

# A-Engrossed House Bill 2481

Ordered by the House May 28  
Including House Amendments dated May 28

Introduced and printed pursuant to House Rule 12.00. Presession filed (at the request of House Interim Committee on Judiciary for Representative Jason Kropf)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure. The statement includes a measure digest written in compliance with applicable readability standards.

**Digest: Authorizes the OPGC to create a program for people who lack fitness to proceed. Changes the rules about telling people they can have a lawyer and helping them get one in court cases about mental health treatment. (Flesch Readability Score: 64.5).**

*[Digest: The Act tells OHA to study mental health. (Flesch Readability Score: 82.3).]*

*[Requires the Oregon Health Authority to study behavioral health. Directs the authority to submit findings to the interim committees of the Legislative Assembly related to health not later than September 15, 2026.]*

**Authorizes the Oregon Public Guardian and Conservator to establish a program for persons found to lack fitness to proceed and to receive records concerning such persons.**

**Modifies provisions in civil commitment proceedings regarding notices of the right to counsel and the appointment of counsel.**

*[Sunsets on January 2, 2027.]*

## A BILL FOR AN ACT

Relating to behavioral health; creating new provisions; and amending ORS 125.683, 161.362, 161.370, 426.070, 426.100, 426.160, 426.232, 426.237 and 426.301.

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

## GUARDIANSHIPS FOR DEFENDANTS LACKING FITNESS TO PROCEED

**SECTION 1. Section 2 of this 2025 Act is added to and made a part of ORS 125.675 to 125.691.**

**SECTION 2. (1) The Oregon Public Guardian and Conservator shall develop and administer a program to provide guardianship services to defendants whose criminal cases have been suspended or dismissed pursuant to ORS 161.370 due to the defendant lacking fitness to proceed.**

**(2) Participants in the program must meet the criteria described in ORS 125.680 (2) to receive public guardian and conservator services under this section.**

**(3) The Oregon Public Guardian and Conservator may provide services under this section at any time after the defendant's fitness to proceed is drawn into question.**

**(4) A defendant's eligibility to participate in the program may be determined at any time after a defendant's fitness to proceed is drawn into question or, if the court finds that there is no substantial probability that the defendant will, in the foreseeable future, gain or regain the fitness to proceed, no later than one year following the date on which the defendant's case is dismissed.**

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

(5) In administering the program described in this section, the Oregon Public Guardian and Conservator shall collaborate and coordinate with district attorneys, community mental health programs and facilities in which defendants are housed, including the Oregon State Hospital.

**SECTION 3.** ORS 125.683 is amended to read:

125.683. (1) In providing public guardian and conservator services, the Oregon Public Guardian and Conservator shall conduct a needs assessment for a person who claims or is claimed not to have relatives or friends willing or able to assume the duties of guardianship or conservatorship and who claims or is claimed to lack the financial resources to obtain a private guardian or conservator. The purpose of the needs assessment is to determine the person's eligibility to receive public guardian and conservator services and to determine the appropriateness of filing a petition for the appointment of a fiduciary or other pleading on behalf of the person in a court having probate jurisdiction. The needs assessment shall, at a minimum:

(a) Assess the person's capacity to:

(A) Care for the person's own safety;

(B) Manage the person's own financial affairs; and

(C) Attend to and provide for necessities such as food, shelter, clothing and medical care;

(b) Assess the person's financial resources;

(c) Determine whether information that is available about the person is sufficient to support a finding that the person is incapacitated or financially incapable and the entry of a court order for the appointment of a fiduciary under ORS 125.010;

(d) Determine whether any other person may be willing and able to serve as the person's guardian or conservator and, if appropriate, locate and contact that other person;

(e) Determine the type of fiduciary, if any, to request in a petition filed under ORS 125.055, giving preference to the least intrusive form of fiduciary relationship consistent with the best interests of the person; and

(f) Determine how best to provide public guardian and conservator services to the person that are least restrictive to the person's liberty, that are least intrusive to the person and that provide for the greatest degree of independence that the person is capable of exercising.

