

D R A F T

SUMMARY

Defines “dangerous to self or others” for purposes of civil commitment proceedings. Describes evidence that court may consider in determining whether person is dangerous to self or others.

A BILL FOR AN ACT

1
2 Relating to civil commitment; amending ORS 163.738, 426.005, 426.070,
3 426.074, 426.130, 426.133, 426.160, 426.180, 426.225, 426.228, 426.231, 426.232,
4 426.233 and 426.234.

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

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

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

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

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

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

17 [(c)] (d) “Facility” means a state mental hospital, community hospital,
18 residential facility, detoxification center, day treatment facility or such other
19 facility as the authority determines suitable that provides diagnosis and
20 evaluation, medical care, detoxification, social services or rehabilitation to

1 persons who are in custody during a prehearing period of detention or who
2 have been committed to the Oregon Health Authority under ORS 426.130.

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

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

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

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

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

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

13 (A) Dangerous to self or others.

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

17 (C) A person:

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

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

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

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

30 [(g)] (h) “Prehearing period of detention” means a period of time calcu-
31 lated from the initiation of custody during which a person may be detained

1 under ORS 426.228, 426.231, 426.232 or 426.233.

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

6 **SECTION 2.** ORS 426.130 is amended to read:

7 426.130. (1) After hearing all of the evidence, and reviewing the findings
8 of the examiners, the court shall determine whether the person has a mental
9 illness and is in need of treatment. **In determining whether a person has**
10 **a mental illness based on the person being dangerous to self or others,**
11 **the court:**

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

13 (A) **Threats or attempts to commit suicide or inflict serious phys-**
14 **ical harm upon self.**

15 (B) **Threats or attempts to inflict serious physical harm upon an-**
16 **other person, if the threats or attempts would place a reasonable per-**
17 **son in fear of imminent serious physical harm.**

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

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

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

24 (a) Is a person with mental illness based upon clear and convincing evi-
25 dence, the court:

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

27 (i) The person is willing and able to participate in treatment on a vol-
28 untary basis; and

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

30 (B) May order conditional release under this subparagraph subject to the
31 qualifications and requirements under ORS 426.125. If the court orders

1 conditional release under this subparagraph, the court shall establish a pe-
2 riod of commitment for the conditional release.

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

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

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

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

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

23 (A) Dismiss the case; or

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

28 [(2)] (3) A court that orders a conditional release, a commitment or as-
29 sisted outpatient treatment under this section shall establish a period of
30 commitment or treatment for the person subject to the order. Any period of
31 commitment ordered for commitment or conditional release under this sec-

1 tion shall be for a period of time not to exceed 180 days. A period of assisted
2 outpatient treatment shall be for a period of time not to exceed 12 months.

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

7 [(4)] (5) If the court finds that the person is a person with mental illness
8 and either orders commitment under subsection [(1)(a)(B) or (C)] (2)(a)(B)
9 or (C) of this section or enters an order under subsection [(1)(a)(D)]
10 (2)(a)(D) of this section, the court shall notify the person that the person
11 is prohibited from purchasing or possessing a firearm under state and federal
12 law unless the person obtains relief from the prohibition from the Psychiat-
13 ric Security Review Board under ORS 166.273 or under federal law.

14 **SECTION 3.** ORS 426.070 is amended to read:

15 426.070. (1) Any of the following may initiate commitment procedures
16 under this section by giving the notice described under subsection (2) of this
17 section:

- 18 (a) Two persons;
- 19 (b) The local health officer; or
- 20 (c) Any magistrate.

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

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

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

1 the two persons:

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

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

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

6 (3) Upon receipt of a notice under subsections (1) and (2) of this section
7 or when notified by a circuit court that the court received notice under ORS
8 426.234, the community mental health program director, or designee of the
9 director, shall:

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

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

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

23 (4) Upon completion, a recommendation based upon the investigation re-
24 port under ORS 426.074 shall be promptly submitted to the court. If the
25 community mental health program director determines that probable cause
26 does not exist to believe that a person released from detention under ORS
27 426.234 (2)(c) or (3)(b) is a person with mental illness, the community mental
28 health program director may recommend assisted outpatient treatment in
29 accordance with ORS 426.133.

