

Senate Bill 187

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Judiciary for Workgroup to Decriminalize Mental Illness)

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 **as introduced**.

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

A BILL FOR AN ACT

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

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

SECTION 1. ORS 426.005 is amended to read:

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

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

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

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

[(c)] (d) "Facility" means a state mental hospital, community hospital, residential facility, detoxification center, day treatment facility or such other facility as the authority determines suitable that provides diagnosis and evaluation, medical care, detoxification, social services or rehabilitation to persons who are in custody during a prehearing period of detention or who have been committed to the Oregon Health Authority under ORS 426.130.

[(d)] (e) "Licensed independent practitioner" means:

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

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

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

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

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

(A) Dangerous to self or others.

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.

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

(C) A person:

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

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

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

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

[(g)] (h) "Prehearing period of detention" means a period of time calculated from the initiation of custody during which a person may be detained under ORS 426.228, 426.231, 426.232 or 426.233.

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

SECTION 2. ORS 426.130 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

(B) May order conditional release under this subparagraph subject to the qualifications and requirements under ORS 426.125. If the court orders conditional release under this subparagraph, the court shall establish a period of commitment for the conditional release.

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

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

(ii) The authority may place the committed person in outpatient commitment under ORS 426.127.

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

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

(A) Dismiss the case; or

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

[(2)] (3) A court that orders a conditional release, a commitment or assisted outpatient treatment under this section shall establish a period of commitment or treatment for the person subject to the order. Any period of commitment ordered for commitment or conditional release under this section shall be for a period of time not to exceed 180 days. A period of assisted outpatient treatment shall be for a period of time not to exceed 12 months.

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

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

SECTION 3. ORS 426.070 is amended to read:

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

(a) Two persons;

(b) The local health officer; or

(c) Any magistrate or **any** judge of a court of a federally recognized Indian tribe located in this state.

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

(a) It must be in writing under oath;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) The warning under ORS 426.123; and

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

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

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

SECTION 4. ORS 426.074 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) A copy of the investigation report shall be provided as soon as possible, but in no event later

than 24 hours prior to the hearing, to the person and to the person's counsel. Copies shall likewise be provided to counsel assisting the court, to the examiners and to the court for use in questioning witnesses.

SECTION 5. ORS 426.133 is amended to read:

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

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

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

(B) Has a mental disorder;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) This section does not:

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

2 (b) Require a community mental health program to provide treatment or services to, or super-
3 vision of, the person:

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

5 (B) In the case of a county that has declined to operate or contract for a community mental
6 health program, if the public agency or private corporation that contracts with the Oregon Health
7 Authority to provide the program, as described in ORS 430.640, lacks sufficient funds for such pur-
8 poses.

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

10 426.160. (1) The court having jurisdiction over any proceeding conducted pursuant to ORS
11 426.005, 426.060 to 426.170, 426.217, 426.228, 426.255 to 426.292, 426.300 to 426.309, 426.385, 426.395,
12 426.701 and 426.702 may not disclose any part of the record of the proceeding or commitment to any
13 person except:

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

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

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

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

22 (e) Pursuant to court order.

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

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

30 426.180. (1) ORS 426.180 to 426.210 apply to the commitment of an individual in Indian country
31 if a federally recognized Indian tribe that has Indian country located within this state chooses to
32 exercise the tribe's authority over the commitment.

33 (2) As used in this section and ORS 426.200 and 426.210, "hospital" means a hospital that is li-
34 censed under ORS chapter 441, other than an institution listed in ORS 426.010.

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

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

41 (b) A medical history completed by one of the following, who may not be related to the indi-
42 vidual by blood or marriage:

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

45 (B) A qualified mental health professional; or

(C) A licensed independent practitioner.

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

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

(6) If the hospital or nonhospital facility admits the individual, the director or a licensed independent practitioner shall notify the community mental health program director for the area and the circuit court with jurisdiction in the area where the facility is located. Upon receipt of the notice, the community mental health program director shall initiate commitment proceedings in accordance with ORS 426.070.

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

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

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

SECTION 8. ORS 426.225 is amended to read:

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

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

SECTION 9. ORS 426.228 is amended to read:

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

1 (a) The reason for custody;

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

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

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

12 (a) The reason for custody;

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

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

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

23 (4) When a peace officer or other authorized individual, acting under this section, delivers a
24 person to a hospital or nonhospital facility, a licensed independent practitioner shall examine the
25 person immediately. If the licensed independent practitioner finds the person to be in need of
26 emergency care or treatment for mental illness, the licensed independent practitioner shall proceed
27 under ORS 426.232, otherwise the person may not be retained in custody. If the person is to be re-
28 leased from custody, the peace officer or the community mental health program director shall return
29 the person to the place where the person was taken into custody unless the person declines that
30 service.

31 (5) A peace officer may transfer a person in custody under this section to the custody of an in-
32 dividual authorized by the community mental health program director under ORS 426.233 (3). The
33 peace officer may meet the authorized individual at any location that is in accordance with ORS
34 426.140 to effect the transfer. When transferring a person in custody to an authorized individual, the
35 peace officer shall deliver the report required under subsections (1) and (2) of this section to the
36 authorized individual.

