

Senators	Bill	510	DATE ENGROSSED	▶ <i>May 17, 1973</i>
	Restoration		DATE REENGROSSED	▶ <i>June 29, 1973</i>
	Memorial		DATE ENROLLED	▶ <i>July 17, 1973</i>

BURBIDGE, Representative PECK, Senators ~~BROWN~~, J. ~~BURNS~~, HALLOCK, ROBERTS, Representatives AuCOIN, DENSMORE, ~~DERELI~~, FADELEY, GROENER, KAFOURY, KATZ, MARTIN, McCOY, OTTO, PAULUS, ROBERTS

TITLE  
 Relating to involuntary commitments of mentally ill persons; creating new provisions; amending ORS 426.005, 426.060, 426.070 and others; and repealing ORS 426.375; and prescribing an effective date.

SENATE ACTION

HOUSE ACTION

READ FIRST TIME	READ SECOND TIME
MAR 2 - 1973	MAR 6 - 1973
REFERRED TO	
<i>Judiciary</i>	
REPORTED BACK	WITH THE RECOMMENDATION
MAY 17 1973	THAT IT ▼
<i>Do pass with amendments</i>	
REREFERRED TO	
REPORTED BACK	WITH THE RECOMMENDATION
	THAT IT ▼
READ THIRD TIME AND	
PASSED	MAY 22 1973
SIGNED	
	<i>Cecil L. Edwards</i>
DATE	
JUL 3 1973	<i>Cecil Edwards</i>

READ FIRST TIME	READ SECOND TIME
MAY 24 1973	MAY 25 1973
REFERRED TO	With Subsequent Referral
<i>Human Resources</i>	to Com. on Ways & Means
REPORTED BACK	WITH THE RECOMMENDATION
JUN 7 1973	THAT IT ▼
<i>Do Pass</i>	
REREFERRED TO	
<i>Ways &amp; Means</i>	
REPORTED BACK	WITH THE RECOMMENDATION
JUN 30 1973	THAT IT ▼
<i>to pass with amendments</i>	
READ THIRD TIME AND	
PASSED	JULY 2, 1973
SIGNED	
	<i>Frederick Mohr</i>
DATE	
	SENATE CONCURRED IN HOUSE AMENDMENTS AND REPASSED

ADDITIONAL ACTION

DATE	ACTION
MAY 22 1973	<i>Newby served notice of possible reconsideration.</i>
MAY 23 1973	<i>Vote not reconsidered.</i>
July 2	<i>Amended on floor</i>

Enrolled  
**Senate Bill 510**

Sponsored by Senator BURBIDGE, Representative PECK, Senators BROWNE, J. BURNS, HALLOCK, ROBERTS, Representatives AuCOIN, DENSMORE, DERELI, FADELEY, GROENER, KAFOURY, KATZ, MARTIN, McCOY, OTTO, PAULUS, ROBERTS

CHAPTER.....

AN ACT

Relating to involuntary commitments of mentally ill persons; creating new provisions; and amending ORS 426.005, 426.060, 426.070, 426.080, 426.090, 426.100, 426.110, 426.120, 426.130, 426.140, 426.150, 426.160, 426.170, 426.215, 426.280, 426.290, 426.300 and 426.385; repealing ORS 426.375; and prescribing an effective date.

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

Section 1. ORS 426.005 is amended to read:

426.005. As used in ORS 426.005 to [426.350] 426.390, unless the context requires otherwise [, "*division*" means the *Mental Health Division*.]:

(1) "*Division*" means the *Mental Health Division*.

(2) "*Mentally ill person*" means a person who, because of a mental disorder, is either:

(a) Dangerous to himself or others; or

(b) Unable to provide for his basic personal needs and is not receiving such care as is necessary for his health or safety.

(3) "*Facility*" means a state mental hospital, community hospital, residential facility, detoxification center, day treatment facility, or such other facility as the *Mental Health Division* determines suitable, any of which may provide diagnosis and evaluation, medical care, detoxification, social services, or rehabilitation for committed mentally ill persons.

(4) "*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.

Section 2. ORS 426.060 is amended to read:

426.060. (1) Commitments to the [*Oregon State Hospital, the F. H. Dammasch State Hospital and the Eastern Oregon Hospital and Training Center*] *Mental Health Division* shall be made by the judge of any court having probate jurisdiction or, if the circuit court is not the probate court, the circuit court if its jurisdiction has been extended to include commitment of the mentally ill pursuant to ORS 3.275 in any county of this state.

(2) The *Mental Health Division* may, in its discretion and for reasons which are satisfactory to the division, direct any [*judge to make his commitments*] court committed person to [*any hospital listed in subsection (1) of this section*] the facility best able to treat him. The authority of the division on such matters shall be final.

Section 3. ORS 426.070 is amended to read:

426.070. (1) The judge of any court having probate jurisdiction or,

if the circuit court is not the probate court, the circuit court if its jurisdiction has been extended to include commitment of the mentally ill pursuant to ORS 3.275 in any county of this state, upon being notified in writing under oath by two persons or by the county health officer or any magistrate that any other person within the county is a mentally ill person and *[by reason of such illness]* is in need of treatment, care or custody, shall *[cause the allegedly mentally ill person to be brought before him at such time and place as he may direct. If necessary, the judge may issue a warrant of detention to the county health officer, or to the sheriff of the county, directing the officer to take such person into his custody and produce him at the time and place stated in the warrant.]* forthwith cause the community mental health program director, or his designee, to investigate to determine whether there is probable cause to believe that the person is in fact a mentally ill person. The community mental health program director or his designee, the two petitioning persons, the county health officer, any magistrate, any peace officer, probation officer, physician attending the allegedly mentally ill person or the physician attached to a hospital or institution wherein the allegedly mentally ill person is a patient shall in no way be held criminally or civilly liable for the making of such notification, provided he acts in good faith, on probable cause and without malice.

(2) The investigation conducted should, where possible, include an interview or examination of the allegedly mentally ill person in his home or other place familiar to the individual. If the allegedly mentally ill person consents, the investigation should also, where possible, include an interview with the individual's relatives, neighbors and physician. The person conducting the investigation shall in no way be held criminally or civilly liable for the making of such investigation, provided he acts in good faith, on probable cause and without malice. Upon completion, a recommendation based upon the investigation report shall be promptly submitted to the court.

(3) If the court, following the investigation, concludes that there is probable cause to believe that the person investigated is a mentally ill person, it shall, through the issuance of a citation as provided in section 5 of this 1973 Act, cause the person to be brought before it at such time and place as it may direct, for a hearing to make a determination whether or not the person is mentally ill. The person shall be given the opportunity to appear voluntarily at the hearing unless he fails to appear or unless he is detained pursuant to subsection (5) of this section. The hearing may be held in a hospital, the person's home, or in some other place convenient to the court and the allegedly mentally ill person. If a person is detained pursuant to subsection (5) of this section, a hearing shall be held within 72 hours of the commencement of his detention unless additional time is requested by him or his attorney. The court may make such orders for the care and custody of the person prior to the hearing as it deems necessary.

(4) A copy of the investigation report shall be made available to the allegedly mentally ill person as soon as possible after it is completed but in any case prior to the hearing.

(5) If the court finds that there is probable cause to believe that failure to take the allegedly mentally ill person into custody pending the investigation or hearing would pose an imminent and serious danger to the person or to others, the judge may issue a warrant of detention to the community mental health program director, the county health officer or to the sheriff of the county, directing that person or his designee to take such person into his custody and produce him at the time and place stated in the warrant.

(6) Persons taken into custody under subsection (5) of this section shall receive the care, custody and treatment required for their mental and

physical health and safety, and the treating physician shall report such care, custody and treatment to the court as required in section 8 of this 1973 Act. All methods of treatment, including the prescription and administration of drugs, shall be the sole responsibility of the treating physician. However, such persons shall not be subject to potentially unusual or hazardous treatment procedures, including electro-shock therapy. The treating physician shall be notified immediately of any use of mechanical restraints on such persons. Every use of a mechanical restraint and the reasons therefor shall be made a part of the clinical record of the person over the signature of the treating physician.

Section 4. ORS 426.080 is amended to read:

426.080. The [officer] person serving [the] a warrant of detention [and] or the citation provided for by ORS 426.090 shall, immediately after service thereof, make a return upon the original warrant or citation showing the time, place and manner of such service and file it with the clerk of the court. In executing the warrant of detention or citation, the [officer] person has all the powers provided by ORS 133.290 and 161.235 to 161.245 and may require the assistance of any peace officer or other person.

Section 4a. If Senate Bill 80 (1973 regular session) becomes law, section 4 of this 1973 Act is repealed and ORS 426.080, as amended by section 348, chapter —, Oregon Laws 1973 (Enrolled Senate Bill 80), is amended to read:

426.080. The [officer] person serving [the] a warrant of detention [and] or the citation provided for by ORS 426.090 shall, immediately after service thereof, make a return upon the original warrant or citation showing the time, place and manner of such service and file it with the clerk of the court. In executing the warrant of detention or citation, the [officer] person has all the powers provided by section 71 [of this 1973 Act], chapter —, Oregon Laws 1973 (Enrolled Senate Bill 80) and ORS 161.235 to 161.245 and may require the assistance of any peace officer or other person.

Section 5. ORS 426.090 is amended to read:

426.090. The judge shall cause a citation to issue to the allegedly mentally ill person stating the nature of the information filed concerning him and the specific reasons he is believed to be mentally ill. The citation shall further contain a notice of the time and place of the commitment hearing, the right to representation by legal counsel, the right to have legal counsel appointed if the person is unable to afford counsel, the right to subpoena witnesses in behalf of himself to the hearing and such other information as the court may direct. The citation shall be served upon such person [by the officer who takes such person into custody,] by delivering a duly certified copy of the original thereof to him in person no less than 24 hours prior to the hearing.

Section 6. ORS 426.100 is amended to read:

426.100. (1) [At the time of the hearing before the court, prescribed by ORS 426.070 to 426.150, the court shall inform the allegedly mentally ill person that he has the right to legal counsel during the proceedings and that, at his request, or the request of his legal guardian, relative or friend, the court may postpone the hearing up to 72 hours in order to allow the allegedly mentally ill person an opportunity to obtain counsel, and subpoena witnesses in his behalf to the hearing.] At the time the allegedly mentally ill person is brought before the court, the court shall advise him of the reason he has been brought before the court, the nature of the proceedings and the possible results of the proceedings. The court shall also advise the allegedly mentally ill person that he is entitled to subpoena witnesses on his behalf and to have an attorney represent him during the proceedings, and that if he does not have funds with which to retain an attor-

ney, the court will appoint an attorney to represent him without cost. If the allegedly mentally ill person does not request an attorney, his legal guardian, relative or friend may request the assistance of legal counsel on his behalf.

(2) If no request for legal counsel is made, the court [*may, at its discretion,*] shall appoint legal counsel unless counsel is expressly, knowingly and intelligently refused by the person.

(3) If the person is [*indigent*] unable to afford counsel, the court [*may*] shall provide by order for payment of a reasonable attorney fee by the county of residence of the allegedly mentally ill person. In all cases such legal counsel shall be present at the hearing and examination and may examine all witnesses offering testimony, and otherwise represent such person.

(4) [*Where legal counsel is requested or provided, the court may continue the hearing for up to 72 hours after counsel has been obtained by appointment or otherwise and may make such orders for the care and custody of the person during that period as it deems necessary.*] If the allegedly mentally ill person, his attorney or guardian requests, the court shall postpone the hearing in order to allow the person to prepare for the hearing. The court shall not postpone the hearing for more than 72 hours unless the person, his counsel, or guardian specifically requests a longer time to prepare. The court may make such orders for the care and custody of the person during such postponement as it deems necessary.

**SECTION 7.** Sections 8 and 9 of this 1973 Act are added to and made a part of ORS chapter 426.

**SECTION 8.** The court shall be fully advised by the community mental health program director, or when the person has been detained under subsection (5) of section 3 or section 32 of this 1973 Act, by the treating physician of all drugs and other treatment known to have been administered to the allegedly mentally ill person which may substantially affect his ability to prepare for or function effectively at the hearing.

**SECTION 9.** The allegedly mentally ill person shall have the right to cross-examine all witnesses, the person conducting the investigation, the examining physicians or other qualified persons recommended by the division who have examined the persons. Neither the investigation report nor any part thereof shall be introduced in evidence without the express consent of the allegedly mentally ill person.

Section 10. ORS 426.110 is amended to read:

426.110. The judge shall appoint at least two competent physicians licensed by the State Board of Medical Examiners for the State of Oregon to practice medicine and surgery, one of whom may be the county health officer, to examine the person as to his mental condition. **In lieu of one of the physicians, the court may appoint one qualified person as recommended by the division, to examine the person.** [*In counties having a population of 10,000 or less, as determined by the latest federal census, the judge may appoint only one such physician, who may be the county health officer, but the judge may, in his discretion, appoint additional physicians, qualified as required by this section, to assist in the examination of the person as to his mental condition.*] If the allegedly mentally ill person requests in writing that one additional examining physician or qualified person as recommended by the division be appointed, or, if in the absence of such request by the allegedly mentally ill person, such request is made by the legal guardian, relative or friend of the alleged mentally ill person, the court shall appoint a physician [*nominated in such request*], or other qualified person as recommended by the division nominated in such request; however, the court shall not appoint more than one such additional examining physician or qualified person, who shall be a resident of the State of Oregon.

Section 11. ORS 426.120 is amended to read:

426.120. The *[physicians]* persons appointed to conduct the examination shall examine the person as to his mental condition and *[report]* make their separate *[or joint findings]* reports in writing, under oath, to the court, which *[findings]* reports immediately shall be filed with the clerk of the court. If the examining *[physicians]* persons find, and show by their verified *[findings]* reports, that the person examined is a mentally ill person, *[and by reason of mental illness is in need of treatment, care or custody, and if the judge, after having examined the verified findings and considered all competent evidence submitted to him, is of the opinion that the person is in need of treatment, care or custody, he shall adjudge the person to be mentally ill and order him committed to the proper state hospital. The order of commitment shall direct that the mentally ill person be promptly and safely delivered to the superintendent of the proper state hospital, as provided in ORS 426.150.]* the reports shall include a recommendation as to the type of treatment facility best calculated to help the person recover from his mental illness. Each report shall also advise the court whether in the opinion of the examiner the mentally ill person would cooperate with and benefit from a program of voluntary treatment.

Section 12. ORS 426.130 is amended to read:

426.130. *[If the legal guardian, relative or friend of the mentally ill person requests that he be allowed to care for him in a place satisfactory to the judge, and shows that he, such applicant, is competent and financially able to care for the mentally ill person, and also if it appears to the court that the mentally ill person is not criminally inclined or violent, and that proper care and treatment can and will be provided him by such applicant, and that it would be to the best interest of the mentally ill person to be paroled, the judge may order that the mentally ill person be released and placed in the care and custody of such applicant. The order may be revoked and the mentally ill person committed to an Oregon state hospital whenever, in the opinion of the judge, it is for the best interest of the mentally ill person.]* After hearing all of the evidence, and reviewing the findings of the examining persons, the court shall determine whether the person is mentally ill. If in the opinion of the court the person is not mentally ill, he shall be discharged forthwith. If in the opinion of the court the person is mentally ill beyond a reasonable doubt the court may order as follows:

(1) If the mentally ill person is willing and able to participate in treatment on a voluntary basis, and the court finds that he will probably do so, the court shall order the release of the individual and dismiss the case.

(2) If the legal guardian, relative or friend of the mentally ill person requests that he be allowed to care for him during the period of commitment in a place satisfactory to the judge, and shows that he, such applicant, is able to care for the mentally ill person and that there are adequate financial resources available for the care of the mentally ill person, the court may order that the mentally ill person be conditionally released and placed in the care and custody of such applicant. The order may be revoked and the mentally ill person committed to the division whenever, in the opinion of the court, it is in the best interest of the mentally ill person.

(3) If in the opinion of the court voluntary treatment or conditional release are not in the best interest of the mentally ill person, the court may order the commitment of the individual to the division for treatment. The commitment shall be for a period of time not to exceed 180 days.

SECTION 13. Sections 14 to 20 of this 1973 Act are added to and made a part of ORS chapter 426.

**SECTION 14.** At any time after commitment by the court, the person, with the approval of the division, may change his status to that of a voluntary patient. Notwithstanding ORS 426.220, any person who alters his status to that of a voluntary patient under this section shall be released from the division within 72 hours of his request for release.

**SECTION 15.** At the end of the 180-day period of commitment, any person whose status has not been changed to voluntary shall be released unless the division certifies to the court in the county where the treating facility is located that the patient is still mentally ill and in need of further treatment. If such certification is made, the person will not be released, but the division shall forthwith issue a copy of the certification to the person. The certification shall be served upon the patient by a physician or registered nurse at the facility or director of the facility wherein the patient is confined. The person serving the citation shall inform the court in writing that service has been made and the date thereof. The certification shall advise the person that the division has requested that his commitment be continued for an additional period of time; that he may consult with an attorney and that an attorney will be provided for him without cost to him if he is unable to afford an attorney; that if he does not protest this further commitment within 14 days, his commitment will be continued for an indefinite period of time up to 180 days; that if he does protest a further period of commitment, he is entitled to a hearing before the court on whether his commitment should be continued; that he may protest either orally or in writing by signing the form accompanying the certification; that he is entitled to have a physician or other qualified person as recommended by the division, other than a member of the staff at the facility where he is confined, examine him and report to the court the results of his examination; that he may subpoena witnesses and offer evidence on his own behalf at the hearing; that if he is without funds to retain an attorney or an examining physician or qualified person as recommended by the division, the court will appoint such attorney, physician or qualified person at no cost to him. The person serving the certification shall read and deliver the certification to the person and ask him whether he protests a further period of commitment. The person may protest further commitment either orally or by signing a simple protest form to be given to the person with the certification. If the person does not protest a further period of commitment within 14 days of service of the certification, the division shall so notify the court and the court shall, without further hearing, order the commitment of the person for an additional indefinite period of time up to 180 days.

**SECTION 16.** When the person protests a further period of commitment the division shall, forthwith, notify the court and the court shall have the person brought before it and shall again advise him that the division has requested that his commitment be continued for an additional period of time and that if he does not protest this commitment his commitment will be continued for an indefinite period of time up to 180 days. He shall also be informed of the rights set forth in section 15 of this 1973 Act.

**SECTION 17.** If the person requests a hearing, the hearing shall be conducted as promptly as possible and at such time and place as the court may direct. If the person requests a continuance in order to prepare for the hearing or to obtain counsel to represent him, the court may grant a continuance for a reasonable period of time for this purpose. In the event the person requests the appointment of an attorney and is without funds to retain an attorney, the court shall appoint an attorney to represent him at no cost to the person. If no request for legal counsel is made, the court shall appoint an attorney to represent the person unless legal counsel is

expressly, knowingly and intelligently refused by the person. If the person requests an examination by a physician or other qualified person as recommended by the division and is without funds to retain such person for purposes of the examination, the court shall appoint a physician or other qualified person, other than a member of the staff from the facility where the person is a patient, to examine the person at no expense to him and to report to the court the results of the examination. The court shall then conduct a hearing and after hearing the evidence and reviewing the recommendations of the treating and examining physicians or other qualified persons, the court shall determine whether the individual is still a mentally ill person and in need of further treatment. If in the opinion of the court the individual is still a mentally ill person beyond a reasonable doubt and in need of further treatment, the court may order his commitment to the division for an additional indefinite period of time up to 180 days. At the end of the 180-day period, the patient shall be released unless the division again certifies to the committing court that the person is still a mentally ill person and in need of further treatment, in which event the procedures set forth in sections 15 to 17 of this 1973 Act shall be followed.

**Note:** Section 18 was deleted by amendment. Subsequent sections were not renumbered.

**SECTION 19.** Costs of hearings conducted pursuant to section 17 of this 1973 Act, and the fees for physicians, other qualified persons, and attorneys appointed thereunder, shall be charged to the county of the person's residence in the same manner provided by ORS 426.310, whether the hearing is held in the county of residence or county of the treating facility.

**SECTION 20.** Sections 14 to 17 of this 1973 Act do not restrict or limit the discharge procedures set forth in ORS 426.300.

Section 21. ORS 426.160 is amended to read:

426.160. The judge shall cause to be recorded in the court records a full account of proceedings had at *[the]* all *[hearing]* hearings and *[examination]* examinations conducted pursuant to this 1973 Act, together with the *[judgment]* judgments and *[order]* orders of the court and a copy of the orders issued. The account of the proceedings and transcripts of testimony if taken thereat shall be delivered to the county clerk who shall cause it to be sealed and neither the account of the proceedings nor the transcript of testimony if taken shall be disclosed to any person except:

- (1) As provided in ORS 426.170;
- (2) Upon request of the person subject to the proceedings, his legal representatives, or his attorney; or
- (3) Pursuant to court order.

Section 22. ORS 426.300 is amended to read:

426.300. (1) The *[superintendent of any state hospital wherein are confined persons adjudged to be mentally diseased]* division *[may]* shall, by filing *[his]* a written certificate with the last committing court and the court of residence, discharge any patient from court commitment, except one held upon an order of a court or judge having criminal jurisdiction in an action or proceeding arising out of criminal offense when *[he is convinced that the patient is sufficiently recovered to be of no danger to himself or others and that the discharge is in the best interest of the patient]* in its opinion the individual is no longer a mentally ill person or when in its opinion the transfer of the individual to a voluntary status is in the best interest of the treatment of the patient.

(2) The *[superintendent of a state institution for the mentally ill or mentally retarded]* division or the administrator of the University State Tuberculosis Hospital may sign applications for public assistance on behalf of those patients who may be eligible for public assistance.

Section 23. ORS 426.140 is amended to read:

426.140. (1) No person, not incarcerated upon a criminal charge, who has been adjudged a mentally ill person or one against whom proceedings have been instituted shall be confined in any prison, jail or other inclosure where those charged with crime or violation of a municipal ordinance are incarcerated, **unless the person represents an immediate and serious danger to hospital staff or facilities** [, if a place suitable for the comfortable, safe and humane confinement of such person is available].

(2) No alleged mentally ill person who has been taken into custody shall be confined, either before or after the hearing and examination, without an attendant in direct charge of him; and, if not confined in a [county] community hospital, the county health officer or sheriff having such person in his custody shall select some suitable person to act as attendant.

Section 24. ORS 426.150 is amended to read:

426.150. (1) Upon receipt of the order of commitment, the health officer or the sheriff, as the case may be, shall take such mentally ill person into his custody, and insure his safekeeping and proper care until delivery is made to [the superintendent of the proper state hospital or a designated employe thereof] **the division**. Immediately after being notified of the court's order of commitment of such mentally ill person, the county health officer or the sheriff shall notify by telephone, if possible, [the superintendent of the state hospital to which the person was committed,] **such person as the division shall designate** informing him of the fact that such person is being held awaiting delivery, and also stating the name, [character,] condition, sex and age of such person. Except as provided in subsection (2) of this section, the [superintendent] **division** shall thereupon [designate an employe of the hospital to] take custody of such person [and safely transport him to the state hospital]. [The employe] **A designee of the division**, accompanied by such assistants as the [superintendent] **division** may deem necessary, shall proceed to the place where the person is to be delivered into his custody, and, upon demand shall be given custody of the committed mentally ill person, together with the certified record required by ORS 426.170. The [employe] **designee** shall issue appropriate receipts therefor and immediately proceed to transport the **committed** mentally ill person safely to the [state hospital to which he has been committed,] **facility designated by the division** and there make delivery of him and the record to the [superintendent] **director** or a designated employe of the [hospital] **facility**.

(2) The committing judge, upon approval of the examining [physician] **physicians or other qualified persons as recommended by the division** and upon request of a guardian, friend or relative of the mentally ill person, may authorize the guardian, friend or relative to transport the person to the designated [hospital] **facility** when the committing judge determines that such means of transportation would not be detrimental to the welfare of the mentally ill person or to the public.

Section 25. ORS 426.170 is amended to read:

426.170. If any person is adjudged mentally ill and ordered committed to [a state hospital] **the division**, a copy of the complete record in the case, certified to by the [county] clerk of the county, shall be given to the health officer of the county, or to the sheriff, for delivery to the [superintendent] **director** of the [state hospital] **facility** to which such mentally ill person is [committed] assigned. The record shall include the name, residence, nativity, sex and age of such mentally ill person and all other information that may be required by the rules and regulations promulgated by the Mental Health Division.

Section 26. ORS 426.280 is amended to read:

426.280. [A superintendent] **The division** may grant a trial visit to a

patient for any period of time , up to 180 days, under such general conditions [prescribed by the Mental Health Division] as it shall prescribe during such patient's period of commitment. The physician and the [hospital] facility granting a trial visit to a patient, the superintendent or director thereof, the Administrator of the Mental Health Division and the chief medical officer of the [hospital] facility shall not be liable for a patient's expenses while on trial visit, nor shall the superintendent or director of any such [hospital] facility, the physician responsible for the patient's release , the Administrator of the Mental Health Division or the chief medical officer of the [hospital] facility be liable for any damages whatsoever that are sustained by any person on account of the misconduct of such patient while on trial visit.

Section 27. ORS 426.290 is amended to read:

426.290. (1) If a written complaint against a patient on trial visit from [a state hospital for the mentally ill] the division is received by [a superintendent of a state hospital for the mentally ill] the division and the complaint is sworn to by a citizen of Oregon before an officer qualified to administer an oath, the patient named in the complaint shall be sent to and received by a [state hospital] facility for the mentally ill designated by the division. If the acts complained of are such as to indicate to the examining physician of the receiving [hospital] facility that the patient should no longer be permitted to remain on trial visit, the patient shall be admitted thereto.

(2) Upon voluntary application to be admitted thereto, every patient on trial visit must be received by [a state hospital for the mentally ill] the facility from which he was released on trial visit.

(3) Every patient on trial visit received by a [state hospital] facility for the mentally ill under this section shall be admitted to the [hospital] facility without examination as to his sanity before any court or judge having jurisdiction over such matters.

Section 28. ORS 426.385 is amended to read:

426.385. (1) Every mentally ill person committed to the division shall have the right to:

- (a) Communicate freely in person, by sending and receiving sealed mail, and by reasonable access to telephones;
- (b) Wear his own clothing;
- (c) Keep his personal possessions, including toilet articles;
- (d) Religious freedom;
- (e) A private storage area with free access thereto;
- (f) Be furnished with a reasonable supply of writing materials and stamps;
- (g) A written treatment plan, kept current with his progress;
- (h) Be represented by counsel whenever his substantial rights may be affected;
- (i) Petition for a writ of habeas corpus;
- (j) Not be required to perform routine labor tasks of the facility except those essential for his treatment;
- (k) Be given reasonable compensation for all work performed other than personal housekeeping duties;
- (L) Such other rights as may be specified by regulation; and
- (m) Exercise all civil rights in the same manner and with the same effect as one not admitted to the facility, including, but not limited to, the right to dispose of property, execute instruments, make purchases, enter contractual relationships, and vote, unless he has been adjudicated incompetent and has not been restored to legal capacity.

(2) Mentally ill persons committed to the division shall have the right to be free from potentially unusual or hazardous treatment procedures, including lobotomy and electro-shock therapy, unless they have

given their express and informed consent. Subject to the applicable provisions of chapter —, Oregon Laws 1973 (Enrolled Senate Bill 298), this right may be denied to such persons for good cause only by the director of the facility in which the person is confined, or his designee, but only after consultation with and approval of an independent examining physician. Any denial shall be entered into the patient's treatment record and shall include the reasons for the denial.

(3) Mechanical restraints shall not be applied to a person admitted to a [state hospital] facility unless it is determined by the [superintendent] chief medical officer of the [hospital] facility or his designee to be required by the medical needs of the person. Every use of a mechanical restraint and the reasons therefor shall be made a part of the clinical record of the person [under] over the signature of the [superintendent] chief medical officer of the [hospital] facility or his designee.

**SECTION 29.** ORS 426.375 is repealed.

**SECTION 30.** Section 31 of this 1973 Act is added to and made a part of ORS chapter 426.

**SECTION 31.** A simple and clear statement of rights guaranteed to patients committed to the division shall be prominently posted in each room frequented by patients in all facilities housing such patients. A copy of the statement shall be given to each patient upon admission and sent, upon request, to his legal counsel, guardian, relative or friend.

**Section 32.** ORS 426.215 is amended to read:

426.215. (1) Any peace officer may take into custody any person who he has reasonable cause to believe is dangerous to himself or to any other person and who he has reasonable cause to believe is in need of immediate care, custody or treatment for mental illness. If a peace officer takes a person into custody under this section, he shall remove him forthwith to:

(a) A hospital, described in subsection (4) of this section, in the county where the person is taken into custody; or

(b) Such a hospital in another county after having obtained a certificate from a physician licensed to practice medicine and surgery by the Board of Medical Examiners for the State of Oregon stating that the travel will not be detrimental to the person's physical health and that the person is dangerous to himself or to any other person and is in need of immediate care or treatment for mental illness. Such physician shall personally examine the allegedly mentally ill person within 24 hours prior to signing the certificate.

(2) The superintendent or administrator of the hospital shall cause the person to be examined forthwith by a staff physician. If the physician finds the person to be in need of immediate care or treatment for mental illness, the person shall be admitted as a patient. Otherwise he shall not be retained in further custody under this section.

(3) The peace officer, after taking a person into custody under this section, shall notify forthwith a court having probate jurisdiction in the county in which the person was taken into custody of the fact of taking the person into custody and the person's whereabouts. When the judge of such a court is informed by a peace officer that a person is in custody, [within 24 hours] the judge shall immediately commence proceedings pursuant to sections 3 to 12 of this 1973 Act. [issue a warrant directing that such person be brought before the court within 24 hours after issuance of the warrant, and a hearing shall be held as provided in ORS 426.070 to 426.170.]

(4) The superintendent or administrator of a hospital maintaining adequate staff and facilities for the care and treatment of persons alleged to be mentally ill and approved by the [Mental Health Division] division may receive and retain therein as a patient for a period not to exceed five days any person alleged to be in need of immediate care or treat-

ment for mental illness as provided in this section. The expenses of such emergency care shall be paid by the county of residence of the person or, if he has no residence within the state, by the county in which the person is taken into custody, unless otherwise provided by law.

**(5) Persons hospitalized under this section shall receive the care, custody and treatment required for their mental and physical health and safety, and the treating physician shall report such care, custody and treatment to the court as required in section 8 of this 1973 Act. All methods of treatment, including the prescription and administration of drugs, shall be the sole responsibility of the treating physician. However, such persons shall not be subject to potentially unusual or hazardous treatment procedures, including electro-shock therapy. The treating physician shall be notified immediately of any use of mechanical restraints on such persons. Every use of a mechanical restraint and the reasons therefor shall be made a part of the clinical record of the person over the signature of the treating physician.**

**[(5)] (6) No peace officer, hospital, physician or judge shall in any way be held criminally or civilly liable for actions pursuant to this section provided he acts in good faith, on probable cause and without malice.**

**SECTION 33.** This Act takes effect on July 1, 1974.



ENROLLED

Senate Bill \_\_\_\_\_ 510

\_\_\_\_\_  
Passed by Senate  
Repassed by Senate

May 22, 1973  
July 3, 1973

\_\_\_\_\_  
Secretary of Senate

\_\_\_\_\_  
President of Senate

\_\_\_\_\_  
Passed by House  
~~Repassed by House~~

July 2, 1973

\_\_\_\_\_  
Speaker of House

Received by Executive Department:

..... M., ....., 1973.

Approved: ....., 1973.

\_\_\_\_\_  
Governor

Filed in Office of Secretary of State:

..... M., ....., 1973.

\_\_\_\_\_  
Secretary of State

Reprint

if the circuit court is not the probate court, the circuit court if its jurisdiction has been extended to include commitment of the mentally ill pursuant to ORS 3.275 in any county of this state, upon being notified in writing under oath by two persons or by the county health officer or any magistrate that any other person within the county is a mentally ill person and [by reason of such illness] is in need of treatment, care or custody, shall [cause the allegedly mentally ill person to be brought before him at such time and place as he may direct. If necessary, the judge may issue a warrant of detention to the county health officer, or to the sheriff of the county, directing the officer to take such person into his custody and produce him at the time and place stated in the warrant.] forthwith cause the community mental health program director, or his designee, to investigate to determine whether there is probable cause to believe that the person is in fact a mentally ill person. The community mental health program director or his designee, the two petitioning persons, the county health officer, any magistrate, any peace officer, probation officer, physician attending the allegedly mentally ill person or the physician attached to a hospital or institution wherein the allegedly mentally ill person is a patient shall in no way be held criminally or civilly liable for the making of such notification, provided he acts in good faith, on probable cause and without malice.

818

(2) The investigation conducted should, where possible, include an interview or examination of the allegedly mentally ill person in his home or other place familiar to the individual. If the allegedly mentally ill person consents, the investigation should also, where possible, include an interview with the individual's relatives, neighbors and physician. The person conducting the investigation shall in no way be held criminally or civilly liable for the making of such investigation, provided he acts in good faith, on probable cause and without malice. Upon completion, a recommendation based upon the investigation report shall be promptly submitted to the court.

(3) If the court, following the investigation, concludes that there is probable cause to believe that the person investigated is a mentally ill person, it shall, through the issuance of a citation as provided in section 5 of this 1973 Act, cause the person to be brought before it at such time and place as it may direct, for a hearing to make a determination whether or not the person is mentally ill. The person shall be given the opportunity to appear voluntarily at the hearing unless he fails to appear or unless he is detained pursuant to subsection (5) of this section. The hearing may be held in a hospital, the person's home, or in some other place convenient to the court and the allegedly mentally ill person. If a person is detained pursuant to subsection (5) of this section, a hearing shall be held within 72 hours of the commencement of his detention unless additional time is requested by him or his attorney. The court may make such orders for the care and custody of the person prior to the hearing as it deems necessary.

(4) A copy of the investigation report shall be made available to the allegedly mentally ill person as soon as possible after it is completed but in any case prior to the hearing.

(5) If the court finds that there is probable cause to believe that failure to take the allegedly mentally ill person into custody pending the investigation or hearing would pose an imminent and serious danger to the person or to others, the judge may issue a warrant of detention to the community mental health program director, the county health officer or to the sheriff of the county, directing that person or his designee to take such person into his custody and produce him at the time and place stated in the warrant.

(6) Persons taken into custody under subsection (5) of this section shall receive the care, custody and treatment required for their mental and

Date July 2

Mr. Speaker:

Rep Han requests UNANIMOUS

CONSENT to amend SB 510

as follows:

AMENDMENT TO SENATE BILL 510

On page 16 of the printed re-engrossed bill, in line 29, before "this" insert "Subject to the applicable provisions of chapter \_\_, Oregon Laws 1973 (Enrolled Senate Bill 298, 1973 Regular Session),".