(2)(a) If the person is a resident of a nursing home as defined in ORS 678.710 or a residential facility as defined in ORS [441.402] **443.400**, the nursing home or residential facility shall provide the Oregon Public Guardian and Conservator access to the person's records as is necessary to conduct the needs assessment required under this section.

(b) Any other public agency that has provided or is providing care or services to the person shall disclose to the Oregon Public Guardian and Conservator, upon request, a minimum amount of information about the person for whom the needs assessment is being conducted, including protected health information as defined in ORS 192.556 and financial information, as is reasonably necessary to prevent or lessen a serious and imminent threat to the health or safety of the person who is the subject of the needs assessment. For purposes of this paragraph, a request from the Oregon Public Guardian and Conservator for the purpose of conducting a needs assessment is presumed to be a situation that will prevent or lessen a serious and imminent threat to the health or safety of the person.

(c) Any health care provider not identified in either paragraph (a) or (b) of this subsection may disclose protected health information to the Oregon Public Guardian and Conservator in accordance with 45 C.F.R. 164.512 (j) to prevent or lessen a serious or imminent threat to the health or safety

1 of a person if the health care provider, in good faith, believes the disclosure is necessary to prevent  
 2 or lessen the threat. For purposes of this paragraph, a request from the Oregon Public Guardian and  
 3 Conservator for disclosure under this paragraph for the purposes of conducting a needs assessment,  
 4 or the good faith belief and disclosure of the health care provider under this paragraph, are pre-  
 5 sumed to be situations that will prevent or lessen a serious and imminent threat to the health or  
 6 safety of the person.

7 **(d) If the person is currently or was previously a defendant in a criminal case subject to**  
 8 **ORS 161.370, and to the extent authorized by federal law, the Oregon Public Guardian and**  
 9 **Conservator shall have access to any reports resulting from examinations or evaluations of**  
 10 **the defendant, documents containing recommendation of or resulting from consultations**  
 11 **with a community mental health program, documents submitted to the court by a state**  
 12 **mental hospital related to the proceedings under ORS 161.370 and any other court records**  
 13 **relating to the defendant.**

14 (3) For each person determined to be eligible for public guardian and conservator services under  
 15 this section, the Oregon Public Guardian and Conservator shall develop a written plan setting forth  
 16 the type and duration of services to be provided by the Oregon Public Guardian and Conservator.  
 17 The plan shall be included in any nonemergency petition or pleading filed with the court.

18 **SECTION 4.** ORS 161.362 is amended to read:

19 161.362. (1) A recommendation provided by a certified evaluator, pursuant to ORS 161.355 to  
 20 161.371, that a defendant requires a hospital level of care due to the acuity of the defendant's  
 21 symptoms must be based upon the defendant's current diagnosis and symptomology, the defendant's  
 22 current ability to engage in treatment, present safety concerns relating to the defendant and any  
 23 other pertinent information known to the evaluator. If the defendant is in a placement in a facility,  
 24 the evaluator may defer to the treatment provider's recommendation regarding whether a hospital  
 25 level of care is needed.

26 (2) A determination by a community mental health program director, or the director's designee,  
 27 pursuant to ORS 161.355 to 161.371, that appropriate community restoration services are not present  
 28 and available in the community must include information concerning the specific services necessary  
 29 to safely allow the defendant to gain or regain fitness to proceed in the community and must specify  
 30 the necessary services that are not present and available in the community.

31 (3)(a) Reports resulting from examinations performed by a certified evaluator, and documents  
 32 containing the recommendations of or resulting from consultations with a community mental health  
 33 program director or the director's designee, prepared under ORS 161.355 to 161.371, and any docu-  
 34 ment submitted to the court by a state mental hospital related to the proceedings under ORS 161.355  
 35 to 161.371, are confidential and may be made available only:

36 (A) To the court, prosecuting attorney, defense attorney, agent of the prosecuting or defense  
 37 attorney, defendant, community mental health program director or designee, state mental hospital,  
 38 **Oregon Public Guardian and Conservator** and any facility in which the defendant is housed; or

39 (B) As ordered by a court.

40 (b) Any facility in which a defendant is housed may not use a report or document described in  
 41 paragraph (a) of this subsection to support a disciplinary action against the defendant.