37 (6) An individual authorized under ORS 426.233 (3) shall take a person into custody when di-
38 rected to do so by a peace officer or by a community mental health program director under ORS
39 426.233.

40 (7) An individual authorized under ORS 426.233 (3) shall perform the duties of the peace officer
41 or the community mental health program director required by this section and ORS 426.233 if the
42 peace officer or the director has not already done so.

43 (8) An individual authorized under ORS 426.233 (3) may transfer a person in custody under this
44 section to the custody of another individual authorized under ORS 426.233 (3) or a peace officer. The
45 individual transferring custody may meet another authorized individual or a peace officer at any

1 location that is in accordance with ORS 426.140 to effect the transfer.

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

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

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

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

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

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

16 (c) A licensed independent practitioner with admitting privileges at the receiving facility con-
17 sents to the transporting.

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

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

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

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

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

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

30 426.232. (1) If a licensed independent practitioner believes a person who is brought to a hospital
31 or nonhospital facility by a peace officer under ORS 426.228 or by an individual authorized under
32 ORS 426.233, or believes a person who is at a hospital or nonhospital facility, is dangerous to self
33 or [*to any other person*] **others** and is in need of emergency care or treatment for mental illness,
34 and the licensed independent practitioner is not related to the person by blood or marriage, the li-
35 censed independent practitioner may do one of the following:

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

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

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

1 be held for longer than five judicial days.

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

3 426.233. (1)(a) A community mental health program director operating under ORS 430.610 to
4 430.695 or a designee of the director may take one of the actions listed in paragraph (b) of this
5 subsection when the community mental health program director or designee has probable cause to
6 believe a person:

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

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

11 (ii) Is dangerous to self or [*to any other person*] **others** or is unable to provide for basic personal
12 needs and is not receiving the care that is necessary for health and safety and is in need of imme-
13 diate care, custody or treatment for mental illness.

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

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

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

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

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

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

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

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

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

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

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

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

44 (e) Transfer a person in custody from a hospital or nonhospital facility to another hospital fa-
45 cility or nonhospital facility when directed to do so by the community mental health program di-

1 rector; and

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

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

7 (5) The costs of transporting a person under ORS 426.060, 426.228 or 426.235 by an individual
8 authorized under subsection (3) of this section shall be the responsibility of the community mental
9 health program in the county in which the authorized individual is directed by a peace officer or a
10 community mental health program director to take custody of a person and to transport the person
11 to a facility approved by the authority, but the community mental health program shall not be re-
12 sponsible for costs that exceed the amount provided by the state for that transportation. An indi-
13 vidual authorized to act under subsection (3) of this section shall charge the cost of emergency
14 medical transportation to, and collect that cost from, the person, third party payers or other legally
15 or financially responsible individuals or entities in the same manner that costs for the transportation
16 of other persons are charged and collected.

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

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

21 (a) Inform the person of the person's right to representation by or appointment of counsel as
22 described in ORS 426.100;

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

24 (c) Immediately examine the person;

25 (d) Set forth, in writing, the condition of the person and the need for emergency care or treat-
26 ment; and

27 (e) If the licensed independent practitioner, nurse or qualified mental health professional rea-
28 sonably suspects that the person is a foreign national, inform the person of the person's right to
29 communicate with an official from the consulate of the person's country. A licensed independent
30 practitioner, nurse or qualified mental health professional is not civilly or criminally liable for fail-
31 ure to provide the information required by this paragraph. Failure to provide the information re-
32 quired by this paragraph does not in itself constitute grounds for the exclusion of evidence that
33 would otherwise be admissible in a proceeding.

34 (2)(a) At the time the person is admitted to or retained in a hospital under ORS 426.232, the li-
35 censed independent practitioner shall contact the community mental health program director of the
36 county in which the person resides, if the county of residence is different from the county in which
37 the hospital is located. The community mental health program director may request that the licensed
38 independent practitioner notify the circuit court in the county in which the person resides. If the
39 community mental health program director does not make the request, the licensed independent
40 practitioner shall notify, immediately and in writing, the circuit court in the county in which the
41 person is hospitalized.

42 (b) At the time the person is admitted to a hospital under ORS 426.232 after being brought to
43 the hospital by a peace officer under ORS 426.228, the licensed independent practitioner shall con-
44 tact the community mental health program director of the county in which the person is hospital-
45 ized. The community mental health program director of the county in which the person is

1 hospitalized may request that the licensed independent practitioner notify the circuit court in the
 2 county in which the person is hospitalized. If the community mental health program director does
 3 not make the request, the licensed independent practitioner shall notify, immediately and in writing,
 4 the circuit court in the county in which the person was taken into custody.

5 (c) If, at any time prior to the hearing under ORS 426.070 to 426.130, the licensed independent
 6 practitioner responsible for a person admitted or retained under ORS 426.232 determines that the
 7 person is not dangerous to self or *[to any other person]* **others** and is not in need of emergency care
 8 or treatment for mental illness, the licensed independent practitioner may release the person from
 9 the detention authorized by ORS 426.232. The licensed independent practitioner shall immediately
 10 notify the circuit court notified under this subsection and the community mental health program
 11 director of the person's release from detention.

