

D R A F T

SUMMARY

Defines “dangerous to self or others” for purpose of taking person with mental illness into custody. Describes evidence that court must consider in civil commitment proceedings.

A BILL FOR AN ACT

Relating to persons with mental illness who are dangerous to self or others; creating new provisions; and amending ORS 163.738, 426.005, 426.070, 426.074, 426.130, 426.133, 426.160, 426.180, 426.225, 426.228, 426.231, 426.232, 426.233, 426.234 and 430.399.

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

SECTION 1. ORS 426.005 is amended to read:

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

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

(b) “Dangerous to self or others” means likely to inflict serious physical harm upon self or another person within the next 30 days.

[(b)] (c) “Director of the facility” means a superintendent of a state mental hospital, the chief of psychiatric services in a community hospital or the person in charge of treatment and rehabilitation programs at other treatment facilities.

[(c)] (d) “Facility” means a state mental hospital, community hospital, residential facility, detoxification center, day treatment facility or such other facility as the authority determines suitable that provides diagnosis and

1 evaluation, medical care, detoxification, social services or rehabilitation to
2 persons who are in custody during a prehearing period of detention or who
3 have been committed to the Oregon Health Authority under ORS 426.130.

4 [(d)] (e) “Licensed independent practitioner” means:

5 (A) A physician, as defined in ORS 677.010;

6 (B) A nurse practitioner licensed under ORS 678.375 and authorized to
7 write prescriptions under ORS 678.390; or

8 (C) A naturopathic physician licensed under ORS chapter 685.

9 [(e)] (f) “Nonhospital facility” means any facility, other than a hospital,
10 that is approved by the authority to provide adequate security, psychiatric,
11 nursing and other services to persons under ORS 426.232 or 426.233.

12 [(f)] (g) “Person with mental illness” means a person who, because of a
13 mental disorder, is one or more of the following:

14 (A) Dangerous to self or others.

15 (B) Unable to provide for basic personal needs that are necessary to avoid
16 serious physical harm in the near future, and is not receiving such care as
17 is necessary to avoid such harm.

18 (C) A person:

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

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

23 (iii) Who is exhibiting symptoms or behavior substantially similar to
24 those that preceded and led to one or more of the hospitalizations or inpa-
25 tient placements referred to in sub-subparagraph (ii) of this subparagraph;
26 and

27 (iv) Who, unless treated, will continue, to a reasonable medical probabil-
28 ity, to physically or mentally deteriorate so that the person will become a
29 person described under either subparagraph (A) or (B) of this paragraph or
30 both.

31 [(g)] (h) “Prehearing period of detention” means a period of time calcu-

lated from the initiation of custody during which a person may be detained under ORS 426.228, 426.231, 426.232 or 426.233.

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

SECTION 2. ORS 426.130 is amended to read:

426.130. (1) After hearing all of the evidence, and reviewing the findings of the examiners, the court shall determine whether the person has a mental illness and is in need of treatment. **In determining whether a person has a mental illness based on the person being dangerous to self or others, the court:**

(a) May consider, but is not limited to, the following:

(A) Threats or attempts to commit suicide or inflict serious physical harm upon self.

(B) Threats or attempts to inflict serious physical harm upon another person, if the threats or attempts would place a reasonable person in fear of imminent serious physical harm.

(C) Any past behavior by the person that resulted in physical harm to self or physical harm to another person.

(b) Shall consider, at a minimum, when assessing the relevance of the person's past behavior, how recently the past behavior occurred and the frequency and severity of the past behavior.

(2) If, in the opinion of the court, the person:

(a) Is a person with mental illness based upon clear and convincing evidence, the court:

(A) Shall order the release of the person and dismiss the case if:

(i) The person is willing and able to participate in treatment on a voluntary basis; and

(ii) The court finds that the person will probably do so.

(B) May order conditional release under this subparagraph subject to the

1 qualifications and requirements under ORS 426.125. If the court orders
2 conditional release under this subparagraph, the court shall establish a pe-
3 riod of commitment for the conditional release.