By Stephan Hessel

This space for Desk use

Amended July 2 (FSM)

LA 71H

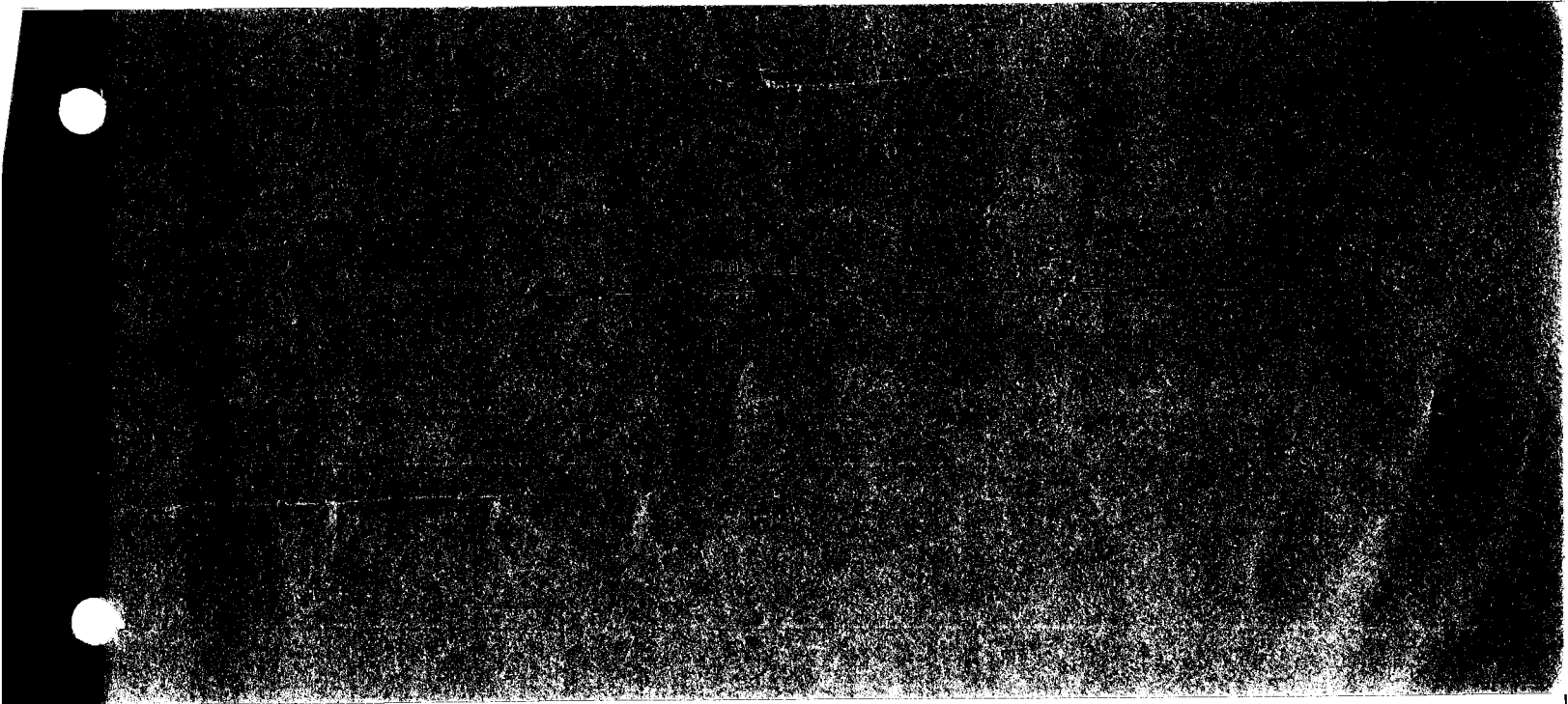
# Committee Report Review – Engrossed and Enrolled Bills Unit

Date June 1, 1973

We have examined the report of the House Committee on Human Resources, dated June 1, 1973 - \_\_\_\_\_, on measure EngSB 510, and, pursuant to House Rule 8.20(2), attest that the measure in the form reported out is accurate in form and style according to the **Form and Style Manual for Legislative Measures**.

*Virginia Mack*  
\_\_\_\_\_  
For Engrossed and Enrolled Bills Unit

HCR 73-4



# Committee Report Review – Engrossed and Enrolled Bills Unit

Date 6-28-23

Senate

Ways and Means

We have examined the report of the ~~House~~ Committee on \_\_\_\_\_,  
dated 6-25-23, on measure SB 510, and,  
pursuant to House Rule 8.20(2), attest that the measure in the form reported out is accurate in form and style  
according to the **Form and Style Manual for Legislative Measures.**



HCR 73-4



For Engrossed and Enrolled Bills Unit

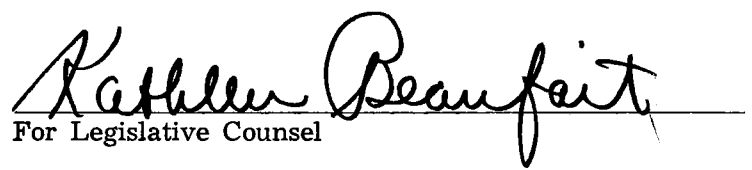
# Committee Report Review – Legislative Counsel

Date 6-28-23

Joint

Ways and Means

We have examined the report of the ~~House~~ Committee on \_\_\_\_\_,  
dated 6-25-23, on measure SB 510, and,  
pursuant to House Rule 8.20(2), attest that the revised bill summary complies with the requirements of House  
Rule 14.15(4) and that the identification of substantive changes in the report is accurate.



For Legislative Counsel

- MEASURE HAS NO REVISED SUMMARY.
- MEASURE HAS NO SUBSTANTIVE CHANGES.

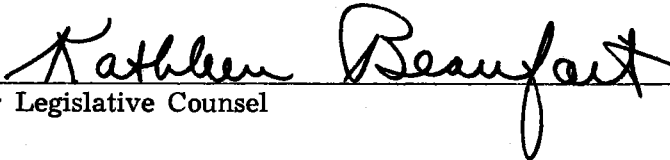
HCR 73-3

Committee Clerk

# Committee Report Review - Legislative Counsel

Date June 1, 1973

We have examined the report of the House Committee on Human Resources,  
dated June 1, 1973, on measure Eng. /SB 510, and,  
pursuant to House Rule 8.20(2), attest that the revised bill summary complies with the requirements of House  
Rule 14.15(4) and that the identification of substantive changes in the report is accurate.

  
\_\_\_\_\_  
For Legislative Counsel

MEASURE HAS NO REVISED SUMMARY.

MEASURE HAS NO SUBSTANTIVE CHANGES.

*Enrolled*  
~~Eng-RE-ENGROSSED~~

# Senate Bill 510

~~Ordered by the House June 29~~  
~~(Including Amendments by Senate May 17 and by~~  
~~Joint Committee on Ways and Means June 28)~~

Sponsored by Senator BURBIDGE, Representative PECK, Senators BROWNE, J. BURNS, HALLOCK, ROBERTS, Representatives AuCOIN, DENSMORE, DERELI, FADELEY, GROENER, KAFOURY, KATZ, MARTIN, McCOY, OTTO, PAULUS, ROBERTS

*Chapter*

## 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.

Modifies provisions relating to involuntary commitment of mentally ill persons. Defines "mentally ill person." Provides for commitment to Mental Health Division rather than specific state hospital. Requires probable cause investigation prior to issuing citation. Defines conditions for treatment of persons detained for hearing. Establishes new hearing procedures and expands existing hearing procedures relating to involuntary commitments of mentally ill persons. Permits courts to allow mentally ill persons to participate in treatment programs on voluntary basis. Places time limitations on length of commitment. Provides for periodic hearings, upon petition of patient, to determine whether or not person should remain patient in facility. Requires that patient committed to division be given statement of rights guaranteed to him and that such statement be posted in certain rooms frequented by patients.

Effective July 1, 1974.

**NOTE:** Matter in bold face in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted; complete new sections begin with **SECTION.**

A BILL FOR AN ACT

1  
2 Relating to involuntary commitments of mentally ill persons; creating new  
3 provisions; and amending ORS 426.005, 426.060, 426.070, 426.080, 426.090,  
4 426.100, 426.110, 426.120, 426.130, 426.140, 426.150, 426.160, 426.170, 426.215,  
5 426.280, 426.290, 426.300 and 426.385; repealing ORS 426.375; and prescrib-  
6 ing an effective date.

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

8 Section 1. ORS 426.005 is amended to read:

9 426.005. As used in ORS 426.005 to [426.350] 426.390, unless the con-  
10 text requires otherwise [, "division" means the Mental Health Division.]:

- 11 (1) "Division" means the Mental Health Division.
- 12 (2) "Mentally ill person" means a person who, because of a mental  
13 disorder, is either:
  - 14 (a) Dangerous to himself or others; or
  - 15 (b) Unable to provide for his basic personal needs and is not receiving  
16 such care as is necessary for his health or safety.
- 17 (3) "Facility" means a state mental hospital, community hospital, resi-  
18 dential facility, detoxification center, day treatment facility, or such other  
19 facility as the Mental Health Division determines suitable, any of which  
20 may provide diagnosis and evaluation, medical care, detoxification, social  
21 services, or rehabilitation for committed mentally ill persons.

22 (4) "Director of the facility" means a superintendent of a state mental  
23 hospital, the chief of psychiatric services in a community hospital, or the  
24 person in charge of treatment and rehabilitation programs at other treat-  
25 ment facilities.

26 Section 2. ORS 426.060 is amended to read:

27 426.060. (1) Commitments to the [Oregon State Hospital, the F. H.  
28 Dammasch State Hospital and the Eastern Oregon Hospital and Training  
29 Center] Mental Health Division shall be made by the judge of any court  
30 having probate jurisdiction or, if the circuit court is not the probate court,  
31 the circuit court if its jurisdiction has been extended to include commit-  
32 ment of the mentally ill pursuant to ORS 3.275 in any county of this state.

33 (2) The Mental Health Division may, in its discretion and for reasons  
34 which are satisfactory to the division, direct any [judge to make his com-

1 mitments] court committed person to [any hospital listed in subsection  
2 (1) of this section] the facility best able to treat him. The authority of  
3 the division on such matters shall be final.

4 Section 3. ORS 426.070 is amended to read:

5 426.070. (1) The judge of any court having probate jurisdiction or,  
6 if the circuit court is not the probate court, the circuit court if its juris-  
7 diction has been extended to include commitment of the mentally ill pur-  
8 suant to ORS 3.275 in any county of this state, upon being notified in writ-  
9 ing under oath by two persons or by the county health officer or any magis-  
10 trate that any other person within the county is a mentally ill person and  
11 [by reason of such illness] is in need of treatment, care or custody, shall  
12 [cause the allegedly mentally ill person to be brought before him at such  
13 time and place as he may direct. If necessary, the judge may issue a war-  
14 rant of detention to the county health officer, or to the sheriff of the county,  
15 directing the officer to take such person into his custody and produce him  
16 at the time and place stated in the warrant.] forthwith cause the community  
17 mental health program director, or his designee, to investigate to determine  
18 whether there is probable cause to believe that the person is in fact a men-  
19 tally ill person. The community mental health program director or his  
20 designee, the two petitioning persons, the county health officer, any magis-  
21 trate, any peace officer, probation officer, physician attending the allegedly  
22 mentally ill person or the physician attached to a hospital or institution  
23 wherein the allegedly mentally ill person is a patient shall in no way be  
24 be held criminally or civilly liable for the making of such notification,  
25 provided he acts in good faith, on probable cause and without malice.

26 (2) The investigation conducted should, where possible, include an  
27 interview or examination of the allegedly mentally ill person in his home  
28 or other place familiar to the individual. If the allegedly mentally ill per-  
29 son consents, the investigation should also, where possible, include an in-  
30 terview with the individual's relatives, neighbors and physician. The per-  
31 son conducting the investigation shall in no way be held criminally or  
32 civilly liable for the making of such investigation, provided he acts in  
33 good faith, on probable cause and without malice. Upon completion, a

1 recommendation based upon the investigation report shall be promptly  
2 submitted to the court.

3 (3) If the court, following the investigation, concludes that there is  
4 probable cause to believe that the person investigated is a mentally ill  
5 person, it shall, through the issuance of a citation as provided in section 5  
6 of this 1973 Act, cause the person to be brought before it at such time  
7 and place as it may direct, for a hearing to make a determination whether  
8 or not the person is mentally ill. The person shall be given the opportunity  
9 to appear voluntarily at the hearing unless he fails to appear or unless  
10 he is detained pursuant to subsection (5) of this section. The hearing may  
11 be held in a hospital, the person's home, or in some other place convenient  
12 to the court and the allegedly mentally ill person. If a person is detained  
13 pursuant to subsection (5) of this section, a hearing shall be held within  
14 72 hours of the commencement of his detention unless additional time is  
15 requested by him or his attorney. The court may make such orders for  
16 the care and custody of the person prior to the hearing as it deems nec-  
17 essary.

18 (4) A copy of the investigation report shall be made available to the  
19 allegedly mentally ill person as soon as possible after it is completed but  
20 in any case prior to the hearing.

21 (5) If the court finds that there is probable cause to believe that failure  
22 to take the allegedly mentally ill person into custody pending the investi-  
23 gation or hearing would pose an imminent and serious danger to the person  
24 or to others, the judge may issue a warrant of detention to the community  
25 mental health program director, the county health officer or to the sheriff  
26 of the county, directing that person or his designee to take such person  
27 into his custody and produce him at the time and place stated in the  
28 warrant.

29 (6) Persons taken into custody under subsection (5) of this section  
30 shall receive the care, custody and treatment required for their mental and  
31 physical health and safety, and the treating physician shall report such  
32 care, custody and treatment to the court as required in section 8 of this  
33 1973 Act. All methods of treatment, including the prescription and admin-  
34 istration of drugs, shall be the sole responsibility of the treating physician.

1 However, such persons shall not be subject to potentially unusual or haz-  
2 ardous treatment procedures, including electro-shock therapy. The treat-  
3 ing physician shall be notified immediately of any use of mechanical re-  
4 straints on such persons. Every use of a mechanical restraint and the  
5 reasons therefor shall be made a part of the clinical record of the person  
6 over the signature of the treating physician.

7 Section 4. ORS 426.080 is amended to read:

8 426.080. The [officer] person serving [the] a warrant of detention  
9 [and] or the citation provided for by ORS 426.090 shall, immediately after  
10 service thereof, make a return upon the original warrant or citation show-  
11 ing the time, place and manner of such service and file it with the clerk  
12 of the court. In executing the warrant of detention or citation, the [offi-  
13 cer] person has all the powers provided by ORS 133.290 and 161.235 to  
14 161.245 and may require the assistance of any peace officer or other per-  
15 son.

16 Section 4a. If Senate Bill 80 (1973 regular session) becomes law, sec-  
17 tion 4 of this 1973 Act is repealed and ORS 426.080, as amended by section  
18 348, chapter —, Oregon Laws 1973 (Enrolled Senate Bill 80), is amended  
19 to read:

20 426.080. The [officer] person serving [the] a warrant of detention [and]  
21 or the citation provided for by ORS 426.090 shall, immediately after serv-  
22 ice thereof, make a return upon the original warrant or citation showing  
23 the time, place and manner of such service and file it with the clerk of  
24 the court. In executing the warrant of detention or citation, the [officer]  
25 person has all the powers provided by section 71 [of this 1973 Act], chap-  
26 ter —, Oregon Laws 1973 (Enrolled Senate Bill 80) and ORS 161.235 to  
27 161.245 and may require the assistance of any peace officer or other person.

28 Section 5. ORS 426.090 is amended to read:

29 426.090. The judge shall cause a citation to issue to the allegedly men-  
30 tally ill person stating the nature of the information filed concerning him  
31 and the specific reasons he is believed to be mentally ill. The citation  
32 shall further contain a notice of the time and place of the commitment  
33 hearing, the right to representation by legal counsel, the right to have  
34 legal counsel appointed if the person is unable to afford counsel, the right

1 to subpoena witnesses in behalf of himself to the hearing and such other  
2 information as the court may direct. The citation shall be served upon  
3 such person [by the officer who takes such person into custody,] by deliv-  
4 ering a duly certified copy of the original thereof to him in person no less  
5 than 24 hours prior to the hearing.

6 Section 6. ORS 426.100 is amended to read:

7 426.100. (1) [At the time of the hearing before the court, prescribed  
8 by ORS 426.070 to 426.150, the court shall inform the allegedly mentally  
9 ill person that he has the right to legal counsel during the proceedings and  
10 that, at his request, or the request of his legal guardian, relative or friend,  
11 the court may postpone the hearing up to 72 hours in order to allow the  
12 allegedly mentally ill person an opportunity to obtain counsel, and sub-  
13 pena witnesses in his behalf to the hearing.] At the time the allegedly  
14 mentally ill person is brought before the court, the court shall advise him  
15 of the reason he has been brought before the court, the nature of the pro-  
16 ceedings and the possible results of the proceedings. The court shall also  
17 advise the allegedly mentally ill person that he is entitled to subpoena wit-  
18 nesses on his behalf and to have an attorney represent him during the pro-  
19 ceedings, and that if he does not have funds with which to retain an attor-  
20 ney, the court will appoint an attorney to represent him without cost. If  
21 the allegedly mentally ill person does not request an attorney, his legal  
22 guardian, relative or friend may request the assistance of legal counsel on  
23 his behalf.

24 (2) If no request for legal counsel is made, the court [may, at its dis-  
25 cretion,] shall appoint legal counsel unless counsel is expressly, knowingly  
26 and intelligently refused by the person.

27 (3) If the person is [indigent] unable to afford counsel, the court [may]  
28 shall provide by order for payment of a reasonable attorney fee by the  
29 county of residence of the allegedly mentally ill person. In all cases such  
30 legal counsel shall be present at the hearing and examination and may  
31 examine all witnesses offering testimony, and otherwise represent such  
32 person.

33 (4) [Where legal counsel is requested or provided, the court may con-  
34 tinue the hearing for up to 72 hours after counsel has been obtained by

1 appointment or otherwise and may make such orders for the care and  
2 custody of the person during that period as it deems necessary.] If the  
3 allegedly mentally ill person, his attorney or guardian requests, the court  
4 shall postpone the hearing in order to allow the person to prepare for the  
5 hearing. The court shall not postpone the hearing for more than 72 hours  
6 unless the person, his counsel, or guardian specifically requests a longer  
7 time to prepare. The court may make such orders for the care and custody  
8 of the person during such postponement as it deems necessary.

9 SECTION 7. Sections 8 and 9 of this 1973 Act are added to and made  
10 a part of ORS chapter 426.

11 SECTION 8. The court shall be fully advised by the community men-  
12 tal health program director, or when the person has been detained under  
13 subsection (5) of section 3 or section 32 of this 1973 Act, by the treating  
14 physician of all drugs and other treatment known to have been adminis-  
15 tered to the allegedly mentally ill person which may substantially affect  
16 his ability to prepare for or function effectively at the hearing.

17 SECTION 9. The allegedly mentally ill person shall have the right to  
18 cross-examine all witnesses, the person conducting the investigation, the  
19 examining physicians or other qualified persons recommended by the divi-  
20 sion who have examined the persons. Neither the investigation report nor  
21 any part thereof shall be introduced in evidence without the express con-  
22 sent of the allegedly mentally ill person.

23 Section 10. ORS 426.110 is amended to read:

24 426.110. The judge shall appoint at least two competent physicians  
25 licensed by the State Board of Medical Examiners for the State of Oregon  
26 to practice medicine and surgery, one of whom may be the county health  
27 officer, to examine the person as to his mental condition. In lieu of one of  
28 the physicians, the court may appoint one qualified person as recommended  
29 by the division, to examine the person. [In counties having a population  
30 of 10,000 or less, as determined by the latest federal census, the judge may  
31 appoint only one such physician, who may be the county health officer, but  
32 the judge may, in his discretion, appoint additional physicians, qualified as  
33 required by this section, to assist in the examination of the person as to  
34 his mental condition.] If the allegedly mentally ill person requests in

1 writing that one additional examining physician or qualified person as  
 2 recommended by the division be appointed, or, if in the absence of such  
 3 request by the allegedly mentally ill person, such request is made by the  
 4 legal guardian, relative or friend of the alleged mentally ill person, the  
 5 court shall appoint a physician [nominated in such request], or other  
 6 qualified person as recommended by the division nominated in such re-  
 7 quest; however, the court shall not appoint more than one such additional  
 8 examining physician or qualified person, who shall be a resident of the  
 9 State of Oregon.

10 Section 11. ORS 426.120 is amended to read:

11 426.120. The [physicians] persons appointed to conduct the examination  
 12 shall examine the person as to his mental condition and [report] make  
 13 their separate [or joint findings] reports in writing, under oath, to the  
 14 court, which [findings] reports immediately shall be filed with the clerk  
 15 of the court. If the examining [physicians] persons find, and show by their  
 16 verified [findings] reports, that the person examined is a mentally ill per-  
 17 son, [and by reason of mental illness is in need of treatment, care or cus-  
 18 tody, and if the judge, after having examined the verified findings and  
 19 considered all competent evidence submitted to him, is of the opinion that  
 20 the person is in need of treatment, care or custody, he shall adjudge the  
 21 person to be mentally ill and order him committed to the proper state  
 22 hospital. The order of commitment shall direct that the mentally ill per-  
 23 son be promptly and safely delivered to the superintendent of the proper  
 24 state hospital, as provided in ORS 426.150.] the reports shall include a  
 25 recommendation as to the type of treatment facility best calculated to  
 26 help the person recover from his mental illness. Each report shall also ad-  
 27 vise the court whether in the opinion of the examiner the mentally ill per-  
 28 son would cooperate with and benefit from a program of voluntary  
 29 treatment.

30 Section 12. ORS 426.130 is amended to read:

31 426.130. [If the legal guardian, relative or friend of the mentally ill  
 32 person requests that he be allowed to care for him in a place satisfactory  
 33 to the judge, and shows that he, such applicant, is competent and finan-  
 34 cially able to care for the mentally ill person, and also if it appears to the

1 court that the mentally ill person is not criminally inclined or violent, and  
 2 that proper care and treatment can and will be provided him by such  
 3 applicant, and that it would be to the best interest of the mentally ill per-  
 4 son to be paroled, the judge may order that the mentally ill person be  
 5 released and placed in the care and custody of such applicant. The order  
 6 may be revoked and the mentally ill person committed to an Oregon state  
 7 hospital whenever, in the opinion of the judge, it is for the best interest  
 8 of the mentally ill person.] After hearing all of the evidence, and review-  
 9 ing the findings of the examining persons, the court shall determine  
 10 whether the person is mentally ill. If in the opinion of the court the person  
 11 is not mentally ill, he shall be discharged forthwith. If in the opinion of  
 12 the court the person is mentally ill beyond a reasonable doubt the court  
 13 may order as follows:

14 (1) If the mentally ill person is willing and able to participate in  
 15 treatment on a voluntary basis, and the court finds that he will probably  
 16 do so, the court shall order the release of the individual and dismiss the  
 17 case.

18 (2) If the legal guardian, relative or friend of the mentally ill person  
 19 requests that he be allowed to care for him during the period of commit-  
 20 ment in a place satisfactory to the judge, and shows that he, such applicant,  
 21 is able to care for the mentally ill person and that there are adequate  
 22 financial resources available for the care of the mentally ill person, the  
 23 court may order that the mentally ill person be conditionally released and  
 24 placed in the care and custody of such applicant. The order may be revoked  
 25 and the mentally ill person committed to the division whenever, in the  
 26 opinion of the court, it is in the best interest of the mentally ill person.

27 (3) If in the opinion of the court voluntary treatment or conditional  
 28 release are not in the best interest of the mentally ill person, the court  
 29 may order the commitment of the individual to the division for treatment.  
 30 The commitment shall be for a period of time not to exceed 180 days.

31 SECTION 13. Sections 14 to 20 of this 1973 Act are added to and  
 32 made a part of ORS chapter 426.

33 SECTION 14. At any time after commitment by the court, the per-  
 34 son, with the approval of the division, may change his status to that of

1 a voluntary patient. Notwithstanding ORS 426.220, any person who alters  
2 his status to that of a voluntary patient under this section shall be released  
3 from the division within 72 hours of his request for release.

4 **SECTION 15.** At the end of the 180-day period of commitment, any  
5 person whose status has not been changed to voluntary shall be released  
6 unless the division certifies to the court in the county where the treating  
7 facility is located that the patient is still mentally ill and in need of further  
8 treatment. If such certification is made, the person will not be released, but  
9 the division shall forthwith issue a copy of the certification to the person.  
10 The certification shall be served upon the patient by a physician or regis-  
11 tered nurse at the facility or director of the facility wherein the patient is  
12 confined. The person serving the citation shall inform the court in writing  
13 that service has been made and the date thereof. The certification shall  
14 advise the person that the division has requested that his commitment be  
15 continued for an additional period of time; that he may consult with an  
16 attorney and that an attorney will be provided for him without cost to  
17 him if he is unable to afford an attorney; that if he does not protest this  
18 further commitment within 14 days, his commitment will be continued  
19 for an indefinite period of time up to 180 days; that if he does protest a fur-  
20 ther period of commitment, he is entitled to a hearing before the court on  
21 whether his commitment should be continued; that he may protest either  
22 orally or in writing by signing the form accompanying the certification;  
23 that he is entitled to have a physician or other qualified person as recom-  
24 mended by the division, other than a member of the staff at the facility  
25 where he is confined, examine him and report to the court the results of  
26 his examination; that he may subpoena witnesses and offer evidence on his  
27 own behalf at the hearing; that if he is without funds to retain an attorney  
28 or an examining physician or qualified person as recommended by the  
29 division, the court will appoint such attorney, physician or qualified  
30 person at no cost to him. The person serving the certification shall read  
31 and deliver the certification to the person and ask him whether he protests  
32 a further period of commitment. The person may protest further com-  
33 mitment either orally or by signing a simple protest form to be given to  
34 the person with the certification. If the person does not protest a further

1 period of commitment within 14 days of service of the certification, the  
2 division shall so notify the court and the court shall, without further  
3 hearing, order the commitment of the person for an additional indefinite  
4 period of time up to 180 days.

5 **SECTION 16.** When the person protests a further period of commit-  
6 ment the division shall, forthwith, notify the court and the court shall  
7 have the person brought before it and shall again advise him that the  
8 division has requested that his commitment be continued for an additional  
9 period of time and that if he does not protest this commitment his com-  
10 mitment will be continued for an indefinite period of time up to 180 days.  
11 He shall also be informed of the rights set forth in section 15 of this 1973  
12 Act.

13 **SECTION 17.** If the person requests a hearing, the hearing shall be  
14 conducted as promptly as possible and at such time and place as the court  
15 may direct. If the person requests a continuance in order to prepare for the  
16 hearing or to obtain counsel to represent him, the court may grant a con-  
17 tinuance for a reasonable period of time for this purpose. In the event the  
18 person requests the appointment of an attorney and is without funds to  
19 retain an attorney, the court shall appoint an attorney to represent him at  
20 no cost to the person. If no request for legal counsel is made, the court  
21 shall appoint an attorney to represent the person unless legal counsel is  
22 expressly, knowingly and intelligently refused by the person. If the per-  
23 son requests an examination by a physician or other qualified person as  
24 recommended by the division and is without funds to retain such person  
25 for purposes of the examination, the court shall appoint a physician or  
26 other qualified person, other than a member of the staff from the facility  
27 where the person is a patient, to examine the person at no expense to him  
28 and to report to the court the results of the examination. The court shall  
29 then conduct a hearing and after hearing the evidence and reviewing the  
30 recommendations of the treating and examining physicians or other quali-  
31 fied persons, the court shall determine whether the individual is still a  
32 mentally ill person and in need of further treatment. If in the opinion of  
33 the court the individual is still a mentally ill person beyond a reasonable

1 doubt and in need of further treatment, the court may order his commit-  
 2 ment to the division for an additional indefinite period of time up to 180  
 3 days. At the end of the 180-day period, the patient shall be released unless  
 4 the division again certifies to the committing court that the person is still  
 5 a mentally ill person and in need of further treatment, in which event the  
 6 procedures set forth in sections 15 to 17 of this 1973 Act shall be followed.

7 **Note:** Section 18 was deleted by amendment. Subsequent sections  
 8 were not renumbered.

9 **SECTION 19.** Costs of hearings conducted pursuant to section 17 of  
 10 this 1973 Act, and the fees for physicians, other qualified persons, and  
 11 attorneys appointed thereunder, shall be charged to the county of the  
 12 person's residence in the same manner provided by ORS 426.310, whether  
 13 the hearing is held in the county of residence or county of the treating  
 14 facility.

15 **SECTION 20.** Sections 14 to 17 of this 1973 Act do not restrict or limit  
 16 the discharge procedures set forth in ORS 426.300.

17 Section 21. ORS 426.160 is amended to read:

18 426.160. The judge shall cause to be recorded in the court records a  
 19 full account of proceedings had at *[the]* all *[hearing]* hearings and *[exam-*  
 20 *ination]* examinations conducted pursuant to this 1973 Act, together with  
 21 the *[judgment]* judgments and *[order]* orders of the court and a copy of  
 22 the orders issued. The account of the proceedings and transcripts of testi-  
 23 mony if taken thereat shall be delivered to the county clerk who shall  
 24 cause it to be sealed and neither the account of the proceedings nor the  
 25 transcript of testimony if taken shall be disclosed to any person except:

26 (1) As provided in ORS 426.170;

27 (2) Upon request of the person subject to the proceedings, his legal  
 28 representatives, or his attorney; or

29 (3) Pursuant to court order.

30 Section 22. ORS 426.300 is amended to read:

31 426.300. (1) The *[superintendent of any state hospital wherein are*  
 32 *confined persons adjudged to be mentally diseased]* division *[may]* shall,  
 33 by filing *[his]* a written certificate with the last committing court and the  
 34 court of residence, discharge any patient from court commitment, except

1 one held upon an order of a court or judge having criminal jurisdiction in  
 2 an action or proceeding arising out of criminal offense when *[he is con-*  
 3 *vinced that the patient is sufficiently recovered to be of no danger to him-*  
 4 *self or others and that the discharge is in the best interest of the patient]*  
 5 in its opinion the individual is no longer a mentally ill person or when in  
 6 its opinion the transfer of the individual to a voluntary status is in the  
 7 best interest of the treatment of the patient.

8 (2) The *[superintendent of a state institution for the mentally ill or*  
 9 *mentally retarded]* division or the administrator of the University State Tu-  
 10 berculosis Hospital may sign applications for public assistance on behalf of  
 11 those patients who may be eligible for public assistance.

12 Section 23. ORS 426.140 is amended to read:

13 426.140. (1) No person, not incarcerated upon a criminal charge, who  
 14 has been adjudged a mentally ill person or one against whom proceed-  
 15 ings have been instituted shall be confined in any prison, jail or other in-  
 16 closure where those charged with crime or violation of a municipal or-  
 17 dinance are incarcerated, unless the person represents an immediate and  
 18 serious danger to hospital staff or facilities *[, if a place suitable for the*  
 19 *comfortable, safe and humane confinement of such person is available]*.

20 (2) No alleged mentally ill person who has been taken into custody  
 21 shall be confined, either before or after the hearing and examination,  
 22 without an attendant in direct charge of him; and, if not confined in a  
 23 *[county]* community hospital, the county health officer or sheriff having  
 24 such person in his custody shall select some suitable person to act as  
 25 attendant.

26 Section 24. ORS 426.150 is amended to read:

27 426.150. (1) Upon receipt of the order of commitment, the health officer  
 28 or the sheriff, as the case may be, shall take such mentally ill person into  
 29 his custody, and insure his safekeeping and proper care until delivery is  
 30 made to *[the superintendent of the proper state hospital or a designated*  
 31 *employee thereof]* the division. Immediately after being notified of the  
 32 court's order of commitment of such mentally ill person, the county health  
 33 officer or the sheriff shall notify by telephone, if possible, *[the superin-*  
 34 *tendent of the state hospital to which the person was committed,]* such

1 person as the division shall designate informing him of the fact that such  
 2 person is being held awaiting delivery, and also stating the name, [char-  
 3 acter,] condition, sex and age of such person. Except as provided in sub-  
 4 section (2) of this section, the [superintendent] division shall thereupon  
 5 [designate an employe of the hospital to] take custody of such person  
 6 [and safely transport him to the state hospital]. [The employe] A designee  
 7 of the division, accompanied by such assistants as the [superintendent]  
 8 division may deem necessary, shall proceed to the place where the person  
 9 is to be delivered into his custody, and, upon demand shall be given custody  
 10 of the committed mentally ill person, together with the certified record  
 11 required by ORS 426.170. The [employe] designee shall issue appropriate  
 12 receipts therefor and immediately proceed to transport the committed  
 13 mentally ill person safely to the [state hospital to which he has been com-  
 14 mitted,] facility designated by the division and there make delivery of  
 15 him and the record to the [superintendent] director or a designated em-  
 16 ploye of the [hospital] facility.

17 (2) The committing judge, upon approval of the examining [physician]  
 18 physicians or other qualified persons as recommended by the division  
 19 and upon request of a guardian, friend or relative of the mentally ill per-  
 20 son, may authorize the guardian, friend or relative to transport the per-  
 21 son to the designated [hospital] facility when the committing judge de-  
 22 termines that such means of transportation would not be detrimental to the  
 23 welfare of the mentally ill person or to the public.

24 Section 25. ORS 426.170 is amended to read:

25 426.170. If any person is adjudged mentally ill and ordered committed  
 26 to [a state hospital] the division, a copy of the complete record in the case,  
 27 certified to by the [county] clerk of the county, shall be given to the health  
 28 officer of the county, or to the sheriff, for delivery to the [superintendent]  
 29 director of the [state hospital] facility to which such mentally ill person  
 30 is [committed] assigned. The record shall include the name, residence,  
 31 nativity, sex and age of such mentally ill person and all other information  
 32 that may be required by the rules and regulations promulgated by the  
 33 Mental Health Division.

1 Section 26. ORS 426.280 is amended to read:

2 426.280. [A superintendent] The division may grant a trial visit to a  
 3 patient for any period of time, up to 180 days, under such general conditions  
 4 [prescribed by the Mental Health Division] as it shall prescribe during  
 5 such patient's period of commitment. The physician and the [hospital]  
 6 facility granting a trial visit to a patient, the superintendent or director  
 7 thereof, the Administrator of the Mental Health Division and the chief  
 8 medical officer of the [hospital] facility shall not be liable for a patient's  
 9 expenses while on trial visit, nor shall the superintendent or director of  
 10 any such [hospital] facility, the physician responsible for the patient's re-  
 11 lease, the Administrator of the Mental Health Division or the chief medical  
 12 officer of the [hospital] facility be liable for any damages whatsoever  
 13 that are sustained by any person on account of the misconduct of such pa-  
 14 tient while on trial visit.

15 Section 27. ORS 426.290 is amended to read:

16 426.290. (1) If a written complaint against a patient on trial visit from  
 17 [a state hospital for the mentally ill] the division is received by [a super-  
 18 intendent of a state hospital for the mentally ill] the division and the com-  
 19 plaint is sworn to by a citizen of Oregon before an officer qualified to ad-  
 20 minister an oath, the patient named in the complaint shall be sent to  
 21 and received by a [state hospital] facility for the mentally ill designated  
 22 by the division. If the acts complained of are such as to indicate to  
 23 the examining physician of the receiving [hospital] facility that the patient  
 24 should no longer be permitted to remain on trial visit, the patient shall be  
 25 admitted thereto.

26 (2) Upon voluntary application to be admitted thereto, every patient  
 27 on trial visit must be received by [a state hospital for the mentally ill]  
 28 the facility from which he was released on trial visit.

29 (3) Every patient on trial visit received by a [state hospital] facility  
 30 for the mentally ill under this section shall be admitted to the [hospital]  
 31 facility without examination as to his sanity before any court or judge  
 32 having jurisdiction over such matters.

Section 28. ORS 426.385 is amended to read:

426.385. (1) Every mentally ill person committed to the division shall have the right to:

- (a) Communicate freely in person, by sending and receiving sealed mail, and by reasonable access to telephones;
- (b) Wear his own clothing;
- (c) Keep his personal possessions, including toilet articles;
- (d) Religious freedom;
- (e) A private storage area with free access thereto;
- (f) Be furnished with a reasonable supply of writing materials and stamps;
- (g) A written treatment plan, kept current with his progress;
- (h) Be represented by counsel whenever his substantial rights may be affected;
- (i) Petition for a writ of habeas corpus;
- (j) Not be required to perform routine labor tasks of the facility except those essential for his treatment;
- (k) Be given reasonable compensation for all work performed other than personal housekeeping duties;
- (L) Such other rights as may be specified by regulation; and
- (m) Exercise all civil rights in the same manner and with the same effect as one not admitted to the facility, including, but not limited to, the right to dispose of property, execute instruments, make purchases, enter contractual relationships, and vote, unless he has been adjudicated incompetent and has not been restored to legal capacity.

(2) Mentally ill persons committed to the division shall have the right to be free from potentially unusual or hazardous treatment procedures, including lobotomy and electro-shock therapy, unless they have given their express and <sup>①</sup> Subject to the applicable provisions

Insert ①

of chapter \_\_, Oregon Laws 1973 (Enrolled Senate Bill 298, 1973 Regular Session),

entered into the patient's treatment record and shall include the reasons for the denial.

(3) Mechanical restraints shall not be applied to a person admitted

to a [state hospital] facility unless it is determined by the [superintendent] chief medical officer of the [hospital] facility or his designee to be required by the medical needs of the person. Every use of a mechanical restraint and the reasons therefor shall be made a part of the clinical record of the person [under] over the signature of the [superintendent] chief medical officer of the [hospital] facility or his designee.

SECTION 29. ORS 426.375 is repealed.

SECTION 30. Section 31 of this 1973 Act is added to and made a part of ORS chapter 426.

SECTION 31. A simple and clear statement of rights guaranteed to patients committed to the division shall be prominently posted in each room frequented by patients in all facilities housing such patients. A copy of the statement shall be given to each patient upon admission and sent, upon request, to his legal counsel, guardian, relative or friend.

