

HB 2481-11
(LC 2836)
5/21/25 (JLM/LAS/ps)

Requested by JOINT COMMITTEE ON ADDICTION AND COMMUNITY SAFETY RESPONSE

**PROPOSED AMENDMENTS TO
HOUSE BILL 2481**

1 In line 2 of the printed bill, after “health” insert “; creating new pro-
2 visions; and amending ORS 125.683, 161.362, 161.370, 426.070, 426.237, 426.100,
3 426.160, 426.232 and 426.301”.

4 Delete lines 4 through 8 and insert:

5

6 **“GUARDIANSHIPS FOR DEFENDANTS LACKING FITNESS TO
7 PROCEED**

8

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

11 **“SECTION 2. (1) The Oregon Public Guardian and Conservator shall
12 develop and administer a program to provide guardianship services to
13 defendants whose criminal cases have been suspended or dismissed
14 pursuant to ORS 161.370 due to the defendant lacking fitness to pro-
15 ceed.**

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

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

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

7 **“(5) In administering the program described in this section, the**
8 **Oregon Public Guardian and Conservator shall collaborate and coor-**
9 **minate with district attorneys, community mental health programs and**
10 **facilities in which defendants are housed, including the Oregon State**
11 **Hospital.**

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

13 “125.683. (1) In providing public guardian and conservator services, the
14 Oregon Public Guardian and Conservator shall conduct a needs assessment
15 for a person who claims or is claimed not to have relatives or friends willing
16 or able to assume the duties of guardianship or conservatorship and who
17 claims or is claimed to lack the financial resources to obtain a private
18 guardian or conservator. The purpose of the needs assessment is to determine
19 the person’s eligibility to receive public guardian and conservator services
20 and to determine the appropriateness of filing a petition for the appointment
21 of a fiduciary or other pleading on behalf of the person in a court having
22 probate jurisdiction. The needs assessment shall, at a minimum:

23 “(a) Assess the person’s capacity to:

24 “(A) Care for the person’s own safety;

25 “(B) Manage the person’s own financial affairs; and

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

28 “(b) Assess the person’s financial resources;

29 “(c) Determine whether information that is available about the person is
30 sufficient to support a finding that the person is incapacitated or financially

1 incapable and the entry of a court order for the appointment of a fiduciary
2 under ORS 125.010;

3 “(d) Determine whether any other person may be willing and able to serve
4 as the person’s guardian or conservator and, if appropriate, locate and con-
5 tact that other person;

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

9 “(f) Determine how best to provide public guardian and conservator ser-
10 vices to the person that are least restrictive to the person’s liberty, that are
11 least intrusive to the person and that provide for the greatest degree of in-
12 dependence that the person is capable of exercising.

13 “(2)(a) If the person is a resident of a nursing home as defined in ORS
14 678.710 or a residential facility as defined in ORS [441.402] **443.400**, the
15 nursing home or residential facility shall provide the Oregon Public Guard-
16 ian and Conservator access to the person’s records as is necessary to conduct
17 the needs assessment required under this section.

18 “(b) Any other public agency that has provided or is providing care or
19 services to the person shall disclose to the Oregon Public Guardian and
20 Conservator, upon request, a minimum amount of information about the
21 person for whom the needs assessment is being conducted, including pro-
22 tected health information as defined in ORS 192.556 and financial informa-
23 tion, as is reasonably necessary to prevent or lessen a serious and imminent
24 threat to the health or safety of the person who is the subject of the needs
25 assessment. For purposes of this paragraph, a request from the Oregon Public
26 Guardian and Conservator for the purpose of conducting a needs assessment
27 is presumed to be a situation that will prevent or lessen a serious and im-
28 minent threat to the health or safety of the person.

29 “(c) Any health care provider not identified in either paragraph (a) or (b)
30 of this subsection may disclose protected health information to the Oregon

1 Public Guardian and Conservator in accordance with 45 C.F.R. 164.512 (j) to
2 prevent or lessen a serious or imminent threat to the health or safety of a
3 person if the health care provider, in good faith, believes the disclosure is
4 necessary to prevent or lessen the threat. For purposes of this paragraph, a
5 request from the Oregon Public Guardian and Conservator for disclosure
6 under this paragraph for the purposes of conducting a needs assessment, or
7 the good faith belief and disclosure of the health care provider under this
8 paragraph, are presumed to be situations that will prevent or lessen a serious
9 and imminent threat to the health or safety of the person.