4 (C) May order commitment of the person with mental illness to the
5 Oregon Health Authority for treatment if, in the opinion of the court, sub-
6 paragraph (A) or (B) of this paragraph is not in the best interest of the
7 person. If the court orders commitment under this subparagraph:

8 (i) The court shall establish a period of commitment.

9 (ii) The authority may place the committed person in outpatient commit-
10 ment under ORS 426.127.

11 (D) Shall order that the person be prohibited from purchasing or pos-
12 sessing a firearm if, in the opinion of the court, there is a reasonable like-
13 lihood the person [*would constitute a danger*] **is dangerous** to self or others
14 or to the community at large as a result of the person's mental or psycho-
15 logical state as demonstrated by past behavior or participation in incidents
16 involving unlawful violence or threats of unlawful violence, or by reason of
17 a single incident of extreme, violent, unlawful conduct. When a court makes
18 an order under this subparagraph, the court shall cause a copy of the order
19 to be delivered to the sheriff of the county who will enter the information
20 into the Law Enforcement Data System.

21 (b) Is not a person with mental illness, the court shall release the person
22 from custody if the person has been detained under ORS 426.070, 426.180,
23 426.228, 426.232 or 426.233 and:

24 (A) Dismiss the case; or

25 (B) Order the person to participate in assisted outpatient treatment in
26 accordance with ORS 426.133. The court may continue the proceeding for no
27 more than seven days to allow time for the community mental health pro-
28 gram director to develop the person's assisted outpatient treatment plan.

29 [(2)] (3) A court that orders a conditional release, a commitment or as-
30 sisted outpatient treatment under this section shall establish a period of
31 commitment or treatment for the person subject to the order. Any period of

commitment ordered for commitment or conditional release under this section shall be for a period of time not to exceed 180 days. A period of assisted outpatient treatment shall be for a period of time not to exceed 12 months.

[(3)] (4) If the commitment proceeding was initiated under ORS 426.070 (1)(a) and if the notice included a request under ORS 426.070 (2)(d)(B), the court shall notify the two persons of the court's determination under subsection [(1)] (2) of this section.

[(4)] (5) If the court finds that the person is a person with mental illness and either orders commitment under subsection [(1)(a)(B)] (2)(a)(B) or (C) of this section or enters an order under subsection [(1)(a)(D)] (2)(a)(D) of this section, the court shall notify the person that the person is prohibited from purchasing or possessing a firearm under state and federal law unless the person obtains relief from the prohibition from the Psychiatric Security Review Board under ORS 166.273 or under federal law.

SECTION 3. ORS 426.070 is amended to read:

426.070. (1) Any of the following may initiate commitment procedures under this section by giving the notice described under subsection (2) of this section:

- (a) Two persons;
- (b) The local health officer; or
- (c) Any magistrate or **any** judge of a court of a federally recognized Indian tribe located in this state.

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

- (a) It must be in writing under oath;
- (b) It must be given to the community mental health program director or a designee of the director in the county where the person alleged to have a mental illness resides;
- (c) It must state that a person within the county other than the person giving the notice is a person with mental illness and is in need of treatment, care or custody;

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

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

(B) Of the court's determination under ORS 426.130 [(1)] **(2)**; and

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

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

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

(b) Immediately notify the Oregon Health Authority if commitment is proposed because the person appears to be a person with mental illness, as defined in ORS 426.005 [(1)(f)(C)] **(1)(g)(C)**. When such notice is received, the authority may verify, to the extent known by the authority, whether or not the person meets the criteria described in ORS 426.005 [(1)(f)(C)(i)] **(1)(g)(C)(i)** and (ii) and so inform the community mental health program director or designee of the director.

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

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

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

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

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

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

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

(ii) The warning under ORS 426.123; and

(iii) The person's right, if the community mental health program director, sheriff or designee reasonably suspects that the person is a foreign national, to communicate with an official from the consulate of the person's country.