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

31 (a) If the court, following the investigation, concludes that there is

1 probable cause to believe that the person investigated is a person with
2 mental illness, it shall, through the issuance of a citation as provided in ORS
3 426.090, cause the person to be brought before it at a time and place as it
4 may direct, for a hearing under ORS 426.095 to determine whether the person
5 is a person with mental illness. The person shall be given the opportunity
6 to appear voluntarily at the hearing unless the person fails to appear or
7 unless the person is detained pursuant to paragraph (b) of this subsection.

8 (b)(A) If the court finds that there is probable cause to believe that fail-
9 ure to take the person into custody pending the investigation or hearing
10 would pose serious harm or danger to the person or to others, the court may
11 issue a warrant of detention to the community mental health program di-
12 rector or designee or the sheriff of the county or designee directing the di-
13 rector, sheriff or a designee to take the person alleged to have a mental
14 illness into custody and produce the person at the time and place stated in
15 the warrant.

16 (B) At the time the person is taken into custody, the person shall be in-
17 formed by the community mental health program director, the sheriff or a
18 designee of the following:

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

21 (ii) The warning under ORS 426.123; and

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

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

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

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

5 426.074. The following is applicable to an investigation initiated by a
6 community mental health program director, or a designee of the director, as
7 part of commitment procedures under ORS 426.070 and 426.228 to 426.235:

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

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

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

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

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

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

25 (A) A treatment option less restrictive than involuntary inpatient com-
26 mitment is actively being pursued.

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

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

31 (2) This subsection establishes a nonexclusive list of provisions applicable

1 to the content of the investigation, as follows:

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

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

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

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

26 **SECTION 5.** ORS 426.133 is amended to read:

27 426.133. (1) As used in ORS 426.005 to 426.390, "assisted outpatient treat-
28 ment" may not be construed to be a commitment under ORS 426.130 and does
29 not include taking a person into custody or the forced medication of a per-
30 son.

31 (2) A court may issue an order requiring a person to participate in as-

1 sisted outpatient treatment if the court finds that the person:

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

3 (B) Has a mental disorder;

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

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

7 (b) As a result of being a person described in paragraph (a) of this sub-
8 section:

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

11 (B) Requires treatment to prevent a deterioration in the person's condi-
12 tion that will predictably result in the person becoming a person with mental
13 illness.

14 (3) In determining whether to issue the order under subsection (2) of this
15 section, the court shall consider, but is not limited to considering, the fol-
16 lowing factors:

17 (a) The person's ability to access finances in order to get food or medi-
18 cine.

19 (b) The person's ability to obtain treatment for the person's medical con-
20 dition.

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

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

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

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

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

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

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

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

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

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

17 (6) The court retains jurisdiction over the person until the earlier of the
18 end of the period of the assisted outpatient treatment established under ORS
19 426.130 [(2)] **(3)** or until the court finds that the person no longer meets the
20 criteria in subsection (2) of this section.

21 (7) This section does not:

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

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

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

27 (B) In the case of a county that has declined to operate or contract for
28 a community mental health program, if the public agency or private corpo-
29 ration that contracts with the Oregon Health Authority to provide the pro-
30 gram, as described in ORS 430.640, lacks sufficient funds for such purposes.

31 **SECTION 6.** ORS 426.160 is amended to read:

1 426.160. (1) The court having jurisdiction over any proceeding conducted
2 pursuant to ORS 426.005, 426.060 to 426.170, 426.217, 426.228, 426.255 to
3 426.292, 426.300 to 426.309, 426.385, 426.395, 426.701 and 426.702 may not dis-
4 close any part of the record of the proceeding or commitment to any person
5 except:

6 (a) The court shall, pursuant to rules adopted by the Department of State
7 Police, transmit the minimum information necessary, as defined in ORS
8 181A.290, to the Department of State Police for persons described in ORS
9 181A.290 (1)(a) or (b) to enable the department to access and maintain the
10 information and transmit the information to the federal government as re-
11 quired under federal law;

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

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

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

16 (e) Pursuant to court order.

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

25 **SECTION 7.** ORS 426.180 is amended to read:

26 426.180. (1) ORS 426.180 to 426.210 apply to the commitment of an indi-
27 vidual in Indian country if the state does not have jurisdiction over the in-
28 dividual.

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

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

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

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

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

14 (B) A qualified mental health professional; or

15 (C) A licensed independent practitioner.