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

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

25 **“SECTION 4.** ORS 161.362 is amended to read:

26 “161.362. (1) A recommendation provided by a certified evaluator, pursu-
27 ant to ORS 161.355 to 161.371, that a defendant requires a hospital level of
28 care due to the acuity of the defendant’s symptoms must be based upon the
29 defendant’s current diagnosis and symptomology, the defendant’s current
30 ability to engage in treatment, present safety concerns relating to the de-

1 defendant and any other pertinent information known to the evaluator. If the
2 defendant is in a placement in a facility, the evaluator may defer to the
3 treatment provider's recommendation regarding whether a hospital level of
4 care is needed.

5 “(2) A determination by a community mental health program director, or
6 the director's designee, pursuant to ORS 161.355 to 161.371, that appropriate
7 community restoration services are not present and available in the commu-
8 nity must include information concerning the specific services necessary to
9 safely allow the defendant to gain or regain fitness to proceed in the com-
10 munity and must specify the necessary services that are not present and
11 available in the community.

12 “(3)(a) Reports resulting from examinations performed by a certified
13 evaluator, and documents containing the recommendations of or resulting
14 from consultations with a community mental health program director or the
15 director's designee, prepared under ORS 161.355 to 161.371, and any document
16 submitted to the court by a state mental hospital related to the proceedings
17 under ORS 161.355 to 161.371, are confidential and may be made available
18 only:

19 “(A) To the court, prosecuting attorney, defense attorney, agent of the
20 prosecuting or defense attorney, defendant, community mental health pro-
21 gram director or designee, state mental hospital, **Oregon Public Guardian**
22 **and Conservator** and any facility in which the defendant is housed; or

23 “(B) As ordered by a court.

24 “(b) Any facility in which a defendant is housed may not use a report or
25 document described in paragraph (a) of this subsection to support a disci-
26 plinary action against the defendant.

27 “(c) Nothing in this subsection prohibits the prosecuting attorney, defense
28 attorney or agent of the prosecuting or defense attorney from discussing the
29 contents of a report or document described in paragraph (a) of this sub-
30 section with witnesses or victims as otherwise permitted by law.

1 “(4) The court shall ensure that an order entered under ORS 161.355 to
2 161.371 is provided, by the end of the next judicial day, to any entity ordered
3 to provide restoration services.

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

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

9 “161.370. (1)(a) When the defendant’s fitness to proceed is drawn in ques-
10 tion, the issue shall be determined by the court.

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

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

22 “(b) After making the determination under paragraph (a) of this sub-
23 section, the court shall receive a recommendation from a community mental
24 health program director or the director’s designee, and from any local entity
25 that would be responsible for treating the defendant if the defendant were
26 to be released in the community, concerning whether appropriate community
27 restoration services are present and available in the community.

28 “(c) If the parties agree as to the appropriate action under this section,
29 the court may, after making all findings required by law, enter any order
30 authorized by this section. If the parties do not agree as to the appropriate

1 action, the court and the parties shall, at a hearing, consider an appropriate
2 action in the case, and the court shall make a determination and enter an
3 order necessary to implement the action. In determining the appropriate
4 action, the court shall consider the primary and secondary release criteria
5 as defined in ORS 135.230, the least restrictive option appropriate for the
6 defendant, the needs of the defendant and the interests of justice. Actions
7 may include but are not limited to:

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

10 “(B) An order to engage in community restoration services, as recom-
11 mended by the community mental health program director or designee, under
12 subsection (6) of this section;

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

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

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

18 “(d) If the court, while considering or ordering an appropriate action un-
19 der this subsection, does not order the defendant committed to a state mental
20 hospital or other facility, but finds that appropriate community restoration
21 services are not present and available in the community, for any defendant
22 remaining in custody after such determination, the court shall set a review
23 hearing seven days from the date of the determination under paragraph (a)
24 of this subsection. At the review hearing, the court shall consider all rele-
25 vant information and determine if commitment to the state mental hospital
26 or other facility is appropriate under subsection (3) or (4) of this section, or
27 if another action described in paragraph (c) of this subsection is appropriate.
28 At the conclusion of the hearing the court shall enter an order in accordance
29 with the defendant’s constitutional rights to due process.

30 “(e) If the court determines that the appropriate action in the case is an

1 order for the defendant to engage in community restoration services, but the
2 defendant has a pending criminal case, warrant or hold in one or more other
3 jurisdictions, the other jurisdictions shall, within two judicial days of be-
4 coming aware of the proceeding under this section, communicate with the
5 court and the other jurisdictions, if applicable, to develop a plan to address
6 the interests of all jurisdictions in the defendant in a timely manner.