42 (c) Nothing in this subsection prohibits the prosecuting attorney, defense attorney or agent of  
 43 the prosecuting or defense attorney from discussing the contents of a report or document described  
 44 in paragraph (a) of this subsection with witnesses or victims as otherwise permitted by law.

45 (4) The court shall ensure that an order entered under ORS 161.355 to 161.371 is provided, by

the end of the next judicial day, to any entity ordered to provide restoration services.

(5) Unless the court orders otherwise or either party objects, a defendant committed to a state mental hospital or other facility, or a certified evaluator or other expert witness, may attend hearings held under ORS 161.355 to 161.371 via simultaneous electronic transmission.

**SECTION 5.** ORS 161.370 is amended to read:

161.370. (1)(a) When the defendant's fitness to proceed is drawn in question, the issue shall be determined by the court.

(b) If neither the prosecuting attorney nor counsel for the defendant contests the finding of the report filed under ORS 161.365, the court may make the determination on the basis of the report. If the finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence in the hearing, the party who contests the finding has the right to summon and to cross-examine any certified evaluator who submitted the report and to offer evidence upon the issue. Other evidence regarding the defendant's fitness to proceed may be introduced by either party.

(2)(a) If the court determines that the defendant lacks fitness to proceed, the criminal proceeding against the defendant shall be suspended and the court shall proceed in accordance with this subsection.

(b) After making the determination under paragraph (a) of this subsection, the court shall receive a recommendation from a community mental health program director or the director's designee, and from any local entity that would be responsible for treating the defendant if the defendant were to be released in the community, concerning whether appropriate community restoration services are present and available in the community.

(c) If the parties agree as to the appropriate action under this section, the court may, after making all findings required by law, enter any order authorized by this section. If the parties do not agree as to the appropriate action, the court and the parties shall, at a hearing, consider an appropriate action in the case, and the court shall make a determination and enter an order necessary to implement the action. In determining the appropriate action, the court shall consider the primary and secondary release criteria as defined in ORS 135.230, the least restrictive option appropriate for the defendant, the needs of the defendant and the interests of justice. Actions may include but are not limited to:

(A) Commitment for the defendant to gain or regain fitness to proceed under subsection (3) or (4) of this section;

(B) An order to engage in community restoration services, as recommended by the community mental health program director or designee, under subsection (6) of this section;

(C) Commencement of a civil commitment proceeding under ORS 426.070 to 426.170, 426.701 or 427.235 to 427.292;

(D) Commencement of protective proceedings under ORS chapter 125; or

(E) Dismissal of the charges pursuant to ORS 135.755 and in accordance with ORS 161.367 (6).

(d) If the court, while considering or ordering an appropriate action under this subsection, does not order the defendant committed to a state mental hospital or other facility, but finds that appropriate community restoration services are not present and available in the community, for any defendant remaining in custody after such determination, the court shall set a review hearing seven days from the date of the determination under paragraph (a) of this subsection. At the review hearing, the court shall consider all relevant information and determine if commitment to the state mental hospital or other facility is appropriate under subsection (3) or (4) of this section, or if another action described in paragraph (c) of this subsection is appropriate. At the conclusion of the

1 hearing the court shall enter an order in accordance with the defendant's constitutional rights to  
2 due process.

3 (e) If the court determines that the appropriate action in the case is an order for the defendant  
4 to engage in community restoration services, but the defendant has a pending criminal case, warrant  
5 or hold in one or more other jurisdictions, the other jurisdictions shall, within two judicial days of  
6 becoming aware of the proceeding under this section, communicate with the court and the other  
7 jurisdictions, if applicable, to develop a plan to address the interests of all jurisdictions in the de-  
8 fendant in a timely manner.