Section 32. ORS 426.215 is amended to read:

426.215. (1) Any peace officer may take into custody any person who he has reasonable cause to believe is dangerous to himself or to any other person and who he has reasonable cause to believe is in need of immediate care, custody or treatment for mental illness. If a peace officer takes a person into custody under this section, he shall remove him forthwith to:

(a) A hospital, described in subsection (4) of this section, in the county where the person is taken into custody; or

(b) Such a hospital in another county after having obtained a certificate from a physician licensed to practice medicine and surgery by the Board of Medical Examiners for the State of Oregon stating that the travel will not be detrimental to the person's physical health and that the person is dangerous to himself or to any other person and is in need of immediate care or treatment for mental illness. Such physician shall personally examine the allegedly mentally ill person within 24 hours prior to signing the certificate.

(2) The superintendent or administrator of the hospital shall cause the person to be examined forthwith by a staff physician. If the physician finds the person to be in need of immediate care or treatment for mental illness, the person shall be admitted as a patient. Otherwise he shall not be retained in further custody under this section.

1 (3) The peace officer, after taking a person into custody under this  
2 section, shall notify forthwith a court having probate jurisdiction in the  
3 county in which the person was taken into custody of the fact of taking the  
4 person into custody and the person's whereabouts. When the judge of such  
5 a court is informed by a peace officer that a person is in custody, [*within*  
6 *24 hours*] the judge shall **immediately commence proceedings pursuant**  
7 **to sections 3 to 12 of this 1973 Act.** [*issue a warrant directing that such*  
8 *person be brought before the court within 24 hours after issuance of the*  
9 *warrant, and a hearing shall be held as provided in ORS 426.070 to 426.170.*]

10 (4) The superintendent or administrator of a hospital maintaining  
11 adequate staff and facilities for the care and treatment of persons alleged  
12 to be mentally ill and approved by the [*Mental Health Division*] **division**  
13 may receive and retain therein as a patient for a period not to exceed  
14 five days any person alleged to be in need of immediate care or treat-  
15 ment for mental illness as provided in this section. The expenses of such  
16 emergency care shall be paid by the county of residence of the person or,  
17 if he has no residence within the state, by the county in which the person  
18 is taken into custody, unless otherwise provided by law.

19 (5) **Persons hospitalized under this section shall receive the care, cus-**  
20 **tody and treatment required for their mental and physical health and**  
21 **safety, and the treating physician shall report such care, custody and**  
22 **treatment to the court as required in section 8 of this 1973 Act. All methods**  
23 **of treatment, including the prescription and administration of drugs,**  
24 **shall be the sole responsibility of the treating physician. However, such**  
25 **persons shall not be subject to potentially unusual or hazardous treatment**  
26 **procedures, including electro-shock therapy. The treating physician shall**  
27 **be notified immediately of any use of mechanical restraints on such per-**  
28 **sons. Every use of a mechanical restraint and the reasons therefor shall**  
29 **be made a part of the clinical record of the person over the signature of**  
30 **the treating physician.**

31 [(5)] (6) No peace officer, hospital, physician or judge shall in any  
32 way be held criminally or civilly liable for actions pursuant to this section  
33 provided he acts in good faith, on probable cause and without malice.

34 **SECTION 33.** This Act takes effect on July 1, 1974.

RE-ENGROSSED

# Senate Bill 510

Ordered by the House June 29  
(Including Amendments by Senate May 17 and by  
Joint Committee on Ways and Means June 28)

Sponsored by Senator BURBIDGE, Representative PECK, Senators BROWNE, J. BURNS, HALLOCK, ROBERTS, Representatives AuCOIN, DENSMORE, DERELI, FADELEY, GROENER, KAFOURY, KATZ, MARTIN, McCOY, OTTO, PAULUS, ROBERTS

## 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.

Modifies provisions relating to involuntary commitment of mentally ill persons. Defines "mentally ill person." Provides for commitment to Mental Health Division rather than specific state hospital. Requires probable cause investigation prior to issuing citation. Defines conditions for treatment of persons detained for hearing. Establishes new hearing procedures and expands existing hearing procedures relating to involuntary commitments of mentally ill persons. Permits courts to allow mentally ill persons to participate in treatment programs on voluntary basis. Places time limitations on length of commitment. Provides for periodic hearings, upon petition of patient, to determine whether or not person should remain patient in facility. Requires that patient committed to division be given statement of rights guaranteed to him and that such statement be posted in certain rooms frequented by patients.

Effective July 1, 1974.

**NOTE:** Matter in bold face in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted; complete new sections begin with **SECTION**.

## A BILL FOR AN ACT

1  
2 Relating to involuntary commitments of mentally ill persons; creating new  
3 provisions; and amending ORS 426.005, 426.060, 426.070, 426.080, 426.090,  
4 426.100, 426.110, 426.120, 426.130, 426.140, 426.150, 426.160, 426.170, 426.215,  
5 426.280, 426.290, 426.300 and 426.385; repealing ORS 426.375; and prescrib-  
6 ing an effective date.

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

8 Section 1. ORS 426.005 is amended to read:

9 426.005. As used in ORS 426.005 to [426.350] **426.390**, unless the con-  
10 text requires otherwise [, "*division*" means the *Mental Health Division*.]:

11 (1) "**Division**" means the **Mental Health Division**.

12 (2) "**Mentally ill person**" means a person who, because of a mental  
13 disorder, is either:

14 (a) **Dangerous to himself or others; or**

15 (b) **Unable to provide for his basic personal needs and is not receiving**  
16 **such care as is necessary for his health or safety.**

17 (3) "**Facility**" means a state mental hospital, community hospital, resi-  
18 dential facility, detoxification center, day treatment facility, or such other  
19 facility as the **Mental Health Division** determines suitable, any of which  
20 may provide diagnosis and evaluation, medical care, detoxification, social  
21 services, or rehabilitation for committed mentally ill persons.

22 (4) "**Director of the facility**" means a superintendent of a state mental  
23 hospital, the chief of psychiatric services in a community hospital, or the  
24 person in charge of treatment and rehabilitation programs at other treat-  
25 ment facilities.

26 Section 2. ORS 426.060 is amended to read:

27 426.060. (1) Commitments to the [*Oregon State Hospital, the F. H.*  
28 *Dammasch State Hospital and the Eastern Oregon Hospital and Training*  
29 *Center*] **Mental Health Division** shall be made by the judge of any court  
30 having probate jurisdiction or, if the circuit court is not the probate court,  
31 the circuit court if its jurisdiction has been extended to include commit-  
32 ment of the mentally ill pursuant to ORS 3.275 in any county of this state.

33 (2) The **Mental Health Division** may, in its discretion and for reasons  
34 which are satisfactory to the division, direct any [*judge to make his com-*

1 *mitments*] **court committed person** to [*any hospital listed in subsection*  
2 (1) of this section] **the facility best able to treat him**. The authority of  
3 the division on such matters shall be final.

4 Section 3. ORS 426.070 is amended to read:

5 426.070. (1) The judge of any court having probate jurisdiction or,  
6 if the circuit court is not the probate court, the circuit court if its juris-  
7 diction has been extended to include commitment of the mentally ill pur-  
8 suant to ORS 3.275 in any county of this state, upon being notified in writ-  
9 ing under oath by two persons or by the county health officer or any magis-  
10 trate that any other person within the county is a mentally ill person and  
11 [*by reason of such illness*] is in need of treatment, care or custody, shall  
12 [*cause the allegedly mentally ill person to be brought before him at such*  
13 *time and place as he may direct. If necessary, the judge may issue a war-*  
14 *rant of detention to the county health officer, or to the sheriff of the county,*  
15 *directing the officer to take such person into his custody and produce him*  
16 *at the time and place stated in the warrant.*] **forthwith cause the community**  
17 **mental health program director, or his designee, to investigate to determine**  
18 **whether there is probable cause to believe that the person is in fact a men-**  
19 **tally ill person. The community mental health program director or his**  
20 **designee, the two petitioning persons, the county health officer, any magis-**  
21 **trate, any peace officer, probation officer, physician attending the allegedly**  
22 **mentally ill person or the physician attached to a hospital or institution**  
23 **wherein the allegedly mentally ill person is a patient shall in no way be**  
24 **held criminally or civilly liable for the making of such notification,**  
25 **provided he acts in good faith, on probable cause and without malice.**

26 (2) **The investigation conducted should, where possible, include an**  
27 **interview or examination of the allegedly mentally ill person in his home**  
28 **or other place familiar to the individual. If the allegedly mentally ill per-**  
29 **son consents, the investigation should also, where possible, include an in-**  
30 **terview with the individual's relatives, neighbors and physician. The per-**  
31 **son conducting the investigation shall in no way be held criminally or**  
32 **civilly liable for the making of such investigation, provided he acts in**  
33 **good faith, on probable cause and without malice. Upon completion, a**

1 recommendation based upon the investigation report shall be promptly  
2 submitted to the court.

3 (3) If the court, following the investigation, concludes that there is  
4 probable cause to believe that the person investigated is a mentally ill  
5 person, it shall, through the issuance of a citation as provided in section 5  
6 of this 1973 Act, cause the person to be brought before it at such time  
7 and place as it may direct, for a hearing to make a determination whether  
8 or not the person is mentally ill. The person shall be given the opportunity  
9 to appear voluntarily at the hearing unless he fails to appear or unless  
10 he is detained pursuant to subsection (5) of this section. The hearing may  
11 be held in a hospital, the person's home, or in some other place convenient  
12 to the court and the allegedly mentally ill person. If a person is detained  
13 pursuant to subsection (5) of this section, a hearing shall be held within  
14 72 hours of the commencement of his detention unless additional time is  
15 requested by him or his attorney. The court may make such orders for  
16 the care and custody of the person prior to the hearing as it deems nec-  
17 essary.

18 (4) A copy of the investigation report shall be made available to the  
19 allegedly mentally ill person as soon as possible after it is completed but  
20 in any case prior to the hearing.

21 (5) If the court finds that there is probable cause to believe that failure  
22 to take the allegedly mentally ill person into custody pending the investi-  
23 gation or hearing would pose an imminent and serious danger to the person  
24 or to others, the judge may issue a warrant of detention to the community  
25 mental health program director, the county health officer or to the sheriff  
26 of the county, directing that person or his designee to take such person  
27 into his custody and produce him at the time and place stated in the  
28 warrant.

29 (6) Persons taken into custody under subsection (5) of this section  
30 shall receive the care, custody and treatment required for their mental and  
31 physical health and safety, and the treating physician shall report such  
32 care, custody and treatment to the court as required in section 8 of this  
33 1973 Act. All methods of treatment, including the prescription and admin-  
34 istration of drugs, shall be the sole responsibility of the treating physician.

1 However, such persons shall not be subject to potentially unusual or haz-  
2 ardous treatment procedures, including electro-shock therapy. The treat-  
3 ing physician shall be notified immediately of any use of mechanical re-  
4 straints on such persons. Every use of a mechanical restraint and the  
5 reasons therefor shall be made a part of the clinical record of the person  
6 over the signature of the treating physician.

7 Section 4. ORS 426.080 is amended to read:

8 426.080. The [officer] person serving [the] a warrant of detention  
9 [and] or the citation provided for by ORS 426.090 shall, immediately after  
10 service thereof, make a return upon the original warrant or citation show-  
11 ing the time, place and manner of such service and file it with the clerk  
12 of the court. In executing the warrant of detention or citation, the [offi-  
13 cer] person has all the powers provided by ORS 133.290 and 161.235 to  
14 161.245 and may require the assistance of any peace officer or other per-  
15 son.

16 Section 4a. If Senate Bill 80 (1973 regular session) becomes law, sec-  
17 tion 4 of this 1973 Act is repealed and ORS 426.080, as amended by section  
18 348, chapter —, Oregon Laws 1973 (Enrolled Senate Bill 80), is amended  
19 to read:

20 426.080. The [officer] person serving [the] a warrant of detention [and]  
21 or the citation provided for by ORS 426.090 shall, immediately after serv-  
22 ice thereof, make a return upon the original warrant or citation showing  
23 the time, place and manner of such service and file it with the clerk of  
24 the court. In executing the warrant of detention or citation, the [officer]  
25 person has all the powers provided by section 71 [of this 1973 Act], chap-  
26 ter —, Oregon Laws 1973 (Enrolled Senate Bill 80) and ORS 161.235 to  
27 161.245 and may require the assistance of any peace officer or other person.

28 Section 5. ORS 426.090 is amended to read:

29 426.090. The judge shall cause a citation to issue to the allegedly men-  
30 tally ill person stating the nature of the information filed concerning him  
31 and the specific reasons he is believed to be mentally ill. The citation  
32 shall further contain a notice of the time and place of the commitment  
33 hearing, the right to representation by legal counsel, the right to have  
34 legal counsel appointed if the person is unable to afford counsel, the right

1 to subpoena witnesses in behalf of himself to the hearing and such other  
 2 information as the court may direct. The citation shall be served upon  
 3 such person [by the officer who takes such person into custody,] by deliv-  
 4 ering a duly certified copy of the original thereof to him in person no less  
 5 than 24 hours prior to the hearing .

6 Section 6. ORS 426.100 is amended to read:

7 426.100. (1) [At the time of the hearing before the court, prescribed  
 8 by ORS 426.070 to 426.150, the court shall inform the allegedly mentally  
 9 ill person that he has the right to legal counsel during the proceedings and  
 10 that, at his request, or the request of his legal guardian, relative or friend,  
 11 the court may postpone the hearing up to 72 hours in order to allow the  
 12 allegedly mentally ill person an opportunity to obtain counsel, and sub-  
 13 pena witnesses in his behalf to the hearing.] **At the time the allegedly**  
 14 **mentally ill person is brought before the court, the court shall advise him**  
 15 **of the reason he has been brought before the court, the nature of the pro-**  
 16 **ceedings and the possible results of the proceedings. The court shall also**  
 17 **advise the allegedly mentally ill person that he is entitled to subpoena wit-**  
 18 **nesses on his behalf and to have an attorney represent him during the pro-**  
 19 **ceedings, and that if he does not have funds with which to retain an attor-**  
 20 **ney, the court will appoint an attorney to represent him without cost. If**  
 21 **the allegedly mentally ill person does not request an attorney, his legal**  
 22 **guardian, relative or friend may request the assistance of legal counsel on**  
 23 **his behalf.**

24 (2) If no request for legal counsel is made, the court [may, at its dis-  
 25 cretion,] shall appoint legal counsel unless counsel is expressly, knowingly  
 26 and intelligently refused by the person .

27 (3) If the person is [indigent] unable to afford counsel , the court [may]  
 28 shall provide by order for payment of a reasonable attorney fee by the  
 29 county of residence of the allegedly mentally ill person. In all cases such  
 30 legal counsel shall be present at the hearing and examination and may  
 31 examine all witnesses offering testimony, and otherwise represent such  
 32 person.

33 (4) [Where legal counsel is requested or provided, the court may con-  
 34 tinue the hearing for up to 72 hours after counsel has been obtained by

1 appointment or otherwise and may make such orders for the care and  
 2 custody of the person during that period as it deems necessary.] **If the**  
 3 **allegedly mentally ill person, his attorney or guardian requests, the court**  
 4 **shall postpone the hearing in order to allow the person to prepare for the**  
 5 **hearing. The court shall not postpone the hearing for more than 72 hours**  
 6 **unless the person, his counsel, or guardian specifically requests a longer**  
 7 **time to prepare. The court may make such orders for the care and custody**  
 8 **of the person during such postponement as it deems necessary.**

9 **SECTION 7.** Sections 8 and 9 of this 1973 Act are added to and made  
 10 a part of ORS chapter 426.

11 **SECTION 8.** The court shall be fully advised by the community men-  
 12 tal health program director, or when the person has been detained under  
 13 subsection (5) of section 3 or section 32 of this 1973 Act, by the treating  
 14 physician of all drugs and other treatment known to have been adminis-  
 15 tered to the allegedly mentally ill person which may substantially affect  
 16 his ability to prepare for or function effectively at the hearing.

17 **SECTION 9.** The allegedly mentally ill person shall have the right to  
 18 cross-examine all witnesses, the person conducting the investigation, the  
 19 examining physicians or other qualified persons recommended by the divi-  
 20 sion who have examined the persons. Neither the investigation report nor  
 21 any part thereof shall be introduced in evidence without the express con-  
 22 sent of the allegedly mentally ill person.

23 Section 10. ORS 426.110 is amended to read:

24 426.110. The judge shall appoint at least two competent physicians  
 25 licensed by the State Board of Medical Examiners for the State of Oregon  
 26 to practice medicine and surgery, one of whom may be the county health  
 27 officer, to examine the person as to his mental condition. **In lieu of one of**  
 28 **the physicians, the court may appoint one qualified person as recommended**  
 29 **by the division, to examine the person. [In counties having a population**  
 30 **of 10,000 or less, as determined by the latest federal census, the judge may**  
 31 **appoint only one such physician, who may be the county health officer, but**  
 32 **the judge may, in his discretion, appoint additional physicians, qualified as**  
 33 **required by this section, to assist in the examination of the person as to**  
 34 **his mental condition.] If the allegedly mentally ill person requests in**

1 writing that one additional examining physician or qualified person as  
 2 recommended by the division be appointed, or, if in the absence of such  
 3 request by the allegedly mentally ill person, such request is made by the  
 4 legal guardian, relative or friend of the alleged mentally ill person, the  
 5 court shall appoint a physician [nominated in such request], or other  
 6 qualified person as recommended by the division nominated in such re-  
 7 quest; however, the court shall not appoint more than one such additional  
 8 examining physician or qualified person, who shall be a resident of the  
 9 State of Oregon.

10 Section 11. ORS 426.120 is amended to read:

11 426.120. The [physicians] persons appointed to conduct the examination  
 12 shall examine the person as to his mental condition and [report] make  
 13 their separate [or joint findings] reports in writing, under oath, to the  
 14 court, which [findings] reports immediately shall be filed with the clerk  
 15 of the court. If the examining [physicians] persons find, and show by their  
 16 verified [findings] reports, that the person examined is a mentally ill per-  
 17 son, [and by reason of mental illness is in need of treatment, care or cus-  
 18 tody, and if the judge, after having examined the verified findings and  
 19 considered all competent evidence submitted to him, is of the opinion that  
 20 the person is in need of treatment, care or custody, he shall adjudge the  
 21 person to be mentally ill and order him committed to the proper state  
 22 hospital. The order of commitment shall direct that the mentally ill per-  
 23 son be promptly and safely delivered to the superintendent of the proper  
 24 state hospital, as provided in ORS 426.150.] the reports shall include a  
 25 recommendation as to the type of treatment facility best calculated to  
 26 help the person recover from his mental illness. Each report shall also ad-  
 27 vise the court whether in the opinion of the examiner the mentally ill per-  
 28 son would cooperate with and benefit from a program of voluntary  
 29 treatment.

30 Section 12. ORS 426.130 is amended to read:

31 426.130. [If the legal guardian, relative or friend of the mentally ill  
 32 person requests that he be allowed to care for him in a place satisfactory  
 33 to the judge, and shows that he, such applicant, is competent and finan-  
 34 cially able to care for the mentally ill person, and also if it appears to the

1 court that the mentally ill person is not criminally inclined or violent, and  
 2 that proper care and treatment can and will be provided him by such  
 3 applicant, and that it would be to the best interest of the mentally ill per-  
 4 son to be paroled, the judge may order that the mentally ill person be  
 5 released and placed in the care and custody of such applicant. The order  
 6 may be revoked and the mentally ill person committed to an Oregon state  
 7 hospital whenever, in the opinion of the judge, it is for the best interest  
 8 of the mentally ill person.] After hearing all of the evidence, and review-  
 9 ing the findings of the examining persons, the court shall determine  
 10 whether the person is mentally ill. If in the opinion of the court the person  
 11 is not mentally ill, he shall be discharged forthwith. If in the opinion of  
 12 the court the person is mentally ill beyond a reasonable doubt the court  
 13 may order as follows:

14 (1) If the mentally ill person is willing and able to participate in  
 15 treatment on a voluntary basis, and the court finds that he will probably  
 16 do so, the court shall order the release of the individual and dismiss the  
 17 case.

18 (2) If the legal guardian, relative or friend of the mentally ill person  
 19 requests that he be allowed to care for him during the period of commit-  
 20 ment in a place satisfactory to the judge, and shows that he, such applicant,  
 21 is able to care for the mentally ill person and that there are adequate  
 22 financial resources available for the care of the mentally ill person, the  
 23 court may order that the mentally ill person be conditionally released and  
 24 placed in the care and custody of such applicant. The order may be revoked  
 25 and the mentally ill person committed to the division whenever, in the  
 26 opinion of the court, it is in the best interest of the mentally ill person.

27 (3) If in the opinion of the court voluntary treatment or conditional  
 28 release are not in the best interest of the mentally ill person, the court  
 29 may order the commitment of the individual to the division for treatment.  
 30 The commitment shall be for a period of time not to exceed 180 days.

31 SECTION 13. Sections 14 to 20 of this 1973 Act are added to and  
 32 made a part of ORS chapter 426.

33 SECTION 14. At any time after commitment by the court, the per-  
 34 son, with the approval of the division, may change his status to that of

1 a voluntary patient. Notwithstanding ORS 426.220, any person who alters  
2 his status to that of a voluntary patient under this section shall be released  
3 from the division within 72 hours of his request for release.

4 **SECTION 15.** At the end of the 180-day period of commitment, any  
5 person whose status has not been changed to voluntary shall be released  
6 unless the division certifies to the court in the county where the treating  
7 facility is located that the patient is still mentally ill and in need of further  
8 treatment. If such certification is made, the person will not be released, but  
9 the division shall forthwith issue a copy of the certification to the person.  
10 The certification shall be served upon the patient by a physician or regis-  
11 tered nurse at the facility or director of the facility wherein the patient is  
12 confined. The person serving the citation shall inform the court in writing  
13 that service has been made and the date thereof. The certification shall  
14 advise the person that the division has requested that his commitment be  
15 continued for an additional period of time; that he may consult with an  
16 attorney and that an attorney will be provided for him without cost to  
17 him if he is unable to afford an attorney; that if he does not protest this  
18 further commitment within 14 days, his commitment will be continued  
19 for an indefinite period of time up to 180 days; that if he does protest a fur-  
20 ther period of commitment, he is entitled to a hearing before the court on  
21 whether his commitment should be continued; that he may protest either  
22 orally or in writing by signing the form accompanying the certification;  
23 that he is entitled to have a physician or other qualified person as recom-  
24 mended by the division, other than a member of the staff at the facility  
25 where he is confined, examine him and report to the court the results of  
26 his examination; that he may subpoena witnesses and offer evidence on his  
27 own behalf at the hearing; that if he is without funds to retain an attorney  
28 or an examining physician or qualified person as recommended by the  
29 division, the court will appoint such attorney, physician or qualified  
30 person at no cost to him. The person serving the certification shall read  
31 and deliver the certification to the person and ask him whether he protests  
32 a further period of commitment. The person may protest further com-  
33 mitment either orally or by signing a simple protest form to be given to  
34 the person with the certification. If the person does not protest a further

1 period of commitment within 14 days of service of the certification, the  
2 division shall so notify the court and the court shall, without further  
3 hearing, order the commitment of the person for an additional indefinite  
4 period of time up to 180 days.

5 **SECTION 16.** When the person protests a further period of commit-  
6 ment the division shall, forthwith, notify the court and the court shall  
7 have the person brought before it and shall again advise him that the  
8 division has requested that his commitment be continued for an additional  
9 period of time and that if he does not protest this commitment his com-  
10 mitment will be continued for an indefinite period of time up to 180 days.  
11 He shall also be informed of the rights set forth in section 15 of this 1973  
12 Act.

13 **SECTION 17.** If the person requests a hearing, the hearing shall be  
14 conducted as promptly as possible and at such time and place as the court  
15 may direct. If the person requests a continuance in order to prepare for the  
16 hearing or to obtain counsel to represent him, the court may grant a con-  
17 tinuance for a reasonable period of time for this purpose. In the event the  
18 person requests the appointment of an attorney and is without funds to  
19 retain an attorney, the court shall appoint an attorney to represent him at  
20 no cost to the person. If no request for legal counsel is made, the court  
21 shall appoint an attorney to represent the person unless legal counsel is  
22 expressly, knowingly and intelligently refused by the person. If the per-  
23 son requests an examination by a physician or other qualified person as  
24 recommended by the division and is without funds to retain such person  
25 for purposes of the examination, the court shall appoint a physician or  
26 other qualified person, other than a member of the staff from the facility  
27 where the person is a patient, to examine the person at no expense to him  
28 and to report to the court the results of the examination. The court shall  
29 then conduct a hearing and after hearing the evidence and reviewing the  
30 recommendations of the treating and examining physicians or other quali-  
31 fied persons, the court shall determine whether the individual is still a  
32 mentally ill person and in need of further treatment. If in the opinion of  
33 the court the individual is still a mentally ill person beyond a reasonable

1 doubt and in need of further treatment, the court may order his commit-  
 2 ment to the division for an additional indefinite period of time up to 180  
 3 days. At the end of the 180-day period, the patient shall be released unless  
 4 the division again certifies to the committing court that the person is still  
 5 a mentally ill person and in need of further treatment, in which event the  
 6 procedures set forth in sections 15 to 17 of this 1973 Act shall be followed.

7 **Note:** Section 18 was deleted by amendment. Subsequent sections  
 8 were not renumbered.

9 **SECTION 19.** Costs of hearings conducted pursuant to section 17 of  
 10 this 1973 Act, and the fees for physicians, other qualified persons, and  
 11 attorneys appointed thereunder, shall be charged to the county of the  
 12 person's residence in the same manner provided by ORS 426.310, whether  
 13 the hearing is held in the county of residence or county of the treating  
 14 facility.

15 **SECTION 20.** Sections 14 to 17 of this 1973 Act do not restrict or limit  
 16 the discharge procedures set forth in ORS 426.300.

17 Section 21. ORS 426.160 is amended to read:

18 426.160. The judge shall cause to be recorded in the court records a  
 19 full account of proceedings had at *[the] all [hearing] hearings* and *[exam-*  
 20 *ination] examinations conducted pursuant to this 1973 Act*, together with  
 21 the *[judgment] judgments* and *[order] orders* of the court and a copy of  
 22 the orders issued. The account of the proceedings and transcripts of testi-  
 23 mony if taken thereat shall be delivered to the county clerk who shall  
 24 cause it to be sealed and neither the account of the proceedings nor the  
 25 transcript of testimony if taken shall be disclosed to any person except:

26 (1) As provided in ORS 426.170;

27 (2) Upon request of the person subject to the proceedings, his legal  
 28 representatives, or his attorney; or

29 (3) Pursuant to court order.

30 Section 22. ORS 426.300 is amended to read:

31 426.300. (1) The *[superintendent of any state hospital wherein are*  
 32 *confined persons adjudged to be mentally diseased] division [may] shall*,  
 33 by filing *[his] a written certificate with the last committing court and the*  
 34 *court of residence*, discharge any patient from court commitment, except

1 one held upon an order of a court or judge having criminal jurisdiction in  
 2 an action or proceeding arising out of criminal offense when *[he is con-*  
 3 *vinced that the patient is sufficiently recovered to be of no danger to him-*  
 4 *self or others and that the discharge is in the best interest of the patient]*  
 5 **in its opinion the individual is no longer a mentally ill person or when in**  
 6 **its opinion the transfer of the individual to a voluntary status is in the**  
 7 **best interest of the treatment of the patient .**

8 (2) The *[superintendent of a state institution for the mentally ill or*  
 9 *mentally retarded] division* or the administrator of the University State Tu-  
 10 berculosis Hospital may sign applications for public assistance on behalf of  
 11 those patients who may be eligible for public assistance.

12 Section 23. ORS 426.140 is amended to read:

13 426.140. (1) No person, not incarcerated upon a criminal charge, who  
 14 has been adjudged a mentally ill person or one against whom proceed-  
 15 ings have been instituted shall be confined in any prison, jail or other in-  
 16 closure where those charged with crime or violation of a municipal or-  
 17 dinance are incarcerated, **unless the person represents an immediate and**  
 18 **serious danger to hospital staff or facilities** *[, if a place suitable for the*  
 19 *comfortable, safe and humane confinement of such person is available].*

20 (2) No alleged mentally ill person who has been taken into custody  
 21 shall be confined, either before or after the hearing and examination,  
 22 without an attendant in direct charge of him; and, if not confined in a  
 23 *[county] community hospital*, the county health officer or sheriff having  
 24 such person in his custody shall select some suitable person to act as  
 25 attendant.

26 Section 24. ORS 426.150 is amended to read:

27 426.150. (1) Upon receipt of the order of commitment, the health officer  
 28 or the sheriff, as the case may be, shall take such mentally ill person into  
 29 his custody, and insure his safekeeping and proper care until delivery is  
 30 made to *[the superintendent of the proper state hospital or a designated*  
 31 *employe thereof] the division*. Immediately after being notified of the  
 32 court's order of commitment of such mentally ill person, the county health  
 33 officer or the sheriff shall notify by telephone, if possible, *[the superin-*  
 34 *tendent of the state hospital to which the person was committed,] such*

1 **person as the division shall designate** informing him of the fact that such  
 2 person is being held awaiting delivery, and also stating the name, [*char-*  
 3 *acter,*] condition, sex and age of such person. Except as provided in sub-  
 4 section (2) of this section, the [*superintendent*] **division** shall thereupon  
 5 [*designate an employe of the hospital to*] take custody of such person  
 6 [*and safely transport him to the state hospital*]. [*The employe*] **A designee**  
 7 **of the division**, accompanied by such assistants as the [*superintendent*]  
 8 **division** may deem necessary, shall proceed to the place where the person  
 9 is to be delivered into his custody, and, upon demand shall be given custody  
 10 of the committed mentally ill person, together with the certified record  
 11 required by ORS 426.170. The [*employe*] **designee** shall issue appropriate  
 12 receipts therefor and immediately proceed to transport the **committed**  
 13 **mentally ill person** safely to the [*state hospital to which he has been com-*  
 14 *mitted,*] **facility designated by the division** and there make delivery of  
 15 him and the record to the [*superintendent*] **director** or a designated em-  
 16 ploye of the [*hospital*] **facility**.

17 (2) The committing judge, upon approval of the examining [*physician*]  
 18 **physicians or other qualified persons as recommended by the division**  
 19 and upon request of a guardian, friend or relative of the mentally ill per-  
 20 son, may authorize the guardian, friend or relative to transport the per-  
 21 son to the designated [*hospital*] **facility** when the committing judge de-  
 22 termines that such means of transportation would not be detrimental to the  
 23 welfare of the mentally ill person or to the public.

24 Section 25. ORS 426.170 is amended to read:

25 426.170. If any person is adjudged mentally ill and ordered committed  
 26 to [*a state hospital*] **the division**, a copy of the complete record in the case,  
 27 certified to by the [*county*] clerk of the county, shall be given to the health  
 28 officer of the county, or to the sheriff, for delivery to the [*superintendent*]  
 29 **director** of the [*state hospital*] **facility** to which such mentally ill person  
 30 is [*committed*] **assigned**. The record shall include the name, residence,  
 31 nativity, sex and age of such mentally ill person and all other information  
 32 that may be required by the rules and regulations promulgated by the  
 33 Mental Health Division.

1 Section 26. ORS 426.280 is amended to read:

2 426.280. [*A superintendent*] **The division** may grant a trial visit to a  
 3 patient for any period of time, **up to 180 days**, under **such** general conditions  
 4 [*prescribed by the Mental Health Division*] **as it shall prescribe during**  
 5 **such patient's period of commitment. The physician and the** [*hospital*]  
 6 **facility** granting a trial visit to a patient, the superintendent or **director**  
 7 thereof, the Administrator of the Mental Health Division and the chief  
 8 medical officer of the [*hospital*] **facility** shall not be liable for a patient's  
 9 expenses while on trial visit, nor shall the superintendent or **director** of  
 10 any such [*hospital*] **facility, the physician responsible for the patient's re-**  
 11 **lease**, the Administrator of the Mental Health Division or the chief medical  
 12 officer of the [*hospital*] **facility** be liable for any damages whatsoever  
 13 that are sustained by any person on account of the misconduct of such pa-  
 14 tient while on trial visit.

15 Section 27. ORS 426.290 is amended to read:

16 426.290. (1) If a written complaint against a patient on trial visit from  
 17 [*a state hospital for the mentally ill*] **the division** is received by [*a super-*  
 18 *intendent of a state hospital for the mentally ill*] **the division** and the com-  
 19 plaint is sworn to by a citizen of Oregon before an officer qualified to ad-  
 20 minister an oath, the patient named in the complaint shall be sent to  
 21 and received by a [*state hospital*] **facility** for the mentally ill **designated**  
 22 **by the division**. If the acts complained of are such as to indicate to  
 23 the examining physician of the receiving [*hospital*] **facility** that the patient  
 24 should no longer be permitted to remain on trial visit, the patient shall be  
 25 admitted thereto.

26 (2) Upon voluntary application to be admitted thereto, every patient  
 27 on trial visit must be received by [*a state hospital for the mentally ill*]  
 28 **the facility from which he was released on trial visit**.

29 (3) Every patient on trial visit received by a [*state hospital*] **facility**  
 30 for the mentally ill under this section shall be admitted to the [*hospital*]  
 31 **facility** without examination as to his sanity before any court or judge  
 32 having jurisdiction over such matters.

1 Section 28. ORS 426.385 is amended to read:

2 426.385. (1) Every mentally ill person committed to the division shall  
3 have the right to:

4 (a) Communicate freely in person, by sending and receiving sealed mail,  
5 and by reasonable access to telephones;

6 (b) Wear his own clothing;

7 (c) Keep his personal possessions, including toilet articles;

8 (d) Religious freedom;

9 (e) A private storage area with free access thereto;

10 (f) Be furnished with a reasonable supply of writing materials and  
11 stamps;

12 (g) A written treatment plan, kept current with his progress;

13 (h) Be represented by counsel whenever his substantial rights may be  
14 affected;

15 (i) Petition for a writ of habeas corpus;

16 (j) Not be required to perform routine labor tasks of the facility ex-  
17 cept those essential for his treatment;

18 (k) Be given reasonable compensation for all work performed other  
19 than personal housekeeping duties;

20 (L) Such other rights as may be specified by regulation; and

21 (m) Exercise all civil rights in the same manner and with the same  
22 effect as one not admitted to the facility, including, but not limited to,  
23 the right to dispose of property, execute instruments, make purchases,  
24 enter contractual relationships, and vote, unless he has been adjudicated  
25 incompetent and has not been restored to legal capacity.

26 (2) Mentally ill persons committed to the division shall have the  
27 right to be free from potentially unusual or hazardous treatment proce-  
28 dures, including lobotomy and electro-shock therapy, unless they have  
29 given their express and informed consent. This right may be denied to  
30 such persons for good cause only by the director of the facility in which the  
31 person is confined, or his designee, but only after consultation with and  
32 approval of an independent examining physician. Any denial shall be  
33 entered into the patient's treatment record and shall include the reasons  
34 for the denial.

(3) Mechanical restraints shall not be applied to a person admitted

1 to a [state hospital] facility unless it is determined by the [superintendent]  
2 chief medical officer of the [hospital] facility or his designee to be re-  
3 quired by the medical needs of the person. Every use of a mechanical  
4 restraint and the reasons therefor shall be made a part of the clinical  
5 record of the person [under] over the signature of the [superintendent]  
6 chief medical officer of the [hospital] facility or his designee.

7 SECTION 29. ORS 426.375 is repealed.

8 SECTION 30. Section 31 of this 1973 Act is added to and made a part  
9 of ORS chapter 426.

10 SECTION 31. A simple and clear statement of rights guaranteed to  
11 patients committed to the division shall be prominently posted in each  
12 room frequented by patients in all facilities housing such patients. A  
13 copy of the statement shall be given to each patient upon admission and  
14 sent, upon request, to his legal counsel, guardian, relative or friend.

15 Section 32. ORS 426.215 is amended to read:

16 426.215. (1) Any peace officer may take into custody any person who  
17 he has reasonable cause to believe is dangerous to himself or to any other  
18 person and who he has reasonable cause to believe is in need of immediate  
19 care, custody or treatment for mental illness. If a peace officer takes a  
20 person into custody under this section, he shall remove him forthwith to:

21 (a) A hospital, described in subsection (4) of this section, in the  
22 county where the person is taken into custody; or

23 (b) Such a hospital in another county after having obtained a certifi-  
24 cate from a physician licensed to practice medicine and surgery by the  
25 Board of Medical Examiners for the State of Oregon stating that the travel  
26 will not be detrimental to the person's physical health and that the person  
27 is dangerous to himself or to any other person and is in need of immediate  
28 care or treatment for mental illness. Such physician shall personally  
29 examine the allegedly mentally ill person within 24 hours prior to signing  
30 the certificate.