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

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

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

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

27 “(b) If the defendant is committed under this subsection, the community
28 mental health program director, or director’s designee, shall at regular in-
29 tervals, during any period of commitment, review available community res-
30 toration services and maintain communication with the defendant and the

1 superintendent of the state mental hospital or director of the facility in order
2 to facilitate an efficient transition to treatment in the community when or-
3 dered.

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

8 “(4)(a) If the most serious offense in the charging instrument is a
9 misdemeanor, the court may not commit the defendant to the custody of the
10 superintendent of a state mental hospital or director of a facility designated
11 by the Oregon Health Authority if the defendant is at least 18 years of age,
12 or to the custody of the director of a secure intensive community inpatient
13 facility designated by the authority if the defendant is under 18 years of age,
14 unless the court:

15 “(A)(i) Receives a recommendation from a certified evaluator that the
16 defendant requires a hospital level of care due to the acuity of symptoms of
17 the defendant’s qualifying mental disorder; and

18 “(ii) Receives a recommendation from a community mental health program
19 director, or director’s designee, that the appropriate community restoration
20 services are not present and available in the community; or

21 “(B) Determines that the defendant requires a hospital level of care after
22 making all of the following written findings:

23 “(i) The defendant needs a hospital level of care due to the acuity of the
24 symptoms of the defendant’s qualifying mental disorder;

25 “(ii) There are public safety concerns; and

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

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

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

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

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

13 “(d) If the defendant is committed under this subsection, the community
14 mental health program director, or director’s designee, shall at regular in-
15 tervals, during any period of commitment, review available community res-
16 toration services and maintain communication with the defendant and the
17 superintendent of the state mental hospital or director of the facility in order
18 to facilitate an efficient transition to treatment in the community when or-
19 dered.

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

26 “(6)(a) If the court does not order the commitment of the defendant under
27 subsection (3) or (4) of this section, if commitment is precluded under sub-
28 section (5) of this section or if the court determines that care other than
29 commitment would better serve the defendant and the community, the court
30 shall release the defendant, pursuant to an order that the defendant engage

1 in community restoration services, until the defendant has gained or re-
2 gained fitness to proceed, or until the court finds there is no substantial
3 probability that the defendant will, within the foreseeable future, gain or
4 regain fitness to proceed. The court may not order the defendant to engage
5 in community restoration services in another county without permission
6 from the other county.

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

12 “(c) A community mental health program director coordinating the
13 defendant’s treatment in the community shall notify the court if the defend-
14 ant gains or regains fitness to proceed. The notice shall be filed with the
15 court and may be filed electronically. The clerk of the court shall cause
16 copies of the notice to be delivered to both the district attorney and the
17 counsel for the defendant.

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

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

27

28

“APPOINTMENT OF COUNSEL

29

30 **“SECTION 6. The Oregon Public Defense Commission shall study**

1 **and implement methods for increasing recruitment and training for**
2 **attorneys specializing in civil commitment. The commission shall**
3 **submit a report in the manner provided by ORS 192.245, and may in-**
4 **clude recommendations for legislation, to the interim committees of**
5 **the Legislative Assembly related to the judiciary and behavioral health**
6 **no later than September 15, 2026.**

7 **“SECTION 7. Section 6 of this 2025 Act is repealed on January 2,**
8 **2027.**

9 **“SECTION 8. ORS 426.070 is amended to read:**

10 “426.070. (1) Any of the following may initiate commitment procedures
11 under this section by giving the notice described under subsection (2) of this
12 section:

13 “(a) Two persons;

14 “(b) The local health officer; or

15 “(c) Any magistrate **mentioned in ORS 133.030** or **any** judge of a court
16 of a federally recognized Indian tribe located in this state.

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

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

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

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

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

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

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

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

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

8 “(a) **Immediately notify the person alleged to have a mental illness**
9 **that the court will appoint legal counsel as provided in ORS 426.100 for**
10 **the person and ascertain the person’s preferences regarding appoint-**
11 **ment of counsel.**

12 “[a] (b) Immediately notify the judge of the court having jurisdiction for
13 that county under ORS 426.060 of the notification described in subsections
14 (1) and (2) of this section **and paragraph (a) of this subsection and the**
15 **person’s preferences regarding appointment of counsel.**

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

23 “[c] (d) Initiate an investigation under ORS 426.074 to determine
24 whether there is probable cause to believe that the person is in fact a person
25 with mental illness.