A community mental health program director, sheriff or designee is not civilly or criminally liable for failure to provide the information required by this sub-subparagraph. Failure to provide the information required by this sub-subparagraph does not in itself constitute grounds for the exclusion of evidence that would otherwise be admissible in a proceeding.

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

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

SECTION 4. ORS 426.074 is amended to read:

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

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

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

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

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

(B) An application for extension shall be made to the court under paragraph (c) of this subsection.

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

(A) A treatment option less restrictive than involuntary inpatient commitment is actively being pursued.

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

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

ate.

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

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

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

(c) The investigator shall be allowed access to licensed independent practitioners, nurses or social workers and to medical records compiled during the current involuntary prehearing period of detention to determine probable cause and to develop alternatives to commitment. If commitment is proposed because the person appears to be a person with mental illness as defined in ORS 426.005 [(1)(f)(C)] (1)(g)(C), the investigator shall be allowed access to medical records necessary to verify the existence of criteria described in ORS 426.005 [(1)(f)(C)] (1)(g)(C). The investigator shall include pertinent parts of the medical record in the investigation report. Records and communications described in this paragraph and related communications are not privileged under ORS 40.230, 40.235, 40.240 or 40.250.

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

SECTION 5. ORS 426.133 is amended to read:

426.133. (1) As used in ORS 426.005 to 426.390, "assisted outpatient treatment" may not be construed to be a commitment under ORS 426.130 and does not include taking a person into custody or the forced medication of a per-

son.

(2) A court may issue an order requiring a person to participate in assisted outpatient treatment if the court finds that the person:

(a)(A) Is 18 years of age or older;

(B) Has a mental disorder;

(C) Will not obtain treatment in the community voluntarily; and

(D) Is unable to make an informed decision to seek or to comply with voluntary treatment; and

(b) As a result of being a person described in paragraph (a) of this subsection:

(A) Is incapable of surviving safely in the community without treatment; and

(B) Requires treatment to prevent a deterioration in the person's condition that will predictably result in the person becoming a person with mental illness.

(3) In determining whether to issue the order under subsection (2) of this section, the court shall consider, but is not limited to considering, the following factors:

(a) The person's ability to access finances in order to get food or medicine.

(b) The person's ability to obtain treatment for the person's medical condition.

(c) The person's ability to access necessary resources in the community without assistance.

(d) The degree to which there are risks to the person's safety.

(e) The likelihood that the person will decompensate without immediate care or treatment.

(f) The person's previous attempts to inflict physical injury on self or others.

(g) The person's history of mental health treatment in the community.

(h) The person's patterns of decompensation in the past.

(i) The person's risk of being victimized or harmed by others.

(j) The person's access to the means to inflict harm on self or others.

(4) The community mental health program director may recommend to the court a treatment plan for a person participating in assisted outpatient treatment. The court may adopt the plan as recommended or with modifications.

(5) As part of the order under subsection (2) of this section, the court may prohibit the person from purchasing or possessing a firearm during the period of assisted outpatient treatment if, in the opinion of the court, there is a reasonable likelihood the person [*would constitute a danger*] **is dangerous** to self or others or to the community at large as a result of the person's mental or psychological state, as demonstrated by past behavior or participation in incidents involving unlawful violence or threats of unlawful violence, or by reason of a single incident of extreme, violent, unlawful conduct. When a court adds a firearm prohibition to an order under subsection (2) of this section, the court shall cause a copy of the order to be delivered to the sheriff of the county, who shall enter the information into the Law Enforcement Data System.

(6) The court retains jurisdiction over the person until the earlier of the end of the period of the assisted outpatient treatment established under ORS 426.130 [(2)] (3) or until the court finds that the person no longer meets the criteria in subsection (2) of this section.