31 (2) The superintendent or administrator of the hospital shall cause  
32 the person to be examined forthwith by a staff physician. If the physician  
33 finds the person to be in need of immediate care or treatment for mental  
34 illness, the person shall be admitted as a patient. Otherwise he shall not  
be retained in further custody under this section.

1 (3) The peace officer, after taking a person into custody under this  
2 section, shall notify forthwith a court having probate jurisdiction in the  
3 county in which the person was taken into custody of the fact of taking the  
4 person into custody and the person's whereabouts. When the judge of such  
5 a court is informed by a peace officer that a person is in custody, [within  
6 24 hours] the judge shall **immediately commence proceedings pursuant**  
7 **to sections 3 to 12 of this 1973 Act.** [issue a warrant directing that such  
8 person be brought before the court within 24 hours after issuance of the  
9 warrant, and a hearing shall be held as provided in ORS 426.070 to 426.170.]

10 (4) The superintendent **or administrator** of a hospital maintaining  
11 adequate staff and facilities for the care and treatment of persons alleged  
12 to be mentally ill and approved by the [Mental Health Division] **division**  
13 may receive and retain therein as a patient for a period not to exceed  
14 five days any person alleged to be in need of immediate care or treat-  
15 ment for mental illness as provided in this section. The expenses of such  
16 emergency care shall be paid by the county of residence of the person or,  
17 if he has no residence within the state, by the county in which the person  
18 is taken into custody, unless otherwise provided by law.

19 (5) **Persons hospitalized under this section shall receive the care, cus-**  
20 **tody and treatment required for their mental and physical health and**  
21 **safety, and the treating physician shall report such care, custody and**  
22 **treatment to the court as required in section 8 of this 1973 Act. All methods**  
23 **of treatment, including the prescription and administration of drugs,**  
24 **shall be the sole responsibility of the treating physician. However, such**  
25 **persons shall not be subject to potentially unusual or hazardous treatment**  
26 **procedures, including electro-shock therapy. The treating physician shall**  
27 **be notified immediately of any use of mechanical restraints on such per-**  
28 **sons. Every use of a mechanical restraint and the reasons therefor shall**  
29 **be made a part of the clinical record of the person over the signature of**  
30 **the treating physician.**

31 [(5)] (6) No peace officer, hospital, physician or judge shall in any  
32 way be held criminally or civilly liable for actions pursuant to this section  
33 provided he acts in good faith, on probable cause and without malice.

34 **SECTION 33.** This Act takes effect on July 1, 1974.

*pre reading for printing*  
*eng MPWP*

*Re-* ENGROSSED

# Senate Bill 510

Ordered by the <sup>House</sup> Senate May 17<sup>th</sup>  
(Including Amendments by Senate May 17<sup>th</sup>)

*Ways and Means General*

Sponsored by Senator BURBIDGE, Representative PECK, Senators BROWNE, J. BURNS, HALLOCK, ROBERTS, Representatives AuCOIN, DENSMORE, DERELI, FADELEY, GROENER, KAFOURY, KATZ, MARTIN, McCOY, OTTO, PAULUS, ROBERTS

## 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.

*No change*

Modifies provisions relating to involuntary commitment of mentally ill persons. Defines "mentally ill person." Provides for commitment to Mental Health Division rather than specific state hospital. Requires probable cause investigation prior to issuing citation. Defines conditions for treatment of persons detained for hearing. Establishes new hearing procedures and expands existing hearing procedures relating to involuntary commitments of mentally ill persons. Permits courts to allow mentally ill persons to participate in treatment programs on voluntary basis. Places time limitations on length of commitment. Provides for periodic hearings, upon petition of patient, to determine whether or not person should remain patient in facility. Requires that patient committed to division be given statement of rights guaranteed to him and that such statement be posted in certain rooms frequented by patients.

Effective July 1, 1974.

**NOTE:** Matter in bold face in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted; complete new sections begin with SECTION.

A BILL FOR AN ACT

1  
2 Relating to involuntary commitments of mentally ill persons; creating new  
3 provisions; and amending ORS 426.005, 426.060, 426.070, 426.080, 426.090,  
4 426.100, 426.110, 426.120, 426.130, 426.140, 426.150, 426.160, 426.170, 426.215,  
5 426.280, 426.290, 426.300 and 426.385; repealing ORS 426.375; and prescrib-  
6 ing an effective date.

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

8 Section 1. ORS 426.005 is amended to read:  
9 426.005. As used in ORS 426.005 to [426.350] 426.390, unless the con-  
10 text requires otherwise [, "division" means the Mental Health Division.]:

- 11 (1) "Division" means the Mental Health Division.
- 12 (2) "Mentally ill person" means a person who, because of a mental  
13 disorder, is either:
  - 14 (a) Dangerous to himself or others; or
  - 15 (b) Unable to provide for his basic personal needs and is not receiving  
16 such care as is necessary for his health or safety.
- 17 (3) "Facility" means a state mental hospital, community hospital, resi-  
18 dential facility, detoxification center, day treatment facility, or such other  
19 facility as the Mental Health Division determines suitable, any of which  
20 may provide diagnosis and evaluation, medical care, detoxification, social  
21 services, or rehabilitation for committed mentally ill persons.
- 22 (4) "Director of the facility" means a superintendent of a state mental  
23 hospital, the chief of psychiatric services in a community hospital, or the  
24 person in charge of treatment and rehabilitation programs at other treat-  
25 ment facilities.

26 Section 2. ORS 426.060 is amended to read:  
27 426.060. (1) Commitments to the [Oregon State Hospital, the F. H.  
28 Dammasch State Hospital and the Eastern Oregon Hospital and Training  
29 Center] Mental Health Division shall be made by the judge of any court  
30 having probate jurisdiction or, if the circuit court is not the probate court,  
31 the circuit court if its jurisdiction has been extended to include commit-  
32 ment of the mentally ill pursuant to ORS 3.275 in any county of this state.  
33 (2) The Mental Health Division may, in its discretion and for reasons  
34 which are satisfactory to the division, direct any [judge to make his com-

1 mitments] court committed person to [any hospital listed in subsection  
2 (1) of this section] the facility best able to treat him. The authority of  
3 the division on such matters shall be final.

4 Section 3. ORS 426.070 is amended to read:  
5 426.070. (1) The judge of any court having probate jurisdiction or,  
6 if the circuit court is not the probate court, the circuit court if its juris-  
7 diction has been extended to include commitment of the mentally ill pur-  
8 suant to ORS 3.275 in any county of this state, upon being notified in writ-  
9 ing under oath by two persons or by the county health officer or any magis-  
10 trate that any other person within the county is a mentally ill person and  
11 [by reason of such illness] is in need of treatment, care or custody, shall  
12 [cause the allegedly mentally ill person to be brought before him at such  
13 time and place as he may direct. If necessary, the judge may issue a war-  
14 rant of detention to the county health officer, or to the sheriff of the county,  
15 directing the officer to take such person into his custody and produce him  
16 at the time and place stated in the warrant.] forthwith cause the community  
17 mental health program director, or his designee, to investigate to determine  
18 whether there is probable cause to believe that the person is in fact a men-  
19 tally ill person. The community mental health program director or his  
20 designee, the two petitioning persons, the county health officer, any magis-  
21 trate, any peace officer, probation officer, physician attending the allegedly  
22 mentally ill person or the physician attached to a hospital or institution  
23 wherein the allegedly mentally ill person is a patient shall in no way be  
24 be held criminally or civilly liable for the making of such notification,  
25 provided he acts in good faith, on probable cause and without malice.

26 (2) The investigation conducted should, where possible, include an  
27 interview or examination of the allegedly mentally ill person in his home  
28 or other place familiar to the individual. If the allegedly mentally ill per-  
29 son consents, the investigation should also, where possible, include an in-  
30 terview with the individual's relatives, neighbors and physician. The per-  
31 son conducting the investigation shall in no way be held criminally or  
32 civilly liable for the making of such investigation, provided he acts in  
33 good faith, on probable cause and without malice. Upon completion, a

1 recommendation based upon the investigation report shall be promptly  
2 submitted to the court.

3 (3) If the court, following the investigation, concludes that there is  
4 probable cause to believe that the person investigated is a mentally ill  
5 person, it shall, through the issuance of a citation as provided in section 5  
6 of this 1973 Act, cause the person to be brought before it at such time  
7 and place as it may direct, for a hearing to make a determination whether  
8 or not the person is mentally ill. The person shall be given the opportunity  
9 to appear voluntarily at the hearing unless he fails to appear or unless  
10 he is detained pursuant to subsection (5) of this section. The hearing may  
11 be held in a hospital, the person's home, or in some other place convenient  
12 to the court and the allegedly mentally ill person. If a person is detained  
13 pursuant to subsection (5) of this section, a hearing shall be held within  
14 72 hours of the commencement of his detention unless additional time is  
15 requested by him or his attorney. The court may make such orders for  
16 the care and custody of the person prior to the hearing as it deems nec-  
17 essary.

18 (4) A copy of the investigation report shall be made available to the  
19 allegedly mentally ill person as soon as possible after it is completed but  
20 in any case prior to the hearing.

21 (5) If the court finds that there is probable cause to believe that failure  
22 to take the allegedly mentally ill person into custody pending the investi-  
23 gation or hearing would pose an imminent and serious danger to the person  
24 or to others, the judge may issue a warrant of detention to the community  
25 mental health program director, the county health officer or to the sheriff  
26 of the county, directing that person or his designee to take such person  
27 into his custody and produce him at the time and place stated in the  
28 warrant.

29 (6) Persons taken into custody under subsection (5) of this section  
30 shall receive the care, custody and treatment required for their mental and  
31 physical health and safety, and the treating physician shall report such  
32 care, custody and treatment to the court as required in section 8 of this  
33 1973 Act. All methods of treatment, including the prescription and admin-  
34 istration of drugs, shall be the sole responsibility of the treating physician.

1 However, such persons shall not be subject to potentially unusual or haz-  
2 ardous treatment procedures, including electro-shock therapy. The treat-  
3 ing physician shall be notified immediately of any use of mechanical re-  
4 straints on such persons. Every use of a mechanical restraint and the  
5 reasons therefor shall be made a part of the clinical record of the person  
6 over the signature of the treating physician.

7 Section 4. ORS 426.080 is amended to read:

8 426.080. The [officer] person serving [the] a warrant of detention  
9 [and] or the citation provided for by ORS 426.090 shall, immediately after  
10 service thereof, make a return upon the original warrant or citation show-  
11 ing the time, place and manner of such service and file it with the clerk  
12 of the court. In executing the warrant of detention or citation, the [offi-  
13 cer] person has all the powers provided by ORS 133.290 and 161.235 to  
14 161.245 and may require the assistance of any peace officer or other per-

15 son.  
16 *Insert 4* <sup>1</sup>

Section 5. ORS 426.090 is amended to read:

"Section 4a. If Senate Bill 80 (1973 regular session)  
becomes law, section 4 of this 1973 Act is repealed and ORS  
426.080, as amended by section 348, chapter \_\_, Oregon Laws  
1973 (Enrolled Senate Bill 80), is amended to read:

"426.080. The <sup>1</sup>person serving <sup>1</sup>a warrant of detention  
<sup>1</sup>or the citation provided for by ORS 426.090 shall, immediately  
after service thereof, make a return upon the original war-  
rant or citation showing the time, place and manner of such  
service and file it with the clerk of the court. In executing  
the warrant of detention or citation, the <sup>1</sup>person has all the  
powers provided by ~~ORS 133.290~~ <sup>1</sup>section 71, chapter \_\_,  
Oregon Laws 1973 (Enrolled Senate Bill 80) and ORS 161.235  
to 161.245 and may require the assistance of any peace officer  
or other person."

34 allegedly mentally ill person an opportunity to obtain counsel, and a sub-

1 *pena witnesses in his behalf to the hearing.* At the time the allegedly  
 2 mentally ill person is brought before the court, the court shall advise him  
 3 of the reason he has been brought before the court, the nature of the pro-  
 4 ceedings and the possible results of the proceedings. The court shall also  
 5 advise the allegedly mentally ill person that he is entitled to subpoena wit-  
 6 nesses on his behalf and to have an attorney represent him during the pro-  
 7 ceedings, and that if he does not have funds with which to retain an attor-  
 8 ney, the court will appoint an attorney to represent him without cost. If  
 9 the allegedly mentally ill person does not request an attorney, his legal  
 10 guardian, relative or friend may request the assistance of legal counsel on  
 11 his behalf.

12 (2) If no request for legal counsel is made, the court [*may, at its dis-*  
 13 *cretion,*] shall appoint legal counsel unless counsel is expressly, knowingly  
 14 and intelligently refused by the person.

15 (3) If the person is [*indigent*] unable to afford counsel, the court [*may*]  
 16 shall provide by order for payment of a reasonable attorney fee by the  
 17 county of residence of the allegedly mentally ill person. In all cases such  
 18 legal counsel shall be present at the hearing and examination and may  
 19 examine all witnesses offering testimony, and otherwise represent such  
 20 person.

21 (4) [*Where legal counsel is requested or provided, the court may con-*  
 22 *tinue the hearing for up to 72 hours after counsel has been obtained by*  
 23 *appointment or otherwise and may make such orders for the care and*  
 24 *custody of the person during that period as it deems necessary.*] If the  
 25 allegedly mentally ill person, his attorney or guardian requests, the court  
 26 shall postpone the hearing in order to allow the person to prepare for the  
 27 hearing. The court shall not postpone the hearing for more than 72 hours  
 28 unless the person, his counsel, or guardian specifically requests a longer  
 29 time to prepare. The court may make such orders for the care and custody  
 30 of the person during such postponement as it deems necessary.

31 SECTION 7. Sections 8 and 9 of this 1973 Act are added to and made  
 32 a part of ORS chapter 426.

33 SECTION 8. The court shall be fully advised by the community men-  
 34 tal health program director, or when the person has been detained under

1 subsection (5) of section 3 or section 32 of this 1973 Act, by the treating  
 2 physician of all drugs and other treatment known to have been adminis-  
 3 tered to the allegedly mentally ill person which may substantially affect  
 4 his ability to prepare for or function effectively at the hearing.

5 SECTION 9. The allegedly mentally ill person shall have the right to  
 6 cross-examine all witnesses, the person conducting the investigation, the  
 7 examining physicians or other qualified persons recommended by the divi-  
 8 sion who have examined the persons. Neither the investigation report nor  
 9 any part thereof shall be introduced in evidence without the express con-  
 10 sent of the allegedly mentally ill person.

11 Section 10. ORS 426.110 is amended to read:

12 426.110. The judge shall appoint at least two competent physicians  
 13 licensed by the State Board of Medical Examiners for the State of Oregon  
 14 to practice medicine and surgery, one of whom may be the county health  
 15 officer, to examine the person as to his mental condition. **In lieu of one of**  
 16 **the physicians, the court may appoint one qualified person as recommended**  
 17 **by the division, to examine the person.** [*In counties having a population*  
 18 *of 10,000 or less, as determined by the latest federal census, the judge may*  
 19 *appoint only one such physician, who may be the county health officer, but*  
 20 *the judge may, in his discretion, appoint additional physicians, qualified as*  
 21 *required by this section, to assist in the examination of the person as to*  
 22 *his mental condition.*] If the allegedly mentally ill person requests in  
 23 writing that one additional examining physician or **qualified person as**  
 24 **recommended by the division** be appointed, or, if in the absence of such  
 25 request by the allegedly mentally ill person, such request is made by the  
 26 legal guardian, relative or friend of the alleged mentally ill person, the  
 27 court shall appoint a physician [*nominated in such request*], or other  
 28 **qualified person as recommended by the division nominated in such re-**  
 29 **quest**; however, the court shall not appoint more than one such additional  
 30 examining physician or **qualified person**, who shall be a resident of the  
 31 State of Oregon.

32 Section 11. ORS 426.120 is amended to read:

33 426.120. The [*physicians*] persons appointed to conduct the examination  
 34 shall examine the person as to his mental condition and [*report*] make

1 their separate [or joint findings] reports in writing, under oath, to the  
 2 court, which [findings] reports immediately shall be filed with the clerk  
 3 of the court. If the examining [physicians] persons find, and show by their  
 4 verified [findings] reports, that the person examined is a mentally ill per-  
 5 son, [and by reason of mental illness is in need of treatment, care or cus-  
 6 tody, and if the judge, after having examined the verified findings and  
 7 considered all competent evidence submitted to him, is of the opinion that  
 8 the person is in need of treatment, care or custody, he shall adjudge the  
 9 person to be mentally ill and order him committed to the proper state  
 10 hospital. The order of commitment shall direct that the mentally ill per-  
 11 son be promptly and safely delivered to the superintendent of the proper  
 12 state hospital, as provided in ORS 426.150.] the reports shall include a  
 13 recommendation as to the type of treatment facility best calculated to  
 14 help the person recover from his mental illness. Each report shall also ad-  
 15 vise the court whether in the opinion of the examiner the mentally ill per-  
 16 son would cooperate with and benefit from a program of voluntary  
 17 treatment.

18 Section 12. ORS 426.130 is amended to read:

19 426.130. [If the legal guardian, relative or friend of the mentally ill  
 20 person requests that he be allowed to care for him in a place satisfactory  
 21 to the judge, and shows that he, such applicant, is competent and finan-  
 22 cially able to care for the mentally ill person, and also if it appears to the  
 23 court that the mentally ill person is not criminally inclined or violent, and  
 24 that proper care and treatment can and will be provided him by such  
 25 applicant, and that it would be to the best interest of the mentally ill per-  
 26 son to be paroled, the judge may order that the mentally ill person be  
 27 released and placed in the care and custody of such applicant. The order  
 28 may be revoked and the mentally ill person committed to an Oregon state  
 29 hospital whenever, in the opinion of the judge, it is for the best interest  
 30 of the mentally ill person.] After hearing all of the evidence, and review-  
 31 ing the findings of the examining persons, the court shall determine  
 32 whether the person is mentally ill. If in the opinion of the court the person  
 33 is not mentally ill, he shall be discharged forthwith. If in the opinion of

1 the court the person is mentally ill beyond a reasonable doubt the court  
 2 may order as follows:

3 (1) If the mentally ill person is willing and able to participate in  
 4 treatment on a voluntary basis, and the court finds that he will probably  
 5 do so, the court shall order the release of the individual and dismiss the  
 6 case.

7 (2) If the legal guardian, relative or friend of the mentally ill person  
 8 requests that he be allowed to care for him during the period of commit-  
 9 ment in a place satisfactory to the judge, and shows that he, such applicant,  
 10 is able to care for the mentally ill person and that there are adequate  
 11 financial resources available for the care of the mentally ill person, the  
 12 court may order that the mentally ill person be conditionally released and  
 13 placed in the care and custody of such applicant. The order may be revoked  
 14 and the mentally ill person committed to the division whenever, in the  
 15 opinion of the court, it is in the best interest of the mentally ill person.

16 (3) If in the opinion of the court voluntary treatment or conditional  
 17 release are not in the best interest of the mentally ill person, the court  
 18 may order the commitment of the individual to the division for treatment.  
 19 The commitment shall be for a period of time not to exceed 180 days.

20 SECTION 13. Sections 14 to 20 of this 1973 Act are added to and  
 21 made a part of ORS chapter 426.

22 SECTION 14. At any time after commitment by the court, the per-  
 23 son, with the approval of the division, may change his status to that of  
 24 a voluntary patient. Notwithstanding ORS 426.220, any person who alters  
 25 his status to that of a voluntary patient under this section shall be released  
 26 from the division within 72 hours of his request for release.

27 SECTION 15. At the end of the 180-day period of commitment, any  
 28 person whose status has not been changed to voluntary shall be released  
 29 unless the division certifies to the court in the county where the treating  
 30 facility is located that the patient is still mentally ill and in need of further  
 31 treatment. If such certification is made, the person will not be released, but  
 32 the division shall forthwith issue a copy of the certification to the person.  
 33 The certification shall be served upon the patient by a physician or regis-  
 34 tered nurse at the facility or director of the facility wherein the patient is

1 confined. The person serving the citation shall inform the court in writing  
2 that service has been made and the date thereof. The certification shall  
3 advise the person that the division has requested that his commitment be  
4 continued for an additional period of time; that he may consult with an  
5 attorney and that an attorney will be provided for him without cost to  
6 him if he is unable to afford an attorney; that if he does not protest this  
7 further commitment within 14 days, his commitment will be continued  
8 for an indefinite period of time up to 180 days; that if he does protest a fur-  
9 ther period of commitment, he is entitled to a hearing before the court on  
10 whether his commitment should be continued; that he may protest either  
11 orally or in writing by signing the form accompanying the certification;  
12 that he is entitled to have a physician or other qualified person as recom-  
13 mended by the division, other than a member of the staff at the facility  
14 where he is confined, examine him and report to the court the results of  
15 his examination; that he may subpoena witnesses and offer evidence on his  
16 own behalf at the hearing; that if he is without funds to retain an attorney  
17 or an examining physician or qualified person as recommended by the  
18 division, the court will appoint such attorney, physician or qualified  
19 person at no cost to him. The person serving the certification shall read  
20 and deliver the certification to the person and ask him whether he protests  
21 a further period of commitment. The person may protest further com-  
22 mitment either orally or by signing a simple protest form to be given to  
23 the person with the certification. If the person does not protest a further  
24 period of commitment within 14 days of service of the certification, the  
25 division shall so notify the court and the court shall, without further  
26 hearing, order the commitment of the person for an additional indefinite  
27 period of time up to 180 days.

28 **SECTION 16.** When the person protests a further period of commit-  
29 ment the division shall, forthwith, notify the court and the court shall  
30 have the person brought before it and shall again advise him that the  
31 division has requested that his commitment be continued for an additional  
32 period of time and that if he does not protest this commitment his com-  
33 mitment will be continued for an indefinite period of time up to 180 days.

1 He shall also be informed of the rights set forth in section 15 of this 1973  
2 Act.

3 **SECTION 17.** If the person requests a hearing, the hearing shall be  
4 conducted as promptly as possible and at such time and place as the court  
5 may direct. If the person requests a continuance in order to prepare for the  
6 hearing or to obtain counsel to represent him, the court may grant a con-  
7 tinuance for a reasonable period of time for this purpose. In the event the  
8 person requests the appointment of an attorney and is without funds to  
9 retain an attorney, the court shall appoint an attorney to represent him at  
10 no cost to the person. If no request for legal counsel is made, the court  
11 shall appoint an attorney to represent the person unless legal counsel is  
12 expressly, knowingly and intelligently refused by the person. If the per-  
13 son requests an examination by a physician or other qualified person as  
14 recommended by the division and is without funds to retain such person  
15 for purposes of the examination, the court shall appoint a physician or  
16 other qualified person, other than a member of the staff from the facility  
17 where the person is a patient, to examine the person at no expense to him  
18 and to report to the court the results of the examination. The court shall  
19 then conduct a hearing and after hearing the evidence and reviewing the  
20 recommendations of the treating and examining physicians or other quali-  
21 fied persons, the court shall determine whether the individual is still a  
22 mentally ill person and in need of further treatment. If in the opinion of  
23 the court the individual is still a mentally ill person beyond a reasonable  
24 doubt and in need of further treatment, the court may order his commit-  
25 ment to the division for an additional indefinite period of time up to 180  
26 days. At the end of the 180-day period, the patient shall be released unless  
27 the division again certifies to the committing court that the person is still  
28 a mentally ill person and in need of further treatment, in which event the  
29 procedures set forth in sections 15 to 17 of this 1973 Act shall be followed.

30 **Note:** Section 18 was deleted by amendment. Subsequent sections  
31 were not renumbered.

32 **SECTION 19.** Costs of hearings conducted pursuant to section 17 of  
33 this 1973 Act, and the fees for physicians, other qualified persons, and  
34 attorneys appointed thereunder, shall be charged to the county of the

1 person's residence in the same manner provided by ORS 426.310, whether  
2 the hearing is held in the county of residence or county of the treating  
3 facility.

4 **SECTION 20.** Sections 14 to 17 of this 1973 Act do not restrict or limit  
5 the discharge procedures set forth in ORS 426.300.

6 Section 21. ORS 426.160 is amended to read:

7 426.160. The judge shall cause to be recorded in the court records a  
8 full account of proceedings had at *[the] all [hearing] hearings and [exam-*  
9 *ination] examinations conducted pursuant to this 1973 Act*, together with  
10 the *[judgment] judgments and [order] orders* of the court and a copy of  
11 the orders issued. The account of the proceedings and transcripts of testi-  
12 mony if taken thereat shall be delivered to the county clerk who shall  
13 cause it to be sealed and neither the account of the proceedings nor the  
14 transcript of testimony if taken shall be disclosed to any person except:

15 (1) As provided in ORS 426.170;

16 (2) Upon request of the person subject to the proceedings, his legal  
17 representatives, or his attorney; or

18 (3) Pursuant to court order.

19 Section 22. ORS 426.300 is amended to read:

20 426.300. (1) The *[superintendent of any state hospital wherein are*  
21 *confined persons adjudged to be mentally diseased] division [may] shall*,  
22 by filing *[his] a written certificate with the last committing court and the*  
23 *court of residence*, discharge any patient from court commitment, except  
24 one held upon an order of a court or judge having criminal jurisdiction in  
25 an action or proceeding arising out of criminal offense when *[he is con-*  
26 *vinced that the patient is sufficiently recovered to be of no danger to him-*  
27 *self or others and that the discharge is in the best interest of the patient]*  
28 *in its opinion the individual is no longer a mentally ill person or when in*  
29 *its opinion the transfer of the individual to a voluntary status is in the*  
30 *best interest of the treatment of the patient*.

31 (2) The *[superintendent of a state institution for the mentally ill or*  
32 *mentally retarded] division* or the administrator of the University State Tu-  
33 berculosis Hospital may sign applications for public assistance on behalf of  
34 those patients who may be eligible for public assistance.

1 Section 23. ORS 426.140 is amended to read:

2 426.140. (1) No person, not incarcerated upon a criminal charge, who  
3 has been adjudged a mentally ill person or one against whom proceed-  
4 ings have been instituted shall be confined in any prison, jail or other in-  
5 closure where those charged with crime or violation of a municipal or-  
6 dinance are incarcerated, **unless the person represents an immediate and**  
7 **serious danger to hospital staff or facilities** *[, if a place suitable for the*  
8 *comfortable, safe and humane confinement of such person is available]*.

9 (2) No alleged mentally ill person who has been taken into custody  
10 shall be confined, either before or after the hearing and examination,  
11 without an attendant in direct charge of him; and, if not confined in a  
12 *[county] community hospital*, the county health officer or sheriff having  
13 such person in his custody shall select some suitable person to act as  
14 attendant.

15 Section 24. ORS 426.150 is amended to read:

16 426.150. (1) Upon receipt of the order of commitment, the health officer  
17 or the sheriff, as the case may be, shall take such mentally ill person into  
18 his custody, and insure his safekeeping and proper care until delivery is  
19 made to *[the superintendent of the proper state hospital or a designated*  
20 *employee thereof] the division*. Immediately after being notified of the  
21 court's order of commitment of such mentally ill person, the county health  
22 officer or the sheriff shall notify by telephone, if possible, *[the superin-*  
23 *tendent of the state hospital to which the person was committed,] such*  
24 **person as the division shall designate** informing him of the fact that such  
25 person is being held awaiting delivery, and also stating the name, *[char-*  
26 *acter,] condition, sex and age of such person*. Except as provided in sub-  
27 section (2) of this section, the *[superintendent] division* shall thereupon  
28 *[designate an employee of the hospital to] take custody of such person*  
29 *[and safely transport him to the state hospital]*. *[The employee] A designee*  
30 **of the division**, accompanied by such assistants as the *[superintendent]*  
31 **division** may deem necessary, shall proceed to the place where the person  
32 is to be delivered into his custody, and, upon demand shall be given custody  
33 of the committed mentally ill person, together with the certified record  
34 required by ORS 426.170. The *[employee] designee* shall issue appropriate

1 receipts therefor and immediately proceed to transport the committed  
2 mentally ill person safely to the [state hospital to which he has been com-  
3 mitted,] facility designated by the division and there make delivery of  
4 him and the record to the [superintendent] director or a designated em-  
5 ploye of the [hospital] facility .

6 (2) The committing judge, upon approval of the examining [physician]  
7 physicians or other qualified persons as recommended by the division  
8 and upon request of a guardian, friend or relative of the mentally ill per-  
9 son, may authorize the guardian, friend or relative to transport the per-  
10 son to the designated [hospital] facility when the committing judge de-  
11 termines that such means of transportation would not be detrimental to the  
12 welfare of the mentally ill person or to the public.

13 Section 25. ORS 426.170 is amended to read:

14 426.170. If any person is adjudged mentally ill and ordered committed  
15 to [a state hospital] the division , a copy of the complete record in the case,  
16 certified to by the [county] clerk of the county, shall be given to the health  
17 officer of the county, or to the sheriff, for delivery to the [superintendent]  
18 director of the [state hospital] facility to which such mentally ill person  
19 is [committed] assigned . The record shall include the name, residence,  
20 nativity, sex and age of such mentally ill person and all other information  
21 that may be required by the rules and regulations promulgated by the  
22 Mental Health Division.

23 Section 26. ORS 426.280 is amended to read:

24 426.280. [A superintendent] The division may grant a trial visit to a  
25 patient for any period of time , up to 180 days, under such general conditions  
26 [prescribed by the Mental Health Division] as it shall prescribe during  
27 such patient's period of commitment. The physician and the [hospital]  
28 facility granting a trial visit to a patient, the superintendent or director  
29 thereof, the Administrator of the Mental Health Division and the chief  
30 medical officer of the [hospital] facility shall not be liable for a patient's  
31 expenses while on trial visit, nor shall the superintendent or director of  
32 any such [hospital] facility, the physician responsible for the patient's re-  
33 lease , the Administrator of the Mental Health Division or the chief medical  
34 officer of the [hospital] facility be liable for any damages whatsoever

1 that are sustained by any person on account of the misconduct of such pa-  
2 tient while on trial visit.

3 Section 27. ORS 426.290 is amended to read:

4 426.290. (1) If a written complaint against a patient on trial visit from  
5 [a state hospital for the mentally ill] the division is received by [a super-  
6 intendent of a state hospital for the mentally ill] the division and the com-  
7 plaint is sworn to by a citizen of Oregon before an officer qualified to ad-  
8 minister an oath, the patient named in the complaint shall be sent to  
9 and received by a [state hospital] facility for the mentally ill designated  
10 by the division . If the acts complained of are such as to indicate to  
11 the examining physician of the receiving [hospital] facility that the patient  
12 should no longer be permitted to remain on trial visit, the patient shall be  
13 admitted thereto.

14 (2) Upon voluntary application to be admitted thereto, every patient  
15 on trial visit must be received by [a state hospital for the mentally ill]  
16 the facility from which he was released on trial visit .

17 (3) Every patient on trial visit received by a [state hospital] facility  
18 for the mentally ill under this section shall be admitted to the [hospital]  
19 facility without examination as to his sanity before any court or judge  
20 having jurisdiction over such matters.

21 Section 28. ORS 426.385 is amended to read:

22 426.385. (1) Every mentally ill person committed to the division shall  
23 have the right to:

24 (a) Communicate freely in person, by sending and receiving sealed mail,  
25 and by reasonable access to telephones;

26 (b) Wear his own clothing;

27 (c) Keep his personal possessions, including toilet articles;

28 (d) Religious freedom;

29 (e) A private storage area with free access thereto;

30 (f) Be furnished with a reasonable supply of writing materials and  
31 stamps;

32 (g) A written treatment plan, kept current with his progress;

33 (h) Be represented by counsel whenever his substantial rights may be  
34 affected;

- 1 (i) Petition for a writ of habeas corpus;
- 2 (j) Not be required to perform routine labor tasks of the facility ex-
- 3 cept those essential for his treatment;
- 4 (k) Be given reasonable compensation for all work performed other
- 5 than personal housekeeping duties;
- 6 (L) Such other rights as may be specified by regulation; and
- 7 (m) Exercise all civil rights in the same manner and with the same
- 8 effect as one not admitted to the facility, including, but not limited to,
- 9 the right to dispose of property, execute instruments, make purchases,
- 10 enter contractual relationships, and vote, unless he has been adjudicated
- 11 incompetent and has not been restored to legal capacity.

12 (2) Mentally ill persons committed to the division shall have the

13 right to be free from potentially unusual or hazardous treatment proce-

14 dures, including lobotomy and electro-shock therapy, unless they have

15 given their express and informed consent. This right may be denied to

16 such persons for good cause only by the director of the facility in which the

17 person is confined, or his designee, but only after consultation with and

18 approval of an independent examining physician. Any denial shall be

19 entered into the patient's treatment record and shall include the reasons

20 for the denial.

21 (3) Mechanical restraints shall not be applied to a person admitted

22 to a [state hospital] facility unless it is determined by the [superintendent]

23 chief medical officer of the [hospital] facility or his designee to be re-

24 quired by the medical needs of the person. Every use of a mechanical

25 restraint and the reasons therefor shall be made a part of the clinical

26 record of the person [under] over the signature of the [superintendent]

27 chief medical officer of the [hospital] facility or his designee.

28 SECTION 29. ORS 426.375 is repealed.

29 SECTION 30. Section 31 of this 1973 Act is added to and made a part

30 of ORS chapter 426.

31 SECTION 31. A simple and clear statement of rights guaranteed to

32 patients committed to the division shall be prominently posted in each

33 room frequented by patients in all facilities housing such patients. A

1 copy of the statement shall be given to each patient upon admission and

2 sent, upon request, to his legal counsel, guardian, relative or friend.

3 Section 32. ORS 426.215 is amended to read:

4 426.215. (1) Any peace officer may take into custody any person who

5 he has reasonable cause to believe is dangerous to himself or to any other

6 person and who he has reasonable cause to believe is in need of immediate

7 care, custody or treatment for mental illness. If a peace officer takes a

8 person into custody under this section, he shall remove him forthwith to:

9 (a) A hospital, described in subsection (4) of this section, in the

10 county where the person is taken into custody; or

11 (b) Such a hospital in another county after having obtained a certifi-

12 cate from a physician licensed to practice medicine and surgery by the

13 Board of Medical Examiners for the State of Oregon stating that the travel

14 will not be detrimental to the person's physical health and that the person

15 is dangerous to himself or to any other person and is in need of immediate

16 care or treatment for mental illness. Such physician shall personally

17 examine the allegedly mentally ill person within 24 hours prior to signing

18 the certificate.

19 (2) The superintendent or administrator of the hospital shall cause

20 the person to be examined forthwith by a staff physician. If the physician

21 finds the person to be in need of immediate care or treatment for mental

22 illness, the person shall be admitted as a patient. Otherwise he shall not

23 be retained in further custody under this section.

24 (3) The peace officer, after taking a person into custody under this

25 section, shall notify forthwith a court having probate jurisdiction in the

26 county in which the person was taken into custody of the fact of taking the

27 person into custody and the person's whereabouts. When the judge of such

28 a court is informed by a peace officer that a person is in custody, [within

29 24 hours] the judge shall immediately commence proceedings pursuant

30 to sections 3 to 12 of this 1973 Act. [issue a warrant directing that such

31 person be brought before the court within 24 hours after issuance of the

32 warrant, and a hearing shall be held as provided in ORS 426.070 to 426.170.]

33 (4) The superintendent or administrator of a hospital maintaining

34 adequate staff and facilities for the care and treatment of persons alleged

1 to be mentally ill and approved by the [*Mental Health Division*] **division**  
2 may receive and retain therein as a patient for a period not to exceed  
3 five days any person alleged to be in need of immediate care or treat-  
4 ment for mental illness as provided in this section. The expenses of such  
5 emergency care shall be paid by the county of residence of the person or,  
6 if he has no residence within the state, by the county in which the person  
7 is taken into custody, unless otherwise provided by law.

