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Dear Chief of Police / County Sheriff,

Listed below are the relevant Oregon Revised Statute or Oregon Administrative Rule as it relates to persons deemed to be a danger to themselves or others and the **transfer of custody** of these persons to an approved Secure Transport provider.

309-033-0230

Custody of Persons Alleged to Be Mentally Ill Prior to Filing a Notification of Mental Illness

(1) Custody by a physician pursuant to ORS 426.231. A physician taking a person into custody pursuant to ORS 426.231 at a hospital approved under OAR 309-033-0550, Standards for the Approval of Hospitals Detaining Persons in Custody Pending Transport to an Approved Holding Hospital or Nonhospital Facility, shall detain the person for no more than 12 hours and during that time shall either:

(a) Authorize the person for transportation to an approved hospital and provide transportation according to the agreement required under OAR 309-033-0550; or

(b) Release the person, if the physician determines that the person no longer is dangerous to self or others.

(2) Custody by a peace officer or secure transport provider. A peace officer taking a person into custody shall remove the person to an approved hospital as directed by the director in the county where the person was taken into custody. **The peace officer or approved secure transport provider shall only take a person into custody under the provisions of one of the following:**

(a) Custody on peace officer's own initiative. A peace officer may take a person into custody pursuant to the provisions of ORS 426.228 when the peace officer has probable cause to believe that the person is dangerous to self or others, and is in need of immediate care, custody or treatment for a mental illness;

(b) Custody on the director's authority. The director may direct, pursuant to the provisions of ORS 426.233(1), a peace officer or an approved secure transport provider to take into custody a person who is dangerous to self or others and in need of immediate care, custody or treatment for mental illness;

(c) Custody of a committed person on the director's authority. The director may direct a peace officer or an approved secure transport provider to take into custody, pursuant to the provisions of ORS 426.233(1), a committed person who is on trial visit, outpatient commitment or conditional release in the community, who is dangerous to self or others or who is unable to provide for basic personal needs, who is not receiving the care that is necessary for health and safety, and who is in need of immediate care, custody or treatment for mental illness.

(d) A peace officer may transfer a person in custody under this section to the custody of an approved secure transport provider. The peace officer may meet the approved Secure transport provider at any location that is in accordance with ORS 426.140 to effect the transfer. When transferring a person in custody to an authorized person, the peace officer shall deliver the report required under subsection (3) of this section to the authorized person.

(3) Peace officer's written report. When taking a person into custody pursuant to ORS chapter 426.228(1) by a peace officer's own initiative, a peace officer shall prepare a written report which states:

(a) The reason for custody;

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

(c) The name of the director in the county where the person is taken into custody and a telephone number where the director may be reached at all times.

(4) Director's written report. When a peace officer or approved secure transport provider takes a person into custody pursuant to ORS chapter 426.228(4) at the direction of the director, a director shall prepare a written report which states:

(a) The reason for custody;

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

(c) The name of the director in the county where the person is taken into custody and a telephone number where the director may be reached at all times.

(5) Transportation to a hospital or nonhospital facility more than one hour away. If the peace officer determines that more than one hour is required to transport the person to a hospital or nonhospital facility approved by the Division, the peace officer or approved secure transport provider shall obtain a certificate, if possible, from a physician prior to transporting the person. A physician authorizing transport shall sign a certificate, on a form approved by the Division, only if the person's condition, in the opinion of the physician, meets all of the following requirements:

(a) The travel will not be detrimental to the person's physical health;

(b) The person is dangerous to self or others; and

(c) The person is in need of immediate care or treatment for mental illness.

(6) The director directs peace officers or approved secure transport providers to appropriate facility. The director shall adopt written procedures for directing peace officers or approved secure transport providers to transport persons taken into custody, pursuant to ORS 426.228, to an approved hospital or nonhospital facility:

(a) The written procedures shall include one of the following, whichever, in the opinion of the director, serves the best interests of persons with mental illness and the community:

(A) A list of approved hospitals or nonhospital facilities where peace officers or approved secure transport providers are to transport persons;

(B) A procedure for contacting the director 24 hours-a-day, seven days-a-week.

(b) The director shall distribute copies of the written procedures to the sheriff and the chief of police of each municipality in the county and approved secure transport providers. The procedures shall be distributed as often as the procedure is amended.