9 **(f) If the court determines that the appropriate action in the case is the commencement**  
10 **of protective proceedings under ORS chapter 125, the court may, in accordance with ORS**  
11 **125.600 and 125.605, appoint a temporary fiduciary for the defendant to exercise the powers**  
12 **of a guardian, until a guardian can be appointed.**

13 (3)(a) If the most serious offense in the charging instrument is a felony, the court shall commit  
14 the defendant to the custody of the superintendent of a state mental hospital or director of a facility  
15 designated by the Oregon Health Authority if the defendant is at least 18 years of age, or to the  
16 custody of the director of a secure intensive community inpatient facility designated by the author-  
17 ity if the defendant is under 18 years of age, if the court makes the following findings:

18 (A) The defendant requires a hospital level of care due to public safety concerns if the defendant  
19 is not hospitalized or in custody or the acuity of symptoms of the defendant's qualifying mental  
20 disorder; and

21 (B) Based on the findings resulting from a consultation described in ORS 161.365 (1), if applica-  
22 ble, from any information provided by community-based mental health providers or any other  
23 sources, and primary and secondary release criteria as defined in ORS 135.230, the appropriate  
24 community restoration services are not present and available in the community.

25 (b) If the defendant is committed under this subsection, the community mental health program  
26 director, or director's designee, shall at regular intervals, during any period of commitment, review  
27 available community restoration services and maintain communication with the defendant and the  
28 superintendent of the state mental hospital or director of the facility in order to facilitate an effi-  
29 cient transition to treatment in the community when ordered.

30 (c) If the court does not order the commitment of the defendant under this subsection, the court  
31 shall proceed in accordance with subsection (2)(c) of this section to determine and order an appro-  
32 priate action other than commitment.

33 (4)(a) If the most serious offense in the charging instrument is a misdemeanor, the court may  
34 not commit the defendant to the custody of the superintendent of a state mental hospital or director  
35 of a facility designated by the Oregon Health Authority if the defendant is at least 18 years of age,  
36 or to the custody of the director of a secure intensive community inpatient facility designated by  
37 the authority if the defendant is under 18 years of age, unless the court:

38 (A)(i) Receives a recommendation from a certified evaluator that the defendant requires a hos-  
39 pital level of care due to the acuity of symptoms of the defendant's qualifying mental disorder; and

40 (ii) Receives a recommendation from a community mental health program director, or director's  
41 designee, that the appropriate community restoration services are not present and available in the  
42 community; or

43 (B) Determines that the defendant requires a hospital level of care after making all of the fol-  
44 lowing written findings:

45 (i) The defendant needs a hospital level of care due to the acuity of the symptoms of the

defendant's qualifying mental disorder;

(ii) There are public safety concerns; and

(iii) The appropriate community restoration services are not present and available in the community.

(b) If at the time of determining the appropriate action for the case, the court is considering commitment under paragraph (a)(A) of this subsection and:

(A) Has not received a recommendation from a certified evaluator as to whether the defendant requires a hospital level of care due to the acuity of symptoms of the defendant's qualifying mental disorder, the court shall order a certified evaluator to make such a recommendation.

(B) Has not received a recommendation from the community mental health program director or designee concerning whether appropriate community restoration services are present and available in the community, the court shall order the director or designee to make such a recommendation.

(c) If the court does not order the commitment of the defendant under this subsection, the court shall proceed in accordance with subsection (2)(c) of this section to determine and order an appropriate action other than commitment.

(d) If the defendant is committed under this subsection, the community mental health program director, or director's designee, shall at regular intervals, during any period of commitment, review available community restoration services and maintain communication with the defendant and the superintendent of the state mental hospital or director of the facility in order to facilitate an efficient transition to treatment in the community when ordered.

(5) If the most serious offense in the charging instrument is a violation, the court may not commit the defendant to the custody of the superintendent of a state mental hospital or director of a facility designated by the Oregon Health Authority if the defendant is at least 18 years of age, or to the custody of the director of a secure intensive community inpatient facility designated by the authority if the defendant is under 18 years of age.

(6)(a) If the court does not order the commitment of the defendant under subsection (3) or (4) of this section, if commitment is precluded under subsection (5) of this section or if the court determines that care other than commitment would better serve the defendant and the community, the court shall release the defendant, pursuant to an order that the defendant engage in community restoration services, until the defendant has gained or regained fitness to proceed, or until the court finds there is no substantial probability that the defendant will, within the foreseeable future, gain or regain fitness to proceed. The court may not order the defendant to engage in community restoration services in another county without permission from the other county.