8 **(5) Persons hospitalized under this section shall receive the care, cus-**  
9 **tody and treatment required for their mental and physical health and**  
10 **safety, and the treating physician shall report such care, custody and**  
11 **treatment to the court as required in section 8 of this 1973 Act. All methods**  
12 **of treatment, including the prescription and administration of drugs,**  
13 **shall be the sole responsibility of the treating physician. However, such**  
14 **persons shall not be subject to potentially unusual or hazardous treatment**  
15 **procedures, including electro-shock therapy. The treating physician shall**  
16 **be notified immediately of any use of mechanical restraints on such per-**  
17 **sons. Every use of a mechanical restraint and the reasons therefor shall**  
18 **be made a part of the clinical record of the person over the signature of**  
19 **the treating physician.**

20 [(5)] **(6) No peace officer, hospital, physician or judge shall in any**  
21 **way be held criminally or civilly liable for actions pursuant to this section**  
22 **provided he acts in good faith, on probable cause and without malice.**

23 **SECTION 33. This Act takes effect on July 1, 1974.**



# SENATE COMMITTEE REPORT

Salem, Oregon 5/16/73

Mr. President:

Your Committee on Judiciary to whom was referred  
Senate bill 510, having had the same under consideration,

respectfully report it back with the recommendation that it:

- Do pass:  Do pass with amendments:  
 Be adopted:  Be adopted with amendments:  
 Do pass with amendments to the printed engrossed bill.  
 (Referred to Committee on Ways and Means by prior reference)  
 (Other—specify)

Voting no: \_\_\_\_\_

Voting aye: John Burns, Keith Burns, Eivers, Hoyt, Smith, and Browne

Excused: Vernon Cook

Submit:  
2 copies if no amdts.  
4 copies if amdts.  
5 copies if to be printed engrossed.

Elizabeth W. Browne  
(Chairman)

Sen. John Burns  
will lead floor discussion.

~~COMMITTEE AMENDMENTS TO SB 510~~

*On page 2, delete the period at the end of line 5, and in the same line after "426.275" insert "; and prescribing an effective date"*

On page 3 ~~of the printed bill~~, line 19, after "designee," insert "the two petitioning persons,".

In line 27, after the period insert "If the allegedly mentally ill person consents,". ~~In the same line, delete the capital "T" in "The" and insert a small "t".~~

In line 32, after the comma insert "a recommendation based upon".

On page 4, line 5, after the period insert "The person shall be given the opportunity to appear voluntarily at the hearing unless he fails to appear or unless he is detained pursuant to subsection (5) of this section.".

*Section 12 delete and insert "and insert a comma" 9ED*  
In line 14, ~~delete all~~ after the period, *delete the rest of the line*

Delete lines 15 through 17.

On page 7, line 4, after the comma insert "the person conducting the investigation,".

*Section 12 delete and insert "conducting the investigation" 9ED*  
On page 8, line 31, after "ill" insert "beyond a reasonable doubt".

On page 9, line 13, delete "45" and insert "180".

In line 21, delete "45" and insert "180".

On page 10, line 2, delete "90" and insert "180".

In line 21, delete "90" and insert "180".

In line 27, delete "90" and insert "180".

On page 11, line 16, after "person" insert "beyond a reasonable doubt".

In line 18, delete "90" and insert "180".

In line 19, delete "90" and insert "180".

Delete lines 23 through 30 and insert: <sup>#</sup> "Note: Section 18 was deleted by amendment. Subsequent sections were not renumbered."

On page 13, line 6, after "incarcerated" insert ", unless the person represents an immediate and serious danger to hospital staff or facilities".

On page 14, line 24, delete "90" and insert "180".

On page 18, after line 22, insert: <sup>#</sup> "Section 33. This Act takes effect on July 1, 1974."<sub>6</sub>

# HOUSE COMMITTEE REPORT

ENGROSSED  
SENATE BILL 510

JOINT  
COMMITTEE ON \_\_\_\_\_ WAYS AND MEANS \_\_\_\_\_ DATED 6-25-73  
Joint

Mr. Speaker: The/committee on \_\_\_\_\_ Ways and Means \_\_\_\_\_ to whom was referred  
Eng. SB 510 \_\_\_\_\_, having had the same under consideration, respectfully reports it back with the recom-  
mendation:

- that the bill do pass.
- that the bill do pass as amended.
- that the bill be now referred to the Committee on \_\_\_\_\_

\_\_\_\_\_ (according to prior reference)

\_\_\_\_\_

## IDENTIFICATION OF SUBSTANTIVE AMENDMENTS BY THE COMMITTEE:

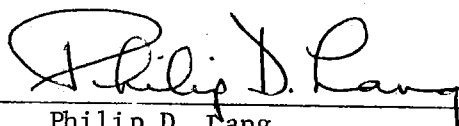
The amendments are to resolve a conflict with Senate Bill 80.

## EXPLANATION OF THE BILL:

See measure summary on engrossed bill

## ATTACHMENTS

- Engrossed bill
- Attested by E & E
- Attested by Leg. Counsel

  
Chairman Philip D. Lang  
Date: 6/28/73

# HOUSE AMENDMENTS

ENGROSSED  
TO SENATE BILL 510

JOINT  
COMMITTEE ON WAYS AND MEANS

Committee Report dated \_\_\_\_\_ Date(s) of Committee Action: 6-25-73

On page 5 of the printed engrossed bill, after line  
15 insert:

"Section 4a. If Senate Bill 80 (1973 regular session)  
becomes law, section 4 of this 1973 Act is repealed and ORS  
426.080, as amended by section 348, chapter \_\_\_, Oregon Laws  
1973 (Enrolled Senate Bill 80), is amended to read:

"426.080. The <sup>[officer]</sup> ~~person~~ serving <sup>[the]</sup> ~~a~~ warrant of detention  
<sup>[and]</sup> ~~or~~ the citation provided for by ORS 426.090 shall, immediately  
after service thereof, make a return upon the original war-  
rant or citation showing the time, place and manner of such  
service and file it with the clerk of the court. In executing  
the warrant of detention or citation, the <sup>[officer]</sup> ~~person~~ has all the  
powers provided by ~~[ORS 133.290]~~ <sup>[of this 1973 Act]</sup> section 71, chapter \_\_\_,  
Oregon Laws 1973 (Enrolled Senate Bill 80) and ORS 161.235  
to 161.245 and may require the assistance of any peace officer  
or other person."

John A. Schmitt  
Committee Clerk

# HOUSE COMMITTEE REPORT

Eng. SB 510

COMMITTEE ON Human Resources DATED June 1, 1973

Mr. Speaker: The committee on Human Resources to whom was referred

Eng. SB 510, having had the same under consideration, respectfully reports it back with the recommendation:

- that the bill do pass.
- that the bill do pass as amended.
- that the bill be now referred to the Committee on Ways and Means

\_\_\_\_\_ (according to prior reference)

\_\_\_\_\_

## II NOTIFICATION OF SUBSTANTIVE AMENDMENTS BY THE COMMITTEE:

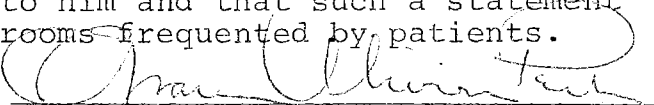
None

## EXPLANATION OF THE BILL:

Modifies provisions relating to involuntary commitment of mentally ill persons. Defines "mentally ill person". Provides for commitment to Mental Health Division rather than specific state hospital. Requires probable cause investigation prior to issuing citation. Defines conditions for treatment of persons detained for hearing. Establishes new hearing procedures and expands existing hearing procedures relating to involuntary commitments of mentally ill persons. Permits courts to allow mentally ill persons to participate in treatment programs on voluntary basis. Places time limitations on length of commitment. Provides for periodic hearings, upon petition of patient, to determine whether or not person should remain patient in a facility. Requires that a patient committed to the division be given a statement of rights guaranteed to him and that such a statement of rights be posted in certain rooms frequented by patients.

## ATTACHMENTS

- Engrossed bill
- Attested by E & E
- Attested by Leg. Counsel

  
Chairman

Date: June 1, 1973

*Eng. mld/ll*

ENGROSSED

# Senate Bill 510

Sponsored by Senator BURBIDGE, Representative PECK, Senators BROWNE, J. BURNS, HALLOCK, ROBERTS, Representatives AuCOIN, DENSMORE, DERELI, FADELEY, GROENER, KAFOURY, KATZ, MARTIN, McCOY, OTTO, PAULUS, ROBERTS

*11/17*  
*(Amended by Senate on 11/17)*

## 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~~.

*Revised*

Modifies provisions relating to involuntary commitment of mentally ill persons. Defines "mentally ill person." Provides for commitment to Mental Health Division rather than specific state hospital. Requires probable cause investigation prior to issuing citation. Defines conditions for treatment of persons detained for hearing. Establishes new hearing procedures and expands existing hearing procedures relating to involuntary commitments of mentally ill persons. Permits courts to allow mentally ill persons to participate in treatment programs on voluntary basis. Places time limitations on length of commitment. Provides for periodic hearings, upon petition of patient, to determine whether or not person should remain patient in facility. Requires that patient committed to division be given statement of rights guaranteed to him and that such statement be posted in certain rooms frequented by patients.

**NOTE:** Matter in bold face in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted; complete new sections begin with **SECTION**.

A BILL FOR AN ACT

1  
2 Relating to involuntary commitments of mentally ill persons; creating new  
3 provisions; and amending ORS 426.005, 426.060, 426.070, 426.080, 426.090,  
4 426.100, 426.110, 426.120, 426.130, 426.140, 426.150, 426.160, 426.170, 426.215,  
5 426.280, 426.290, 426.300 and 426.385; and repealing ORS 426.375; *and presenting and effect of state*

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

7 Section 1. ORS 426.005 is amended to read:

8 426.005. As used in ORS 426.005 to [426.350] **426.390**, unless the con-  
9 text requires otherwise [, "division" means the Mental Health Division.]:

10 (1) "Division" means the Mental Health Division.

11 (2) "Mentally ill person" means a person who, because of a mental  
12 disorder, is either:

13 (a) Dangerous to himself or others; or

14 (b) Unable to provide for his basic personal needs and is not receiving  
15 such care as is necessary for his health or safety.

16 (3) "Facility" means a state mental hospital, community hospital, resi-  
17 dential facility, detoxification center, day treatment facility, or such other  
18 facility as the Mental Health Division determines suitable, any of which  
19 may provide diagnosis and evaluation, medical care, detoxification, social  
20 services, or rehabilitation for committed mentally ill persons.

21 (4) "Director of the facility" means a superintendent of a state mental  
22 hospital, the chief of psychiatric services in a community hospital, or the  
23 person in charge of treatment and rehabilitation programs at other treat-  
24 ment facilities.

25 Section 2. ORS 426.060 is amended to read:

26 426.060. (1) Commitments to the [Oregon State Hospital, the F. H.  
27 Dammasch State Hospital and the Eastern Oregon Hospital and Training  
28 Center] **Mental Health Division** shall be made by the judge of any court  
29 having probate jurisdiction or, if the circuit court is not the probate court,  
30 the circuit court if its jurisdiction has been extended to include commit-  
31 ment of the mentally ill pursuant to ORS 3.275 in any county of this state.

32 (2) The Mental Health Division may, in its discretion and for reasons  
33 which are satisfactory to the division, direct any [judge to make his com-  
34 mitments] court committed person to [any hospital listed in subsection

1 (1) of this section] the facility best able to treat him. The authority of  
2 the division on such matters shall be final.

3 Section 3. ORS 426.070 is amended to read:

4 426.070. (1) The judge of any court having probate jurisdiction or,  
5 if the circuit court is not the probate court, the circuit court if its juris-  
6 diction has been extended to include commitment of the mentally ill pur-  
7 suant to ORS 3.275 in any county of this state, upon being notified in writ-  
8 ing under oath by two persons or by the county health officer or any magis-  
9 trate that any other person within the county is a mentally ill person and  
10 [by reason of such illness] is in need of treatment, care or custody, shall  
11 [cause the allegedly mentally ill person to be brought before him at such  
12 time and place as he may direct. If necessary, the judge may issue a war-  
13 rant of detention to the county health officer, or to the sheriff of the county,  
14 directing the officer to take such person into his custody and produce him  
15 at the time and place stated in the warrant.] forthwith cause the community  
16 mental health program director, or his designee, to investigate to determine  
17 whether there is probable cause to believe that the person is in fact a men-  
18 tally ill person. The community mental health program director or his  
19 designee, *the county health officer, any magistrate, any peace officer, pro-*  
20 bation officer, physician attending the allegedly mentally ill person or the  
21 physician attached to a hospital or institution wherein the allegedly men-  
22 tally ill person is a patient shall in no way be held criminally or civilly  
23 liable for the making of such notification, provided he acts in good faith,  
24 on probable cause and without malice.

25 (2) The investigation conducted should, where possible, include an  
26 interview or examination of the allegedly mentally ill person in his home  
27 or other place familiar to the individual. *if the allegedly mentally ill person consents,* The investigation should also,  
28 where possible, include an interview with the individual's relatives, neigh-  
29 bors and physician. The person conducting the investigation shall in no  
30 way be held criminally or civilly liable for the making of such investi-  
31 gation, provided he acts in good faith, on probable cause and without  
32 malice. Upon completion, *a recommendation based upon* the investigation report shall be promptly sub-  
33 mitted to the court.

34 (3) If the court, following the investigation, concludes that there is

Insert ①

1 probable cause to believe that the person investigated is a mentally ill  
2 person, it shall, through the issuance of a citation as provided in section 5  
3 of this 1973 Act, cause the person to be brought before it at such time  
4 and place as it may direct, for a hearing to make a determination whether  
5 or not the person is mentally ill. The hearing may be held. The person

shall be given the opportunity to appear voluntarily at the  
hearing unless he fails to appear or unless he is detained  
pursuant to subsection (5) of this section.

9 commencement of his detention unless additional time is requested by him  
10 or his attorney. The court may make such orders for the care and custody  
11 of the person prior to the hearing as it deems necessary.

12 (4) A copy of the <sup>investigative</sup> report shall be made available to the  
13 allegedly mentally ill person as soon as possible after it is completed but  
14 in any case prior to the hearing. ~~The report shall be made available to the~~  
15 ~~examining physicians or other qualified persons as may be recommended~~  
16 ~~by the division, to assist them in their evaluation of the allegedly mentally~~  
17 ~~ill person, as provided for in section 10 of this 1973 Act.~~

18 (5) If the court finds that there is probable cause to believe that failure  
19 to take the allegedly mentally ill person into custody pending the investi-  
20 gation or hearing would pose an imminent and serious danger to the person  
21 or to others, the judge may issue a warrant of detention to the community  
22 mental health program director, the county health officer or to the sheriff  
23 of the county, directing that person or his designee to take such person  
24 into his custody and produce him at the time and place stated in the  
25 warrant.

26 (6) Persons taken into custody under subsection (5) of this section  
27 shall receive the care, custody and treatment required for their mental and  
28 physical health and safety, and the treating physician shall report such  
29 care, custody and treatment to the court as required in section 8 of this  
30 1973 Act. All methods of treatment, including the prescription and admin-  
31 istration of drugs, shall be the sole responsibility of the treating physician.  
32 However, such persons shall not be subject to potentially unusual or haz-  
33 ardous treatment procedures, including electro-shock therapy. The treat-  
34 ing physician shall be notified immediately of any use of mechanical re-

1 straits on such persons. Every use of a mechanical restraint and the  
2 reasons therefor shall be made a part of the clinical record of the person  
3 over the signature of the treating physician.

4 Section 4. ORS 426.080 is amended to read:

5 426.080. The [officer] person serving [the] a warrant of detention  
6 [and] or the citation provided for by ORS 426.090 shall, immediately after  
7 service thereof, make a return upon the original warrant or citation show-  
8 ing the time, place and manner of such service and file it with the clerk  
9 of the court. In executing the warrant of detention or citation, the [offi-  
10 cer] person has all the powers provided by ORS 133.290 and 161.235 to  
11 161.245 and may require the assistance of any peace officer or other per-  
12 son.

13 Section 5. ORS 426.090 is amended to read:

14 426.090. The judge shall cause a citation to issue to the allegedly men-  
15 tally ill person stating the nature of the information filed concerning him  
16 and the specific reasons he is believed to be mentally ill. The citation  
17 shall further contain a notice of the time and place of the commitment  
18 hearing, the right to representation by legal counsel, the right to have  
19 legal counsel appointed if the person is unable to afford counsel, the right  
20 to subpoena witnesses in behalf of himself to the hearing and such other  
21 information as the court may direct. The citation shall be served upon  
22 such person [by the officer who takes such person into custody,] by deliv-  
23 ering a duly certified copy of the original thereof to him in person no less  
24 than 24 hours prior to the hearing.

25 Section 6. ORS 426.100 is amended to read:

26 426.100 (1) [At the time of the hearing before the court, prescribed  
27 by ORS 426.070 to 426.150, the court shall inform the allegedly mentally  
28 ill person that he has the right to legal counsel during the proceedings and  
29 that, at his request, or the request of his legal guardian, relative or friend,  
30 the court may postpone the hearing up to 72 hours in order to allow the  
31 allegedly mentally ill person an opportunity to obtain counsel, and sub-  
32 pena witnesses in his behalf to the hearing.] At the time the allegedly  
33 mentally ill person is brought before the court, the court shall advise him  
34 of the reason he has been brought before the court, the nature of the pro-

1 ceedings and the possible results of the proceedings. The court shall also  
 2 advise the allegedly mentally ill person that he is entitled to subpoena wit-  
 3 nesses on his behalf and to have an attorney represent him during the pro-  
 4 ceedings, and that if he does not have funds with which to retain an attor-  
 5 ney, the court will appoint an attorney to represent him without cost. If  
 6 the allegedly mentally ill person does not request an attorney, his legal  
 7 guardian, relative or friend may request the assistance of legal counsel on  
 8 his behalf.

9 (2) If no request for legal counsel is made, the court [*may, at its dis-*  
 10 *cretion,*] shall appoint legal counsel **unless counsel is expressly, knowingly**  
 11 **and intelligently refused by the person.**

12 (3) If the person is [*indigent*] **unable to afford counsel**, the court [*may*]  
 13 **shall** provide by order for payment of a reasonable attorney fee by the  
 14 county of residence of the allegedly mentally ill person. In all cases such  
 15 legal counsel shall be present at the hearing and examination and may  
 16 examine all witnesses offering testimony, and otherwise represent such  
 17 person.

18 (4) [*Where legal counsel is requested or provided, the court may con-*  
 19 *tinue the hearing for up to 72 hours after counsel has been obtained by*  
 20 *appointment or otherwise and may make such orders for the care and*  
 21 *custody of the person during that period as it deems necessary.*] **If the**  
 22 **allegedly mentally ill person, his attorney or guardian requests, the court**  
 23 **shall postpone the hearing in order to allow the person to prepare for the**  
 24 **hearing. The court shall not postpone the hearing for more than 72 hours**  
 25 **unless the person, his counsel, or guardian specifically requests a longer**  
 26 **time to prepare. The court may make such orders for the care and custody**  
 27 **of the person during such postponement as it deems necessary.**

28 **SECTION 7.** Sections 8 and 9 of this 1973 Act are added to and made  
 29 a part of ORS chapter 426.

30 **SECTION 8.** The court shall be fully advised by the community men-  
 31 tal health program director, or when the person has been detained under  
 32 subsection (5) of section 3 or section 32 of this 1973 Act, by the treating  
 33 physician of all drugs and other treatment known to have been adminis-

1 tered to the allegedly mentally ill person which may substantially affect  
 2 his ability to prepare for or function effectively at the hearing.

3 **SECTION 9.** The allegedly mentally ill person shall have the right to  
 4 cross-examine all witnesses, <sup>*the person conducting the investigation,*</sup> the examining physicians or other qualified  
 5 persons recommended by the division who have examined the persons.  
 6 Neither the <sup>*investigation*</sup> ~~investigative~~ report nor any part thereof shall be introduced in  
 7 evidence without the express consent of the allegedly mentally ill person.

8 Section 10. ORS 426.110 is amended to read:

9 426.110. The judge shall appoint at least two competent physicians  
 10 licensed by the State Board of Medical Examiners for the State of Oregon  
 11 to practice medicine and surgery, one of whom may be the county health  
 12 officer, to examine the person as to his mental condition. **In lieu of one of**  
 13 **the physicians, the court may appoint one qualified person as recommended**  
 14 **by the division, to examine the person.** [*In counties having a population*  
 15 *of 10,000 or less, as determined by the latest federal census, the judge may*  
 16 *appoint only one such physician, who may be the county health officer, but*  
 17 *the judge may, in his discretion, appoint additional physicians, qualified as*  
 18 *required by this section, to assist in the examination of the person as to*  
 19 *his mental condition.*] If the allegedly mentally ill person requests in  
 20 writing that one additional examining physician **or qualified person as**  
 21 **recommended by the division** be appointed, or, if in the absence of such  
 22 request by the allegedly mentally ill person, such request is made by the  
 23 legal guardian, relative or friend of the alleged mentally ill person, the  
 24 court shall appoint a physician [*nominated in such request*], **or other**  
 25 **qualified person as recommended by the division nominated in such re-**  
 26 **quest**; however, the court shall not appoint more than one such additional  
 27 examining physician **or qualified person**, who shall be a resident of the  
 28 State of Oregon.

29 Section 11. ORS 426.120 is amended to read:

30 426.120. The [*physicians*] **persons** appointed to conduct the examination  
 31 shall examine the person as to his mental condition and [*report*] **make**  
 32 their separate [*or joint findings*] **reports** in writing, under oath, to the  
 33 court, which [*findings*] **reports** immediately shall be filed with the clerk  
 34 of the court. If the examining [*physicians*] **persons** find, and show by their

1 verified [findings] reports, that the person examined is a mentally ill per-  
 2 son, [and by reason of mental illness is in need of treatment, care or cus-  
 3 tody, and if the judge, after having examined the verified findings and  
 4 considered all competent evidence submitted to him, is of the opinion that  
 5 the person is in need of treatment, care or custody, he shall adjudge the  
 6 person to be mentally ill and order him committed to the proper state  
 7 hospital. The order of commitment shall direct that the mentally ill per-  
 8 son be promptly and safely delivered to the superintendent of the proper  
 9 state hospital, as provided in ORS 426.150.] the reports shall include a  
 10 recommendation as to the type of treatment facility best calculated to  
 11 help the person recover from his mental illness. Each report shall also ad-  
 12 vise the court whether in the opinion of the examiner the mentally ill per-  
 13 son would cooperate with and benefit from a program of voluntary  
 14 treatment.

15 Section 12. ORS 426.130 is amended to read:

16 426.130. [If the legal guardian, relative or friend of the mentally ill  
 17 person requests that he be allowed to care for him in a place satisfactory  
 18 to the judge, and shows that he, such applicant, is competent and finan-  
 19 cially able to care for the mentally ill person, and also if it appears to the  
 20 court that the mentally ill person is not criminally inclined or violent, and  
 21 that proper care and treatment can and will be provided him by such  
 22 applicant, and that it would be to the best interest of the mentally ill per-  
 23 son to be paroled, the judge may order that the mentally ill person be  
 24 released and placed in the care and custody of such applicant. The order  
 25 may be revoked and the mentally ill person committed to an Oregon state  
 26 hospital whenever, in the opinion of the judge, it is for the best interest  
 27 of the mentally ill person.] After hearing all of the evidence, and review-  
 28 ing the findings of the examining persons, the court shall determine  
 29 whether the person is mentally ill. If in the opinion of the court the person  
 30 is not mentally ill, he shall be discharged forthwith. If in the opinion of  
 31 the court the person is mentally ill, <sup>beyond a reasonable doubt</sup> the court may order as follows:

32 (1) If the mentally ill person is willing and able to participate in  
 33 treatment on a voluntary basis, and the court finds that he will probably  
 34 do so, the court shall order the release of the individual and dismiss the  
 case.

1 (2) If the legal guardian, relative or friend of the mentally ill person  
 2 requests that he be allowed to care for him during the period of commit-  
 3 ment in a place satisfactory to the judge, and shows that he, such applicant,  
 4 is able to care for the mentally ill person and that there are adequate  
 5 financial resources available for the care of the mentally ill person, the  
 6 court may order that the mentally ill person be conditionally released and  
 7 placed in the care and custody of such applicant. The order may be revoked  
 8 and the mentally ill person committed to the division whenever, in the  
 9 opinion of the court, it is in the best interest of the mentally ill person.

10 (3) If in the opinion of the court voluntary treatment or conditional  
 11 release are not in the best interest of the mentally ill person, the court  
 12 may order the commitment of the individual to the division for treatment.  
 13 The commitment shall be for a period of time not to exceed <sup>180</sup>~~45~~ days.

14 SECTION 13. Sections 14 to 20 of this 1973 Act are added to and  
 15 made a part of ORS chapter 426.

16 SECTION 14. At any time after commitment by the court, the per-  
 17 son, with the approval of the division, may change his status to that of  
 18 a voluntary patient. Notwithstanding ORS 426.220, any person who alters  
 19 his status to that of a voluntary patient under this section shall be released  
 20 from the division within 72 hours of his request for release.

21 SECTION 15. At the end of the <sup>180</sup>~~45~~ day period of commitment, any  
 22 person whose status has not been changed to voluntary shall be released  
 23 unless the division certifies to the court in the county where the treating  
 24 facility is located that the patient is still mentally ill and in need of further  
 25 treatment. If such certification is made, the person will not be released, but  
 26 the division shall forthwith issue a copy of the certification to the person.  
 27 The certification shall be served upon the patient by a physician or regis-  
 28 tered nurse at the facility or director of the facility wherein the patient is  
 29 confined. The person serving the citation shall inform the court in writing  
 30 that service has been made and the date thereof. The certification shall  
 31 advise the person that the division has requested that his commitment be  
 32 continued for an additional period of time; that he may consult with an  
 33 attorney and that an attorney will be provided for him without cost to  
 34 him if he is unable to afford an attorney; that if he does not protest this

1 further commitment within 14 days, his commitment will be continued  
 2 for an indefinite period of time up to <sup>180</sup>90 days; that if he does protest a fur-  
 3 ther period of commitment, he is entitled to a hearing before the court on  
 4 whether his commitment should be continued; that he may protest either  
 5 orally or in writing by signing the form accompanying the certification;  
 6 that he is entitled to have a physician or other qualified person as recom-  
 7 mended by the division, other than a member of the staff at the facility  
 8 where he is confined, examine him and report to the court the results of  
 9 his examination; that he may subpoena witnesses and offer evidence on his  
 10 own behalf at the hearing; that if he is without funds to retain an attorney  
 11 or an examining physician or qualified person as recommended by the  
 12 division, the court will appoint such attorney, physician or qualified  
 13 person at no cost to him. The person serving the certification shall read  
 14 and deliver the certification to the person and ask him whether he protests  
 15 a further period of commitment. The person may protest further com-  
 16 mitment either orally or by signing a simple protest form to be given to  
 17 the person with the certification. If the person does not protest a further  
 18 period of commitment within 14 days of service of the certification, the  
 19 division shall so notify the court and the court shall, without further  
 20 hearing, order the commitment of the person for an additional indefinite  
 21 period of time up to <sup>180</sup>90 days.

22 **SECTION 16.** When the person protests a further period of commit-  
 23 ment the division shall, forthwith, notify the court and the court shall  
 24 have the person brought before it and shall again advise him that the  
 25 division has requested that his commitment be continued for an additional  
 26 period of time and that if he does not protest this commitment his com-  
 27 mitment will be continued for an indefinite period of time up to <sup>180</sup>90 days.  
 28 He shall also be informed of the rights set forth in section 15 of this 1973  
 29 Act.

30 **SECTION 17.** If the person requests a hearing, the hearing shall be  
 31 conducted as promptly as possible and at such time and place as the court  
 32 may direct. If the person requests a continuance in order to prepare for the  
 33 hearing or to obtain counsel to represent him, the court may grant a con-  
 34 tinuance for a reasonable period of time for this purpose. In the event the

1 person requests the appointment of an attorney and is without funds to  
 2 retain an attorney, the court shall appoint an attorney to represent him at  
 3 no cost to the person. If no request for legal counsel is made, the court  
 4 shall appoint an attorney to represent the person unless legal counsel is  
 5 expressly, knowingly and intelligently refused by the person. If the per-  
 6 son requests an examination by a physician or other qualified person as  
 7 recommended by the division and is without funds to retain such person  
 8 for purposes of the examination, the court shall appoint a physician or  
 9 other qualified person, other than a member of the staff from the facility  
 10 where the person is a patient, to examine the person at no expense to him  
 11 and to report to the court the results of the examination. The court shall  
 12 then conduct a hearing and after hearing the evidence and reviewing the  
 13 recommendations of the treating and examining physicians or other quali-  
 14 fied persons, the court shall determine whether the individual is still a  
 15 mentally ill person and in need of further treatment. If in the opinion of  
 16 the court the individual is still a mentally ill person <sup>subject to a hearing with doubt</sup> and in need of  
 17 further treatment, the court may order his commitment to the division  
 18 for an additional indefinite period of time up to <sup>180</sup>90 days. At the end of  
 19 the <sup>180</sup>90-day period, the patient shall be released unless the division again  
 20 certifies to the committing court that the person is still a mentally ill  
 21 person and in need of further treatment, in which event the procedures  
 22 set forth in sections 15 to 17 of this 1973 Act shall be followed.

~~23 **SECTION 18.** After a person has been in the custody of the division  
 24 involuntarily for one year immediately preceding a certification that he  
 25 is still mentally ill and in need of further treatment, additional orders  
 26 of commitment may be for indefinite periods of time up to 180 days. No  
 27 person on trial visit may be committed for more than 90 days. If such a  
 28 person is still mentally ill and in need of further treatment, additional  
 29 orders of commitment may be made under provisions set forth in sections  
 30 15 to 17 of this 1973 Act.~~

31 <sup>2</sup> **SECTION 19.** Costs of hearings conducted pursuant <sup>2</sup> "Note: Section  
 18 was deleted by amendment. Subsequent sections were not  
 renumbered."

*Handwritten notes:*  
 insert  
 H

1 person's residence in the same manner provided by ORS 426.310, whether  
2 the hearing is held in the county of residence or county of the treating  
3 facility.

4 **SECTION 20.** Sections 14 to 17 of this 1973 Act do not restrict or limit  
5 the discharge procedures set forth in ORS 426.300.

6 Section 21. ORS 426.160 is amended to read:

7 426.160. The judge shall cause to be recorded in the court records a  
8 full account of proceedings had at [the] all [hearing] hearings and [exam-  
9 ination] examinations conducted pursuant to this 1973 Act, together with  
10 the [judgment] judgments and [order] orders of the court and a copy of  
11 the orders issued. The account of the proceedings and transcripts of testi-  
12 mony if taken thereat shall be delivered to the county clerk who shall  
13 cause it to be sealed and neither the account of the proceedings nor the  
14 transcript of testimony if taken shall be disclosed to any person except:

15 (1) As provided in ORS 426.170;

16 (2) Upon request of the person subject to the proceedings, his legal  
17 representatives, or his attorney; or

18 (3) Pursuant to court order.

19 Section 22. ORS 426.300 is amended to read:

20 426.300. (1) The [superintendent of any state hospital wherein are  
21 confined persons adjudged to be mentally diseased] division [may] shall,  
22 by filing [his] a written certificate with the last committing court and the  
23 court of residence, discharge any patient from court commitment, except  
24 one held upon an order of a court or judge having criminal jurisdiction in  
25 an action or proceeding arising out of criminal offense when [he is con-  
26 vinced that the patient is sufficiently recovered to be of no danger to him-  
27 self or others and that the discharge is in the best interest of the patient]  
28 in its opinion the individual is no longer a mentally ill person or when in  
29 its opinion the transfer of the individual to a voluntary status is in the  
30 best interest of the treatment of the patient.

31 (2) The [superintendent of a state institution for the mentally ill or  
32 mentally retarded] division or the administrator of the University State Tu-  
33 berculosis Hospital may sign applications for public assistance on behalf of  
34 those patients who may be eligible for public assistance.

1 Section 23. ORS 426.140 is amended to read:

2 426.140. (1) No person, not incarcerated upon a criminal charge, who  
3 has been adjudged a mentally ill person or one against whom proceed-  
4 ings have been instituted shall be confined in any prison, jail or other in-  
5 closure where those charged with crime or violation of a municipal or-  
6 dinance are incarcerated <sup>5</sup> if a place suitable for the comfortable <sup>5</sup> unless  
the person represents an immediate and serious danger to  
hospital staff or facilities

9 shall be confined, either before or after the hearing and examination,  
10 without an attendant in direct charge of him; and, if not confined in a  
11 [county] community hospital, the county health officer or sheriff having  
12 such person in his custody shall select some suitable person to act as  
13 attendant.

14 Section 24. ORS 426.150 is amended to read:

15 426.150. (1) Upon receipt of the order of commitment, the health officer  
16 or the sheriff, as the case may be, shall take such mentally ill person into  
17 his custody, and insure his safekeeping and proper care until delivery is  
18 made to [the superintendent of the proper state hospital or a designated  
19 employe thereof] the division. Immediately after being notified of the  
20 court's order of commitment of such mentally ill person, the county health  
21 officer or the sheriff shall notify by telephone, if possible, [the superin-  
22 tendent of the state hospital to which the person was committed,] such  
23 person as the division shall designate informing him of the fact that such  
24 person is being held awaiting delivery, and also stating the name, [char-  
25 acter,] condition, sex and age of such person. Except as provided in sub-  
26 section (2) of this section, the [superintendent] division shall thereupon  
27 [designate an employe of the hospital to] take custody of such person  
28 [and safely transport him to the state hospital]. [The employe] A designee  
29 of the division, accompanied by such assistants as the [superintendent]  
30 division may deem necessary, shall proceed to the place where the person  
31 is to be delivered into his custody, and, upon demand shall be given custody  
32 of the committed mentally ill person, together with the certified record  
33 required by ORS 426.170. The [employe] designee shall issue appropriate  
34 receipts therefor and immediately proceed to transport the committed

1 mentally ill person safely to the [state hospital to which he has been com-  
2 mitted,] facility designated by the division and there make delivery of  
3 him and the record to the [superintendent] director or a designated em-  
4 ploye of the [hospital] facility .

5 (2) The committing judge, upon approval of the examining [physician]  
6 physicians or other qualified persons as recommended by the division  
7 and upon request of a guardian, friend or relative of the mentally ill per-  
8 son, may authorize the guardian, friend or relative to transport the per-  
9 son to the designated [hospital] facility when the committing judge de-  
10 termines that such means of transportation would not be detrimental to the  
11 welfare of the mentally ill person or to the public.

12 Section 25. ORS 426.170 is amended to read:

13 426.170. If any person is adjudged mentally ill and ordered committed  
14 to [a state hospital] the division , a copy of the complete record in the case  
15 certified to by the [county] clerk of the county, shall be given to the health  
16 officer of the county, or to the sheriff, for delivery to the [superintendent]  
17 director of the [state hospital] facility to which such mentally ill person  
18 is [committed] assigned . The record shall include the name, residence,  
19 nativity, sex and age of such mentally ill person and all other information  
20 that may be required by the rules and regulations promulgated by the  
21 Mental Health Division.

22 Section 26. ORS 426.280 is amended to read:

23 426.280. [A superintendent] The division may grant a trial visit to a  
24 patient for any period of time , up to <sup>180</sup>~~90~~ days, under such general conditions  
25 [prescribed by the Mental Health Division] as it shall prescribe during  
26 such patient's period of commitment. The physician and the [hospital]  
27 facility granting a trial visit to a patient, the superintendent or director  
28 thereof, the Administrator of the Mental Health Division and the chief  
29 medical officer of the [hospital] facility shall not be liable for a patient's  
30 expenses while on trial visit, nor shall the superintendent or director of  
31 any such [hospital] facility, the physician responsible for the patient's re-  
32 lease , the Administrator of the Mental Health Division or the chief medical  
33 officer of the [hospital] facility be liable for any damages whatsoever

1 that are sustained by any person on account of the misconduct of such pa-  
2 tient while on trial visit.

3 Section 27. ORS 426.290 is amended to read:

4 426.290. (1) If a written complaint against a patient on trial visit from  
5 [a state hospital for the mentally ill] the division is received by [a super-  
6 intendent of a state hospital for the mentally ill] the division and the com-  
7 plaint is sworn to by a citizen of Oregon before an officer qualified to ad-  
8 minister an oath, the patient named in the complaint shall be sent to  
9 and received by a [state hospital] facility for the mentally ill designated  
10 by the division . If the acts complained of are such as to indicate to  
11 the examining physician of the receiving [hospital] facility that the patient  
12 should no longer be permitted to remain on trial visit, the patient shall be  
13 admitted thereto.