26 “(4) Upon completion, a recommendation based upon the investigation
27 report under ORS 426.074 shall be promptly submitted to the court. If the
28 community mental health program director determines that probable cause
29 does not exist to believe that a person released from detention under ORS
30 426.234 (2)(c) or (3)(b) is a person with mental illness, the community mental

1 health program director may recommend assisted outpatient treatment in
2 accordance with ORS 426.133.

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

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

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

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

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

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

26 “(iii) The person’s right, if the community mental health program direc-
27 tor, sheriff or designee reasonably suspects that the person is a foreign na-
28 tional, to communicate with an official from the consulate of the person’s
29 country. A community mental health program director, sheriff or designee is
30 not civilly or criminally liable for failure to provide the information required

1 by this sub-subparagraph. Failure to provide the information required by this
2 sub-subparagraph does not in itself constitute grounds for the exclusion of
3 evidence that would otherwise be admissible in a proceeding.

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

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

9 **“SECTION 9.** ORS 426.070, as amended by section 8 of this 2025 Act, is
10 amended to read:

11 “426.070. (1) Any of the following may initiate commitment procedures
12 under this section by giving the notice described under subsection (2) of this
13 section:

14 “(a) Two persons;

15 “(b) The local health officer; or

16 “(c) Any magistrate mentioned in ORS 133.030 or any judge of a court of
17 a federally recognized Indian tribe located in this state.

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

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

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

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

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

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

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

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

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

9 “(a) Immediately notify the person alleged to have a mental illness that
10 the court will appoint legal counsel as provided in ORS 426.100 for the per-
11 son and ascertain the person’s preferences regarding appointment of counsel.

12 “(b) Immediately notify the judge of the court having jurisdiction for that
13 county under ORS 426.060 of the notification described in subsections (1) and
14 (2) of this section and paragraph (a) of this subsection and the person’s
15 preferences regarding appointment of counsel.

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

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

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

1 accordance with ORS 426.133.

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

3 **“(a) The court shall appoint legal counsel for the person as provided**
4 **in ORS 426.100.**

5 “[*(a)*] **(b)** If the court, following the investigation, concludes that there
6 is probable cause to believe that the person investigated is a person with
7 mental illness, it shall, through the issuance of a citation as provided in ORS
8 426.090, cause the person to be brought before it at a time and place as it
9 may direct, for a hearing under ORS 426.095 to determine whether the person
10 is a person with mental illness. The person shall be given the opportunity
11 to appear voluntarily at the hearing unless the person fails to appear or
12 unless the person is detained pursuant to paragraph [*(b)*] **(c)** of this sub-
13 section.

14 “[*(b)*(A)] **(c)(A)** If the court finds that there is probable cause to believe
15 that failure to take the person into custody pending the investigation or
16 hearing would pose serious harm or danger to the person or to others, the
17 court may issue a warrant of detention to the community mental health
18 program director or designee or the sheriff of the county or designee direct-
19 ing the director, sheriff or a designee to take the person alleged to have a
20 mental illness into custody and produce the person at the time and place
21 stated in the warrant.

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

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

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

28 “(iii) The person’s right, if the community mental health program direc-
29 tor, sheriff or designee reasonably suspects that the person is a foreign na-
30 tional, to communicate with an official from the consulate of the person’s

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

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

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

11 **“SECTION 10.** ORS 426.100 is amended to read:

12 “426.100. (1) At the time the person alleged to have a mental illness is
13 brought before the court, the court shall advise the person of the following:

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

15 “(b) The nature of the proceedings;

16 “(c) The possible results of the proceedings;

17 “(d) The right to subpoena witnesses; and

18 “(e) The person’s rights regarding representation by or appointment of
19 counsel.

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

22 **“(a) When notice of probable cause to believe the person is a person
23 with mental illness has been filed with the court as provided in ORS
24 426.070.**

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

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

28 “[c] (d) When the person is detained as provided under ORS 426.228,
29 426.232 or 426.233.

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

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

4 “(a) The right to obtain suitable legal counsel possessing skills and ex-
5 perience commensurate with the nature of the allegations and complexity of
6 the case during the proceedings.

7 “(b) If the person is determined to be financially eligible for appointed
8 counsel at state expense, the court will appoint legal counsel to represent
9 the person. If counsel is appointed at state expense, payment of expenses and
10 compensation relating to legal counsel shall be made as provided under ORS
11 426.250.