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

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

26 (6) If the hospital or nonhospital facility admits the individual, the di-
27 rector or a licensed independent practitioner shall notify the community
28 mental health program director for the area and the circuit court with ju-
29 risdiction in the area where the facility is located. Upon receipt of the no-
30 tice, the community mental health program director shall initiate
31 commitment proceedings in accordance with ORS 426.070.

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

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

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

12 **SECTION 8.** ORS 426.225 is amended to read:

13 426.225. (1) If any person who has been committed to the Oregon Health
14 Authority under ORS 426.127 or 426.130 [(1)(a)(B)] **(2)(a)(B)** or (C) requests,
15 during this period of commitment, voluntary admission to a state hospital,
16 the superintendent shall cause the person to be examined immediately by a
17 licensed independent practitioner. If the licensed independent practitioner
18 finds the person to be in need of immediate care or treatment for mental
19 illness, the person shall be voluntarily admitted.

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

28 **SECTION 9.** ORS 426.228 is amended to read:

29 426.228. (1) A peace officer may take into custody a person who the officer
30 has probable cause to believe is dangerous to self or [*to any other person*]
31 **others** and is in need of immediate care, custody or treatment for mental

1 illness. As directed by the community mental health program director, a
2 peace officer shall remove a person taken into custody under this section to
3 the nearest hospital or nonhospital facility approved by the Oregon Health
4 Authority. The officer shall prepare a written report and deliver it to the
5 licensed independent practitioner who is treating the person. The report
6 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*] **others**. As directed by
15 the community mental health program director, the peace officer shall re-
16 move the person to a hospital or nonhospital facility approved by the au-
17 thority. The community mental health program director shall prepare a
18 written report that the peace officer shall deliver to the licensed independent
19 practitioner who is treating the person. The report shall state:

20 (a) The reason for custody;

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

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

24 (3) If more than one hour will be required to transport the person to the
25 hospital or nonhospital facility from the location where the person was taken
26 into custody, the peace officer shall obtain, if possible, a certificate from a
27 licensed independent practitioner stating that the travel will not be detri-
28 mental to the person's physical health and that the person is dangerous to
29 self or [*to any other person*] **others** and is in need of immediate care or
30 treatment for mental illness. The licensed independent practitioner shall
31 have personally examined the person within 24 hours prior to signing the

1 certificate.

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

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

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

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

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

31 (9)(a) When a peace officer takes a person into custody under this section,

1 and the peace officer reasonably suspects that the person is a foreign na-
2 tional, the peace officer shall inform the person of the person's right to
3 communicate with an official from the consulate of the person's country.

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

8 **SECTION 10.** ORS 426.231 is amended to read:

9 426.231. (1) A licensed independent practitioner may hold a person for
10 transportation to a treatment facility for up to 12 hours in a health care
11 facility licensed under ORS chapter 441 and approved by the Oregon Health
12 Authority if:

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

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

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

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

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

24 (b) A licensed independent practitioner with admitting privileges at the
25 receiving facility has consented to the transporting of the person for exam-
26 ination and admission if appropriate; and

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

30 (3) The written statement required by subsection (2) of this section au-
31 thORIZES a peace officer, an individual authorized under ORS 426.233 or the

1 designee of a community mental health program director to transport a per-
2 son to the treatment facility indicated on the statement.

3 **SECTION 11.** ORS 426.232 is amended to read:

4 426.232. (1) If a licensed independent practitioner believes a person who
5 is brought to a hospital or nonhospital facility by a peace officer under ORS
6 426.228 or by an individual authorized under ORS 426.233, or believes a per-
7 son who is at a hospital or nonhospital facility, is dangerous to self or [*to*
8 *any other person*] **others** and is in need of emergency care or treatment for
9 mental illness, and the licensed independent practitioner is not related to the
10 person by blood or marriage, the licensed independent practitioner may do
11 one of the following:

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

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

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

25 **SECTION 12.** ORS 426.233 is amended to read:

26 426.233. (1)(a) A community mental health program director operating
27 under ORS 430.610 to 430.695 or a designee of the director may take one of
28 the actions listed in paragraph (b) of this subsection when the community
29 mental health program director or designee has probable cause to believe a
30 person:

31 (A) Is dangerous to self or [*to any other person*] **others** and is in need of

1 immediate care, custody or treatment for mental illness; or

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

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

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

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

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

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

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

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

29 (2) A designee under subsection (1) of this section must meet the stan-
30 dards established by rule of the authority and be approved by the community
31 mental health program director before assuming the authority permitted un-

1 der subsection (1) of this section.