14 (2) Upon voluntary application to be admitted thereto, every patient  
15 on trial visit must be received by [a state hospital for the mentally ill]  
16 the facility from which he was released on trial visit .

17 (3) Every patient on trial visit received by a [state hospital] facility  
18 for the mentally ill under this section shall be admitted to the [hospital]  
19 facility without examination as to his sanity before any court or judge  
20 having jurisdiction over such matters.

21 Section 28. ORS 426.385 is amended to read:

22 426.385. (1) Every mentally ill person committed to the division shall  
23 have the right to:

24 (a) Communicate freely in person, by sending and receiving sealed mail,  
25 and by reasonable access to telephones;

26 (b) Wear his own clothing;

27 (c) Keep his personal possessions, including toilet articles;

28 (d) Religious freedom;

29 (e) A private storage area with free access thereto;

30 (f) Be furnished with a reasonable supply of writing materials and  
31 stamps;

32 (g) A written treatment plan, kept current with his progress;

33 (h) Be represented by counsel whenever his substantial rights may be  
34 affected;

- 1 (i) Petition for a writ of habeas corpus;
- 2 (j) Not be required to perform routine labor tasks of the facility ex-
- 3 cept those essential for his treatment;
- 4 (k) Be given reasonable compensation for all work performed other
- 5 than personal housekeeping duties;
- 6 (L) Such other rights as may be specified by regulation; and
- 7 (m) Exercise all civil rights in the same manner and with the same
- 8 effect as one not admitted to the facility, including, but not limited to,
- 9 the right to dispose of property, execute instruments, make purchases,
- 10 enter contractual relationships, and vote, unless he has been adjudicated
- 11 incompetent and has not been restored to legal capacity.
- 12 (2) Mentally ill persons committed to the division shall have the
- 13 right to be free from potentially unusual or hazardous treatment proce-
- 14 dures, including lobotomy and electro-shock therapy, unless they have
- 15 given their express and informed consent. This right may be denied to
- 16 such persons for good cause only by the director of the facility in which the
- 17 person is confined, or his designee, but only after consultation with and
- 18 approval of an independent examining physician. Any denial shall be
- 19 entered into the patient's treatment record and shall include the reasons
- 20 for the denial.
- 21 (3) Mechanical restraints shall not be applied to a person admitted
- 22 to a [state hospital] facility unless it is determined by the [superintendent]
- 23 chief medical officer of the [hospital] facility or his designee to be re-
- 24 quired by the medical needs of the person. Every use of a mechanical
- 25 restraint and the reasons therefor shall be made a part of the clinical
- 26 record of the person [under] over the signature of the [superintendent]
- 27 chief medical officer of the [hospital] facility or his designee.
- 28 **SECTION 29.** ORS 426.375 is repealed.
- 29 **SECTION 30.** Section 31 of this 1973 Act is added to and made a part
- 30 of ORS chapter 426.
- 31 **SECTION 31.** A simple and clear statement of rights guaranteed to
- 32 patients committed to the division shall be prominently posted in each
- 33 room frequented by patients in all facilities housing such patients. A

1 copy of the statement shall be given to each patient upon admission and

2 sent, upon request, to his legal counsel, guardian, relative or friend.

3 Section 32. ORS 426.215 is amended to read:

4 426.215. (1) Any peace officer may take into custody any person who

5 he has reasonable cause to believe is dangerous to himself or to any other

6 person and who he has reasonable cause to believe is in need of immediate

7 care, custody or treatment for mental illness. If a peace officer takes a

8 person into custody under this section, he shall remove him forthwith to:

9 (a) A hospital, described in subsection (4) of this section, in the

10 county where the person is taken into custody; or

11 (b) Such a hospital in another county after having obtained a certifi-

12 cate from a physician licensed to practice medicine and surgery by the

13 Board of Medical Examiners for the State of Oregon stating that the travel

14 will not be detrimental to the person's physical health and that the person

15 is dangerous to himself or to any other person and is in need of immediate

16 care or treatment for mental illness. Such physician shall personally

17 examine the allegedly mentally ill person within 24 hours prior to signing

18 the certificate.

19 (2) The superintendent or administrator of the hospital shall cause

20 the person to be examined forthwith by a staff physician. If the physician

21 finds the person to be in need of immediate care or treatment for mental

22 illness, the person shall be admitted as a <sup>patient</sup> ~~patient~~. Otherwise he shall not

23 be retained in further custody under this section.

24 (3) The peace officer, after taking a person into custody under this

25 section, shall notify forthwith a court having probate jurisdiction in the

26 county in which the person was taken into custody of the fact of taking the

27 person into custody and the person's whereabouts. When the judge of such

28 a court is informed by a peace officer that a person is in custody, [within

29 24 hours] the judge shall immediately commence proceedings pursuant

30 to sections 3 to 12 of this 1973 Act. [issue a warrant directing that such

31 person be brought before the court within 24 hours after issuance of the

32 warrant, and a hearing shall be held as provided in ORS 426.070 to 426.170.]

33 (4) The superintendent or administrator of a hospital maintaining

34 adequate staff and facilities for the care and treatment of persons alleged

1 to be mentally ill and approved by the [*Mental Health Division*] division  
2 may receive and retain therein as a patient for a period not to exceed  
3 five days any person alleged to be in need of immediate care or treat-  
4 ment for mental illness as provided in this section. The expenses of such  
5 emergency care shall be paid by the county of residence of the person or,  
6 if he has no residence within the state, by the county in which the person  
7 is taken into custody, unless otherwise provided by law.

8 (5) Persons hospitalized under this section shall receive the care, cus-  
9 tody and treatment required for their mental and physical health and  
10 safety, and the treating physician shall report such care, custody and  
11 treatment to the court as required in section 8 of this 1973 Act. All methods  
12 of treatment, including the prescription and administration of drugs,  
13 shall be the sole responsibility of the treating physician. However, such  
14 persons shall not be subject to potentially unusual or hazardous treatment  
15 procedures, including electro-shock therapy. The treating physician shall  
16 be notified immediately of any use of mechanical restraints on such per-  
17 sons. Every use of a mechanical restraint and the reasons therefor shall  
18 be made a part of the clinical record of the person over the signature of  
19 the treating physician.

20 [(5)] (6) No peace officer, hospital, physician or judge shall in any  
21 way be held criminally or civilly liable for actions pursuant to this section  
22 provided he acts in good faith, on probable cause and without malice.

*Smartly*  
④ ————◆——— "Section 33. This Act  
takes effect on July 1, 1974.

# HOUSE AMENDMENTS

Eng.  
TO / SB 510

COMMITTEE ON Human Resources

Committee Report dated June 1, 1973 Date(s) of Committee Action: May 31, 1973

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None



Committee Clerk

*Sen. Judd.*

S 510  
3/6/73

#2

S 510

may conflict with

H 2808

426.215 A 510, 2808

Sen. Judd.

S 510  
3/2/73

#1

S 510

may conflict with

H 2330  
2698

S 80  
455

426.005 A 2330 , A 510

426.070 A 2330, 2698 , A 510

426.080 A 80 , A 510

426.100 A 2330 , A 510

426.120 A 2330 , A 510

426.130 A 2330 , A 510

426.215 A 455 , A 510

426.300 A 2330 , A 510

ENGROSSED

# Senate Bill 510

Ordered by the Senate May 17  
(Including Amendments by Senate May 17)

Sponsored by Senator BURBIDGE, Representative PECK, Senators BROWNE, J. BURNS, HALLOCK, ROBERTS, Representatives AuCOIN, DENSMORE, DERELI, FADELEY, GROENER, KAFOURY, KATZ, MARTIN, McCOY, OTTO, PAULUS, ROBERTS

## 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.

Modifies provisions relating to involuntary commitment of mentally ill persons. Defines "mentally ill person." Provides for commitment to Mental Health Division rather than specific state hospital. Requires probable cause investigation prior to issuing citation. Defines conditions for treatment of persons detained for hearing. Establishes new hearing procedures and expands existing hearing procedures relating to involuntary commitments of mentally ill persons. Permits courts to allow mentally ill persons to participate in treatment programs on voluntary basis. Places time limitations on length of commitment. Provides for periodic hearings, upon petition of patient, to determine whether or not person should remain patient in facility. Requires that patient committed to division be given statement of rights guaranteed to him and that such statement be posted in certain rooms frequented by patients.

**Effective July 1, 1974.**

**NOTE:** Matter in bold face in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted; complete new sections begin with **SECTION**.

## A BILL FOR AN ACT

1  
2 Relating to involuntary commitments of mentally ill persons; creating new  
3 provisions; and amending ORS 426.005, 426.060, 426.070, 426.080, 426.090,  
4 426.100, 426.110, 426.120, 426.130, 426.140, 426.150, 426.160, 426.170, 426.215,  
5 426.280, 426.290, 426.300 and 426.385; repealing ORS 426.375; and prescrib-  
6 ing an effective date.

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

8 Section 1. ORS 426.005 is amended to read:

9 426.005. As used in ORS 426.005 to [426.350] 426.390, unless the con-  
10 text requires otherwise [, "division" means the Mental Health Division.]:

11 (1) "Division" means the Mental Health Division.

12 (2) "Mentally ill person" means a person who, because of a mental  
13 disorder, is either:

14 (a) Dangerous to himself or others; or

15 (b) Unable to provide for his basic personal needs and is not receiving  
16 such care as is necessary for his health or safety.

17 (3) "Facility" means a state mental hospital, community hospital, resi-  
18 dential facility, detoxification center, day treatment facility, or such other  
19 facility as the Mental Health Division determines suitable, any of which  
20 may provide diagnosis and evaluation, medical care, detoxification, social  
21 services, or rehabilitation for committed mentally ill persons.

22 (4) "Director of the facility" means a superintendent of a state mental  
23 hospital, the chief of psychiatric services in a community hospital, or the  
24 person in charge of treatment and rehabilitation programs at other treat-  
25 ment facilities.

26 Section 2. ORS 426.060 is amended to read:

27 426.060. (1) Commitments to the [Oregon State Hospital, the F. H.  
28 Dammasch State Hospital and the Eastern Oregon Hospital and Training  
29 Center] Mental Health Division shall be made by the judge of any court  
30 having probate jurisdiction or, if the circuit court is not the probate court,  
31 the circuit court if its jurisdiction has been extended to include commit-  
32 ment of the mentally ill pursuant to ORS 3.275 in any county of this state.

33 (2) The Mental Health Division may, in its discretion and for reasons  
34 which are satisfactory to the division, direct any [judge to make his com-

1 mitments] court committed person to [any hospital listed in subsection  
2 (1) of this section] the facility best able to treat him. The authority of  
3 the division on such matters shall be final.

4 Section 3. ORS 426.070 is amended to read:

5 426.070. (1) The judge of any court having probate jurisdiction or,  
6 if the circuit court is not the probate court, the circuit court if its juris-  
7 diction has been extended to include commitment of the mentally ill pur-  
8 suant to ORS 3.275 in any county of this state, upon being notified in writ-  
9 ing under oath by two persons or by the county health officer or any magis-  
10 trate that any other person within the county is a mentally ill person and  
11 [by reason of such illness] is in need of treatment, care or custody, shall  
12 [cause the allegedly mentally ill person to be brought before him at such  
13 time and place as he may direct. If necessary, the judge may issue a war-  
14 rant of detention to the county health officer, or to the sheriff of the county,  
15 directing the officer to take such person into his custody and produce him  
16 at the time and place stated in the warrant.] forthwith cause the community  
17 mental health program director, or his designee, to investigate to determine  
18 whether there is probable cause to believe that the person is in fact a men-  
19 tally ill person. The community mental health program director or his  
20 designee, the two petitioning persons, the county health officer, any magis-  
21 trate, any peace officer, probation officer, physician attending the allegedly  
22 mentally ill person or the physician attached to a hospital or institution  
23 wherein the allegedly mentally ill person is a patient shall in no way be  
24 be held criminally or civilly liable for the making of such notification,  
25 provided he acts in good faith, on probable cause and without malice.

26 (2) The investigation conducted should, where possible, include an  
27 interview or examination of the allegedly mentally ill person in his home  
28 or other place familiar to the individual. If the allegedly mentally ill per-  
29 son consents, the investigation should also, where possible, include an in-  
30 terview with the individual's relatives, neighbors and physician. The per-  
31 son conducting the investigation shall in no way be held criminally or  
32 civilly liable for the making of such investigation, provided he acts in  
33 good faith, on probable cause and without malice. Upon completion, a

1 recommendation based upon the investigation report shall be promptly  
2 submitted to the court.

3 (3) If the court, following the investigation, concludes that there is  
4 probable cause to believe that the person investigated is a mentally ill  
5 person, it shall, through the issuance of a citation as provided in section 5  
6 of this 1973 Act, cause the person to be brought before it at such time  
7 and place as it may direct, for a hearing to make a determination whether  
8 or not the person is mentally ill. The person shall be given the opportunity  
9 to appear voluntarily at the hearing unless he fails to appear or unless  
10 he is detained pursuant to subsection (5) of this section. The hearing may  
11 be held in a hospital, the person's home, or in some other place convenient  
12 to the court and the allegedly mentally ill person. If a person is detained  
13 pursuant to subsection (5) of this section, a hearing shall be held within  
14 72 hours of the commencement of his detention unless additional time is  
15 requested by him or his attorney. The court may make such orders for  
16 the care and custody of the person prior to the hearing as it deems nec-  
17 essary.

18 (4) A copy of the investigation report shall be made available to the  
19 allegedly mentally ill person as soon as possible after it is completed but  
20 in any case prior to the hearing.

21 (5) If the court finds that there is probable cause to believe that failure  
22 to take the allegedly mentally ill person into custody pending the investi-  
23 gation or hearing would pose an imminent and serious danger to the person  
24 or to others, the judge may issue a warrant of detention to the community  
25 mental health program director, the county health officer or to the sheriff  
26 of the county, directing that person or his designee to take such person  
27 into his custody and produce him at the time and place stated in the  
28 warrant.

29 (6) Persons taken into custody under subsection (5) of this section  
30 shall receive the care, custody and treatment required for their mental and  
31 physical health and safety, and the treating physician shall report such  
32 care, custody and treatment to the court as required in section 8 of this  
33 1973 Act. All methods of treatment, including the prescription and admin-  
34 istration of drugs, shall be the sole responsibility of the treating physician.

1 However, such persons shall not be subject to potentially unusual or haz-  
2 ardous treatment procedures, including electro-shock therapy. The treat-  
3 ing physician shall be notified immediately of any use of mechanical re-  
4 straints on such persons. Every use of a mechanical restraint and the  
5 reasons therefor shall be made a part of the clinical record of the person  
6 over the signature of the treating physician.

7 Section 4. ORS 426.080 is amended to read:

8 426.080. The [officer] person serving [the] a warrant of detention  
9 [and] or the citation provided for by ORS 426.090 shall, immediately after  
10 service thereof, make a return upon the original warrant or citation show-  
11 ing the time, place and manner of such service and file it with the clerk  
12 of the court. In executing the warrant of detention or citation, the [offi-  
13 cer] person has all the powers provided by ORS 133.290 and 161.235 to  
14 161.245 and may require the assistance of any peace officer or other per-  
15 son.

16 Section 5. ORS 426.090 is amended to read:

17 426.090. The judge shall cause a citation to issue to the allegedly men-  
18 tally ill person stating the nature of the information filed concerning him  
19 and the specific reasons he is believed to be mentally ill. The citation  
20 shall further contain a notice of the time and place of the commitment  
21 hearing, the right to representation by legal counsel, the right to have  
22 legal counsel appointed if the person is unable to afford counsel, the right  
23 to subpoena witnesses in behalf of himself to the hearing and such other  
24 information as the court may direct. The citation shall be served upon  
25 such person [by the officer who takes such person into custody,] by deliv-  
26 ering a duly certified copy of the original thereof to him in person no less  
27 than 24 hours prior to the hearing.

28 Section 6. ORS 426.100 is amended to read:

29 426.100 (1) [At the time of the hearing before the court, prescribed  
30 by ORS 426.070 to 426.150, the court shall inform the allegedly mentally  
31 ill person that he has the right to legal counsel during the proceedings and  
32 that, at his request, or the request of his legal guardian, relative or friend,  
33 the court may postpone the hearing up to 72 hours in order to allow the  
34 allegedly mentally ill person an opportunity to obtain counsel, and sub-

1 *pena witnesses in his behalf to the hearing.] At the time the allegedly*  
 2 *mentally ill person is brought before the court, the court shall advise him*  
 3 *of the reason he has been brought before the court, the nature of the pro-*  
 4 *ceedings and the possible results of the proceedings. The court shall also*  
 5 *advise the allegedly mentally ill person that he is entitled to subpoena wit-*  
 6 *nesses on his behalf and to have an attorney represent him during the pro-*  
 7 *ceedings, and that if he does not have funds with which to retain an attor-*  
 8 *ney, the court will appoint an attorney to represent him without cost. If*  
 9 *the allegedly mentally ill person does not request an attorney, his legal*  
 10 *guardian, relative or friend may request the assistance of legal counsel on*  
 11 *his behalf.*

12 (2) If no request for legal counsel is made, the court [*may, at its dis-*  
 13 *cretion,]* shall appoint legal counsel unless counsel is expressly, knowingly  
 14 and intelligently refused by the person.

15 (3) If the person is [*indigent*] unable to afford counsel, the court [*may*]  
 16 shall provide by order for payment of a reasonable attorney fee by the  
 17 county of residence of the allegedly mentally ill person. In all cases such  
 18 legal counsel shall be present at the hearing and examination and may  
 19 examine all witnesses offering testimony, and otherwise represent such  
 20 person.

21 (4) [*Where legal counsel is requested or provided, the court may con-*  
 22 *tinue the hearing for up to 72 hours after counsel has been obtained by*  
 23 *appointment or otherwise and may make such orders for the care and*  
 24 *custody of the person during that period as it deems necessary.] If the*  
 25 *allegedly mentally ill person, his attorney or guardian requests, the court*  
 26 *shall postpone the hearing in order to allow the person to prepare for the*  
 27 *hearing. The court shall not postpone the hearing for more than 72 hours*  
 28 *unless the person, his counsel, or guardian specifically requests a longer*  
 29 *time to prepare. The court may make such orders for the care and custody*  
 30 *of the person during such postponement as it deems necessary.*

31 **SECTION 7.** Sections 8 and 9 of this 1973 Act are added to and made  
 32 a part of ORS chapter 426.

33 **SECTION 8.** The court shall be fully advised by the community men-  
 34 tal health program director, or when the person has been detained under

1 subsection (5) of section 3 or section 32 of this 1973 Act, by the treating  
 2 physician of all drugs and other treatment known to have been adminis-  
 3 tered to the allegedly mentally ill person which may substantially affect  
 4 his ability to prepare for or function effectively at the hearing.

5 **SECTION 9.** The allegedly mentally ill person shall have the right to  
 6 cross-examine all witnesses, the person conducting the investigation, the  
 7 examining physicians or other qualified persons recommended by the divi-  
 8 sion who have examined the persons. Neither the investigation report nor  
 9 any part thereof shall be introduced in evidence without the express con-  
 10 sent of the allegedly mentally ill person.

11 Section 10. ORS 426.110 is amended to read:

12 426.110. The judge shall appoint at least two competent physicians  
 13 licensed by the State Board of Medical Examiners for the State of Oregon  
 14 to practice medicine and surgery, one of whom may be the county health  
 15 officer, to examine the person as to his mental condition. **In lieu of one of**  
 16 **the physicians, the court may appoint one qualified person as recommended**  
 17 **by the division, to examine the person.** [*In counties having a population*  
 18 *of 10,000 or less, as determined by the latest federal census, the judge may*  
 19 *appoint only one such physician, who may be the county health officer, but*  
 20 *the judge may, in his discretion, appoint additional physicians, qualified as*  
 21 *required by this section, to assist in the examination of the person as to*  
 22 *his mental condition.] If the allegedly mentally ill person requests in*  
 23 *writing that one additional examining physician or qualified person as*  
 24 **recommended by the division** be appointed, or, if in the absence of such  
 25 request by the allegedly mentally ill person, such request is made by the  
 26 legal guardian, relative or friend of the alleged mentally ill person, the  
 27 court shall appoint a physician [*nominated in such request*], or other  
 28 **qualified person as recommended by the division nominated in such re-**  
 29 **quest**; however, the court shall not appoint more than one such additional  
 30 examining physician or qualified person, who shall be a resident of the  
 31 State of Oregon.

32 Section 11. ORS 426.120 is amended to read:

33 426.120. The [*physicians*] persons appointed to conduct the examination  
 34 shall examine the person as to his mental condition and [*report*] make

1 their separate [or joint findings] reports in writing, under oath, to the  
 2 court, which [findings] reports immediately shall be filed with the clerk  
 3 of the court. If the examining [physicians] persons find, and show by their  
 4 verified [findings] reports, that the person examined is a mentally ill per-  
 5 son, [and by reason of mental illness is in need of treatment, care or cus-  
 6 tody, and if the judge, after having examined the verified findings and  
 7 considered all competent evidence submitted to him, is of the opinion that  
 8 the person is in need of treatment, care or custody, he shall adjudge the  
 9 person to be mentally ill and order him committed to the proper state  
 10 hospital. The order of commitment shall direct that the mentally ill per-  
 11 son be promptly and safely delivered to the superintendent of the proper  
 12 state hospital, as provided in ORS 426.150.] the reports shall include a  
 13 recommendation as to the type of treatment facility best calculated to  
 14 help the person recover from his mental illness. Each report shall also ad-  
 15 vise the court whether in the opinion of the examiner the mentally ill per-  
 16 son would cooperate with and benefit from a program of voluntary  
 17 treatment.

18 Section 12. ORS 426.130 is amended to read:

19 426.130. [If the legal guardian, relative or friend of the mentally ill  
 20 person requests that he be allowed to care for him in a place satisfactory  
 21 to the judge, and shows that he, such applicant, is competent and finan-  
 22 cially able to care for the mentally ill person, and also if it appears to the  
 23 court that the mentally ill person is not criminally inclined or violent, and  
 24 that proper care and treatment can and will be provided him by such  
 25 applicant, and that it would be to the best interest of the mentally ill per-  
 26 son to be paroled, the judge may order that the mentally ill person be  
 27 released and placed in the care and custody of such applicant. The order  
 28 may be revoked and the mentally ill person committed to an Oregon state  
 29 hospital whenever, in the opinion of the judge, it is for the best interest  
 30 of the mentally ill person.] After hearing all of the evidence, and review-  
 31 ing the findings of the examining persons, the court shall determine  
 32 whether the person is mentally ill. If in the opinion of the court the person  
 33 is not mentally ill, he shall be discharged forthwith. If in the opinion of

1 the court the person is mentally ill beyond a reasonable doubt the court  
 2 may order as follows:

3 (1) If the mentally ill person is willing and able to participate in  
 4 treatment on a voluntary basis, and the court finds that he will probably  
 5 do so, the court shall order the release of the individual and dismiss the  
 6 case.

7 (2) If the legal guardian, relative or friend of the mentally ill person  
 8 requests that he be allowed to care for him during the period of commit-  
 9 ment in a place satisfactory to the judge, and shows that he, such applicant,  
 10 is able to care for the mentally ill person and that there are adequate  
 11 financial resources available for the care of the mentally ill person, the  
 12 court may order that the mentally ill person be conditionally released and  
 13 placed in the care and custody of such applicant. The order may be revoked  
 14 and the mentally ill person committed to the division whenever, in the  
 15 opinion of the court, it is in the best interest of the mentally ill person.

16 (3) If in the opinion of the court voluntary treatment or conditional  
 17 release are not in the best interest of the mentally ill person, the court  
 18 may order the commitment of the individual to the division for treatment.  
 19 The commitment shall be for a period of time not to exceed 180 days.

20 SECTION 13. Sections 14 to 20 of this 1973 Act are added to and  
 21 made a part of ORS chapter 426.

22 SECTION 14. At any time after commitment by the court, the per-  
 23 son, with the approval of the division, may change his status to that of  
 24 a voluntary patient. Notwithstanding ORS 426.220, any person who alters  
 25 his status to that of a voluntary patient under this section shall be released  
 26 from the division within 72 hours of his request for release.

27 SECTION 15. At the end of the 180-day period of commitment, any  
 28 person whose status has not been changed to voluntary shall be released  
 29 unless the division certifies to the court in the county where the treating  
 30 facility is located that the patient is still mentally ill and in need of further  
 31 treatment. If such certification is made, the person will not be released, but  
 32 the division shall forthwith issue a copy of the certification to the person.  
 33 The certification shall be served upon the patient by a physician or regis-  
 34 tered nurse at the facility or director of the facility wherein the patient is

1 confined. The person serving the citation shall inform the court in writing  
2 that service has been made and the date thereof. The certification shall  
3 advise the person that the division has requested that his commitment be  
4 continued for an additional period of time; that he may consult with an  
5 attorney and that an attorney will be provided for him without cost to  
6 him if he is unable to afford an attorney; that if he does not protest this  
7 further commitment within 14 days, his commitment will be continued  
8 for an indefinite period of time up to 180 days; that if he does protest a fur-  
9 ther period of commitment, he is entitled to a hearing before the court on  
10 whether his commitment should be continued; that he may protest either  
11 orally or in writing by signing the form accompanying the certification;  
12 that he is entitled to have a physician or other qualified person as recom-  
13 mended by the division, other than a member of the staff at the facility  
14 where he is confined, examine him and report to the court the results of  
15 his examination; that he may subpoena witnesses and offer evidence on his  
16 own behalf at the hearing; that if he is without funds to retain an attorney  
17 or an examining physician or qualified person as recommended by the  
18 division, the court will appoint such attorney, physician or qualified  
19 person at no cost to him. The person serving the certification shall read  
20 and deliver the certification to the person and ask him whether he protests  
21 a further period of commitment. The person may protest further com-  
22 mitment either orally or by signing a simple protest form to be given to  
23 the person with the certification. If the person does not protest a further  
24 period of commitment within 14 days of service of the certification, the  
25 division shall so notify the court and the court shall, without further  
26 hearing, order the commitment of the person for an additional indefinite  
27 period of time up to 180 days.

28 **SECTION 16.** When the person protests a further period of commit-  
29 ment the division shall, forthwith, notify the court and the court shall  
30 have the person brought before it and shall again advise him that the  
31 division has requested that his commitment be continued for an additional  
32 period of time and that if he does not protest this commitment his com-  
33 mitment will be continued for an indefinite period of time up to 180 days.

1 He shall also be informed of the rights set forth in section 15 of this 1973  
2 Act.

3 **SECTION 17.** If the person requests a hearing, the hearing shall be  
4 conducted as promptly as possible and at such time and place as the court  
5 may direct. If the person requests a continuance in order to prepare for the  
6 hearing or to obtain counsel to represent him, the court may grant a con-  
7 tinuance for a reasonable period of time for this purpose. In the event the  
8 person requests the appointment of an attorney and is without funds to  
9 retain an attorney, the court shall appoint an attorney to represent him at  
10 no cost to the person. If no request for legal counsel is made, the court  
11 shall appoint an attorney to represent the person unless legal counsel is  
12 expressly, knowingly and intelligently refused by the person. If the per-  
13 son requests an examination by a physician or other qualified person as  
14 recommended by the division and is without funds to retain such person  
15 for purposes of the examination, the court shall appoint a physician or  
16 other qualified person, other than a member of the staff from the facility  
17 where the person is a patient, to examine the person at no expense to him  
18 and to report to the court the results of the examination. The court shall  
19 then conduct a hearing and after hearing the evidence and reviewing the  
20 recommendations of the treating and examining physicians or other quali-  
21 fied persons, the court shall determine whether the individual is still a  
22 mentally ill person and in need of further treatment. If in the opinion of  
23 the court the individual is still a mentally ill person beyond a reasonable  
24 doubt and in need of further treatment, the court may order his commit-  
25 ment to the division for an additional indefinite period of time up to 180  
26 days. At the end of the 180-day period, the patient shall be released unless  
27 the division again certifies to the committing court that the person is still  
28 a mentally ill person and in need of further treatment, in which event the  
29 procedures set forth in sections 15 to 17 of this 1973 Act shall be followed.

30 **Note:** Section 18 was deleted by amendment. Subsequent sections  
31 were not renumbered.

32 **SECTION 19.** Costs of hearings conducted pursuant to section 17 of  
33 this 1973 Act, and the fees for physicians, other qualified persons, and  
34 attorneys appointed thereunder, shall be charged to the county of the

1 person's residence in the same manner provided by ORS 426.310, whether  
 2 the hearing is held in the county of residence or county of the treating  
 3 facility.

4 **SECTION 20.** Sections 14 to 17 of this 1973 Act do not restrict or limit  
 5 the discharge procedures set forth in ORS 426.300.

6 Section 21. ORS 426.160 is amended to read:  
 7 426.160. The judge shall cause to be recorded in the court records a  
 8 full account of proceedings had at *[the]* all *[hearing]* hearings and *[exam-*  
 9 *ination]* examinations conducted pursuant to this 1973 Act, together with  
 10 the *[judgment]* judgments and *[order]* orders of the court and a copy of  
 11 the orders issued. The account of the proceedings and transcripts of testi-  
 12 mony if taken thereat shall be delivered to the county clerk who shall  
 13 cause it to be sealed and neither the account of the proceedings nor the  
 14 transcript of testimony if taken shall be disclosed to any person except:

15 (1) As provided in ORS 426.170;

16 (2) Upon request of the person subject to the proceedings, his legal  
 17 representatives, or his attorney; or

18 (3) Pursuant to court order.

19 Section 22. ORS 426.300 is amended to read:

20 426.300. (1) The *[superintendent of any state hospital wherein are]*  
 21 *confined persons adjudged to be mentally diseased]* division *[may]* shall,  
 22 by filing *[his]* a written certificate with the last committing court and the  
 23 court of residence, discharge any patient from court commitment, except  
 24 one held upon an order of a court or judge having criminal jurisdiction in  
 25 an action or proceeding arising out of criminal offense when *[he is con-*  
 26 *vinced that the patient is sufficiently recovered to be of no danger to him-*  
 27 *self or others and that the discharge is in the best interest of the patient]*  
 28 *in its opinion the individual is no longer a mentally ill person or when in*  
 29 *its opinion the transfer of the individual to a voluntary status is in the*  
 30 *best interest of the treatment of the patient.*

31 (2) The *[superintendent of a state institution for the mentally ill or*  
 32 *mentally retarded]* division or the administrator of the University State Tu-  
 33 berculosis Hospital may sign applications for public assistance on behalf of  
 34 those patients who may be eligible for public assistance.

1 Section 23. ORS 426.140 is amended to read:

2 426.140. (1) No person, not incarcerated upon a criminal charge, who  
 3 has been adjudged a mentally ill person or one against whom proceed-  
 4 ings have been instituted shall be confined in any prison, jail or other in-  
 5 closure where those charged with crime or violation of a municipal or-  
 6 dinance are incarcerated, **unless the person represents an immediate and**  
 7 **serious danger to hospital staff or facilities** *[, if a place suitable for the*  
 8 *comfortable, safe and humane confinement of such person is available].*

9 (2) No alleged mentally ill person who has been taken into custody  
 10 shall be confined, either before or after the hearing and examination,  
 11 without an attendant in direct charge of him; and, if not confined in a  
 12 *[county]* community hospital, the county health officer or sheriff having  
 13 such person in his custody shall select some suitable person to act as  
 14 attendant.

15 Section 24. ORS 426.150 is amended to read:

16 426.150. (1) Upon receipt of the order of commitment, the health officer  
 17 or the sheriff, as the case may be, shall take such mentally ill person into  
 18 his custody, and insure his safekeeping and proper care until delivery is  
 19 made to *[the superintendent of the proper state hospital or a designated*  
 20 *employe thereof]* the division. Immediately after being notified of the  
 21 court's order of commitment of such mentally ill person, the county health  
 22 officer or the sheriff shall notify by telephone, if possible, *[the superin-*  
 23 *tendent of the state hospital to which the person was committed,]* such  
 24 **person as the division shall designate** informing him of the fact that such  
 25 person is being held awaiting delivery, and also stating the name, *[char-*  
 26 *acter,]* condition, sex and age of such person. Except as provided in sub-  
 27 section (2) of this section, the *[superintendent]* division shall thereupon  
 28 *[designate an employe of the hospital to]* take custody of such person  
 29 *[and safely transport him to the state hospital].* *[The employe]* A designee  
 30 of the division, accompanied by such assistants as the *[superintendent]*  
 31 division may deem necessary, shall proceed to the place where the person  
 32 is to be delivered into his custody, and, upon demand shall be given custody  
 33 of the committed mentally ill person, together with the certified record  
 34 required by ORS 426.170. The *[employe]* designee shall issue appropriate

1 receipts therefor and immediately proceed to transport the **committed**  
 2 mentally ill person safely to the [*state hospital to which he has been com-*  
 3 *mited,*] **facility designated by the division** and there make delivery of  
 4 him and the record to the [*superintendent*] **director** or a designated em-  
 5 ploye of the [*hospital*] **facility** .

6 (2) The committing judge, upon approval of the examining [*physician*]  
 7 **physicians or other qualified persons as recommended by the division**  
 8 and upon request of a guardian, friend or relative of the mentally ill per-  
 9 son, may authorize the guardian, friend or relative to transport the per-  
 10 son to the designated [*hospital*] **facility** when the committing judge de-  
 11 termines that such means of transportation would not be detrimental to the  
 12 welfare of the mentally ill person or to the public.

13 Section 25. ORS 426.170 is amended to read:

14 426.170. If any person is adjudged mentally ill and ordered committed  
 15 to [*a state hospital*] **the division** , a copy of the complete record in the case,  
 16 certified to by the [*county*] clerk of the county, shall be given to the health  
 17 officer of the county, or to the sheriff, for delivery to the [*superintendent*]  
 18 **director** of the [*state hospital*] **facility** to which such mentally ill person  
 19 is [*committed*] **assigned** . The record shall include the name, residence,  
 20 nativity, sex and age of such mentally ill person and all other information  
 21 that may be required by the rules and regulations promulgated by the  
 22 Mental Health Division.

23 Section 26. ORS 426.280 is amended to read:

24 426.280. [*A superintendent*] **The division** may grant a trial visit to a  
 25 patient for any period of time , **up to 180 days**, under such general conditions  
 26 [*prescribed by the Mental Health Division*] **as it shall prescribe during**  
 27 **such patient's period of commitment. The physician and the [*hospital*]**  
 28 **facility granting a trial visit to a patient, the superintendent or director**  
 29 **thereof, the Administrator of the Mental Health Division and the chief**  
 30 **medical officer of the [*hospital*] facility shall not be liable for a patient's**  
 31 **expenses while on trial visit, nor shall the superintendent or director of**  
 32 **any such [*hospital*] facility, the physician responsible for the patient's re-**  
 33 **lease , the Administrator of the Mental Health Division or the chief medical**  
 34 **officer of the [*hospital*] facility be liable for any damages whatsoever**

1 that are sustained by any person on account of the misconduct of such pa-  
 2 tient while on trial visit.

3 Section 27. ORS 426.290 is amended to read:

4 426.290. (1) If a written complaint against a patient on trial visit from  
 5 [*a state hospital for the mentally ill*] **the division** is received by [*a super-*  
 6 *intendent of a state hospital for the mentally ill*] **the division** and the com-  
 7 plaint is sworn to by a citizen of Oregon before an officer qualified to ad-  
 8 minister an oath, the patient named in the complaint shall be sent to  
 9 and received by a [*state hospital*] **facility** for the mentally ill **designated**  
 10 **by the division** . If the acts complained of are such as to indicate to  
 11 the examining physician of the receiving [*hospital*] **facility** that the patient  
 12 should no longer be permitted to remain on trial visit, the patient shall be  
 13 admitted thereto.

14 (2) Upon voluntary application to be admitted thereto, every patient  
 15 on trial visit must be received by [*a state hospital for the mentally ill*]  
 16 **the facility from which he was released on trial visit** .

17 (3) Every patient on trial visit received by a [*state hospital*] **facility**  
 18 for the mentally ill under this section shall be admitted to the [*hospital*]  
 19 **facility** without examination as to his sanity before any court or judge  
 20 having jurisdiction over such matters.

