

Requested by SENATE COMMITTEE ON JUDICIARY

**PROPOSED AMENDMENTS TO
SENATE BILL 762**

1 On page 1 of the printed bill, line 2, after “ORS” delete the rest of the
2 line and line 3 and insert “426.095, 426.210, 426.232, 426.234, 426.237 and
3 426.275.”.

4 Delete lines 5 through 30 and delete pages 2 through 10 and insert:

5 **“SECTION 1.** ORS 426.095 is amended to read:

6 “426.095. The following is applicable to a commitment hearing held by a
7 court under ORS 426.070:

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

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

13 “(a) Except as provided by paragraph (b) or (c) of this subsection, a
14 hearing shall be held [*five*] **10** judicial days from the day a court under ORS
15 426.070 issues a citation provided under ORS 426.090.

16 “(b) Except as provided by paragraph (c) of this subsection, if a person
17 is detained by a warrant of detention under ORS 426.070, a hearing shall be
18 held within [*five*] **10** judicial days of the commencement of detention.

19 “(c) If requested under this paragraph, the court, for good cause, may
20 postpone the hearing for not more than [*five*] **10** judicial days in order to
21 allow preparation for the hearing. The court may make orders for the care

1 and custody of the person during a postponement as it deems necessary. If
2 a person is detained before a hearing under ORS 426.070, 426.180, 426.228,
3 426.232, 426.233 or 426.702 and the hearing is postponed under this paragraph,
4 the court, for good cause, may allow the person to be detained during the
5 postponement if the postponement is requested by the person or the legal
6 counsel of the person. Any of the following may request a postponement
7 under this paragraph:

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

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

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

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

15 “(a) Witnesses.

16 “(b) The individual conducting the investigation.

17 “(c) The examining physicians or other licensed independent practitioners
18 who have examined the person.

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

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

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

27 “(c) The testimony of any treating licensed independent practitioners,
28 nurses or social workers for the prehearing period of detention. Any treating
29 licensed independent practitioner, nurse or social worker who is subpoenaed
30 as a witness for the proceeding shall testify as an expert witness under the

1 provisions of ORS 40.410, 40.415, 40.420 and 40.425 and is subject to treatment
2 as an expert witness in the payment of witness fees and costs.

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

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

7 “(B) Upon objection by any party to the action, the court shall exclude
8 any part of the investigation report that may be excluded under the Oregon
9 Evidence Code on grounds other than those set forth in ORS 40.230, 40.235,
10 40.240 or 40.250.

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

16 “**SECTION 2.** ORS 426.210 is amended to read:

17 “426.210. An individual admitted to a hospital or nonhospital facility
18 pursuant to the emergency proceedings under ORS 426.180 and 426.200 may
19 not be detained there for more than [*five*] **10** judicial days following admis-
20 sion. The court, for good cause, may allow a postponement and detention
21 during a postponement as provided under ORS 426.095.

22 “**SECTION 3.** ORS 426.232 is amended to read:

23 “426.232. (1) If a licensed independent practitioner believes a person who
24 is brought to a hospital or nonhospital facility by a peace officer under ORS
25 426.228 or by an individual authorized under ORS 426.233, or believes a per-
26 son who is at a hospital or nonhospital facility, is dangerous to self or to
27 any other person and is in need of emergency care or treatment for mental
28 illness, and the licensed independent practitioner is not related to the person
29 by blood or marriage, the licensed independent practitioner may do one of
30 the following:

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

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

7 “(2) When approving a person for emergency care or treatment at a non-
8 hospital facility under this section, the licensed independent practitioner
9 shall notify immediately the community mental health program director in
10 the county where the person was taken into custody and maintain the per-
11 son, if the person is being held at a hospital, for as long as is feasible given
12 the needs of the person for mental or physical health or safety. However,
13 under no circumstances may the person be held for longer than [*five*] 10 ju-
14 dicial days.

15 “**SECTION 4.** ORS 426.234 is amended to read:

16 “426.234. (1) At the time a person alleged to have a mental illness is ad-
17 mitted to or retained in a hospital or nonhospital facility under ORS 426.232
18 or 426.233, a licensed independent practitioner, nurse or qualified mental
19 health professional at the hospital or nonhospital facility shall:

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

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

23 “(c) Immediately examine the person;

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

26 “(e) If the licensed independent practitioner, nurse or qualified mental
27 health professional reasonably suspects that the person is a foreign national,
28 inform the person of the person’s right to communicate with an official from
29 the consulate of the person’s country. A licensed independent practitioner,
30 nurse or qualified mental health professional is not civilly or criminally li-

1 able for failure to provide the information required by this paragraph. Fail-
2 ure to provide the information required by this paragraph does not in itself
3 constitute grounds for the exclusion of evidence that would otherwise be
4 admissible in a proceeding.