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

15 “(d) If no request for legal counsel is made, the court shall appoint suit-
16 able legal counsel unless counsel is expressly, knowingly and intelligently
17 refused by the person.

18 “(e) If the person is being involuntarily detained before a hearing on the
19 issue of commitment, the right under paragraph (a) of this subsection to
20 contact an attorney or under paragraph (b) of this subsection to have an
21 attorney appointed may be exercised as soon as reasonably possible.

22 “(f) In all cases suitable legal counsel shall be present at the hearing and
23 may be present at examination and may examine all witnesses offering tes-
24 timony, and otherwise represent the person.

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

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

29 **“(b) The person expressly, knowingly and intelligently refuses ap-**
30 **pointment of counsel.**

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

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

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

11 **“[(4)] (6) The responsibility for representing the state’s interest in com-**
12 **mitment proceedings, including, but not limited to, preparation of the state’s**
13 **case and appearances at commitment hearings is as follows:**

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

16 **“(A) Recommitment proceedings under ORS 426.307; or**

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

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

20 **“(c) In lieu of the district attorney under paragraph (b) of this subsection,**
21 **a counsel designated by the governing body of a county shall take the re-**
22 **sponsibility. A county governing body may designate counsel to take re-**
23 **sponsibility under this paragraph either for single proceedings or for all such**
24 **proceedings the county will be obligated to pay for under ORS 426.250. If a**
25 **county governing body elects to proceed under this paragraph, the county**
26 **governing body shall so notify the district attorney. The expenses of an at-**
27 **torney appointed under this paragraph shall be paid as provided under ORS**
28 **426.250.**

29 **“SECTION 11. ORS 426.160 is amended to read:**

30 **“426.160. (1) The court having jurisdiction over any proceeding conducted**

1 pursuant to ORS 426.005, 426.060 to 426.170, 426.217, 426.228, 426.255 to
2 426.292, 426.300 to 426.309, 426.385, 426.395, 426.701 and 426.702 may not dis-
3 close any part of the record of the proceeding or commitment to any person
4 except:

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

11 “(b) As provided in ORS 426.070 [(5)(c)] **(5)(d)**, 426.130 (3) or 426.170;

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

13 “(d) On request of the person’s legal representative or the attorney for the
14 person or the state; or

15 “(e) Pursuant to court order.

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

24 “**SECTION 12.** ORS 426.232 is amended to read:

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

1 by blood or marriage, the licensed independent practitioner may do one of
2 the following:

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

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

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

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

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

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

23 “426.237. (1) During a prehearing period of detention as provided in ORS
24 426.070, 426.140, 426.232 or 426.233, the community mental health program
25 director shall do one of the following:

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

30 “(b) No later than three judicial days after initiation of a prehearing pe-

1 rioid of detention as provided in ORS 426.070, 426.140, 426.232 or 426.233,
2 certify the detained person for a 14-day period of intensive treatment if:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 “(C) A notice of the person’s right to an attorney and that an attorney
20 will be appointed by the court or as otherwise obtained under ORS 426.100
21 (3);

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

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

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

28 “(c) Immediately upon receipt of a certificate under paragraph (a) of this
29 subsection, the court shall notify the person’s attorney or appoint an attor-
30 ney for the person if the person cannot afford one. Within 24 hours of the

1 time the certificate is delivered to the court, the person's attorney shall re-
2 view the certificate with the person. If the person and the person's attorney
3 consent to the certification within one judicial day of the time the certificate
4 is delivered to the circuit court and, except as provided in subsection (4) of
5 this section, the court shall postpone the hearing required by ORS 426.070
6 to 426.130 for 14 days.

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

9 “(A) Except as otherwise provided in this paragraph, all methods of
10 treatment, including the prescription and administration of drugs, shall be
11 the sole responsibility of the licensed independent practitioner who is treat-
12 ing the person. However, the person shall not be subject to electroshock
13 therapy or unduly hazardous treatment and shall receive usual and custom-
14 ary treatment in accordance with medical standards in the community.