21 Section 28. ORS 426.385 is amended to read:

22 426.385. (1) **Every mentally ill person committed to the division shall**  
 23 **have the right to:**

24 (a) **Communicate freely in person, by sending and receiving sealed mail,**  
 25 **and by reasonable access to telephones;**

26 (b) **Wear his own clothing;**

27 (c) **Keep his personal possessions, including toilet articles;**

28 (d) **Religious freedom;**

29 (e) **A private storage area with free access thereto;**

30 (f) **Be furnished with a reasonable supply of writing materials and**  
 31 **stamps;**

32 (g) **A written treatment plan, kept current with his progress;**

33 (h) **Be represented by counsel whenever his substantial rights may be**  
 34 **affected;**

- 1 (i) Petition for a writ of habeas corpus;
- 2 (j) Not be required to perform routine labor tasks of the facility ex-
- 3 cept those essential for his treatment;
- 4 (k) Be given reasonable compensation for all work performed other
- 5 than personal housekeeping duties;
- 6 (L) Such other rights as may be specified by regulation; and
- 7 (m) Exercise all civil rights in the same manner and with the same
- 8 effect as one not admitted to the facility, including, but not limited to,
- 9 the right to dispose of property, execute instruments, make purchases,
- 10 enter contractual relationships, and vote, unless he has been adjudicated
- 11 incompetent and has not been restored to legal capacity.
- 12 (2) Mentally ill persons committed to the division shall have the
- 13 right to be free from potentially unusual or hazardous treatment proce-
- 14 dures, including lobotomy and electro-shock therapy, unless they have
- 15 given their express and informed consent. This right may be denied to
- 16 such persons for good cause only by the director of the facility in which the
- 17 person is confined, or his designee, but only after consultation with and
- 18 approval of an independent examining physician. Any denial shall be
- 19 entered into the patient's treatment record and shall include the reasons
- 20 for the denial.
- 21 (3) Mechanical restraints shall not be applied to a person admitted
- 22 to a [state hospital] facility unless it is determined by the [superintendent]
- 23 chief medical officer of the [hospital] facility or his designee to be re-
- 24 quired by the medical needs of the person. Every use of a mechanical
- 25 restraint and the reasons therefor shall be made a part of the clinical
- 26 record of the person [under] over the signature of the [superintendent]
- 27 chief medical officer of the [hospital] facility or his designee.
- 28 **SECTION 29.** ORS 426.375 is repealed.
- 29 **SECTION 30.** Section 31 of this 1973 Act is added to and made a part
- 30 of ORS chapter 426.
- 31 **SECTION 31.** A simple and clear statement of rights guaranteed to
- 32 patients committed to the division shall be prominently posted in each
- 33 room frequented by patients in all facilities housing such patients. A

1 copy of the statement shall be given to each patient upon admission and

2 sent, upon request, to his legal counsel, guardian, relative or friend.

3 Section 32. ORS 426.215 is amended to read:

4 426.215. (1) Any peace officer may take into custody any person who

5 he has reasonable cause to believe is dangerous to himself or to any other

6 person and who he has reasonable cause to believe is in need of immediate

7 care, custody or treatment for mental illness. If a peace officer takes a

8 person into custody under this section, he shall remove him forthwith to:

9 (a) A hospital, described in subsection (4) of this section, in the

10 county where the person is taken into custody; or

11 (b) Such a hospital in another county after having obtained a certifi-

12 cate from a physician licensed to practice medicine and surgery by the

13 Board of Medical Examiners for the State of Oregon stating that the travel

14 will not be detrimental to the person's physical health and that the person

15 is dangerous to himself or to any other person and is in need of immediate

16 care or treatment for mental illness. Such physician shall personally

17 examine the allegedly mentally ill person within 24 hours prior to signing

18 the certificate.

19 (2) The superintendent or administrator of the hospital shall cause

20 the person to be examined forthwith by a staff physician. If the physician

21 finds the person to be in need of immediate care or treatment for mental

22 illness, the person shall be admitted as a patient. Otherwise he shall not

23 be retained in further custody under this section.

24 (3) The peace officer, after taking a person into custody under this

25 section, shall notify forthwith a court having probate jurisdiction in the

26 county in which the person was taken into custody of the fact of taking the

27 person into custody and the person's whereabouts. When the judge of such

28 a court is informed by a peace officer that a person is in custody, [within

29 24 hours] the judge shall immediately commence proceedings pursuant

30 to sections 3 to 12 of this 1973 Act. [issue a warrant directing that such

31 person be brought before the court within 24 hours after issuance of the

32 warrant, and a hearing shall be held as provided in ORS 426.070 to 426.170.]

33 (4) The superintendent or administrator of a hospital maintaining

34 adequate staff and facilities for the care and treatment of persons alleged

1 to be mentally ill and approved by the [*Mental Health Division*] **division**  
2 may receive and retain therein as a patient for a period not to exceed  
3 five days any person alleged to be in need of immediate care or treat-  
4 ment for mental illness as provided in this section. The expenses of such  
5 emergency care shall be paid by the county of residence of the person or,  
6 if he has no residence within the state, by the county in which the person  
7 is taken into custody, unless otherwise provided by law.

8 **(5) Persons hospitalized under this section shall receive the care, cus-**  
9 **tody and treatment required for their mental and physical health and**  
10 **safety, and the treating physician shall report such care, custody and**  
11 **treatment to the court as required in section 8 of this 1973 Act. All methods**  
12 **of treatment, including the prescription and administration of drugs,**  
13 **shall be the sole responsibility of the treating physician. However, such**  
14 **persons shall not be subject to potentially unusual or hazardous treatment**  
15 **procedures, including electro-shock therapy. The treating physician shall**  
16 **be notified immediately of any use of mechanical restraints on such per-**  
17 **sons. Every use of a mechanical restraint and the reasons therefor shall**  
18 **be made a part of the clinical record of the person over the signature of**  
19 **the treating physician.**

20 [(5)] **(6) No peace officer, hospital, physician or judge shall in any**  
21 **way be held criminally or civilly liable for actions pursuant to this section**  
22 **provided he acts in good faith, on probable cause and without malice.**

23 **SECTION 33.** This Act takes effect on July 1, 1974.



**SENATE AMENDMENTS TO  
SENATE BILL 510**

By COMMITTEE ON JUDICIARY

May 17

1 On page 2 of the printed bill, line 5, delete the second "and" and in the  
2 same line after "426.375" insert "; and prescribing an effective date".

3 On page 3, line 19, after "designee," insert "the two petitioning persons,".

4 In line 27, after the period insert "If the allegedly mentally ill person  
5 consents,".

6 In line 32, after the comma insert "a recommendation based upon".

7 On page 4, line 5, after the period insert "The person shall be given the  
8 opportunity to appear voluntarily at the hearing unless he fails to appear  
9 or unless he is detained pursuant to subsection (5) of this section.".

10 In line 12, delete "investigative" and insert "investigation".

11 In line 14, after the period delete the rest of the line.

12 Delete lines 15 through 17.

13 On page 7, line 4, after the comma insert "the person conducting the  
14 investigation,".

15 In line 6, delete "investigative" and insert "investigation".

16 On page 8, line 31, after "ill" insert "beyond a reasonable doubt".

17 On page 9, line 13, delete "45" and insert "180".

18 In line 21, delete "45" and insert "180".

19 On page 10, line 2, delete "90" and insert "180".

20 In line 21, delete "90" and insert "180".

21 In line 27, delete "90" and insert "180".

22 On page 11, line 16, after "person" insert "beyond a reasonable doubt".

23 In line 18, delete "90" and insert "180".

24 In line 19, delete "90" and insert "180".

25 Delete lines 23 through 30 and insert:

26 "Note: Section 18 was deleted by amendment. Subsequent sections  
27 were not renumbered.".

- 1 On page 13, line 6, after "incarcerated" insert ", unless the person rep-
- 2 resents an immediate and serious danger to hospital staff or facilities".
- 3 On page 14, line 24, delete "90" and insert "180".
- 4 On page 18, after line 22, insert:
- 5 **"SECTION 33. This Act takes effect on July 1, 1974."**



# Senate Bill 510

Sponsored by Senator BURBIDGE, Representative PECK, Senators BROWNE, J. BURNS, HALLOCK, ROBERTS, Representatives AuCOIN, DENSMORE, DERELI, FADELEY, GROENER, KAFOURY, KATZ, MARTIN, McCOY, OTTO, PAULUS, ROBERTS

## 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**.

Modifies provisions relating to involuntary commitment of mentally ill persons. Defines "mentally ill person." Provides for commitment to Mental Health Division rather than specific state hospital. Requires probable cause investigation prior to issuing citation. Defines conditions for treatment of persons detained for hearing. Establishes new hearing procedures and expands existing hearing procedures relating to involuntary commitments of mentally ill persons. Permits courts to allow mentally ill persons to participate in treatment programs on voluntary basis. Places time limitations on length of commitment. Provides for periodic hearings, upon petition of patient, to determine whether or not person should remain patient in facility. Requires that patient committed to division be given statement of rights guaranteed to him and that such statement be posted in certain rooms frequented by patients.

**NOTE:** Matter in **bold face** in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted; complete new sections begin with **SECTION**.

## A BILL FOR AN ACT

1  
2 Relating to involuntary commitments of mentally ill persons; creating new  
3 provisions; and amending ORS 426.005, 426.060, 426.070, 426.080, 426.090,  
4 426.100, 426.110, 426.120, 426.130, 426.140, 426.150, 426.160, 426.170, 426.215,  
5 426.280, 426.290, 426.300 and 426.385; and repealing ORS 426.375.

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

7 Section 1. ORS 426.005 is amended to read:

8 426.005. As used in ORS 426.005 to [426.350] **426.390**, unless the con-  
9 text requires otherwise [, "division" means the Mental Health Division.]:

10 (1) "Division" means the Mental Health Division.

11 (2) "Mentally ill person" means a person who, because of a mental  
12 disorder, is either:

13 (a) Dangerous to himself or others; or

14 (b) Unable to provide for his basic personal needs and is not receiving  
15 such care as is necessary for his health or safety.

16 (3) "Facility" means a state mental hospital, community hospital, resi-  
17 dential facility, detoxification center, day treatment facility, or such other  
18 facility as the Mental Health Division determines suitable, any of which  
19 may provide diagnosis and evaluation, medical care, detoxification, social  
20 services, or rehabilitation for committed mentally ill persons.

21 (4) "Director of the facility" means a superintendent of a state mental  
22 hospital, the chief of psychiatric services in a community hospital, or the  
23 person in charge of treatment and rehabilitation programs at other treat-  
24 ment facilities.

25 Section 2. ORS 426.060 is amended to read:

26 426.060. (1) Commitments to the [Oregon State Hospital, the F. H.  
27 Dammasch State Hospital and the Eastern Oregon Hospital and Training  
28 Center] **Mental Health Division** shall be made by the judge of any court  
29 having probate jurisdiction or, if the circuit court is not the probate court,  
30 the circuit court if its jurisdiction has been extended to include commit-

31 ment of the mentally ill pursuant to ORS 3.275 in any county of this state.  
32 (2) The Mental Health Division may, in its discretion and for reasons  
33 which are satisfactory to the division, direct any [judge to make his com-  
34 mitments] **court committed person** to [any hospital listed in subsection

1 (1) of this section] the facility best able to treat him. The authority of  
2 the division on such matters shall be final.

3 Section 3. ORS 426.070 is amended to read:

4 426.070. (1) The judge of any court having probate jurisdiction or,  
5 if the circuit court is not the probate court, the circuit court if its juris-  
6 diction has been extended to include commitment of the mentally ill pur-  
7 suant to ORS 3.275 in any county of this state, upon being notified in writ-  
8 ing under oath by two persons or by the county health officer or any magis-  
9 trate that any other person within the county is a mentally ill **person** and  
10 [by reason of such illness] is in need of treatment, care or custody, shall  
11 [cause the allegedly mentally ill person to be brought before him at such  
12 time and place as he may direct. If necessary, the judge may issue a war-  
13 rant of detention to the county health officer, or to the sheriff of the county,  
14 directing the officer to take such person into his custody and produce him  
15 at the time and place stated in the warrant.] **forthwith cause the community**  
16 **mental health program director, or his designee, to investigate to determine**  
17 **whether there is probable cause to believe that the person is in fact a men-**  
18 **tally ill person. The community mental health program director or his**  
19 **designee, the county health officer, any magistrate, any peace officer, pro-**  
20 **bation officer, physician attending the allegedly mentally ill person or the**  
21 **physician attached to a hospital or institution wherein the allegedly men-**  
22 **tally ill person is a patient shall in no way be held criminally or civilly**  
23 **liable for the making of such notification, provided he acts in good faith,**  
24 **on probable cause and without malice.**

25 (2) **The investigation conducted should, where possible, include an**  
26 **interview or examination of the allegedly mentally ill person in his home**  
27 **or other place familiar to the individual. The investigation should also,**  
28 **where possible, include an interview with the individual's relatives, neigh-**  
29 **bors and physician. The person conducting the investigation shall in no**  
30 **way be held criminally or civilly liable for the making of such investi-**  
31 **gation, provided he acts in good faith, on probable cause and without**  
32 **malice. Upon completion, the investigation report shall be promptly sub-**  
33 **mitted to the court.**

34 (3) **If the court, following the investigation, concludes that there is**

1 probable cause to believe that the person investigated is a mentally ill  
 2 person, it shall, through the issuance of a citation as provided in section 5  
 3 of this 1973 Act, cause the person to be brought before it at such time  
 4 and place as it may direct, for a hearing to make a determination whether  
 5 or not the person is mentally ill. The hearing may be held in a hospital,  
 6 the person's home, or in some other place convenient to the court and the  
 7 allegedly mentally ill person. If a person is detained pursuant to sub-  
 8 section (5) of this section, a hearing shall be held within 72 hours of the  
 9 commencement of his detention unless additional time is requested by him  
 10 or his attorney. The court may make such orders for the care and custody  
 11 of the person prior to the hearing as it deems necessary.

12 (4) A copy of the investigative report shall be made available to the  
 13 allegedly mentally ill person as soon as possible after it is completed but  
 14 in any case prior to the hearing. The report shall be made available to the  
 15 examining physicians or other qualified persons as may be recommended  
 16 by the division, to assist them in their evaluation of the allegedly mentally  
 17 ill person, as provided for in section 10 of this 1973 Act.

18 (5) If the court finds that there is probable cause to believe that failure  
 19 to take the allegedly mentally ill person into custody pending the investi-  
 20 gation or hearing would pose an imminent and serious danger to the person  
 21 or to others, the judge may issue a warrant of detention to the community  
 22 mental health program director, the county health officer or to the sheriff  
 23 of the county, directing that person or his designee to take such person  
 24 into his custody and produce him at the time and place stated in the  
 25 warrant.

26 (6) Persons taken into custody under subsection (5) of this section  
 27 shall receive the care, custody and treatment required for their mental and  
 28 physical health and safety, and the treating physician shall report such  
 29 care, custody and treatment to the court as required in section 8 of this  
 30 1973 Act. All methods of treatment, including the prescription and admin-  
 31 istration of drugs, shall be the sole responsibility of the treating physician.  
 32 However, such persons shall not be subject to potentially unusual or haz-  
 33 ardous treatment procedures, including electro-shock therapy. The treat-  
 34 ing physician shall be notified immediately of any use of mechanical re-

1 straits on such persons. Every use of a mechanical restraint and the  
 2 reasons therefor shall be made a part of the clinical record of the person  
 3 over the signature of the treating physician.

4 Section 4. ORS 426.080 is amended to read:

5 426.080. The [officer] person serving [the] a warrant of detention  
 6 [and] or the citation provided for by ORS 426.090 shall, immediately after  
 7 service thereof, make a return upon the original warrant or citation show-  
 8 ing the time, place and manner of such service and file it with the clerk  
 9 of the court. In executing the warrant of detention or citation, the [offi-  
 10 cer] person has all the powers provided by ORS 133.290 and 161.235 to  
 11 161.245 and may require the assistance of any peace officer or other per-  
 12 son.

13 Section 5. ORS 426.090 is amended to read:

14 426.090. The judge shall cause a citation to issue to the allegedly men-  
 15 tally ill person stating the nature of the information filed concerning him  
 16 and the specific reasons he is believed to be mentally ill. The citation  
 17 shall further contain a notice of the time and place of the commitment  
 18 hearing, the right to representation by legal counsel, the right to have  
 19 legal counsel appointed if the person is unable to afford counsel, the right  
 20 to subpoena witnesses in behalf of himself to the hearing and such other  
 21 information as the court may direct. The citation shall be served upon  
 22 such person [by the officer who takes such person into custody,] by deliv-  
 23 ering a duly certified copy of the original thereof to him in person no less  
 24 than 24 hours prior to the hearing.

25 Section 6. ORS 426.100 is amended to read:

26 426.100 (1) [At the time of the hearing before the court, prescribed  
 27 by ORS 426.070 to 426.150, the court shall inform the allegedly mentally  
 28 ill person that he has the right to legal counsel during the proceedings and  
 29 that, at his request, or the request of his legal guardian, relative or friend,  
 30 the court may postpone the hearing up to 72 hours in order to allow the  
 31 allegedly mentally ill person an opportunity to obtain counsel, and sub-  
 32 pena witnesses in his behalf to the hearing.] At the time the allegedly  
 33 mentally ill person is brought before the court, the court shall advise him  
 34 of the reason he has been brought before the court, the nature of the pro-

1 ceedings and the possible results of the proceedings. The court shall also  
 2 advise the allegedly mentally ill person that he is entitled to subpoena wit-  
 3 nesses on his behalf and to have an attorney represent him during the pro-  
 4 ceedings, and that if he does not have funds with which to retain an attor-  
 5 ney, the court will appoint an attorney to represent him without cost. If  
 6 the allegedly mentally ill person does not request an attorney, his legal  
 7 guardian, relative or friend may request the assistance of legal counsel on  
 8 his behalf.

9 (2) If no request for legal counsel is made, the court [*may, at its dis-*  
 10 *cretion,*] shall appoint legal counsel **unless counsel is expressly, knowingly**  
 11 **and intelligently refused by the person.**

12 (3) If the person is [*indigent*] **unable to afford counsel**, the court [*may*]  
 13 **shall** provide by order for payment of a reasonable attorney fee by the  
 14 county of residence of the allegedly mentally ill person. In all cases such  
 15 legal counsel shall be present at the hearing and examination and may  
 16 examine all witnesses offering testimony, and otherwise represent such  
 17 person.

18 (4) [*Where legal counsel is requested or provided, the court may con-*  
 19 *tinue the hearing for up to 72 hours after counsel has been obtained by*  
 20 *appointment or otherwise and may make such orders for the care and*  
 21 *custody of the person during that period as it deems necessary.*] **If the**  
 22 **allegedly mentally ill person, his attorney or guardian requests, the court**  
 23 **shall postpone the hearing in order to allow the person to prepare for the**  
 24 **hearing. The court shall not postpone the hearing for more than 72 hours**  
 25 **unless the person, his counsel, or guardian specifically requests a longer**  
 26 **time to prepare. The court may make such orders for the care and custody**  
 27 **of the person during such postponement as it deems necessary.**

28 **SECTION 7.** Sections 8 and 9 of this 1973 Act are added to and made  
 29 a part of ORS chapter 426.

30 **SECTION 8.** The court shall be fully advised by the community men-  
 31 tal health program director, or when the person has been detained under  
 32 subsection (5) of section 3 or section 32 of this 1973 Act, by the treating  
 33 physician of all drugs and other treatment known to have been adminis-

1 tered to the allegedly mentally ill person which may substantially affect  
 2 his ability to prepare for or function effectively at the hearing.

3 **SECTION 9.** The allegedly mentally ill person shall have the right to  
 4 cross-examine all witnesses, the examining physicians or other qualified  
 5 persons recommended by the division who have examined the persons.  
 6 Neither the investigative report nor any part thereof shall be introduced in  
 7 evidence without the express consent of the allegedly mentally ill person.

8 Section 10. ORS 426.110 is amended to read:

9 426.110. The judge shall appoint at least two competent physicians  
 10 licensed by the State Board of Medical Examiners for the State of Oregon  
 11 to practice medicine and surgery, one of whom may be the county health  
 12 officer, to examine the person as to his mental condition. **In lieu of one of**  
 13 **the physicians, the court may appoint one qualified person as recommended**  
 14 **by the division, to examine the person.** [*In counties having a population*  
 15 *of 10,000 or less, as determined by the latest federal census, the judge may*  
 16 *appoint only one such physician, who may be the county health officer, but*  
 17 *the judge may, in his discretion, appoint additional physicians, qualified as*  
 18 *required by this section, to assist in the examination of the person as to*  
 19 *his mental condition.*] If the allegedly mentally ill person requests in  
 20 writing that one additional examining physician **or qualified person as**  
 21 **recommended by the division** be appointed, or, if in the absence of such  
 22 request by the allegedly mentally ill person, such request is made by the  
 23 legal guardian, relative or friend of the alleged mentally ill person, the  
 24 court shall appoint a physician [*nominated in such request*], **or other**  
 25 **qualified person as recommended by the division nominated in such re-**  
 26 **quest**; however, the court shall not appoint more than one such additional  
 27 examining physician **or qualified person**, who shall be a resident of the  
 28 State of Oregon.

29 Section 11. ORS 426.120 is amended to read:

30 426.120. The [*physicians*] **persons appointed to conduct the examination**  
 31 **shall examine the person as to his mental condition and [*report*] make**  
 32 **their separate [*or joint findings*] reports** in writing, under oath, to the  
 33 court, which [*findings*] **reports** immediately shall be filed with the clerk  
 34 of the court. If the examining [*physicians*] **persons** find, and show by their

1 verified [findings] reports, that the person examined is a mentally ill per-  
 2 son, [and by reason of mental illness is in need of treatment, care or cus-  
 3 tody, and if the judge, after having examined the verified findings and  
 4 considered all competent evidence submitted to him, is of the opinion that  
 5 the person is in need of treatment, care or custody, he shall adjudge the  
 6 person to be mentally ill and order him committed to the proper state  
 7 hospital. The order of commitment shall direct that the mentally ill per-  
 8 son be promptly and safely delivered to the superintendent of the proper  
 9 state hospital, as provided in ORS 426.150.] the reports shall include a  
 10 recommendation as to the type of treatment facility best calculated to  
 11 help the person recover from his mental illness. Each report shall also ad-  
 12 vise the court whether in the opinion of the examiner the mentally ill per-  
 13 son would cooperate with and benefit from a program of voluntary  
 14 treatment.

15 Section 12. ORS 426.130 is amended to read:

16 426.130. [If the legal guardian, relative or friend of the mentally ill  
 17 person requests that he be allowed to care for him in a place satisfactory  
 18 to the judge, and shows that he, such applicant, is competent and finan-  
 19 cially able to care for the mentally ill person, and also if it appears to the  
 20 court that the mentally ill person is not criminally inclined or violent, and  
 21 that proper care and treatment can and will be provided him by such  
 22 applicant, and that it would be to the best interest of the mentally ill per-  
 23 son to be paroled, the judge may order that the mentally ill person be  
 24 released and placed in the care and custody of such applicant. The order  
 25 may be revoked and the mentally ill person committed to an Oregon state  
 26 hospital whenever, in the opinion of the judge, it is for the best interest  
 27 of the mentally ill person.] After hearing all of the evidence, and review-  
 28 ing the findings of the examining persons, the court shall determine  
 29 whether the person is mentally ill. If in the opinion of the court the person  
 30 is not mentally ill, he shall be discharged forthwith. If in the opinion of  
 31 the court the person is mentally ill the court may order as follows:  
 32 (1) If the mentally ill person is willing and able to participate in  
 33 treatment on a voluntary basis, and the court finds that he will probably  
 34 do so, the court shall order the release of the individual and dismiss the  
 case.

1 (2) If the legal guardian, relative or friend of the mentally ill person  
 2 requests that he be allowed to care for him during the period of commit-  
 3 ment in a place satisfactory to the judge, and shows that he, such applicant,  
 4 is able to care for the mentally ill person and that there are adequate  
 5 financial resources available for the care of the mentally ill person, the  
 6 court may order that the mentally ill person be conditionally released and  
 7 placed in the care and custody of such applicant. The order may be revoked  
 8 and the mentally ill person committed to the division whenever, in the  
 9 opinion of the court, it is in the best interest of the mentally ill person.

10 (3) If in the opinion of the court voluntary treatment or conditional  
 11 release are not in the best interest of the mentally ill person, the court  
 12 may order the commitment of the individual to the division for treatment.  
 13 The commitment shall be for a period of time not to exceed 45 days.

14 SECTION 13. Sections 14 to 20 of this 1973 Act are added to and  
 15 made a part of ORS chapter 426.

16 SECTION 14. At any time after commitment by the court, the per-  
 17 son, with the approval of the division, may change his status to that of  
 18 a voluntary patient. Notwithstanding ORS 426.220, any person who alters  
 19 his status to that of a voluntary patient under this section shall be released  
 20 from the division within 72 hours of his request for release.

21 SECTION 15. At the end of the 45-day period of commitment, any  
 22 person whose status has not been changed to voluntary shall be released  
 23 unless the division certifies to the court in the county where the treating  
 24 facility is located that the patient is still mentally ill and in need of further  
 25 treatment. If such certification is made, the person will not be released, but  
 26 the division shall forthwith issue a copy of the certification to the person.  
 27 The certification shall be served upon the patient by a physician or regis-  
 28 tered nurse at the facility or director of the facility wherein the patient is  
 29 confined. The person serving the citation shall inform the court in writing  
 30 that service has been made and the date thereof. The certification shall  
 31 advise the person that the division has requested that his commitment be  
 32 continued for an additional period of time; that he may consult with an  
 33 attorney and that an attorney will be provided for him without cost to  
 34 him if he is unable to afford an attorney; that if he does not protest this

1 further commitment within 14 days, his commitment will be continued  
 2 for an indefinite period of time up to 90 days; that if he does protest a fur-  
 3 ther period of commitment, he is entitled to a hearing before the court on  
 4 whether his commitment should be continued; that he may protest either  
 5 orally or in writing by signing the form accompanying the certification;  
 6 that he is entitled to have a physician or other qualified person as recom-  
 7 mended by the division, other than a member of the staff at the facility  
 8 where he is confined, examine him and report to the court the results of  
 9 his examination; that he may subpoena witnesses and offer evidence on his  
 10 own behalf at the hearing; that if he is without funds to retain an attorney  
 11 or an examining physician or qualified person as recommended by the  
 12 division, the court will appoint such attorney, physician or qualified  
 13 person at no cost to him. The person serving the certification shall read  
 14 and deliver the certification to the person and ask him whether he protests  
 15 a further period of commitment. The person may protest further com-  
 16 mitment either orally or by signing a simple protest form to be given to  
 17 the person with the certification. If the person does not protest a further  
 18 period of commitment within 14 days of service of the certification, the  
 19 division shall so notify the court and the court shall, without further  
 20 hearing, order the commitment of the person for an additional indefinite  
 21 period of time up to 90 days.

22 **SECTION 16.** When the person protests a further period of commit-  
 23 ment the division shall, forthwith, notify the court and the court shall  
 24 have the person brought before it and shall again advise him that the  
 25 division has requested that his commitment be continued for an additional  
 26 period of time and that if he does not protest this commitment his com-  
 27 mitment will be continued for an indefinite period of time up to 90 days.  
 28 He shall also be informed of the rights set forth in section 15 of this 1973  
 29 Act.

30 **SECTION 17.** If the person requests a hearing, the hearing shall be  
 31 conducted as promptly as possible and at such time and place as the court  
 32 may direct. If the person requests a continuance in order to prepare for the  
 33 hearing or to obtain counsel to represent him, the court may grant a con-  
 34 tinuance for a reasonable period of time for this purpose. In the event the

1 person requests the appointment of an attorney and is without funds to  
 2 retain an attorney, the court shall appoint an attorney to represent him at  
 3 no cost to the person. If no request for legal counsel is made, the court  
 4 shall appoint an attorney to represent the person unless legal counsel is  
 5 expressly, knowingly and intelligently refused by the person. If the per-  
 6 son requests an examination by a physician or other qualified person as  
 7 recommended by the division and is without funds to retain such person  
 8 for purposes of the examination, the court shall appoint a physician or  
 9 other qualified person, other than a member of the staff from the facility  
 10 where the person is a patient, to examine the person at no expense to him  
 11 and to report to the court the results of the examination. The court shall  
 12 then conduct a hearing and after hearing the evidence and reviewing the  
 13 recommendations of the treating and examining physicians or other quali-  
 14 fied persons, the court shall determine whether the individual is still a  
 15 mentally ill person and in need of further treatment. If in the opinion of  
 16 the court the individual is still a mentally ill person and in need of  
 17 further treatment, the court may order his commitment to the division  
 18 for an additional indefinite period of time up to 90 days. At the end of  
 19 the 90-day period, the patient shall be released unless the division again  
 20 certifies to the committing court that the person is still a mentally ill  
 21 person and in need of further treatment, in which event the procedures  
 22 set forth in sections 15 to 17 of this 1973 Act shall be followed.

23 **SECTION 18.** After a person has been in the custody of the division  
 24 involuntarily for one year immediately preceding a certification that he  
 25 is still mentally ill and in need of further treatment, additional orders  
 26 of commitment may be for indefinite periods of time up to 180 days. No  
 27 person on trial visit may be committed for more than 90 days. If such a  
 28 person is still mentally ill and in need of further treatment, additional  
 29 orders of commitment may be made under provisions set forth in sections  
 30 15 to 17 of this 1973 Act.

31 **SECTION 19.** Costs of hearings conducted pursuant to section 17 of  
 32 this 1973 Act, and the fees for physicians, other qualified persons, and  
 33 attorneys appointed thereunder, shall be charged to the county of the

1 person's residence in the same manner provided by ORS 426.310, whether  
 2 the hearing is held in the county of residence or county of the treating  
 3 facility.

4 **SECTION 20.** Sections 14 to 17 of this 1973 Act do not restrict or limit  
 5 the discharge procedures set forth in ORS 426.300.

6 Section 21. ORS 426.160 is amended to read:

7 426.160. The judge shall cause to be recorded in the court records a  
 8 full account of proceedings had at [the] all [hearing] hearings and [exam-  
 9 ination] examinations conducted pursuant to this 1973 Act, together with  
 10 the [judgment] judgments and [order] orders of the court and a copy of  
 11 the orders issued. The account of the proceedings and transcripts of testi-  
 12 mony if taken thereat shall be delivered to the county clerk who shall  
 13 cause it to be sealed and neither the account of the proceedings nor the  
 14 transcript of testimony if taken shall be disclosed to any person except:

15 (1) As provided in ORS 426.170;

16 (2) Upon request of the person subject to the proceedings, his legal  
 17 representatives, or his attorney; or

18 (3) Pursuant to court order.

19 Section 22. ORS 426.300 is amended to read:

20 426.300. (1) The [superintendent of any state hospital wherein are  
 21 confined persons adjudged to be mentally diseased] division [may] shall,  
 22 by filing [his] a written certificate with the last committing court and the  
 23 court of residence, discharge any patient from court commitment, except  
 24 one held upon an order of a court or judge having criminal jurisdiction in  
 25 an action or proceeding arising out of criminal offense when [he is con-  
 26 vinced that the patient is sufficiently recovered to be of no danger to him-  
 27 self or others and that the discharge is in the best interest of the patient]  
 28 in its opinion the individual is no longer a mentally ill person or when in  
 29 its opinion the transfer of the individual to a voluntary status is in the  
 30 best interest of the treatment of the patient.

31 (2) The [superintendent of a state institution for the mentally ill or  
 32 mentally retarded] division or the administrator of the University State Tu-  
 33 berculosis Hospital may sign applications for public assistance on behalf of  
 34 those patients who may be eligible for public assistance.

1 Section 23. ORS 426.140 is amended to read:

2 426.140. (1) No person, not incarcerated upon a criminal charge, who  
 3 has been adjudged a mentally ill person or one against whom proceed-  
 4 ings have been instituted shall be confined in any prison, jail or other in-  
 5 closure where those charged with crime or violation of a municipal or-  
 6 dinance are incarcerated [, if a place suitable for the comfortable, safe and  
 7 humane confinement of such person is available].

8 (2) No alleged mentally ill person who has been taken into custody  
 9 shall be confined, either before or after the hearing and examination,  
 10 without an attendant in direct charge of him; and, if not confined in a  
 11 [county] community hospital, the county health officer or sheriff having  
 12 such person in his custody shall select some suitable person to act as  
 13 attendant.

14 Section 24. ORS 426.150 is amended to read:

15 426.150. (1) Upon receipt of the order of commitment, the health officer  
 16 or the sheriff, as the case may be, shall take such mentally ill person into  
 17 his custody, and insure his safekeeping and proper care until delivery is  
 18 made to [the superintendent of the proper state hospital or a designated  
 19 employe thereof] the division. Immediately after being notified of the  
 20 court's order of commitment of such mentally ill person, the county health  
 21 officer or the sheriff shall notify by telephone, if possible, [the superin-  
 22 tendent of the state hospital to which the person was committed,] such  
 23 person as the division shall designate informing him of the fact that such  
 24 person is being held awaiting delivery, and also stating the name, [char-  
 25 acter,] condition, sex and age of such person. Except as provided in sub-  
 26 section (2) of this section, the [superintendent] division shall thereupon  
 27 [designate an employe of the hospital to] take custody of such person  
 28 [and safely transport him to the state hospital]. [The employe] A designee  
 29 of the division, accompanied by such assistants as the [superintendent]  
 30 division may deem necessary, shall proceed to the place where the person  
 31 is to be delivered into his custody, and, upon demand shall be given custody  
 32 of the committed mentally ill person, together with the certified record  
 33 required by ORS 426.170. The [employe] designee shall issue appropriate  
 34 receipts therefor and immediately proceed to transport the committed

1 mentally ill person safely to the [*state hospital to which he has been com-*  
2 *mitted,*] **facility designated by the division** and there make delivery of  
3 him and the record to the [*superintendent*] **director** or a designated em-  
4 ploye of the [*hospital*] **facility** .

5 (2) The committing judge, upon approval of the examining [*physician*]  
6 **physicians or other qualified persons as recommended by the division**  
7 and upon request of a guardian, friend or relative of the mentally ill per-  
8 son, may authorize the guardian, friend or relative to transport the per-  
9 son to the designated [*hospital*] **facility** when the committing judge de-  
10 termines that such means of transportation would not be detrimental to the  
11 welfare of the mentally ill person or to the public.

12 Section 25. ORS 426.170 is amended to read:

13 426.170. If any person is adjudged mentally ill and ordered committed  
14 to [*a state hospital*] **the division** , a copy of the complete record in the case  
15 certified to by the [*county*] clerk of the county, shall be given to the health  
16 officer of the county, or to the sheriff, for delivery to the [*superintendent*]  
17 **director** of the [*state hospital*] **facility** to which such mentally ill person  
18 is [*committed*] **assigned** . The record shall include the name, residence,  
19 nativity, sex and age of such mentally ill person and all other information  
20 that may be required by the rules and regulations promulgated by the  
21 Mental Health Division.

22 Section 26. ORS 426.280 is amended to read:

23 426.280. [*A superintendent*] **The division** may grant a trial visit to a  
24 patient for any period of time , **up to 90 days**, under such general conditions  
25 [*prescribed by the Mental Health Division*] **as it shall prescribe during**  
26 **such patient's period of commitment. The physician and the [*hospital*]**  
27 **facility** granting a trial visit to a patient, the superintendent or director  
28 thereof, the Administrator of the Mental Health Division and the chief  
29 medical officer of the [*hospital*] **facility** shall not be liable for a patient's  
30 expenses while on trial visit, nor shall the superintendent or director of  
31 any such [*hospital*] **facility, the physician responsible for the patient's re-**  
32 **lease** , the Administrator of the Mental Health Division or the chief medical  
33 officer of the [*hospital*] **facility** be liable for any damages whatsoever

1 that are sustained by any person on account of the misconduct of such pa-  
2 tient while on trial visit.

3 Section 27. ORS 426.290 is amended to read:

4 426.290. (1) If a written complaint against a patient on trial visit from  
5 [*a state hospital for the mentally ill*] **the division** is received by [*a super-*  
6 *intendent of a state hospital for the mentally ill*] **the division** and the com-  
7 plaint is sworn to by a citizen of Oregon before an officer qualified to ad-  
8 minister an oath, the patient named in the complaint shall be sent to  
9 and received by a [*state hospital*] **facility** for the mentally ill **designated**  
10 **by the division** . If the acts complained of are such as to indicate to  
11 the examining physician of the receiving [*hospital*] **facility** that the patient  
12 should no longer be permitted to remain on trial visit, the patient shall be  
13 admitted thereto.