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

7 (a) Accept custody from a peace officer of a person in custody under ORS
8 426.228;

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

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

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

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

18 (f) Retain a person in custody at the approved hospital or nonhospital
19 facility until a licensed independent practitioner makes a determination un-
20 der ORS 426.232.

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

25 (5) The costs of transporting a person under ORS 426.060, 426.228 or
26 426.235 by an individual authorized under subsection (3) of this section shall
27 be the responsibility of the community mental health program in the county
28 in which the authorized individual is directed by a peace officer or a com-
29 munity mental health program director to take custody of a person and to
30 transport the person to a facility approved by the authority, but the com-
31 munity mental health program shall not be responsible for costs that exceed

1 the amount provided by the state for that transportation. An individual au-
2 thorized to act under subsection (3) of this section shall charge the cost of
3 emergency medical transportation to, and collect that cost from, the person,
4 third party payers or other legally or financially responsible individuals or
5 entities in the same manner that costs for the transportation of other persons
6 are charged and collected.

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

8 426.234. (1) At the time a person alleged to have a mental illness is ad-
9 mitted to or retained in a hospital or nonhospital facility under ORS 426.232
10 or 426.233, a licensed independent practitioner, nurse or qualified mental
11 health professional at the hospital or nonhospital facility shall:

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

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

15 (c) Immediately examine the person;

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

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

27 (2)(a) At the time the person is admitted to or retained in a hospital under
28 ORS 426.232, the licensed independent practitioner shall contact the commu-
29 nity mental health program director of the county in which the person re-
30 sides, if the county of residence is different from the county in which the
31 hospital is located. The community mental health program director may re-

1 quest that the licensed independent practitioner notify the circuit court in
2 the county in which the person resides. If the community mental health
3 program director does not make the request, the licensed independent prac-
4 titioner shall notify, immediately and in writing, the circuit court in the
5 county in which the person is hospitalized.

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

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

25 (3)(a) At the time the person is admitted to or retained in a nonhospital
26 facility under ORS 426.233, the community mental health program director
27 in the county where the person was taken into custody shall contact the
28 community mental health program director of the county in which the person
29 resides, if the county of residence is different from the county in which the
30 person was taken into custody. The community mental health program di-
31 rector of the county in which the person resides may request that the com-

1 munity mental health program director of the county in which the person
 2 was taken into custody notify the circuit court in the county where the
 3 person resides. Otherwise, the community mental health program director of
 4 the county in which the person was taken into custody shall notify, imme-
 5 diately and in writing, the circuit court in the county in which the person
 6 was taken into custody.

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

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

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

31 **SECTION 14.** ORS 163.738 is amended to read:

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

- 4 (A) The name of the court at which the respondent is to appear;
- 5 (B) The name of the respondent;
- 6 (C) A copy of the stalking complaint;
- 7 (D) The date, time and place at which the citation was issued;
- 8 (E) The name of the law enforcement officer who issued the citation;
- 9 (F) The time, date and place at which the respondent is to appear in
10 court;

11 (G) Notice to the respondent that failure to appear at the time, date and
12 place set forth in the citation shall result in the respondent's arrest and
13 entry of a court's stalking protective order; and

14 (H) Notice to the respondent of potential liability under federal law for
15 the possession or purchase of firearms or firearm ammunition and for other
16 acts prohibited by 18 U.S.C. 2261 to 2262.

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

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

24 (A) A temporary stalking protective order pending further proceedings;
25 or

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

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

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

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

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

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

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

20 (5) The circuit court may also order the respondent to undergo mental
21 health evaluation and, if indicated by the evaluation, treatment. If the re-
22 spondent is without sufficient resources to obtain the evaluation or treat-
23 ment, or both, the court shall refer the respondent to the mental health
24 agency designated by the community mental health director for evaluation
25 or treatment, or both.

26 (6) If the circuit court, the mental health evaluator or any other persons
27 have probable cause to believe that the respondent is dangerous to self or
28 others **as defined in ORS 426.005**, or is unable to provide for basic personal
29 needs, the court shall initiate commitment procedures as provided in ORS
30 426.070 or 426.180.

31 (7) A law enforcement officer shall report the results of any investigation

1 arising from a complaint under ORS 163.744 to the district attorney within
2 three days after presentation of the complaint.

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

7
