
26 **practitioner** shall notify immediately the community mental health program
27 director in the county where the person was taken into custody and maintain
28 the person, if the person is being held at a hospital, for as long as is feasible
29 given the needs of the person for mental or physical health or safety. How-
30 ever, under no circumstances may the person be held for longer than five

1 judicial days.

2 **“SECTION 14.** ORS 426.233 is amended to read:

3 “426.233. (1)(a) A community mental health program director operating
4 under ORS 430.610 to 430.695 or a designee of the director, under authori-
5 zation of a county governing body, may take one of the actions listed in
6 paragraph (b) of this subsection when the community mental health program
7 director or designee has probable cause to believe a person:

8 “(A) Is dangerous to self or to any other person and is in need of imme-
9 diate care, custody or treatment for mental illness; or

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

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

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

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

22 “(B) Authorize involuntary admission of, or, if already admitted, cause to
23 be involuntarily retained in a nonhospital facility approved by the authority,
24 a person approved for care or treatment at a nonhospital facility by a [*phy-*
25 *sician*] **licensed independent practitioner** under ORS 426.232;

26 “(C) Notify an individual authorized under subsection (3) of this section
27 to take the person into custody and direct the authorized individual to re-
28 move the person in custody to a hospital or nonhospital facility approved by
29 the authority;

30 “(D) Direct an individual authorized under subsection (3) of this section

1 to transport a person in custody from a hospital or a nonhospital facility
2 approved by the authority to another hospital or nonhospital facility ap-
3 proved by the authority as provided under ORS 426.235; or

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

7 “(2) A designee under subsection (1) of this section must be recommended
8 by the community mental health program director, meet the standards es-
9 tablished by rule of the authority and be approved by the county governing
10 body before assuming the authority permitted under subsection (1) of this
11 section.

12 “(3) The county governing body may, upon recommendation by the com-
13 munity mental health program director, authorize any individual to provide
14 custody and secure transportation services for a person in custody under
15 ORS 426.228. In authorizing an individual under this subsection, the county
16 governing body shall grant the individual the authority to do the following:

17 “(a) Accept custody from a peace officer of a person in custody under ORS
18 426.228;

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

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

23 “(d) Transfer a person in custody to another individual authorized under
24 this subsection or a peace officer;

25 “(e) Transfer a person in custody from a hospital or nonhospital facility
26 to another hospital facility or nonhospital facility when directed to do so by
27 the community mental health program director; and

28 “(f) Retain a person in custody at the approved hospital or nonhospital
29 facility until a physician makes a determination under ORS 426.232.

30 “(4) An individual authorized under subsection (3) of this section must

1 be recommended by the community mental health program director, meet the
2 standards established by rule of the authority and be approved by the gov-
3 erning body before assuming the authority granted under this section.

4 “(5) The costs of transporting a person under ORS 426.060, 426.228 or
5 426.235 by an individual authorized under subsection (3) of this section shall
6 be the responsibility of the county whose peace officer or community mental
7 health program director directs the authorized individual to take custody of
8 a person and to transport the person to a facility approved by the authority,
9 but the county shall not be responsible for costs that exceed the amount
10 provided by the state for that transportation. An individual authorized to act
11 under subsection (3) of this section shall charge the cost of emergency med-
12 ical transportation to, and collect that cost from, the person, third party
13 payers or other legally or financially responsible individuals or entities in
14 the same manner that costs for the transportation of other persons are
15 charged and collected.

16 **“SECTION 15.** ORS 426.234 is amended to read:

17 “426.234. (1) At the time a person alleged to have a mental illness is ad-
18 mitted to or retained in a hospital or nonhospital facility under ORS 426.232
19 or 426.233, a [*physician*] **licensed independent practitioner**, nurse or qual-
20 ified mental health professional at the hospital or nonhospital facility shall:

21 “(a) Inform the person of the person’s right to representation by or ap-
22 pointment of counsel as described in ORS 426.100;

23 “(b) Give the person the warning under ORS 426.123;

24 “(c) Immediately examine the person;

25 “(d) Set forth, in writing, the condition of the person and the need for
26 emergency care or treatment; and

27 “(e) If the [*physician*] **licensed independent practitioner**, nurse or
28 qualified mental health professional reasonably suspects that the person is
29 a foreign national, inform the person of the person’s right to communicate
30 with an official from the consulate of the person’s country. A [*physician*]

1 **licensed independent practitioner**, nurse or qualified mental health pro-
2 fessional is not civilly or criminally liable for failure to provide the infor-
3 mation required by this paragraph. Failure to provide the information
4 required by this paragraph does not in itself constitute grounds for the ex-
5 clusion of evidence that would otherwise be admissible in a proceeding.