(c) The director may develop a written agreement with the law enforcement agencies in the county which designates a site or sites where the director can safely evaluate the person and determine which facility, in the director's opinion, can best serve the person's needs within the resources available. If such an agreement exists in a county, the director may direct a peace officer to transport a person in custody under ORS 426.228 to a site designated in the agreement. Once the director makes a determination, the peace officer shall transport and deliver the person to a hospital or nonhospital facility as directed by the director. The agreement shall:

(A) Designate the site or sites where the director can safely evaluate the person's needs for treatment;

(B) Define the minimum response time for the director meeting the peace officer at the site; and

(C) Be signed by all parties to the agreement.

Stat. Auth.: ORS 426.228, ORS 426.231 & ORS 426.236

Stats. Implemented: ORS 426.005 - ORS 426.309

Hist.: MHD 6-1998, f. 6-26-98, cert. ef. 7-1-98, Renumbered from 309-200-0040; MHD 2-2000(Temp), f. & cert. ef. 1-25-00 thru 7-22-00; MHD 9-2000, f. & cert. ef. 7-21-00

426.140 - Place of confinement; attendant

(1) No person, not incarcerated upon a criminal charge, who has been adjudged a mentally ill person or one against whom commitment proceedings have been instituted shall be confined in any prison, jail or other enclosure where those charged with a crime or a violation of a municipal ordinance are incarcerated, unless the person represents an immediate and serious danger to staff or physical facilities of a hospital or other facility approved by the Department of Human Services for the care, custody and treatment of the person.

(2) No allegedly mentally ill person who has been taken into custody shall be confined, either before or after the commitment hearing, without an attendant in direct charge of the person; and, if not confined in a community hospital, the sheriff or community mental health and developmental disabilities program director having the person in custody shall select some suitable person to act as attendant in quarters suitable for the comfortable, safe and humane confinement of the person and approved by the department.

[Amended by 1973 c.838 §23; 1975 c.690 §9; 1977 c.764 §1]

426.150 Transportation to treatment facility. (1) Upon receipt of the order of commitment, the Department of Human Services or its designee shall take the mentally ill person into its custody, and insure the safekeeping and proper care of the person until delivery is made to an assigned treatment facility or its representative. The representative of the treating facility to which the person has been assigned, accompanied by any assistants the department or its designee may deem necessary, shall proceed to the place where the person is to be delivered into custody, and upon demand shall be given custody of the mentally ill person, together with the certified record required by ORS 426.170. The representative shall issue appropriate receipts therefor and immediately proceed to transport the committed mentally ill person safely to the facility to which the person has been assigned by the department and there make delivery of the person and the record to the director or a designated employee of the facility. In taking custody of the person, the department, its designee, or the representative of the facility has all the powers provided by ORS 133.225 and 161.255 and may require the assistance of any peace officer or other person.

(2) The committing judge, upon approval of the examining physicians or other qualified persons as recommended by the department 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 facility when the committing judge determines that means of transportation would not be detrimental to the welfare of the mentally ill person or to the public. [Amended by 1963 c.325 §1; 1973 c.838 §24; 1975 c.690 §10]

426.170 Delivery of certified copy of record. If any person is adjudged mentally ill and ordered committed to the Department of Human Services, a copy of the complete record in the case, certified to by the court clerk or court administrator, shall be given to the health officer of the county, or to the sheriff, for delivery to the director of the facility to which such mentally ill person is 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 department. [Amended by 1973 c.838 §25; 1993 c.223 §12]

426.175 [1969 c.371 §1; 1975 c.690 §11; 1977 c.764 §2; 1987 c.903 §20; 1991 c.901 §1; repealed by 1993 c.484 §27]

(Emergency and Voluntary Admissions)

426.223 Retaking persons in custody of or committed to department; assistance of peace officers and others. In retaking custody of a mentally ill person who has been committed to the Department of Human Services under ORS 426.130 and who has, without lawful authority, left the custody of the facility to which the person has been assigned under ORS 426.060, or in the case of an allegedly mentally ill person who is in custody under ORS 426.070, 426.095, 426.228 to 426.235 or 426.237 at a hospital or nonhospital facility and who has, without lawful authority, left the hospital or nonhospital facility, the facility director or designee has all the powers provided by ORS 133.225 and 161.255 and may require the assistance of any peace officer or other person. [1975 c.690 §25; 1993 c.484 §20]

426.228 Custody; authority of peace officers and other persons; transporting to facility; reports; examination of person. (1) A peace officer may take into custody a person who the officer has probable cause to believe is dangerous to self or to any other person and is in need of immediate care, custody or treatment for mental illness. As directed by the community mental health and developmental disabilities program director, a peace officer shall remove a person taken into custody under this section to the nearest hospital or nonhospital facility approved by the Department of Human Services. The officer shall prepare a written report and deliver it to the treating physician. The report shall state:

- (a) The reason for custody;
- (b) The date, time and place the person was taken into custody; and
- (c) The name of the community mental health and developmental disabilities program director and a telephone number where the director may be reached at all times.