(b) The court may order a community mental health program director coordinating the defendant's treatment in the community to provide the court with status reports on the defendant's progress in gaining or regaining fitness to proceed. The director shall provide a status report if the defendant is not complying with court-ordered restoration services.

(c) A community mental health program director coordinating the defendant's treatment in the community shall notify the court if the defendant gains or regains fitness to proceed. The notice shall be filed with the court and may be filed electronically. The clerk of the court shall cause copies of the notice to be delivered to both the district attorney and the counsel for the defendant.

(d) When a defendant is ordered to engage in community restoration services under this subsection, the court may place conditions that the court deems appropriate on the release, including the requirement that the defendant regularly report to a state mental hospital or a certified evaluator for examination to determine if the defendant has gained or regained fitness to proceed.

(7) The Oregon Health Authority shall establish by rule standards for the recommendation provided to the court described in subsection (2) of this section.

## APPOINTMENT OF COUNSEL

**SECTION 6. The Oregon Public Defense Commission shall study and implement methods for increasing recruitment and training for attorneys specializing in civil commitment. The commission shall submit a report in the manner provided by ORS 192.245, and may include recommendations for legislation, to the interim committees of the Legislative Assembly related to the judiciary and behavioral health no later than September 15, 2026.**

**SECTION 7. Section 6 of this 2025 Act is repealed on January 2, 2027.**

**SECTION 8.** 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 **mentioned in ORS 133.030** 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); 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 person alleged to have a mental illness that the court will appoint legal counsel as provided in ORS 426.100 for the person and ascertain the person's preferences regarding appointment of counsel.**

**[(a)] (b) 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 and paragraph (a) of this subsection and the person's preferences regarding appointment of counsel.**

**[(b)] (c) 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). 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) and (ii) and so inform the community mental health program director or designee of the director.**

**[(c)] (d) 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 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 9.** ORS 426.070, as amended by section 8 of this 2025 Act, 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 mentioned in ORS 133.030 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 di-



rector 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); 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 person alleged to have a mental illness that the court will appoint legal counsel as provided in ORS 426.100 for the person and ascertain the person's preferences regarding appointment of counsel.

(b) 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 and paragraph (a) of this subsection and the person's preferences regarding appointment of counsel.

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

(d) 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) The court shall appoint legal counsel for the person as provided in ORS 426.100.**

~~[(a)]~~ **(b)** 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)]~~ **(c)** of this subsection.

~~[(b)(A)]~~ **(c)(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)] (d) 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 10.** ORS 426.100 is amended to read:

426.100. (1) At the time the person alleged to have a mental illness is brought before the court, the court shall advise the person of the following:

(a) The reason for being brought before the court;

(b) The nature of the proceedings;

(c) The possible results of the proceedings;

(d) The right to subpoena witnesses; and

(e) The person's rights regarding representation by or appointment of counsel.

(2) Subsection (3) of this section establishes the rights of persons alleged to have a mental illness in each of the following circumstances:

**(a) When notice of probable cause to believe the person is a person with mental illness has been filed with the court as provided in ORS 426.070.**

[(a)] (b) When the person is held by warrant of detention issued under ORS 426.070.

[(b)] (c) In commitment hearings under ORS 426.095.

[(c)] (d) When the person is detained as provided under ORS 426.228, 426.232 or 426.233.

[(d)] (e) In recommitment hearings under ORS 426.307.

(3) When provided under subsection (2) of this section, a person alleged to have a mental illness has the following rights relating to representation by or appointment of counsel:

(a) The right to obtain suitable legal counsel possessing skills and experience commensurate with the nature of the allegations and complexity of the case during the proceedings.

(b) If the person is determined to be financially eligible for appointed counsel at state expense, the court will appoint legal counsel to represent the person. If counsel is appointed at state expense, payment of expenses and compensation relating to legal counsel shall be made as provided under ORS 426.250.

(c) If the person alleged to have a mental illness does not request legal counsel, the legal guardian, relative or friend may request the assistance of suitable legal counsel on behalf of the person.

(d) If no request for legal counsel is made, the court shall appoint suitable legal counsel unless counsel is expressly, knowingly and intelligently refused by the person.