12 (3)(a) At the time the person is admitted to or retained in a nonhospital facility under ORS
 13 426.233, the community mental health program director in the county where the person was taken
 14 into custody shall contact the community mental health program director of the county in which the
 15 person resides, if the county of residence is different from the county in which the person was taken
 16 into custody. The community mental health program director of the county in which the person re-
 17 sides may request that the community mental health program director of the county in which the
 18 person was taken into custody notify the circuit court in the county where the person resides.
 19 Otherwise, the community mental health program director of the county in which the person was
 20 taken into custody shall notify, immediately and in writing, the circuit court in the county in which
 21 the person was taken into custody.

22 (b) If, at any time prior to the hearing under ORS 426.070 to 426.130, a community mental health
 23 program director, after consultation with a licensed independent practitioner, determines that a
 24 person admitted or retained under ORS 426.233 is not dangerous to self or *[to any other person]*
 25 **others** and is not in need of immediate care, custody or treatment for mental illness, the community
 26 mental health program director may release the person from detention. The community mental
 27 health program director shall immediately notify the circuit court originally notified under para-
 28 graph (a) of this subsection of the person's release from detention.

29 (4) When the judge of the circuit court receives notice under subsection (2) or (3) of this section,
 30 the judge immediately shall commence proceedings under ORS 426.070 to 426.130. In a county having
 31 a population of 100,000 or more, and when feasible in a county with a lesser population, the com-
 32 munity mental health program director or designee who directs the peace officer or other authorized
 33 individual to take a person into custody under ORS 426.233 shall not also conduct the investigation
 34 as provided for under ORS 426.074. Except when a person is being held under ORS 426.237 (1)(b), a
 35 person shall not be held under ORS 426.232 or 426.233 for more than five judicial days without a
 36 hearing being held under ORS 426.070 to 426.130.

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

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

42 430.399. (1) Any person who is intoxicated or under the influence of controlled substances in a
 43 public place may be sent home or taken to a sobering facility or to a treatment facility by a police
 44 officer. If the person is incapacitated, the person shall be taken by the police officer to an appro-
 45 priate treatment facility or sobering facility. If the health of the person appears to be in immediate

1 danger, or the police officer has reasonable cause to believe the person is dangerous to self or [to
2 any other person] **others, as defined in ORS 426.005**, the person shall be taken by the police officer
3 to an appropriate treatment facility or sobering facility. A person shall be deemed incapacitated
4 when in the opinion of the police officer the person is unable to make a rational decision as to ac-
5 ceptance of assistance.

6 (2) When a person is taken to a treatment facility, the director of the treatment facility shall
7 determine whether the person shall be admitted as a patient, referred to another treatment facility
8 or a sobering facility or denied referral or admission. If the person is incapacitated or the health
9 of the person appears to be in immediate danger, or if the director has reasonable cause to believe
10 the person is dangerous to self or [to any other person] **others, as defined in ORS 426.005**, the
11 person must be admitted. The person shall be discharged within 48 hours unless the person has ap-
12 plied for voluntary admission to the treatment facility.

13 (3) When a person is taken to a sobering facility, the staff of the sobering facility shall, con-
14 sistent with the facility's comprehensive written policies and procedures, determine whether or not
15 the person shall be admitted into the sobering facility. A person who is admitted shall be discharged
16 from the sobering facility within 24 hours.

17 (4) In the absence of any appropriate treatment facility or sobering facility, or if a sobering fa-
18 cility determines that a person should not be admitted to the sobering facility, an intoxicated person
19 or a person under the influence of controlled substances who would otherwise be taken by the police
20 officer to a treatment facility or sobering facility may be taken to the city or county jail where the
21 person may be held until no longer intoxicated, under the influence of controlled substances or in-
22 capacitated.

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

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

32 **SECTION 15.** ORS 163.738 is amended to read:

33 163.738. (1)(a) A citation shall notify the respondent of a circuit court hearing where the re-
34 spondent shall appear at the place and time set forth in the citation. The citation shall contain:

35 (A) The name of the court at which the respondent is to appear;

36 (B) The name of the respondent;

37 (C) A copy of the stalking complaint;

38 (D) The date, time and place at which the citation was issued;

39 (E) The name of the law enforcement officer who issued the citation;

40 (F) The time, date and place at which the respondent is to appear in court;

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

43 (H) Notice to the respondent of potential liability under federal law for the possession or pur-
44 chase of firearms or firearm ammunition and for other acts prohibited by 18 U.S.C. 2261 to 2262.

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

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

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

(B) A court's stalking protective order if the court finds by a preponderance of the evidence that:

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

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

(iii) The repeated and unwanted contact causes the victim reasonable apprehension regarding the personal safety of the victim or a member of the victim's immediate family or household.

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

(3) The circuit court may enter an order under this section against a minor respondent without appointment of a guardian ad litem.

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

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

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

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

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

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