(7) This section does not:

(a) Prevent a court from appointing a guardian ad litem to act for the person; or

(b) Require a community mental health program to provide treatment or services to, or supervision of, the person:

(A) If the county lacks sufficient funds for such purposes; or

(B) In the case of a county that has declined to operate or contract for a community mental health program, if the public agency or private corporation that contracts with the Oregon Health Authority to provide the pro-

gram, as described in ORS 430.640, lacks sufficient funds for such purposes.

SECTION 6. ORS 426.160 is amended to read:

426.160. (1) The court having jurisdiction over any proceeding conducted pursuant to ORS 426.005, 426.060 to 426.170, 426.217, 426.228, 426.255 to 426.292, 426.300 to 426.309, 426.385, 426.395, 426.701 and 426.702 may not disclose any part of the record of the proceeding or commitment to any person except:

(a) The court shall, pursuant to rules adopted by the Department of State Police, transmit the minimum information necessary, as defined in ORS 181A.290, to the Department of State Police for persons described in ORS 181A.290 (1)(a) or (b) to enable the department to access and maintain the information and transmit the information to the federal government as required under federal law;

(b) As provided in ORS 426.070 (5)(c), 426.130 [(3)] (4) or 426.170;

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

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

(e) Pursuant to court order.

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

SECTION 7. ORS 426.180 is amended to read:

426.180. (1) ORS 426.180 to 426.210 apply to the commitment of an individual in Indian country if a federally recognized Indian tribe that has Indian country located within this state chooses to exercise the tribe's authority over the commitment.

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

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

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

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

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

(B) A qualified mental health professional; or

(C) A licensed independent practitioner.

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

(5) The director of the hospital or nonhospital facility may refuse to admit the individual if a licensed independent practitioner, after reviewing the documents accompanying the individual, is not satisfied that an emergency exists or that the individual is dangerous to self or others and **is** in need of immediate care, custody or treatment for mental illness.

(6) If the hospital or nonhospital facility admits the individual, the director or a licensed independent practitioner shall notify the community mental health program director for the area and the circuit court with ju-

risdiction in the area where the facility is located. Upon receipt of the notice, the community mental health program director shall initiate commitment proceedings in accordance with ORS 426.070.

(7) If an individual is admitted to a hospital or nonhospital facility under this section, any licensed independent practitioner who is treating the individual shall give the individual the warning under ORS 426.123.

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

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

SECTION 8. ORS 426.225 is amended to read:

426.225. (1) If any person who has been committed to the Oregon Health Authority under ORS 426.127 or 426.130 [(1)(a)(B)] **(2)(a)(B)** or (C) requests, during this period of commitment, voluntary admission to a state hospital, the superintendent shall cause the person to be examined immediately by a licensed independent practitioner. If the licensed independent practitioner finds the person to be in need of immediate care or treatment for mental illness, the person shall be voluntarily admitted.

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

SECTION 9. ORS 426.228 is amended to read:

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

(a) The reason for custody;

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

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

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

(a) The reason for custody;

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

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

(3) If more than one hour will be required to transport the person to the hospital or nonhospital facility from the location where the person was taken into custody, the peace officer shall obtain, if possible, a certificate from a licensed independent practitioner stating that the travel will not be detrimental to the person's physical health and that the person is dangerous to

1 self or [*to any other person*] **others** and is in need of immediate care or
2 treatment for mental illness. The licensed independent practitioner shall
3 have personally examined the person within 24 hours prior to signing the
4 certificate.

5 (4) When a peace officer or other authorized individual, acting under this
6 section, delivers a person to a hospital or nonhospital facility, a licensed
7 independent practitioner shall examine the person immediately. If the li-
8 censed independent practitioner finds the person to be in need of emergency
9 care or treatment for mental illness, the licensed independent practitioner
10 shall proceed under ORS 426.232, otherwise the person may not be retained
11 in custody. If the person is to be released from custody, the peace officer or
12 the community mental health program director shall return the person to the
13 place where the person was taken into custody unless the person declines
14 that service.

