

D R A F T

SUMMARY

Defines “dangerous to self or others” for purposes of civil commitment proceedings.

A BILL FOR AN ACT

Relating to civil commitment; creating new provisions; and amending ORS 163.738, 426.005, 426.070, 426.074, 426.180, 426.228, 426.231, 426.232, 426.233 and 426.234.

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

SECTION 1. Section 2 of this 2019 Act is added to and made a part of ORS 426.005 to 426.390.

SECTION 2. (1) Evidence that a person is dangerous to self or others includes, but is not limited to, any of 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.

(2) When assessing the relevance of a person’s past behavior, the court shall consider, at a minimum, how recently the past behavior occurred and the frequency and severity of the past behavior.

SECTION 3. ORS 426.005 is amended to read:

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

1 otherwise:

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

4 (b) **“Dangerous to self or others” means likely to inflict serious**
5 **physical harm upon self or serious physical harm upon another person**
6 **in the near future.**

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

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

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

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

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

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

22 (f) **“Near future” means within:**

23 (A) **Thirty days; or**

24 (B) **If a court determines a longer time period is necessary to**
25 **complete a proper assessment, ninety days.**

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

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

31 (A) Dangerous to self or others.

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

4 (C) A person:

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

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

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

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

17 [(g)] (i) "Prehearing period of detention" means a period of time calcu-
18 lated from the initiation of custody during which a person may be detained
19 under ORS 426.228, 426.231, 426.232 or 426.233.

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

24 **SECTION 4.** ORS 426.070 is amended to read:

25 426.070. (1) Any of the following may initiate commitment procedures
26 under this section by giving the notice described under subsection (2) of this
27 section:

28 (a) Two persons;

29 (b) The local health officer; or

30 (c) Any magistrate.

31 (2) For purposes of subsection (1) of this section, the notice must comply

1 with the following:

2 (a) It must be in writing under oath;

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

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

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

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

13 (B) Of the court's determination under ORS 426.130 (1); and

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

16 (3) Upon receipt of a notice under subsections (1) and (2) of this section
17 or when notified by a circuit court that the court received notice under ORS
18 426.234, the community mental health program director, or designee of the
19 director, shall:

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

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

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

1 mental illness.

2 (4) Upon completion, a recommendation based upon the investigation re-
3 port under ORS 426.074 shall be promptly submitted to the court. If the
4 community mental health program director determines that probable cause
5 does not exist to believe that a person released from detention under ORS
6 426.234 (2)(c) or (3)(b) is a person with mental illness, the community mental
7 health program director may recommend assisted outpatient treatment in
8 accordance with ORS 426.133.

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

10 (a) If the court, following the investigation, concludes that there is
11 probable cause to believe that the person investigated is a person with
12 mental illness, it shall, through the issuance of a citation as provided in ORS
13 426.090, cause the person to be brought before it at a time and place as it
14 may direct, for a hearing under ORS 426.095 to determine whether the person
15 is a person with mental illness. The person shall be given the opportunity
16 to appear voluntarily at the hearing unless the person fails to appear or
17 unless the person is detained pursuant to paragraph (b) of this subsection.

18 (b)(A) If the court finds that there is probable cause to believe that fail-
19 ure to take the person into custody pending the investigation or hearing
20 would pose serious harm or danger to the person or to others, the court may
21 issue a warrant of detention to the community mental health program di-
22 rector or designee or the sheriff of the county or designee directing the di-
23 rector, sheriff or a designee to take the person alleged to have a mental
24 illness into custody and produce the person at the time and place stated in
25 the warrant.

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

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

31 (ii) The warning under ORS 426.123; and

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

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

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

14 **SECTION 5.** ORS 426.074 is amended to read:

15 426.074. The following is applicable to an investigation initiated by a
16 community mental health program director, or a designee of the director, as
17 part of commitment procedures under ORS 426.070 and 426.228 to 426.235:

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

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

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

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

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

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

4 (A) A treatment option less restrictive than involuntary in-patient com-
5 mitment is actively being pursued.

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

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

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

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

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

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

31 (3) A copy of the investigation report shall be provided as soon as possi-

1 ble, but in no event later than 24 hours prior to the hearing, to the person
2 and to the person's counsel. Copies shall likewise be provided to counsel
3 assisting the court, to the examiners and to the court for use in questioning
4 witnesses.

5 **SECTION 6.** ORS 426.180 is amended to read:

6 426.180. (1) ORS 426.180 to 426.210 apply to the commitment of an indi-
7 vidual in Indian country if the state does not have jurisdiction over the in-
8 dividual.

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

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

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

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

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

25 (B) A qualified mental health professional; or

26 (C) A licensed independent practitioner.

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

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

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

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

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

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

23 **SECTION 7.** ORS 426.228 is amended to read:

24 426.228. (1) A peace officer may take into custody a person who the officer
25 has probable cause to believe is dangerous to self or *[to any other person]*
26 **others** and is in need of immediate care, custody or treatment for mental
27 illness. As directed by the community mental health program director, a
28 peace officer shall remove a person taken into custody under this section to
29 the nearest hospital or nonhospital facility approved by the Oregon Health
30 Authority. The officer shall prepare a written report and deliver it to the
31 licensed independent practitioner who is treating the person. The report

1 shall state:

2 (a) The reason for custody;

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

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

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

15 (a) The reason for custody;

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

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

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

28 (4) When a peace officer or other authorized individual, acting under this
29 section, delivers a person to a hospital or nonhospital facility, a licensed
30 independent practitioner shall examine the person immediately. If the li-
31 censed independent practitioner finds the person to be in need of emergency

1 care or treatment for mental illness, the licensed independent practitioner
2 shall proceed under ORS 426.232, otherwise the person may not be retained
3 in custody. If the person is to be released from custody, the peace officer or
4 the community mental health program director shall return the person to the
5 place where the person was taken into custody unless the person declines
6 that service.