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

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

28 “(c) If, at any time prior to the hearing under ORS 426.070 to 426.130, the
29 [*physician*] **licensed independent practitioner** responsible for a person ad-
30 mitted or retained under ORS 426.232 determines that the person is not

1 dangerous to self or to any other person and is not in need of emergency care
2 or treatment for mental illness, the [*physician*] **licensed independent prac-**
3 **titioner** may release the person from the detention authorized by ORS
4 426.232. The [*physician*] **licensed independent practitioner** shall imme-
5 diately notify the circuit court notified under this subsection and the com-
6 munity mental health program director of the person's release from
7 detention.

8 “(3)(a) At the time the person is admitted to or retained in a nonhospital
9 facility under ORS 426.233, the community mental health program director
10 in the county where the person was taken into custody shall contact the
11 community mental health program director of the county in which the person
12 resides, if the county of residence is different from the county in which the
13 person was taken into custody. The community mental health program di-
14 rector of the county in which the person resides may request that the com-
15 munity mental health program director of the county in which the person
16 was taken into custody notify the circuit court in the county where the
17 person resides. Otherwise, the community mental health program director of
18 the county in which the person was taken into custody shall notify, imme-
19 diately and in writing, the circuit court in the county in which the person
20 was taken into custody.

21 “(b) If, at any time prior to the hearing under ORS 426.070 to 426.130, a
22 community mental health program director, after consultation with a [*phy-*
23 *sician*] **licensed independent practitioner**, determines that a person ad-
24 mitted or retained under ORS 426.233 is not dangerous to self or to any other
25 person and is not in need of immediate care, custody or treatment for mental
26 illness, the community mental health program director may release the per-
27 son from detention. The community mental health program director shall
28 immediately notify the circuit court originally notified under paragraph (a)
29 of this subsection of the person's release from detention.

30 “(4) When the judge of the circuit court receives notice under subsection

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

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

15 **“SECTION 16.** ORS 426.235 is amended to read:

16 “426.235. (1) The community mental health program director may transfer
17 a person in custody under ORS 426.232, 426.233 or 426.237 (1)(b) to a hospital
18 or nonhospital facility approved by the Oregon Health Authority at any time
19 during the period of detention.

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

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

28 “(4) In transporting a person between a hospital and nonhospital facility
29 under this section, the community mental health program director has all the
30 powers provided in ORS 133.225 and 161.255 and may compel the assistance

1 of any peace officer or other authorized individual.

2 “(5) When a person is transferred under this section, the community
3 mental health program director shall notify immediately the court notified
4 under ORS 426.234 (2) or (3) of the fact of the transfer and of the location
5 of the person.

6 **“SECTION 17.** ORS 426.237 is amended to read:

7 “426.237. (1) During a prehearing period of detention as provided in ORS
8 426.070, 426.140, 426.232 or 426.233, the community mental health program
9 director shall do one of the following:

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

14 “(b) No later than three judicial days after initiation of a prehearing pe-
15 riod of detention as provided in ORS 426.070, 426.140, 426.232 or 426.233,
16 certify the detained person for a 14-day period of intensive treatment if:

17 “(A) The community mental health program director and a [*psychiatrist,*
18 *as defined by rule by the Oregon Health Authority,*] **physician licensed by**
19 **the Oregon Medical Board** have probable cause to believe the person is a
20 person with mental illness;

21 “(B) The community mental health program director in the county where
22 the person resides verbally approves the arrangements for payment for the
23 services at the hospital or nonhospital facility; and

24 “(C) The community mental health program director locates a hospital
25 or nonhospital facility that:

26 “(i) Is approved by the authority and the community mental health pro-
27 gram director in the county where the person resides; and

28 “(ii) Can, in the opinion of the community mental health program director
29 and [*the psychiatrist*] **a licensed independent practitioner**, provide inten-
30 sive care or treatment for mental illness necessary and sufficient to meet the

1 emergency psychiatric needs of the person.

2 “(c) Recommend, in an investigation report as provided in ORS 426.074,
3 that the circuit court hold a hearing under ORS 426.070 to 426.130 if the
4 community mental health program director has probable cause to believe the
5 person is a person with mental illness or that the person is in need of as-
6 sisted outpatient treatment.

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

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

14 “(B) Hospital, the [*treating physician*] **licensed independent practitioner**
15 **who is treating the person** shall make discharge plans and discharge the
16 person.

17 “(b) Upon release of the person, the community mental health program
18 director shall attempt to notify the person’s next of kin if the person con-
19 sents to the notification.

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

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

24 “(B) Orally inform the person of the certification and deliver a copy of
25 the certificate to the person.