15 (5) A peace officer may transfer a person in custody under this section
16 to the custody of an individual authorized by the community mental health
17 program director under ORS 426.233 (3). The peace officer may meet the
18 authorized individual at any location that is in accordance with ORS 426.140
19 to effect the transfer. When transferring a person in custody to an authorized
20 individual, the peace officer shall deliver the report required under sub-
21 sections (1) and (2) of this section to the authorized individual.

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

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

29 (8) An individual authorized under ORS 426.233 (3) may transfer a person
30 in custody under this section to the custody of another individual authorized
31 under ORS 426.233 (3) or a peace officer. The individual transferring custody

may meet another authorized individual or a peace officer at any location that is in accordance with ORS 426.140 to effect the transfer.

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

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

SECTION 10. ORS 426.231 is amended to read:

426.231. (1) A licensed independent practitioner may hold a person for transportation to a treatment facility for up to 12 hours in a health care facility licensed under ORS chapter 441 and approved by the Oregon Health Authority if:

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

(b) The licensed independent practitioner is not related to the person by blood or marriage; and

(c) A licensed independent practitioner with admitting privileges at the receiving facility consents to the transporting.

(2) Before transporting the person, the licensed independent practitioner shall prepare a written statement that:

(a) The licensed independent practitioner has examined the person within the preceding 12 hours;

(b) A licensed independent practitioner with admitting privileges at the receiving facility has consented to the transporting of the person for examination and admission if appropriate; and

(c) The licensed independent practitioner believes the person is dangerous to self or *[to any other person]* **others** and is in need of emergency care or

treatment for mental illness.

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

SECTION 11. ORS 426.232 is amended to read:

426.232. (1) If a licensed independent practitioner believes a person who is brought to a hospital or nonhospital facility by a peace officer under ORS 426.228 or by an individual authorized under ORS 426.233, or believes a person who is at a hospital or nonhospital facility, is dangerous to self or *[to any other person]* **others** and is in need of emergency care or treatment for mental illness, and the licensed independent practitioner is not related to the person by blood or marriage, the licensed independent practitioner may do one of the following:

(a) Detain the person and cause the person to be admitted or, if the person is already admitted, cause the person to be retained in a hospital where the licensed independent practitioner has admitting privileges or is on staff.

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

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

SECTION 12. ORS 426.233 is amended to read:

426.233. (1)(a) A community mental health program director operating under ORS 430.610 to 430.695 or a designee of the director may take one of the actions listed in paragraph (b) of this subsection when the community

1 mental health program director or designee has probable cause to believe a
2 person:

3 (A) Is dangerous to self or [*to any other person*] **others** and is in need of
4 immediate care, custody or treatment for mental illness; or

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

8 (ii) Is dangerous to self or [*to any other person*] **others** or is unable to
9 provide for basic personal needs and is not receiving the care that is neces-
10 sary for health and safety and is in need of immediate care, custody or
11 treatment for mental illness.

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

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

17 (B) Authorize involuntary admission of, or, if already admitted, cause to
18 be involuntarily retained in a nonhospital facility approved by the authority,
19 a person approved for care or treatment at a nonhospital facility by a li-
20 censed independent practitioner under ORS 426.232;

21 (C) Notify an individual authorized under subsection (3) of this section
22 to take the person into custody and direct the authorized individual to re-
23 move the person in custody to a hospital or nonhospital facility approved by
24 the authority;

25 (D) Direct an individual authorized under subsection (3) of this section
26 to transport a person in custody from a hospital or a nonhospital facility
27 approved by the authority to another hospital or nonhospital facility ap-
28 proved by the authority as provided under ORS 426.235; or

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

(2) A designee under subsection (1) of this section must meet the standards established by rule of the authority and be approved by the community mental health program director before assuming the authority permitted under subsection (1) of this section.