(e) If the person is being involuntarily detained before a hearing on the issue of commitment,

the right under paragraph (a) of this subsection to contact an attorney or under paragraph (b) of this subsection to have an attorney appointed may be exercised as soon as reasonably possible.

(f) In all cases suitable legal counsel shall be present at the hearing and may be present at examination and may examine all witnesses offering testimony, and otherwise represent the person.

**(4) When the court is required to appoint counsel for a person under ORS 426.005 to 426.390, the court shall appoint suitable legal counsel for the person unless:**

**(a) The person is already represented by an attorney; or**

**(b) The person expressly, knowingly and intelligently refuses appointment of counsel.**

**(5) If the court appoints counsel for the person under subsection (4) of this section:**

**(a) The court shall order the person or the person's estate to pay attorney fees and costs for court-appointed counsel, if the person or the person's estate has sufficient funds to pay all or a portion of the attorney fees and costs due; or**

**(b) If the court determines that the person is financially eligible for appointed counsel at state expense, the payment of expenses and compensation related to legal counsel appointed under subsection (4) of this section shall be made as provided under ORS 426.250.**

~~[(4)]~~ **(6)** The responsibility for representing the state's interest in commitment proceedings, including, but not limited to, preparation of the state's case and appearances at commitment hearings is as follows:

(a) The Attorney General's office shall have the responsibility relating to proceedings initiated by state hospital staff that are any of the following:

(A) Recommitment proceedings under ORS 426.307; or

(B) Proceedings under ORS 426.228, 426.232 or 426.233.

(b) The district attorney if requested to do so by the governing body of the county.

(c) In lieu of the district attorney under paragraph (b) of this subsection, a counsel designated by the governing body of a county shall take the responsibility. A county governing body may designate counsel to take responsibility under this paragraph either for single proceedings or for all such proceedings the county will be obligated to pay for under ORS 426.250. If a county governing body elects to proceed under this paragraph, the county governing body shall so notify the district attorney. The expenses of an attorney appointed under this paragraph shall be paid as provided under ORS 426.250.

**SECTION 11.** 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)]~~ **(5)(d)**, 426.130 (3) 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 12.** 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 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.

**(3)(a) If a person is detained under subsection (1) of this section, the licensed independent practitioner must inform the person of the person's rights under ORS 426.100 to court-appointed counsel.**

**(b) The licensed independent practitioner must provide the notice under this subsection orally and in writing.**

**SECTION 13.** ORS 426.237 is amended to read:

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

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

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

(A) The community mental health program director and a licensed independent practitioner have probable cause to believe the person is a person with mental illness;

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

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

(i) Is approved by the authority and the community mental health program director in the

county where the person resides; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**(E) Information about how to request legal counsel, as described in ORS 426.100; and**

~~[(E)]~~ (F) The date and time the copy of the certificate was delivered to the person.

(c) Immediately upon receipt of a certificate under paragraph (a) of this subsection, the court shall notify the person's attorney or appoint an attorney for the person if the person cannot afford one. Within 24 hours of the time the certificate is delivered to the court, the person's attorney shall review the certificate with the person. If the person and the person's attorney consent to the certification within one judicial day of the time the certificate is delivered to the circuit court and, except as provided in subsection (4) of this section, the court shall postpone the hearing required by ORS 426.070 to 426.130 for 14 days.

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

(A) Except as otherwise provided in this paragraph, all methods of treatment, including the

1 prescription and administration of drugs, shall be the sole responsibility of the licensed independent  
2 practitioner who is treating the person. However, the person shall not be subject to electroshock  
3 therapy or unduly hazardous treatment and shall receive usual and customary treatment in accord-  
4 ance with medical standards in the community.

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

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

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

22 (i) If, in the opinion of a licensed independent practitioner, the person's condition requires the  
23 person to receive medical care or treatment in a hospital; and

24 (ii) The licensed independent practitioner agrees to admit the person to a hospital, approved by  
25 the authority, where the licensed independent practitioner has admitting privileges.