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

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

25 “(c) If, at any time prior to the hearing under ORS 426.070 to 426.130, the
26 licensed independent practitioner responsible for a person admitted or re-
27 tained under ORS 426.232 determines that the person is not dangerous to self
28 or to any other person and is not in need of emergency care or treatment for
29 mental illness, the licensed independent practitioner may release the person
30 from the detention authorized by ORS 426.232. The licensed independent

1 practitioner shall immediately notify the circuit court notified under this
2 subsection and the community mental health program director of the person's
3 release from detention.

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

17 “(b) If, at any time prior to the hearing under ORS 426.070 to 426.130, a
18 community mental health program director, after consultation with a li-
19 censed independent practitioner, determines that a person admitted or re-
20 tained under ORS 426.233 is not dangerous to self or to any other person and
21 is not in need of immediate care, custody or treatment for mental illness, the
22 community mental health program director may release the person from de-
23 tention. The community mental health program director shall immediately
24 notify the circuit court originally notified under paragraph (a) of this sub-
25 section of the person's release from detention.

26 “(4) When the judge of the circuit court receives notice under subsection
27 (2) or (3) of this section, the judge immediately shall commence proceedings
28 under ORS 426.070 to 426.130. In a county having a population of 100,000 or
29 more, and when feasible in a county with a lesser population, the community
30 mental health program director or designee who directs the peace officer or

1 other authorized individual to take a person into custody under ORS 426.233
2 shall not also conduct the investigation as provided for under ORS 426.074.
3 Except when a person is being held under ORS 426.237 (1)(b), a person shall
4 not be held under ORS 426.232 or 426.233 for more than [*five*] **10** judicial days
5 without a hearing being held under ORS 426.070 to 426.130.

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

11 **“SECTION 5.** ORS 426.237 is amended to read:

12 “426.237. (1) During a prehearing period of detention as provided in ORS
13 426.070, 426.140, 426.232 or 426.233, the community mental health program
14 director shall do one of the following:

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

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

22 “(A) The community mental health program director and a licensed inde-
23 pendent practitioner have probable cause to believe the person is a person
24 with mental illness;

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

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

30 “(i) Is approved by the authority and the community mental health pro-

1 gram director in the county where the person resides; and

2 “(ii) Can, in the opinion of the community mental health program director
3 and the licensed independent practitioner, provide intensive care or treat-
4 ment for mental illness necessary and sufficient to meet the emergency psy-
5 chiatric needs of the person.

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

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

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

18 “(B) Hospital, the licensed independent practitioner who is treating the
19 person shall make discharge plans and discharge the person.

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

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

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

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

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

1 “(A) A written statement under oath by the community mental health
2 program director and the licensed independent practitioner that they have
3 probable cause to believe the person is a person with mental illness in need
4 of care or treatment for mental illness;

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

8 “(C) A notice of the person’s right to an attorney and that an attorney
9 will be appointed by the court or as otherwise obtained under ORS 426.100
10 (3);

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

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

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

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

27 “(A) Except as otherwise provided in this paragraph, all methods of
28 treatment, including the prescription and administration of drugs, shall be
29 the sole responsibility of the licensed independent practitioner who is treat-
30 ing the person. However, the person shall not be subject to electroshock

1 therapy or unduly hazardous treatment and shall receive usual and custom-
2 ary treatment in accordance with medical standards in the community.

3 “(B) Except when the person expressly refuses treatment, the treating li-
4 censed independent practitioner shall treat the person within the scope of
5 the treatment plan provided the person under paragraph (b) of this sub-
6 section. The person’s refusal of treatment constitutes sufficient grounds for
7 the community mental health program director to request a hearing as pro-
8 vided in subsection (4)(a) of this section.

9 “(C) If the person is in a hospital and the community mental health pro-
10 gram director locates a nonhospital facility, approved by the authority, that,
11 in the opinion of the community mental health program director and the li-
12 censed independent practitioner who is treating the person, can provide care
13 or treatment for mental illness necessary and sufficient to meet the emer-
14 gency psychiatric needs of the person, the treating licensed independent
15 practitioner shall discharge the person from the hospital and the community
16 mental health program director shall remove the person to the nonhospital
17 facility for the remainder of the 14-day intensive treatment period. If, how-
18 ever, in the opinion of the treating licensed independent practitioner, the
19 person’s condition requires the person to receive medical care or treatment,
20 the licensed independent practitioner shall retain the person in the hospital.