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

21 “(C) If the person is in a hospital and the community mental health pro-
22 gram director locates a nonhospital facility, approved by the authority, that,
23 in the opinion of the community mental health program director and the li-
24 censed independent practitioner who is treating the person, can provide care
25 or treatment for mental illness necessary and sufficient to meet the emer-
26 gency psychiatric needs of the person, the treating licensed independent
27 practitioner shall discharge the person from the hospital and the community
28 mental health program director shall remove the person to the nonhospital
29 facility for the remainder of the 14-day intensive treatment period. If, how-
30 ever, in the opinion of the treating licensed independent practitioner, the

1 person's condition requires the person to receive medical care or treatment,
2 the licensed independent practitioner shall retain the person in the hospital.

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

6 “(i) If, in the opinion of a licensed independent practitioner, the person's
7 condition requires the person to receive medical care or treatment in a hos-
8 pital; and

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

12 “(E) If the person is transferred as provided in subparagraph (C) or (D)
13 of this paragraph, the community mental health program director shall notify
14 the circuit court, in the county where the certificate was filed, of the lo-
15 cation of the person. The person may appeal the transfer as provided by rules
16 of the authority.

17 “(e) If the person is in a hospital, the licensed independent practitioner
18 who is treating the person may discharge the person at any time during the
19 14-day period. The treating licensed independent practitioner shall confer
20 with the community mental health program director and the person's next
21 of kin, if the person consents to the consultation, prior to discharging the
22 person. Immediately upon discharge of the person, the treating licensed in-
23 dependent practitioner shall notify the court in the county in which the
24 certificate was filed initially.

25 “(f) If the person is in a nonhospital facility, the community mental
26 health program director may discharge the person at any time during the
27 14-day period. The community mental health program director shall consult
28 with the licensed independent practitioner who is treating the person and the
29 person's next of kin, if the person consents to the consultation, prior to
30 discharging the person. Immediately upon discharge of the person, the com-

1 community mental health program director shall notify the court in the county
2 in which the certificate was filed initially.

3 “(g) The person may agree to voluntary treatment at any time during the
4 14-day period. When a person agrees to voluntary treatment under this par-
5 agraph, the community mental health program director immediately shall
6 notify the court in the county in which the certificate was filed initially.

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

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

12 “(4) The judge of the circuit court shall immediately commence pro-
13 ceedings under ORS 426.070 to 426.130 when:

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

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

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

23 “426.301. (1) At the end of the 180-day period of commitment, any person
24 whose status has not been changed to voluntary shall be released unless the
25 Oregon Health Authority certifies to the court in the county where the
26 treating facility is located that the person is still a person with mental ill-
27 ness and is in need of further treatment. The authority, pursuant to its rules,
28 may delegate to the director of the treating facility the responsibility for
29 making the certification. The director of the treating facility shall consult
30 with the community mental health program director of the county of resi-

1 dence prior to making the certification. If the certification is made, the
2 person will not be released, but the director of the treating facility shall
3 immediately issue a copy of the certification to the person and to the com-
4 munity mental health program director of the county of residence.

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

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

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

12 “(b) That the person may consult with legal counsel and that legal coun-
13 sel will be provided for the person without cost if the person is unable to
14 afford legal counsel.

15 “(c) That the person may protest this further period of commitment within
16 14 days, and if the person does not protest the further commitment, commit-
17 ment will be continued for an indefinite period of time up to 180 days.

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

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

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

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

29 “(h) That if the person is without funds to retain legal counsel or an ex-
30 amining physician or qualified professional as recommended by the authority,

1 the court will appoint legal counsel, a physician or other qualified profes-
2 sional.

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

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

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

10 “(c) If the person does not protest a further period of commitment within
11 14 days [of] **after receiving** service of the certification, the authority or fa-
12 cility shall so notify the court [and].

13 “(6)(a) **Upon receipt of the proof of service of the certification re-**
14 **quired under subsection (2) of this section, the court shall appoint**
15 **counsel for the person, subject to ORS 426.100.**

16 “(b) **Upon receipt of the notification under subsection (5)(c) of this**
17 **section that the person does not protest the further period of com-**
18 **mitment,** the court shall, without further hearing, order the commitment
19 of the person for an additional indefinite period of time up to 180 days.

20

21 “CAPTIONS

22

23 “**SECTION 15. The unit and section captions used in this 2025 Act**
24 **are provided only for the convenience of the reader and do not become**
25 **part of the statutory law of this state or express any legislative intent**
26 **in the enactment of this 2025 Act.**

27

28 “OPERATIVE DATE

29

30 “**SECTION 16. Operative date. The amendments to ORS 426.070,**

1 **426.100, 426.301 and 426.160 by sections 9 to 11 and 14 of this 2025 Act**
2 **become operative on July 1, 2026.”.**

3 _____