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

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

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

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

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

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

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

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

(5) The costs of transporting a person under ORS 426.060, 426.228 or 426.235 by an individual authorized under subsection (3) of this section shall be the responsibility of the community mental health program in the county in which the authorized individual is directed by a peace officer or a com-

1 munity mental health program director to take custody of a person and to
2 transport the person to a facility approved by the authority, but the com-
3 munity mental health program shall not be responsible for costs that exceed
4 the amount provided by the state for that transportation. An individual au-
5 thorized to act under subsection (3) of this section shall charge the cost of
6 emergency medical transportation to, and collect that cost from, the person,
7 third party payers or other legally or financially responsible individuals or
8 entities in the same manner that costs for the transportation of other persons
9 are charged and collected.

10 **SECTION 13.** ORS 426.234 is amended to read:

11 426.234. (1) At the time a person alleged to have a mental illness is ad-
12 mitted to or retained in a hospital or nonhospital facility under ORS 426.232
13 or 426.233, a licensed independent practitioner, nurse or qualified mental
14 health professional at the hospital or nonhospital facility shall:

15 (a) Inform the person of the person's right to representation by or ap-
16 pointment of counsel as described in ORS 426.100;

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

18 (c) Immediately examine the person;

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

21 (e) If the licensed independent practitioner, nurse or qualified mental
22 health professional reasonably suspects that the person is a foreign national,
23 inform the person of the person's right to communicate with an official from
24 the consulate of the person's country. A licensed independent practitioner,
25 nurse or qualified mental health professional is not civilly or criminally li-
26 able for failure to provide the information required by this paragraph. Fail-
27 ure to provide the information required by this paragraph does not in itself
28 constitute grounds for the exclusion of evidence that would otherwise be
29 admissible in a proceeding.

30 (2)(a) At the time the person is admitted to or retained in a hospital under
31 ORS 426.232, the licensed independent practitioner shall contact the commu-

1 nity mental health program director of the county in which the person re-
2 sides, if the county of residence is different from the county in which the
3 hospital is located. The community mental health program director may re-
4 quest that the licensed independent practitioner notify the circuit court in
5 the county in which the person resides. If the community mental health
6 program director does not make the request, the licensed independent prac-
7 titioner shall notify, immediately and in writing, the circuit court in the
8 county in which the person is hospitalized.

9 (b) At the time the person is admitted to a hospital under ORS 426.232
10 after being brought to the hospital by a peace officer under ORS 426.228, the
11 licensed independent practitioner shall contact the community mental health
12 program director of the county in which the person is hospitalized. The
13 community mental health program director of the county in which the person
14 is hospitalized may request that the licensed independent practitioner notify
15 the circuit court in the county in which the person is hospitalized. If the
16 community mental health program director does not make the request, the
17 licensed independent practitioner shall notify, immediately and in writing,
18 the circuit court in the county in which the person was taken into custody.

19 (c) If, at any time prior to the hearing under ORS 426.070 to 426.130, the
20 licensed independent practitioner responsible for a person admitted or re-
21 tained under ORS 426.232 determines that the person is not dangerous to self
22 or *[to any other person]* **others** and is not in need of emergency care or
23 treatment for mental illness, the licensed independent practitioner may re-
24 lease the person from the detention authorized by ORS 426.232. The licensed
25 independent practitioner shall immediately notify the circuit court notified
26 under this subsection and the community mental health program director of
27 the person's release from detention.

28 (3)(a) At the time the person is admitted to or retained in a nonhospital
29 facility under ORS 426.233, the community mental health program director
30 in the county where the person was taken into custody shall contact the
31 community mental health program director of the county in which the person

1 resides, if the county of residence is different from the county in which the
2 person was taken into custody. The community mental health program di-
3 rector of the county in which the person resides may request that the com-
4 munity mental health program director of the county in which the person
5 was taken into custody notify the circuit court in the county where the
6 person resides. Otherwise, the community mental health program director of
7 the county in which the person was taken into custody shall notify, imme-
8 diately and in writing, the circuit court in the county in which the person
9 was taken into custody.