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

30 (e) If the person is in a hospital, the licensed independent practitioner who is treating the person  
31 may discharge the person at any time during the 14-day period. The treating licensed independent  
32 practitioner shall confer with the community mental health program director and the person's next  
33 of kin, if the person consents to the consultation, prior to discharging the person. Immediately upon  
34 discharge of the person, the treating licensed independent practitioner shall notify the court in the  
35 county in which the certificate was filed initially.

36 (f) If the person is in a nonhospital facility, the community mental health program director may  
37 discharge the person at any time during the 14-day period. The community mental health program  
38 director shall consult with the licensed independent practitioner who is treating the person and the  
39 person's next of kin, if the person consents to the consultation, prior to discharging the person.  
40 Immediately upon discharge of the person, the community mental health program director shall no-  
41 tify the court in the county in which the certificate was filed initially.

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

45 (h) A person consenting to 14 days of treatment under subsection (3)(c) of this section shall not

be held longer than 14 days from the time of consenting without a hearing as provided in ORS 426.070 to 426.130.

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

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

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

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

**SECTION 14.** ORS 426.301 is amended to read:

426.301. (1) At the end of the 180-day period of commitment, any person whose status has not been changed to voluntary shall be released unless the Oregon Health Authority certifies to the court in the county where the treating facility is located that the person is still a person with mental illness and is in need of further treatment. The authority, pursuant to its rules, may delegate to the director of the treating facility the responsibility for making the certification. The director of the treating facility shall consult with the community mental health program director of the county of residence prior to making the certification. If the certification is made, the person will not be released, but the director of the treating facility shall immediately issue a copy of the certification to the person and to the community mental health program director of the county of residence.

(2) The certification shall be served upon the person by the director of the facility where the person is confined or by the designee of the director. The director of the facility shall inform the court in writing that service has been made and the date thereof.

(3) The certification shall advise the person of all the following:

(a) That the authority or facility has requested that commitment be continued for an additional period of time.

(b) That the person may consult with legal counsel and that legal counsel will be provided for the person without cost if the person is unable to afford legal counsel.

(c) That the person may protest this further period of commitment within 14 days, and if the person does not protest the further commitment, commitment will be continued for an indefinite period of time up to 180 days.

(d) That if the person does protest a further period of commitment, the person is entitled to a hearing before the court on whether commitment should be continued.

(e) That the person may protest either orally or in writing by signing the form accompanying the certification.

(f) That the person is entitled to have a physician or other qualified professional as recommended by the authority, other than a member of the staff at the facility where the person is confined, examine the person and report to the court the results of the examination.

(g) That the person may subpoena witnesses and offer evidence on behalf of the person at the hearing.

(h) That if the person is without funds to retain legal counsel or an examining physician or

1 qualified professional as recommended by the authority, the court will appoint legal counsel, a  
2 physician or other qualified professional.

3 (4) Nothing in subsection (3) of this section requires the giving of the warning under ORS  
4 426.123.

5 (5)(a) When serving the certification upon the person, the authority shall read and deliver the  
6 certification to the person and ask whether the person protests a further period of commitment.

7 (b) The person may protest further commitment either orally or by signing a simple protest form  
8 to be given to the person with the certification.

9 (c) If the person does not protest a further period of commitment within 14 days *[of]* **after re-**  
10 **ceiving** service of the certification, the authority or facility shall so notify the court *[and]*.

11 (6)(a) **Upon receipt of the proof of service of the certification required under subsection**  
12 **(2) of this section, the court shall appoint counsel for the person, subject to ORS 426.100.**

13 (b) **Upon receipt of the notification under subsection (5)(c) of this section that the person**  
14 **does not protest the further period of commitment,** the court shall, without further hearing,  
15 order the commitment of the person for an additional indefinite period of time up to 180 days.

16  
17 **CAPTIONS**

18  
19 **SECTION 15. The unit and section captions used in this 2025 Act are provided only for**  
20 **the convenience of the reader and do not become part of the statutory law of this state or**  
21 **express any legislative intent in the enactment of this 2025 Act.**

22  
23 **OPERATIVE DATE**

24  
25 **SECTION 16. Operative date. The amendments to ORS 426.070, 426.100, 426.160 and 426.301**  
26 **by sections 9 to 11 and 14 of this 2025 Act become operative on July 1, 2026.**  
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