26 “(b) The certificate required by paragraph (a) of this subsection shall in-
27 clude:

28 “(A) A written statement under oath by the community mental health
29 program director and the [*psychiatrist*] **physician** that they have probable
30 cause to believe the person is a person with mental illness in need of care

1 or treatment for mental illness;

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

5 “(C) A notice of the person’s right to an attorney and that an attorney
6 will be appointed by the court or as otherwise obtained under ORS 426.100
7 (3);

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

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

13 “(c) Immediately upon receipt of a certificate under paragraph (a) of this
14 subsection, the court shall notify the person’s attorney or appoint an attor-
15 ney for the person if the person cannot afford one. Within 24 hours of the
16 time the certificate is delivered to the court, the person’s attorney shall re-
17 view the certificate with the person. If the person and the person’s attorney
18 consent to the certification within one judicial day of the time the certificate
19 is delivered to the circuit court and, except as provided in subsection (4) of
20 this section, the court shall postpone the hearing required by ORS 426.070
21 to 426.130 for 14 days.

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

24 “(A) Except as otherwise provided in this paragraph, all methods of
25 treatment, including the prescription and administration of drugs, shall be
26 the sole responsibility of the [*treating physician*] **licensed independent**
27 **practitioner who is treating the person**. However, the person shall not
28 be subject to electroshock therapy or unduly hazardous treatment and shall
29 receive usual and customary treatment in accordance with medical standards
30 in the community.

1 “(B) Except when the person expressly refuses treatment, the treating
2 [*physician*] **licensed independent practitioner** shall treat the person within
3 the scope of the treatment plan provided the person under paragraph (b) of
4 this subsection. The person’s refusal of treatment constitutes sufficient
5 grounds for the community mental health program director to request a
6 hearing as provided in subsection (4)(a) of this section.

7 “(C) If the person is in a hospital and the community mental health pro-
8 gram director locates a nonhospital facility, approved by the authority, that,
9 in the opinion of the community mental health program director and the
10 [*treating physician*] **licensed independent practitioner who is treating the**
11 **person**, can provide care or treatment for mental illness necessary and suf-
12 ficient to meet the emergency psychiatric needs of the person, the treating
13 [*physician*] **licensed independent practitioner** shall discharge the person
14 from the hospital and the community mental health program director shall
15 remove the person to the nonhospital facility for the remainder of the 14-day
16 intensive treatment period. If, however, in the opinion of the treating [*phy-*
17 *sician*] **licensed independent practitioner**, the person’s condition requires
18 the person to receive medical care or treatment, the [*physician*] **licensed**
19 **independent practitioner** shall retain the person in the hospital.

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

23 “(i) If, in the opinion of a [*physician*] **licensed independent**
24 **practitioner**, the person’s condition requires the person to receive medical
25 care or treatment in a hospital; and

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

29 “(E) If the person is transferred as provided in subparagraph (C) or (D)
30 of this paragraph, the community mental health program director shall notify

1 the circuit court, in the county where the certificate was filed, of the lo-
2 cation of the person. The person may appeal the transfer as provided by rules
3 of the authority.

4 “(e) If the person is in a hospital, the [*treating physician*] **licensed inde-**
5 **pendent practitioner who is treating the person** may discharge the per-
6 son at any time during the 14-day period. The treating [*physician*] **licensed**
7 **independent practitioner** shall confer with the community mental health
8 program director and the person’s next of kin, if the person consents to the
9 consultation, prior to discharging the person. Immediately upon discharge
10 of the person, the treating [*physician*] **licensed independent practitioner**
11 shall notify the court in the county in which the certificate was filed ini-
12 tially.

13 “(f) If the person is in a nonhospital facility, the community mental
14 health program director may discharge the person at any time during the
15 14-day period. The community mental health program director shall consult
16 with the [*treating physician*] **licensed independent practitioner who is**
17 **treating the person** and the person’s next of kin, if the person consents to
18 the consultation, prior to discharging the person. Immediately upon dis-
19 charge of the person, the community mental health program director shall
20 notify the court in the county in which the certificate was filed initially.

21 “(g) The person may agree to voluntary treatment at any time during the
22 14-day period. When a person agrees to voluntary treatment under this par-
23 agraph, the community mental health program director immediately shall
24 notify the court in the county in which the certificate was filed initially.

25 “(h) A person consenting to 14 days of treatment under subsection (3)(c)
26 of this section shall not be held longer than 14 days from the time of con-
27 senting without a hearing as provided in ORS 426.070 to 426.130.

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

30 “(4) The judge of the circuit court shall immediately commence pro-

1 proceedings under ORS 426.070 to 426.130 when:

2 “(a) The person consenting to 14 days of treatment or the community
3 mental health program director requests a hearing. The hearing shall be held
4 without unreasonable delay. In no case shall the person be held in a hospital
5 or nonhospital facility longer than five judicial days after the request for a
6 hearing is made without a hearing being held under ORS 426.070 to 426.130.