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

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

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

21 (8) An individual authorized under ORS 426.233 (3) may transfer a person
22 in custody under this section to the custody of another individual authorized
23 under ORS 426.233 (3) or a peace officer. The individual transferring custody
24 may meet another authorized individual or a peace officer at any location
25 that is in accordance with ORS 426.140 to effect the transfer.

26 (9)(a) When a peace officer takes a person into custody under this section,
27 and the peace officer reasonably suspects that the person is a foreign na-
28 tional, the peace officer shall inform the person of the person's right to
29 communicate with an official from the consulate of the person's country.

30 (b) A peace officer is not civilly or criminally liable for failure to provide
31 the information required by this subsection. Failure to provide the infor-

1 mation required by this subsection does not in itself constitute grounds for
2 the exclusion of evidence that would otherwise be admissible in a proceeding.

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

4 426.231. (1) A licensed independent practitioner may hold a person for
5 transportation to a treatment facility for up to 12 hours in a health care
6 facility licensed under ORS chapter 441 and approved by the Oregon Health
7 Authority if:

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

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

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

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

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

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

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

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

29 **SECTION 9.** ORS 426.232 is amended to read:

30 426.232. (1) If a licensed independent practitioner believes a person who
31 is brought to a hospital or nonhospital facility by a peace officer under ORS

1 426.228 or by an individual authorized under ORS 426.233, or believes a per-
2 son who is at a hospital or nonhospital facility, is dangerous to self or [*to*
3 *any other person*] **others** and is in need of emergency care or treatment for
4 mental illness, and the licensed independent practitioner is not related to the
5 person by blood or marriage, the licensed independent practitioner may do
6 one of the following:

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

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

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

20 **SECTION 10.** ORS 426.233 is amended to read:

21 426.233. (1)(a) A community mental health program director operating
22 under ORS 430.610 to 430.695 or a designee of the director may take one of
23 the actions listed in paragraph (b) of this subsection when the community
24 mental health program director or designee has probable cause to believe a
25 person:

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

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

31 (ii) Is dangerous to self or [*to any other person*] **others** or is unable to

1 provide for basic personal needs and is not receiving the care that is neces-
2 sary for health and safety and is in need of immediate care, custody or
3 treatment for mental illness.

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

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

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

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

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

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

24 (2) A designee under subsection (1) of this section must meet the stan-
25 dards established by rule of the authority and be approved by the community
26 mental health program director before assuming the authority permitted un-
27 der subsection (1) of this section.

28 (3) The community mental health program director may authorize any
29 individual to provide custody and secure transportation services for a person
30 in custody under ORS 426.228. In authorizing an individual under this sub-
31 section, the community mental health program director shall grant the indi-

1 vidual the authority to do the following:

2 (a) Accept custody from a peace officer of a person in custody under ORS
3 426.228;

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

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

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

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

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

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

20 (5) The costs of transporting a person under ORS 426.060, 426.228 or
21 426.235 by an individual authorized under subsection (3) of this section shall
22 be the responsibility of the community mental health program in the county
23 in which the authorized individual is directed by a peace officer or a com-
24 munity mental health program director to take custody of a person and to
25 transport the person to a facility approved by the authority, but the com-
26 munity mental health program shall not be responsible for costs that exceed
27 the amount provided by the state for that transportation. An individual au-
28 thorized to act under subsection (3) of this section shall charge the cost of
29 emergency medical transportation to, and collect that cost from, the person,
30 third party payers or other legally or financially responsible individuals or
31 entities in the same manner that costs for the transportation of other persons

1 are charged and collected.

2 **SECTION 11.** ORS 426.234 is amended to read:

3 426.234. (1) At the time a person alleged to have a mental illness is ad-
4 mitted to or retained in a hospital or nonhospital facility under ORS 426.232
5 or 426.233, a licensed independent practitioner, nurse or qualified mental
6 health professional at the hospital or nonhospital facility shall:

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

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

10 (c) Immediately examine the person;

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

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

22 (2)(a) At the time the person is admitted to or retained in a hospital under
23 ORS 426.232, the licensed independent practitioner shall contact the commu-
24 nity mental health program director of the county in which the person re-
25 sides, if the county of residence is different from the county in which the
26 hospital is located. The community mental health program director may re-
27 quest that the licensed independent practitioner notify the circuit court in
28 the county in which the person resides. If the community mental health
29 program director does not make the request, the licensed independent prac-
30 titioner shall notify, immediately and in writing, the circuit court in the
31 county in which the person is hospitalized.

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

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

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

1 was taken into custody.

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

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

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

26 **SECTION 12.** ORS 163.738 is amended to read:

27 163.738. (1)(a) A citation shall notify the respondent of a circuit court
28 hearing where the respondent shall appear at the place and time set forth
29 in the citation. The citation shall contain:

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

31 (B) The name of the respondent;

1 (C) A copy of the stalking complaint;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (8) Except for purposes of impeachment, a statement made by the re-
30 spondent at a hearing under this section may not be used as evidence in a
31 prosecution for stalking as defined in ORS 163.732 or for violating a court's

1 stalking protective order as defined in ORS 163.750.

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