14 (2) Upon voluntary application to be admitted thereto, every patient  
15 on trial visit must be received by [*a state hospital for the mentally ill*]  
16 **the facility from which he was released on trial visit** .

17 (3) Every patient on trial visit received by a [*state hospital*] **facility**  
18 for the mentally ill under this section shall be admitted to the [*hospital*]  
19 **facility** without examination as to his sanity before any court or judge  
20 having jurisdiction over such matters.

21 Section 28. ORS 426.385 is amended to read:

22 426.385. (1) **Every mentally ill person committed to the division shall**  
23 **have the right to:**

24 (a) **Communicate freely in person, by sending and receiving sealed mail,**  
25 **and by reasonable access to telephones;**

26 (b) **Wear his own clothing;**

27 (c) **Keep his personal possessions, including toilet articles;**

28 (d) **Religious freedom;**

29 (e) **A private storage area with free access thereto;**

30 (f) **Be furnished with a reasonable supply of writing materials and**  
31 **stamps;**

32 (g) **A written treatment plan, kept current with his progress;**

33 (h) **Be represented by counsel whenever his substantial rights may be**  
34 **affected;**

- 1 (i) Petition for a writ of habeas corpus;
- 2 (j) Not be required to perform routine labor tasks of the facility ex-
- 3 cept those essential for his treatment;
- 4 (k) Be given reasonable compensation for all work performed other
- 5 than personal housekeeping duties;
- 6 (L) Such other rights as may be specified by regulation; and
- 7 (m) Exercise all civil rights in the same manner and with the same
- 8 effect as one not admitted to the facility, including, but not limited to,
- 9 the right to dispose of property, execute instruments, make purchases,
- 10 enter contractual relationships, and vote, unless he has been adjudicated
- 11 incompetent and has not been restored to legal capacity.
- 12 (2) Mentally ill persons committed to the division shall have the
- 13 right to be free from potentially unusual or hazardous treatment proce-
- 14 dures, including lobotomy and electro-shock therapy, unless they have
- 15 given their express and informed consent. This right may be denied to
- 16 such persons for good cause only by the director of the facility in which the
- 17 person is confined, or his designee, but only after consultation with and
- 18 approval of an independent examining physician. Any denial shall be
- 19 entered into the patient's treatment record and shall include the reasons
- 20 for the denial.
- 21 (3) Mechanical restraints shall not be applied to a person admitted
- 22 to a [state hospital] facility unless it is determined by the [superintendent]
- 23 chief medical officer of the [hospital] facility or his designee to be re-
- 24 quired by the medical needs of the person. Every use of a mechanical
- 25 restraint and the reasons therefor shall be made a part of the clinical
- 26 record of the person [under] over the signature of the [superintendent]
- 27 chief medical officer of the [hospital] facility or his designee.
- 28 **SECTION 29.** ORS 426.375 is repealed.
- 29 **SECTION 30.** Section 31 of this 1973 Act is added to and made a part
- 30 of ORS chapter 426.
- 31 **SECTION 31.** A simple and clear statement of rights guaranteed to
- 32 patients committed to the division shall be prominently posted in each
- 33 room frequented by patients in all facilities housing such patients. A

- 1 copy of the statement shall be given to each patient upon admission and
- 2 sent, upon request, to his legal counsel, guardian, relative or friend.
- 3 Section 32. ORS 426.215 is amended to read:
- 4 426.215. (1) Any peace officer may take into custody any person who
- 5 he has reasonable cause to believe is dangerous to himself or to any other
- 6 person and who he has reasonable cause to believe is in need of immediate
- 7 care, custody or treatment for mental illness. If a peace officer takes a
- 8 person into custody under this section, he shall remove him forthwith to:
- 9 (a) A hospital, described in subsection (4) of this section, in the
- 10 county where the person is taken into custody; or
- 11 (b) Such a hospital in another county after having obtained a certifi-
- 12 cate from a physician licensed to practice medicine and surgery by the
- 13 Board of Medical Examiners for the State of Oregon stating that the travel
- 14 will not be detrimental to the person's physical health and that the person
- 15 is dangerous to himself or to any other person and is in need of immediate
- 16 care or treatment for mental illness. Such physician shall personally
- 17 examine the allegedly mentally ill person within 24 hours prior to signing
- 18 the certificate.
- 19 (2) The superintendent or administrator of the hospital shall cause
- 20 the person to be examined forthwith by a staff physician. If the physician
- 21 finds the person to be in need of immediate care or treatment for mental
- 22 illness, the person shall be admitted as a patient. Otherwise he shall not
- 23 be retained in further custody under this section.
- 24 (3) The peace officer, after taking a person into custody under this
- 25 section, shall notify forthwith a court having probate jurisdiction in the
- 26 county in which the person was taken into custody of the fact of taking the
- 27 person into custody and the person's whereabouts. When the judge of such
- 28 a court is informed by a peace officer that a person is in custody, [within
- 29 24 hours] the judge shall immediately commence proceedings pursuant
- 30 to sections 3 to 12 of this 1973 Act. [issue a warrant directing that such
- 31 person be brought before the court within 24 hours after issuance of the
- 32 warrant, and a hearing shall be held as provided in ORS 426.070 to 426.170.]
- 33 (4) The superintendent or administrator of a hospital maintaining
- 34 adequate staff and facilities for the care and treatment of persons alleged

1 to be mentally ill and approved by the [*Mental Health Division*] **division**  
2 may receive and retain therein as a patient for a period not to exceed  
3 five days any person alleged to be in need of immediate care or treat-  
4 ment for mental illness as provided in this section. The expenses of such  
5 emergency care shall be paid by the county of residence of the person or,  
6 if he has no residence within the state, by the county in which the person  
7 is taken into custody, unless otherwise provided by law.

8 **(5) Persons hospitalized under this section shall receive the care, cus-**  
9 **tody and treatment required for their mental and physical health and**  
10 **safety, and the treating physician shall report such care, custody and**  
11 **treatment to the court as required in section 8 of this 1973 Act. All methods**  
12 **of treatment, including the prescription and administration of drugs,**  
13 **shall be the sole responsibility of the treating physician. However, such**  
14 **persons shall not be subject to potentially unusual or hazardous treatment**  
15 **procedures, including electro-shock therapy. The treating physician shall**  
16 **be notified immediately of any use of mechanical restraints on such per-**  
17 **sons. Every use of a mechanical restraint and the reasons therefor shall**  
18 **be made a part of the clinical record of the person over the signature of**  
19 **the treating physician.**

20 [(5)] **(6) No peace officer, hospital, physician or judge shall in any**  
21 **way be held criminally or civilly liable for actions pursuant to this section**  
22 **provided he acts in good faith, on probable cause and without malice.**

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# SENATE BILL BACK

▼ CROSS OUT INAPPLICABLE WORDS ▼

BILL  
~~RESOLUTION~~ } NUMBER 510  
~~MEMORIAL~~

1

Title: **RELATING TO INVOLUNTARY COMMITMENTS OF MENTALLY ILL PERSONS; CREATING NEW PROVISIONS; AND AMENDING ORS 426.005, 426.060, 426.070, 426.080, 426.090, 426.100, 426.110, 426.120, 426.130, 426.140, 426.150, 426.160, 426.170, 426.215, 426.280, 426.290, 426.300 and 426.385; REPEAL-**

Principal Sponsors: **ING ORS 426.375.**

Senator **Burbidge** and Representative **Peck**

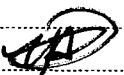
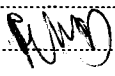
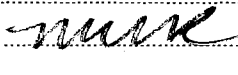
KAB



## ADDITIONAL SPONSORS

SENATE

HOUSE

Atiyeh .....	Akeson 	Macpherson .....
Boe .....	AuCoin 	Magruder .....
Browne 	Bazett .....	Markham 
Burbidge 	Blumenauer .....	Martin 
Burns, J. 	Bunn .....	Marx 
Burns, K. 	Burrows .....	McCoy 
Carson .....	Byers .....	Morris .....
Cook .....	Cherry .....	Oakes .....
Eivers .....	Cole .....	Otto 
Fadeley 	Densmore 	Patterson .....
Groener 	Dereli 	Paulus 
Hallock 	Elliott .....	Peck .....
Hartung .....	Eymann .....	Perry .....
Heard .....	Fadeley 	Priestley .....
Holmstrom .....	Gilmour .....	Ragsdale .....
Howard .....	Grannell .....	Rieke .....
Hoyt .....	Groener 	Roberts 
Jernstedt .....	Gwinn .....	Skelton .....
Macpherson .....	Hampton .....	Stevenson .....
Mahoney .....	Hanneman .....	Stults, D. ....
Meeker .....	Hansell .....	Stults, R. ....
Newbry .....	Ingalls .....	Sumner .....
Ouderkirk .....	Johnson, L. ....	Walden .....
Potts .....	Johnson, S. ....	Whallon .....
Ripper .....	Jones .....	Whitehead .....
Roberts 	Kafoury 	Whiting .....
Smith .....	Katz 	Wilhelms .....
Stevenson .....	Kinsey .....	Willits .....
Thorne .....	Lang .....	Wolfer, C. ....
Wingard .....	Lindquist .....	Wolfer, M. ....

Staple

Staple

A BILL FOR

AN ACT

Relating to involuntary commitments of mentally ill persons; creating new provisions; ~~and~~ amending ORS 426.005, 426.060, 426.070, 426.080, 426.090, 426.100, 426.110, 426.120, 426.130, 426.140, 426.150, 426.160, 426.170, 426.215, 426.280, 426.290, 426.300 and 426.385; <sup>and</sup> repealing ORS 426.375.

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

Section 1. ORS 426.005 is amended to read:

426.005. As used in ORS 426.005 to <sup>[426.350]</sup> 426.390, unless the context requires otherwise[, "division" means the Mental Health Division.]:

- (1) "Division" means the Mental Health Division.
- (2) "Mentally ill person" means a person who, because of a mental disorder, is either:
  - (a) Dangerous to himself or others; or
  - (b) Unable to provide for his basic personal needs and is not receiving such care as is necessary for his health or safety.
- (3) "Facility" means a state mental hospital, community hospital, residential facility, detoxification center, day treatment facility, or such other facility as the Mental

the Division determines suitable, any of which may provide diagnosis and evaluation, medical care, detoxification, social services, or rehabilitation for committed mentally ill persons.

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

Section 2. ORS 426.060 is amended to read:

426.060. (1) Commitments to the [Oregon State Hospital, F. H. Dammasch State Hospital and the Eastern Oregon Hospital and Training Center] Mental Health Division shall be made by the judge of any court having probate jurisdiction, and if the circuit court is not the probate court, the circuit court if its jurisdiction has been extended to include commitment of the mentally ill pursuant to ORS 3.275 in any county of this state.

(2) The Mental Health Division may, in its discretion and for reasons which are satisfactory to the division, direct any [judge to make his commitments] court committed person to [any hospital listed in subsection (1) of this section] the facility best able to treat him. The authority of the division on such matters shall be final.

Section 3. ORS 426.070 is amended to read:

426.070. (1) The judge of any court having probate jurisdiction or, if the circuit court is not the probate court, the circuit court if its jurisdiction has been extended to include commitment of the mentally ill pursuant

to ORS 3.275 in any county of this state, upon being notified in writing under oath by two persons or by the county health officer or any magistrate that any other person within the county is a mentally ill person and [by reason of such illness] is in need of treatment, care or custody, shall [cause the allegedly mentally ill person to be brought before him at such time and place as he may direct. If necessary, the judge may issue a warrant of detention to the county health officer, or to the sheriff of the county, directing the officer to take such person into his custody and produce him at the time and place stated in the warrant.] forthwith cause the community mental health program director, or his designee, to investigate to determine whether there is probable cause to believe that the person is in fact a mentally ill person. The community mental health program director or his designee, the county health officer, any magistrate, any peace officer, probation officer, physician attending the allegedly mentally ill person or the physician attached to a hospital or institution wherein the allegedly mentally ill person is a patient shall in no way be held criminally or civilly liable for the making of such notification, provided he acts in good faith, on probable cause and without malice.

(2) The investigation conducted should, where possible, include an interview or examination of the allegedly mentally ill person in his home or other place familiar to the individual. The investigation should also, where possible, include an interview with the individual's relatives, neighbors

and physician. The person conducting the investigation shall in no way be held criminally or civilly liable for the making of such investigation, provided he acts in good faith, on probable cause and without malice. Upon completion, the investigation report shall be promptly submitted to the court.

(3) If the court, following the investigation, concludes that there is probable cause to believe that the person investigated is a mentally ill person, it shall, through the issuance of a citation as provided in section 5 of this 1973 Act, cause the person to be brought before it at such time and place as it may direct, for a hearing to make a determination whether or not the person is mentally ill. The hearing may be held in a hospital, the person's home, or in some other place convenient to the court and the allegedly mentally ill person. If a person is detained pursuant to subsection (5) of this section, a hearing shall be held within 72 hours of the commencement of his detention unless additional time is requested by him or his attorney. The court may make such orders for the care and custody of the person prior to the hearing as it deems necessary.

(4) A copy of the investigative report shall be made available to the allegedly mentally ill person as soon as possible after it is completed but in any case prior to the hearing. The report shall be made available to the examining physicians or other qualified persons<sup>x</sup> as may be recommended by the division, to assist them in their evaluation of the allegedly mentally ill person, as provided for in section 10

of this 1973 Act.

(5) If the court finds that there is probable cause to believe that failure to take the allegedly mentally ill person into custody pending the investigation or hearing would pose an imminent and serious danger to the person or to others, the judge may issue a warrant of detention to the community mental health program director, the county health officer or to the sheriff of the county, directing that person or his designee to take such person into his custody and produce him at the time and place stated in the warrant.

(6) Persons taken into custody under subsection (5) of this section shall receive the care, custody and treatment required for their mental and physical health and safety, and the treating physician shall report such care, custody and treatment to the court as required in section 8 of this 1973 Act. All methods of treatment, including the prescription and administration of drugs, shall be the sole responsibility of the treating physician. However, such persons shall not be subject to potentially unusual or hazardous treatment procedures, including electro-shock therapy. The treating physician shall be notified immediately of any use of mechanical restraints on such persons. Every use of a mechanical restraint and the reasons therefor shall be made a part of the clinical record of the person over the signature of the treating physician.

Section 4. ORS 426.080 is amended to read:

426.080. The [officer] person serving [the] a warrant

of detention [and] or the citation provided for by ORS 426.090 shall, immediately after service thereof, make a return upon the original warrant or citation showing the time, place and manner of such service and file it with the clerk of the court. In executing the warrant of detention or citation, the [officer] person has all the powers provided by ORS 133.290 and 161.235 to 161.245 and may require the assistance of any peace officer or other person.

Section 5. ORS 426.090 is amended to read:

426.090. The judge shall cause a citation to issue to the allegedly mentally ill person stating the nature of the information filed concerning him and the specific reasons he is believed to be mentally ill. The citation shall further contain a notice of the time and place of the commitment hearing, the right to representation by legal counsel, <sup>the</sup> right to have legal counsel appointed if the person is unable to afford counsel, the right to subpoena witnesses in behalf of himself to the hearing and such other information as the court may direct. The citation shall be served upon such person [by the officer who takes such person into custody,] by delivering a duly certified copy of the original hereof to him in person ~~/~~ no less than 24 hours prior to the hearing.

Section 6. ORS 426.100 is amended to read:

426.100. (1) [At the time of the hearing before the court, prescribed by ORS 426.070 to 426.150, the court shall inform the allegedly mentally ill person that he has the

right to legal counsel during the proceedings and that, at his request, or the request of his legal guardian, relative or friend, the court may postpone the hearing up to 72 hours in order to allow the allegedly mentally ill person an opportunity to obtain counsel, and subpoena witnesses in his behalf to the hearing.] At the time the allegedly mentally ill person is brought before the court, the court shall advise him of the reason he has been brought before the court, the nature of the proceedings and the possible results of the proceedings. The court shall also advise the allegedly mentally ill person that he is entitled to subpoena witnesses on his behalf and to have an attorney represent him during the proceedings, and that if he does not have funds with which to retain an attorney, the court will appoint an attorney to represent him without cost. If the allegedly mentally ill person does not request an attorney, his legal guardian, relative or friend may request the assistance of legal counsel on his behalf.

(2) If no request for legal counsel is made, the court [may, at its discretion,] shall appoint legal counsel unless counsel is expressly, knowingly and intelligently refused by the person.

(3) If the person is [indigent] unable to afford counsel, the court [may] shall provide by order for payment of a reasonable attorney fee by the county of residence of the allegedly mentally ill person. In all cases such legal counsel shall be present at the hearing and examination and may ex-

amine all witnesses offering testimony, and otherwise represent such person.

(4) [Where legal counsel is requested or provided, the court may continue the hearing for up to 72 hours after counsel has been obtained by appointment or otherwise and may make such orders for the care and custody of the person during that period as it deems necessary.] If the allegedly mentally ill person, his attorney or guardian requests, the court shall postpone the hearing in order to allow the person to prepare for the hearing. The court shall not postpone the hearing for more than 72 hours unless the person, his counsel, or guardian specifically requests a longer time to prepare. The court may make such orders for the care and custody of the person during such postponement as it deems necessary.

4 Section 7. Sections 8 and 9 of this 1973 Act are added to and made a part of ORS chapter 426.

4 Section 8. The court shall be fully advised by the community mental health program director, or when the person has been detained under <sup>subsection (5) 4</sup> ~~section 3, subsection (5)~~ or section 32 of this 1973 Act, by the treating physician of all drugs and other treatment known to have been administered to the allegedly mentally ill person which may substantially affect his ability to prepare for or function effectively at the hearing.

4 Section 9. The allegedly mentally ill person shall have the right to cross-examine all witnesses, the examining physicians or other qualified persons recommended by the division who have examined the persons. Neither the investigative re-

Port nor any part thereof shall be introduced in evidence without the express consent of the allegedly mentally ill person.

Section 10. ORS 426.110 is amended to read:

426.110. The judge shall appoint at least two competent physicians licensed by the State Board of Medical Examiners for the State of Oregon to practice medicine and surgery, one of whom may be the county health officer, to examine the person as to his mental condition. In lieu of one of the physicians, the court may appoint one qualified person as recommended by the division, to examine the person. [In counties having a population of 10,000 or less, as determined by the latest federal census, the judge may appoint only one such physician, who may be the county health officer, but the judge may, in his discretion, appoint additional physicians, qualified as required by this section, to assist in the examination of the person as to his mental condition.] If the allegedly mentally ill person requests in writing that one additional examining physician or qualified person as recommended by the division be appointed, or, if in the absence of such request by the allegedly mentally ill person, such request is made by the legal guardian, relative or friend of the alleged mentally ill person, the court shall appoint a physician [nominated in such request], or other qualified person as recommended by the division nominated in such request; however, the court shall not appoint more than one such additional examining physician or qualified person, who shall be a ~~resident~~ of the State of Oregon.

Section 11. ORS 426.120 is amended to read:

426.120. The [physicians] persons appointed to conduct the examination shall examine the person as to his mental condition and [report] make their separate [or joint findings] reports in writing, under oath, to the court, which [findings] reports immediately shall be filed with the clerk of the court. If the examining [physicians] persons find, and show by their verified [findings] reports, that the person examined is a mentally ill person, [and by reason of mental illness is in need of treatment, care or custody, and if the judge, after having examined the verified findings and considered all competent evidence submitted to him, is of the opinion that the person is in need of treatment, care or custody, he shall adjudge the person to be mentally ill and order him committed to the proper state hospital. The order of commitment shall direct that the mentally ill person be promptly and safely delivered to the superintendent of the proper state hospital, as provided in ORS 426.150.] the reports shall include a recommendation as to the type of treatment facility best calculated to help the person recover from his mental illness. Each report shall also advise the court whether in the opinion of the examiner the mentally ill person would cooperate with and benefit from a program of voluntary treatment.

Section 12. ORS 426.130 is amended to read:

426.130. [If the legal guardian, relative or friend of the mentally ill person requests that he be allowed to care for him in a place satisfactory to the judge, and shows that

he, such applicant, is competent and financially able to care for the mentally ill person, and also if it appears to the court that the mentally ill person is not criminally inclined or violent, and that proper care and treatment can and will be provided him by such applicant, and that it would be to the best interest of the mentally ill person to be paroled, the judge may order that the mentally ill person be released and placed in the care and custody of such applicant. The order may be revoked and the mentally ill person committed to an Oregon state hospital whenever, in the opinion of the judge, it is for the best interest of the mentally ill person.] After hearing all of the evidence, and reviewing the findings of the examining persons, the court shall determine whether the person is mentally ill. If in the opinion of the court the person is not mentally ill, he shall be discharged forthwith. If in the opinion of the court the person is mentally ill the court may order as follows:

(1) If the mentally ill person is willing and able to participate in treatment on a voluntary basis, and the court finds that he will probably do so, the court shall order the release of the individual and dismiss the case.

(2) If the legal guardian, relative or friend of the mentally ill person requests that he be allowed to care for him during the period of commitment in a place satisfactory to the judge, and shows that he, such applicant, is able to care for the mentally ill person and that there are adequate

financial resources available for the care of the mentally ill person, the court may order that the mentally ill person be conditionally released and placed in the care and custody of such applicant. The order may be revoked and the mentally ill person committed to the division whenever, in the opinion of the court, it is in the best interest of the mentally ill person.

(3) If in the opinion of the court voluntary treatment or conditional release are not in the best interest of the mentally ill person, the court may order the commitment of the individual to the division for treatment. The commitment shall be for a period of time not to exceed 45 days.

Section 13. Sections 14 to 20 of this 1973 Act are added to and made a part of ORS chapter 426.

Section 14. At any time after commitment by the court, the person, with the approval of the division, may change his status to that of a voluntary patient. Notwithstanding ORS 426.220, any person who alters his status to that of a voluntary patient under this section shall be released from the division within 72 hours of his request for release.

Section 15. At the end of the 45-day period of commitment, any person whose status has not been changed to voluntary shall be released unless the division certifies to the court in the county where the treating facility is located that the patient is still mentally ill and in need of further treatment. If such certification is made, the person will not be released, but the division shall forthwith issue a copy of the certification to the person. The certification shall be

served upon the patient by a physician or registered nurse at the facility or director of the facility wherein the patient is confined. The person serving the citation shall inform the court in writing that service has been made and the date thereof. The certification shall advise the person that the division has requested that his commitment be continued for an additional period of time; that he may consult with an attorney and that an attorney will be provided for him without cost to him if he is unable to afford an attorney; that if he does not protest this further commitment within 14 days, his commitment will be continued for an indefinite period of time up to 90 days; that if he does protest a further period of commitment, he is entitled to a hearing before the court on whether his commitment should be continued; that he may protest either orally or in writing by signing the form accompanying the certification; that he is entitled to have a physician or other qualified person as recommended by the division, other than a member of the staff at the facility where he is confined, examine him and report to the court the results of his examination; that he may subpoena witnesses and offer evidence on his own behalf at the hearing; that if he is without funds to retain an attorney or an examining physician or qualified person as recommended by the division, the court will appoint such attorney, physician or qualified person at no cost to him. The person serving the certification shall read and deliver the certification to the person and ask him whether he protests a further period of commitment. The person may

protest further commitment either orally or by signing a simple protest form to be given to the person with the certification. If the person does not protest a further period of commitment within 14 days of service of the certification, the division shall so notify the court and the court shall, without further hearing, order the commitment of the person for an additional indefinite period of time up to 90 days.

✓ Section 16. When the person protests a further period of commitment the division shall, forthwith, notify the court and the court shall have the person brought before it and shall again advise him that the division has requested that his commitment be continued for an additional period of time and that if he does not protest this commitment his commitment will be continued for an indefinite period of time up to 90 days. He shall also be informed of the rights set forth in section 15 of this 1973 Act.

✓ Section 17. If the person requests a hearing, the hearing shall be conducted as promptly as possible and at such time and place as the court may direct. If the person requests a continuance in order to prepare for the hearing or to obtain counsel to represent him, the court may grant a continuance for a reasonable period of time for this purpose. In the event the person requests the appointment of an attorney and is without funds to retain an attorney, the court shall appoint an attorney to represent him at no cost to the person. If no request for legal counsel is made, the court shall appoint an attorney to represent the person

unless legal counsel is expressly, knowingly and intelligently refused by the person. If the person requests an examination by a physician or other qualified person as recommended by the division and is without funds to retain such person for purposes of the examination, the court shall appoint a physician or other qualified person, other than a member of the staff from the facility where the person is a patient, to examine the person at no expense to him and to report to the court the results of the examination. The court shall then conduct a hearing and after hearing the evidence and reviewing the recommendations of the treating and examining physicians or other qualified persons, the court shall determine whether the individual is still a mentally ill person and in need of further treatment. If in the opinion of the court the individual is still a mentally ill person and in need of further treatment, the court may order his commitment to the division for an additional indefinite period of time up to 90 days. At the end of the 90-day period, the patient shall be released unless the division again certifies to the committing court that the person is still a mentally ill person and in need of further treatment, in which event the procedures set forth in sections 15 to 17 of this 1973 act shall be followed.

by Section 18. After a person has been in the custody of the division involuntarily for one year immediately preceding certification that he is still mentally ill and in need of further treatment, additional orders of commitment may be

for indefinite periods of time up to 180 days. No person on trial visit may be committed for more than 90 days. If such a person is still mentally ill and in need of further treatment, additional orders of commitment may be made under provisions set forth in sections 15 to 17 of this 1973 Act.

~~Section 19.~~ Costs of hearings conducted pursuant to section 17 of this 1973 Act, and the fees for physicians, other qualified persons, and attorneys appointed thereunder, shall be charged to the county of the person's residence in the same manner provided by ORS 426.310, whether the hearing is held in the county of residence or county of the treating facility.

~~Section 20.~~ Sections 14 to 17 of this 1973 Act do not restrict or limit the discharge procedures set forth in ORS 426.300.

Section 21. ORS 426.160 is amended to read:

426.160. The judge shall cause to be recorded in the court records a full account of proceedings had at [the] all [hearing] hearings and [examination] examinations conducted pursuant to this 1973 Act, together with the [judgment] judgments and [order] orders of the court and a copy of the orders issued. The account of the proceedings and transcripts of testimony if taken thereat shall be delivered to the county clerk who shall cause it to be sealed and neither the account of the proceedings nor the transcript of testimony if taken shall be disclosed to any person except:

- (1) As provided in ORS 426.170;
- (2) Upon request of the person subject to the proceed-

ings, his legal representatives, or his attorney; or

(3) Pursuant to court order.

Section 22. ORS 426.300 is amended to read:

426.300. (1) The [superintendent of any state hospital wherein are confined persons adjudged to be mentally diseased] division [may] shall, by filing [his] a written certificate with the last committing court and the court of residence, discharge any patient from court commitment, except one held upon an order of a court or judge having criminal jurisdiction in an action or proceeding arising out of criminal offense when [he is convinced that the patient is sufficiently recovered to be of no danger to himself or others and that the discharge is in the best interest of the patient] in its opinion the individual is no longer a mentally ill person or when in its opinion the transfer of the individual to a voluntary status is in the best interest of the treatment of the patient.

(2) The [superintendent of a state institution for the mentally ill or mentally retarded] division or the administrator of the University State Tuberculosis Hospital may sign applications for public assistance on behalf of those patients who may be eligible for public assistance.

Section 23. ORS 426.140 is amended to read:

426.140. (1) No person, not incarcerated upon a criminal charge, who has been adjudged a mentally ill person or one against whom proceedings have been instituted shall be confined in any prison, jail or other inclosure where those charged with crime or violation of a municipal ordinance are

incarcerated [, if a place suitable for the comfortable, safe and humane confinement of such person is available].

(2) No alleged mentally ill person who has been taken into custody shall be confined, either before or after the hearing and examination, without an attendant in direct charge of him; and, if not confined in a [county] community hospital, the county health officer or sheriff having such person in his custody shall select some suitable person to act as attendant.

Section 24. ORS 426.150 is amended to read:

426.150. (1) Upon receipt of the order of commitment, the health officer or the sheriff, as the case may be, shall take such mentally ill person into his custody, and insure his safekeeping and proper care until delivery is made to [the superintendent of the proper state hospital or a designated employe thereof] the division. Immediately after being notified of the court's order of commitment of such mentally ill person, the county health officer or the sheriff shall notify by telephone, if possible, [the superintendent of the state hospital to which the person was committed,] such person as the division shall designate informing him of the fact that such person is being held awaiting delivery, and also stating the name, [character,] condition, sex and age of such person. Except as provided in subsection (2) of this section, the [superintendent] division shall thereupon [designate an employe of the hospital to] take custody of such person [and safely transport

him to the state hospital]. [The employe] A designee of the division, accompanied by such assistants as the [superintendent] division may deem necessary, shall proceed to the place where the person is to be delivered into his custody, and, upon demand shall be given custody of the committed mentally ill person, together with the certified record required by ORS 426.170. The [employe] designee shall issue appropriate receipts therefor and immediately proceed to transport the committed mentally ill person safely to the [state hospital to which he has been committed,] facility designated by the division and there make delivery of him and the record to the [superintendent] director or a designated employe of the [hospital] facility.

(2) The committing judge, upon approval of the examining [physician] physicians or other qualified persons as recommended by the division and upon request of a guardian, friend or relative of the mentally ill person, may authorize the guardian, friend or relative to transport the person to the designated [hospital] facility when the committing judge determines that such means of transportation would not be detrimental to the welfare of the mentally ill person or to the public.

Section 25. ORS 426.170 is amended to read:

426.170. If any person is adjudged mentally ill and ordered committed to [a state hospital] the division, a copy of the complete record in the case, certified to by the [county] clerk of the county, shall be given to the health officer of the county, or to the sheriff, for delivery to

the [superintendent] director of the [state hospital] facility to which such mentally ill person is [committed] assigned.

The record shall include the name, residence, nativity, sex and age of such mentally ill person and all other information that may be required by the rules and regulations promulgated by the Mental Health Division.

Section 26. ORS 426.280 is amended to read:

426.280. [A superintendent] The division may grant a trial visit to a patient for any period of time, up to 90 days, under such general conditions [prescribed by the Mental Health Division] as it shall prescribe during such patient's period of commitment. The physician and the [hospital] facility granting a trial visit to a patient, the superintendent or director thereof, the Administrator of the Mental Health Division and the chief medical officer of the [hospital] facility shall not be liable for a patient's expenses while on trial visit, nor shall the superintendent or director of any such [hospital] facility, the physician responsible for the patient's release, the Administrator of the Mental Health Division or the chief medical officer of the [hospital] facility be liable for any damages whatsoever that are sustained by any person on account of the misconduct of such patient while on trial visit.

Section 27. ORS 426.290 is amended to read:

426.290. (1) If a written complaint against a patient on trial visit from [a state hospital for the mentally ill] the division is received by [a superintendent of a state hos-

pital for the mentally ill] the division and the complaint is sworn to by a citizen of Oregon before an officer qualified to administer an oath, the patient named in the complaint shall be sent to and received by a [state hospital] facility for the mentally ill designated by the division. If the acts complained of are such as to indicate to the examining physician of the receiving [hospital] facility that the patient should no longer be permitted to remain on trial visit, the patient shall be admitted thereto.

(2) Upon voluntary application to be admitted thereto, every patient on trial visit must be received by [a state hospital for the mentally ill] the facility from which he was released on trial visit.

(3) Every patient on trial visit received by a [state hospital] facility for the mentally ill under this section shall be admitted to the [hospital] facility without examination as to his sanity before any court or judge having jurisdiction over such matters.

Section 28. ORS 426.385 is amended to read:

426.385. (1) Every mentally ill person committed to the division shall have the right to:

(a) Communicate freely in person, by sending and receiving sealed mail, and by reasonable access to telephones;

(b) Wear his own clothing;

(c) Keep his personal possessions, including toilet articles;

(d) Religious freedom;

(e) A private storage area with free access thereto;

(f) Be furnished with a reasonable supply of writing materials and stamps;

(g) A written treatment plan, kept current with his progress;

(h) Be represented by counsel whenever his substantial rights may be affected;

(i) Petition for a writ of habeas corpus;

(j) Not be required to perform routine labor tasks of the facility except those essential for his treatment;

(k) Be given reasonable compensation for all work performed other than personal housekeeping duties;

(L) Such other rights as may be specified by regulation; *and*

(m) Exercise all civil rights in the same manner and with the same effect as one not admitted to the facility, including, but not limited to, the right to dispose of property, execute instruments, make purchases, enter contractual relationships, and vote, unless he has been adjudicated incompetent and has not been restored to legal capacity.

(2) Mentally ill persons committed to the division shall have the right to be free from potentially unusual or hazardous treatment procedures, including lobotomy and electroshock therapy, unless they have given their express and informed consent. This right may be denied to such persons for good cause only by the director of the facility in which the person is confined, or his designee, but only after consultation with and approval of an independent examining physician. Any

denial shall be entered into the patient's treatment record and shall include the reasons for the denial.

(3) Mechanical restraints shall not be applied to a person admitted to a [state hospital] facility unless it is determined by the [superintendent] chief medical officer of the [hospital] facility or his designee to be required by the medical needs of the person. Every use of a mechanical restraint and the reasons therefor shall be made a part of the clinical record of the person [under] over the signature of the [superintendent] chief medical officer of the [hospital] facility or his designee.

Section 29. ORS 426.375 is repealed.

Section 30. Section 31 of this 1973 Act is added to and made a part of ORS chapter 426.

Section 31. A simple and clear statement of rights guaranteed to patients committed to the division shall be prominently posted in each room frequented by patients in all facilities housing such patients. A copy of the statement shall be given to each patient upon admission and sent, upon request, to his legal counsel, guardian, relative or friend.

Section 32. ORS 426.215 is amended to read:

426.215. (1) Any peace officer may take into custody any person who he has reasonable cause to believe is dangerous to himself or to any other person and who he has reasonable cause to believe is in need of immediate care, custody or treatment for mental illness. If a peace officer takes a

person into custody under this section, he shall remove him forthwith to:

(a) A hospital, described in subsection (4) of this section, in the county where the person is taken into custody; or

(b) Such a hospital in another county after having obtained a certificate from a physician licensed to practice medicine and surgery by the Board of Medical Examiners for the State of Oregon stating that the travel will not be detrimental to the person's physical health and that the person is dangerous to himself or to any other person and is in need of immediate care or treatment for mental illness. Such physician shall personally examine the allegedly mentally ill person within 24 hours prior to signing the certificate.

(2) The superintendent or administrator of the hospital shall cause the person to be examined forthwith by a staff physician. If the physician finds the person to be in need of immediate care or treatment for mental illness, the person shall be admitted as a patient. Otherwise he shall not be retained in further custody under this section.

(3) The peace officer, after taking a person into custody under this section, shall notify forthwith a court having probate jurisdiction in the county in which the person was taken into custody of the fact of taking the person into custody and the person's whereabouts. When the judge of such a court is informed by a peace officer that a person is in custody, [within 24 hours] the judge shall immediately

commence proceedings pursuant to sections 3 to 12 of this 1973 Act. [issue a warrant directing that such person be brought before the court within 24 hours after ~~the~~ issuance of the warrant, and a hearing shall be held as provided in ORS 426.070 to 426.170.]

(4) The superintendent or administrator of a hospital maintaining adequate staff and facilities for the care and treatment of persons alleged to be mentally ill and approved by the [Mental Health Division] division may receive and retain therein as a patient for a period not to exceed five days any person alleged to be in need of immediate care or treatment for mental illness as provided in this section. The expenses of such emergency care shall be paid by the county of residence of the person or, if he has no residence within the state, by the county in which the person is taken into custody, unless otherwise provided by law.

(5) Persons hospitalized under this section shall receive the care, custody and treatment required for their mental and physical health and safety, and the treating physician shall report such care, custody and treatment to the court as required in section 8 of this 1973 Act. All methods of treatment, including the prescription and administration of drugs, shall be the sole responsibility of the treating physician. However, such persons shall not be subject to potentially unusual or hazardous treatment procedures, including electroshock therapy. The treating physician shall be notified immediately of any use of mechanical restraints on such persons.

Every use of a mechanical restraint and the reasons therefor shall be made a part of the clinical record of the person over the signature of the treating physician.

[(5)] (6) No peace officer, hospital, physician or judge shall in any way be held criminally or civilly liable for actions pursuant to this section provided he acts in good faith, on probable cause and without malice.