10 (b) If, at any time prior to the hearing under ORS 426.070 to 426.130, a
11 community mental health program director, after consultation with a li-
12 censed independent practitioner, determines that a person admitted or re-
13 tained under ORS 426.233 is not dangerous to self or *[to any other person]*
14 **others** and is not in need of immediate care, custody or treatment for mental
15 illness, the community mental health program director may release the per-
16 son from detention. The community mental health program director shall
17 immediately notify the circuit court originally notified under paragraph (a)
18 of this subsection of the person's release from detention.

19 (4) When the judge of the circuit court receives notice under subsection
20 (2) or (3) of this section, the judge immediately shall commence proceedings
21 under ORS 426.070 to 426.130. In a county having a population of 100,000 or
22 more, and when feasible in a county with a lesser population, the community
23 mental health program director or designee who directs the peace officer or
24 other authorized individual to take a person into custody under ORS 426.233
25 shall not also conduct the investigation as provided for under ORS 426.074.
26 Except when a person is being held under ORS 426.237 (1)(b), a person shall
27 not be held under ORS 426.232 or 426.233 for more than five judicial days
28 without a hearing being held under ORS 426.070 to 426.130.

29 (5) When the judge of the circuit court receives notice under subsection
30 (2)(c) or (3)(b) of this section that a person has been released, and unless the
31 court receives the recommendation required by ORS 426.070 (4), the judge

1 shall dismiss the case no later than 14 days after the date the person was
2 initially detained.

3 **SECTION 14.** ORS 430.399 is amended to read:

4 430.399. (1) Any person who is intoxicated or under the influence of con-
5 trolled substances in a public place may be sent home or taken to a sobering
6 facility or to a treatment facility by a police officer. If the person is inca-
7 pacitated, the person shall be taken by the police officer to an appropriate
8 treatment facility or sobering facility. If the health of the person appears to
9 be in immediate danger, or the police officer has reasonable cause to believe
10 the person is dangerous to self or *[to any other person]* **others, as defined**
11 **in ORS 426.005**, the person shall be taken by the police officer to an appro-
12 priate treatment facility or sobering facility. A person shall be deemed in-
13 capacitated when in the opinion of the police officer the person is unable to
14 make a rational decision as to acceptance of assistance.

15 (2) When a person is taken to a treatment facility, the director of the
16 treatment facility shall determine whether the person shall be admitted as
17 a patient, referred to another treatment facility or a sobering facility or de-
18 nied referral or admission. If the person is incapacitated or the health of the
19 person appears to be in immediate danger, or if the director has reasonable
20 cause to believe the person is dangerous to self or *[to any other person]*
21 **others, as defined in ORS 426.005**, the person must be admitted. The person
22 shall be discharged within 48 hours unless the person has applied for vol-
23 untary admission to the treatment facility.

24 (3) When a person is taken to a sobering facility, the staff of the sobering
25 facility shall, consistent with the facility's comprehensive written policies
26 and procedures, determine whether or not the person shall be admitted into
27 the sobering facility. A person who is admitted shall be discharged from the
28 sobering facility within 24 hours.

29 (4) In the absence of any appropriate treatment facility or sobering facil-
30 ity, or if a sobering facility determines that a person should not be admitted
31 to the sobering facility, an intoxicated person or a person under the influ-

ence of controlled substances who would otherwise be taken by the police officer to a treatment facility or sobering facility may be taken to the city or county jail where the person may be held until no longer intoxicated, under the influence of controlled substances or incapacitated.

(5) An intoxicated person or person under the influence of controlled substances, when taken into custody by the police officer for a criminal offense, shall immediately be taken to the nearest appropriate treatment facility when the condition of the person requires emergency medical treatment.

(6) The records of a person at a treatment facility or sobering facility may not, without the person's consent, be revealed to any person other than the director and staff of the treatment facility or sobering facility. A person's request that no disclosure be made of admission to a treatment facility or sobering facility shall be honored unless the person is incapacitated or disclosure of admission is required by ORS 430.397.