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

10 **“SECTION 18.** ORS 426.292 is amended to read:

11 “426.292. Nothing in this chapter and ORS 430.397 to 430.401 prohibits the
12 Oregon Health Authority from releasing a person from a hospital or other
13 facility in which the person is being treated prior to the expiration of the
14 period of commitment under ORS 426.130 when, in the opinion of the director
15 of the facility or [*treating physician*] **the licensed independent practitioner**
16 **who is treating the person**, the person is no longer a person with mental
17 illness.

18 **“SECTION 19.** ORS 426.335 is amended to read:

19 “426.335. The following limitations on liability are applicable to actions
20 and proceedings within this chapter and ORS 430.397 to 430.401:

21 “(1) The following individuals may not in any way be held criminally or
22 civilly liable for the initiation of commitment procedures under ORS 426.070,
23 provided the individual acts in good faith, on probable cause and without
24 malice:

25 “(a) The community mental health program director or designee of the
26 director.

27 “(b) The two petitioning persons.

28 “(c) The county health officer.

29 “(d) Any magistrate.

30 “(e) Any peace officer or parole and probation officer.

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

3 “(g) Any [*physician*] **licensed independent practitioner** associated with
4 the hospital or institution where the person alleged to have a mental illness
5 is a patient.

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

11 “(3) The individual representing the state’s interest under ORS 426.100
12 shall not be held criminally or civilly liable for performing responsibilities
13 under ORS 426.100 as long as the individual acts in good faith and without
14 malice.

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

18 “(5) A [*physician*] **licensed independent practitioner**, hospital or judge
19 may not be held criminally or civilly liable for actions pursuant to ORS
20 426.228, 426.231, 426.232, 426.234 or 426.235 if the [*physician*] **inde-**
21 **pendent practitioner**, hospital or judge acts in good faith, on probable
22 cause and without malice.

23 “(6) A peace officer, individual authorized under ORS 426.233, community
24 mental health director or designee, hospital or other facility, [*physician*] **li-**
25 **censed independent practitioner** or judge may not in any way be held
26 criminally or civilly liable for actions pursuant to ORS 426.228 to 426.235 if
27 the individual or facility acts in good faith, on probable cause and without
28 malice.

29 “(7) Any legal guardian, relative or friend of a person with mental illness
30 who assumes responsibility for the person under a conditional release under

1 ORS 426.125 shall not be liable for any damages that result from the mis-
2 conduct of the person while on conditional release if the legal guardian,
3 relative or friend acts in good faith and without malice.

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

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

11 “(b) The superintendent or director of any staff of any facility where the
12 person with mental illness receives treatment during the outpatient commit-
13 ment.

14 “(c) The Director of the Oregon Health Authority.

15 “(d) The [*physician*] **licensed independent practitioner** and the facility
16 providing care or treatment to a person on outpatient commitment.

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

18 “(a) The following individuals and entities may not be liable for a
19 person’s expenses while on trial visit:

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

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

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

25 “(D) The chief medical officer of the facility.

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

30 “(A) The community mental health program director for the county in

1 which the person resides;

2 “(B) The superintendent, director or chief medical officer of any facility
3 providing care or treatment to a patient on a trial visit;

4 “(C) The [*physician*] **licensed independent practitioner** responsible for
5 the patient’s care or treatment during a trial visit;

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

7 “(E) The employees and agents of individuals or facilities under this
8 paragraph.

9 **“SECTION 20.** ORS 426.495 is amended to read:

10 “426.495. (1) As used in ORS 426.490 to 426.500, unless the context requires
11 otherwise:

12 “(a) ‘Case manager’ means a person who works on a continuing basis with
13 a person with a chronic mental illness and is responsible for assuring the
14 continuity of the various services called for in the discharge plan of the
15 person with a chronic mental illness including services for basic personal
16 maintenance, mental and personal treatment, and appropriate education and
17 employment.

18 “(b) ‘Discharge plan’ means a written plan prepared jointly with the per-
19 son with a chronic mental illness, mental health staff and case manager prior
20 to discharge, prescribing for the basic and special needs of the person upon
21 release from the hospital.

22 “(c) ‘Person with a chronic mental illness’ means an individual who is:

23 “(A) Eighteen years of age or older; and

24 “(B) Diagnosed by a psychiatrist, a licensed clinical psychologist, a **li-**
25 **icensed independent practitioner as defined in ORS 426.005** or a non-
26 medical examiner certified by the Oregon Health Authority or the
27 Department of Human Services as having chronic schizophrenia, a chronic
28 major affective disorder, a chronic paranoid disorder or another chronic
29 psychotic mental disorder other than those caused by substance abuse.

30 “(2) For purposes of providing services in the community, the authority

1 may adopt rules consistent with accepted professional practices in the fields
2 of psychology and psychiatry to specify other criteria for determining who
3 is a person with a chronic mental illness.

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

7