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

24 “(i) If, in the opinion of a licensed independent practitioner, the person’s
25 condition requires the person to receive medical care or treatment in a hos-
26 pital; and

27 “(ii) The licensed independent practitioner agrees to admit the person to
28 a hospital, approved by the authority, where the licensed independent prac-
29 titioner has admitting privileges.

30 “(E) If the person is transferred as provided in subparagraph (C) or (D)

1 of this paragraph, the community mental health program director shall notify
2 the circuit court, in the county where the certificate was filed, of the lo-
3 cation of the person. The person may appeal the transfer as provided by rules
4 of the authority.

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

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

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

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

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

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

1 ceedings under ORS 426.070 to 426.130 when:

2 “(a) The person consenting to 14 days of treatment or the community
3 mental health program director requests a hearing. The hearing shall be held
4 without unreasonable delay. In no case shall the person be held in a hospital
5 or nonhospital facility longer than [*five*] **10** judicial days after the request
6 for a hearing is made without a hearing being held under ORS 426.070 to
7 426.130.

8 “(b) The community mental health program director acts under subsection
9 (1)(c) of this section. In no case shall the person be held longer than [*five*]
10 **10** judicial days without a hearing under this subsection.

11 **“SECTION 6.** ORS 426.275 is amended to read:

12 “426.275. The following are applicable to placements of persons with
13 mental illness that are made as conditional release under ORS 426.125, out-
14 patient commitments under ORS 426.127 or trial visits under ORS 426.273 as
15 described:

16 “(1) If the individual responsible under this subsection determines that a
17 person with mental illness is failing to adhere to the terms and conditions
18 of the placement, the responsible individual shall notify the court having
19 jurisdiction that the person with mental illness is not adhering to the terms
20 and conditions of the placement. If the placement is an outpatient commit-
21 ment under ORS 426.127 or a trial visit under ORS 426.273, the notifications
22 shall include a copy of the conditions for the placement. The individual re-
23 sponsible for notifying the court under this subsection is as follows:

24 “(a) For conditional releases under ORS 426.125, the guardian, relative
25 or friend in whose care the person with mental illness is conditionally re-
26 leased.

27 “(b) For outpatient commitments under ORS 426.127, the community
28 mental health program director, or designee of the director, of the county in
29 which the person on outpatient commitment lives.

30 “(c) For trial visits under ORS 426.273, the community mental health

1 program director, or designee of the director, of the county in which the
2 person on trial visit is to receive outpatient treatment.

3 “(2) On its own motion, the court with jurisdiction of a person with
4 mental illness on placement may cause the person to be brought before it for
5 a hearing to determine whether the person is or is not adhering to the terms
6 and conditions of the placement. The person shall have the same rights with
7 respect to notice, detention stay, hearing and counsel as for a hearing held
8 under ORS 426.095. The court shall hold the hearing within [*five*] 10 judicial
9 days of the date the person with mental illness receives notice under this
10 section. The court may allow postponement and detention during
11 postponement as provided under ORS 426.095.

12 “(3) Pursuant to the determination of the court upon hearing under this
13 section, a person on placement shall either continue the placement on the
14 same or modified conditions or shall be returned to the Oregon Health Au-
15 thority for involuntary care and treatment on an inpatient basis subject to
16 discharge at the end of the commitment period or as otherwise provided un-
17 der this chapter.

18 “(4) If the person on placement is living in a county other than the county
19 of the court that established the current period of commitment under ORS
20 426.130 during which the trial visit, conditional release or outpatient com-
21 mitment takes place, the court establishing the current period of commitment
22 shall transfer jurisdiction to the appropriate court of the county in which
23 the person is living while on the placement and the court receiving the
24 transfer shall accept jurisdiction.

25 “(5) The court may proceed as provided in ORS 426.307 or this section
26 when the court:

27 “(a) Receives notice under ORS 426.070 or 426.228 to 426.235; and

28 “(b) Determines that the person is a person with mental illness on con-
29 ditional release under ORS 426.125, outpatient commitment under ORS
30 426.127 or trial visit under ORS 426.273.”.