SECTION 15. ORS 163.738 is amended to read:

163.738. (1)(a) A citation shall notify the respondent of a circuit court hearing where the respondent shall appear at the place and time set forth in the citation. The citation shall contain:

- (A) The name of the court at which the respondent is to appear;
- (B) The name of the respondent;
- (C) A copy of the stalking complaint;
- (D) The date, time and place at which the citation was issued;
- (E) The name of the law enforcement officer who issued the citation;
- (F) The time, date and place at which the respondent is to appear in court;
- (G) Notice to the respondent that failure to appear at the time, date and place set forth in the citation shall result in the respondent's arrest and entry of a court's stalking protective order; and
- (H) Notice to the respondent of potential liability under federal law for the possession or purchase of firearms or firearm ammunition and for other

1 acts prohibited by 18 U.S.C. 2261 to 2262.

2 (b) The officer shall notify the petitioner in writing of the place and time
3 set for the hearing.

4 (2)(a) The hearing shall be held as indicated in the citation. At the
5 hearing, the petitioner may appear in person or by telephonic appearance.
6 The respondent shall be given the opportunity to show cause why a court's
7 stalking protective order should not be entered. The hearing may be contin-
8 ued for up to 30 days. The court may enter:

9 (A) A temporary stalking protective order pending further proceedings;
10 or

11 (B) A court's stalking protective order if the court finds by a preponder-
12 ance of the evidence that:

13 (i) The person intentionally, knowingly or recklessly engages in repeated
14 and unwanted contact with the other person or a member of that person's
15 immediate family or household thereby alarming or coercing the other per-
16 son;

17 (ii) It is objectively reasonable for a person in the victim's situation to
18 have been alarmed or coerced by the contact; and

19 (iii) The repeated and unwanted contact causes the victim reasonable ap-
20 prehension regarding the personal safety of the victim or a member of the
21 victim's immediate family or household.

22 (b) In the order, the court shall specify the conduct from which the re-
23 spondent is to refrain, which may include all contact listed in ORS 163.730
24 and any attempt to make contact listed in ORS 163.730. The order is of un-
25 limited duration unless limited by law. If the respondent was provided notice
26 and an opportunity to be heard, the court shall also include in the order,
27 when appropriate, terms and findings sufficient under 18 U.S.C. 922 (d)(8) and
28 (g)(8) to affect the respondent's ability to possess firearms and ammunition
29 or engage in activities involving firearms.

30 (3) The circuit court may enter an order under this section against a mi-
31 nor respondent without appointment of a guardian ad litem.

(4) If the respondent fails to appear at the time, date and place specified in the citation, the circuit court shall issue a warrant of arrest as provided in ORS 133.110 in order to ensure the appearance of the respondent at court and shall enter a court's stalking protective order.

(5) The circuit court may also order the respondent to undergo mental health evaluation and, if indicated by the evaluation, treatment. If the respondent is without sufficient resources to obtain the evaluation or treatment, or both, the court shall refer the respondent to the mental health agency designated by the community mental health director for evaluation or treatment, or both.

(6) If the circuit court, the mental health evaluator or any other persons have probable cause to believe that the respondent is dangerous to self or others, **as defined in ORS 426.005**, or is unable to provide for basic personal needs, the court shall initiate commitment procedures as provided in ORS 426.070 or 426.180.

(7) A law enforcement officer shall report the results of any investigation arising from a complaint under ORS 163.744 to the district attorney within three days after presentation of the complaint.

(8) Except for purposes of impeachment, a statement made by the respondent at a hearing under this section may not be used as evidence in a prosecution for stalking as defined in ORS 163.732 or for violating a court's stalking protective order as defined in ORS 163.750.

SECTION 16. The amendments to ORS 163.738, 426.005, 426.070, 426.074, 426.130, 426.133, 426.160, 426.180, 426.225, 426.228, 426.231, 426.232, 426.233, 426.234 and 430.399 by sections 1 to 15 of this 2021 Act apply to individuals who are taken into custody by a treatment facility or law enforcement on or after the effective date of this 2021 Act.