(2) A peace officer shall take a person into custody when the community mental health and developmental disabilities program director, pursuant to ORS 426.233, notifies the peace officer that the director has probable cause to believe that the person is imminently dangerous to self or to any other person. As directed by the community mental health and developmental disabilities program director, the peace officer shall remove the person to a hospital or nonhospital facility approved by the department. The community mental health and developmental disabilities program director shall prepare a written report that the peace officer shall deliver to the treating physician. The report shall state:

- (a) The reason for custody;
- (b) The date, time and place the person was taken into custody; and
- (c) The name of the community mental health and developmental disabilities program director and a telephone number where the director may be reached at all times.

(3) If more than one hour will be required to transport the person to the hospital or nonhospital facility from the location where the person was taken into custody, the peace officer shall obtain, if possible, a certificate from a physician licensed 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 self or to any other person and is in need of immediate care or treatment for mental illness. The physician shall have personally examined the allegedly mentally ill person within 24 hours prior to signing the certificate.

(4) When a peace officer or other authorized person, acting under this section, delivers a person to a hospital or nonhospital facility, a physician licensed by the Board of Medical Examiners for the State of Oregon shall examine the person immediately. If the physician finds the person to be in need of emergency care or treatment for mental illness, the physician shall proceed under ORS 426.232, otherwise the person shall not be retained in custody. If the person is to be released from custody, the peace officer or the community mental health and developmental disabilities program director shall return the person to the place where the person was taken into custody unless the person declines that service.

(5) A peace officer may transfer a person in custody under this section to the custody of a person authorized by the county governing body under ORS 426.233 (3). The peace officer may meet the authorized person at any location that is in accordance with ORS 426.140 to effect the transfer. When transferring a person in custody to an authorized person, the peace officer shall deliver the report required under subsections (1) and (2) of this section to the authorized person.

(6) A person authorized under ORS 426.233 (3) shall take a person into custody when directed to do so by a peace officer or by a community mental health and developmental disabilities program director under ORS 426.233.

(7) A person authorized under ORS 426.233 (3) shall perform the duties of the peace officer or the community mental health and developmental disabilities program director required by this section and ORS 426.233 if the peace officer or the director has not already done so.

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

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

(b) A peace officer is not civilly or criminally liable for failure to provide the information required by this subsection. Failure to provide the information required by this subsection does not in itself constitute grounds for the exclusion of evidence that would otherwise be admissible in a proceeding. [1993 c.484 §2; 1997 c.531 §2; 2003 c.109 §2]

Note: 426.228 to 426.238 were added to and made a part of 426.005 to 426.390 by legislative action but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

426.230 [Amended by 1955 c.651 §7; repealed by 1957 c.388 §17]

426.231 Physician hold; when authorized; statement required. (1) A physician licensed by the Board of Medical Examiners for the State of Oregon may hold a person for transportation to a treatment facility for up to 12 hours in a health care facility licensed under ORS chapter 431 and approved by the Department of Human Services if:

(a) The physician believes the person is dangerous to self or to any other person and is in need of emergency care or treatment for mental illness;

(b) The physician is not related to the person by blood or marriage; and

(c) An admitting physician at the receiving facility consents to the transporting.

(2) Before transporting the person, the physician shall prepare a written statement that:

(a) The physician has examined the person within the preceding 12 hours;

(b) An admitting physician at the receiving facility has consented to the transporting of the person for examination and admission if appropriate; and

(c) The physician believes the person is dangerous to self or to any other person and is in need of emergency care or treatment for mental illness.

(3) The written statement required by subsection (2) of this section authorizes a peace officer, a person authorized under ORS 426.233 or the designee of a community mental health and developmental disabilities program director to transport a person to the treatment facility indicated on the statement. [1993 c.484 §3; 1997 c.531 §3]

Note: See note under 426.228.

426.232 Physician emergency admission; notice; limit of hold. (1) When a physician licensed to practice medicine by the Board of Medical Examiners for the State of Oregon believes a person who is brought to a hospital or nonhospital facility by a peace officer under ORS 426.228, a person authorized under ORS 426.233 or a person who is at a hospital or nonhospital facility is dangerous to self or to any other person and is in need of emergency care or treatment for mental illness, the physician may do one of the following:

(a) After consulting with a physician or a qualified mental health professional, as defined by rule of the Department of Human Services, detain the person and cause the person to be admitted or, if the person is already admitted, cause the person to be retained in a hospital where the physician has admitting privileges or is on staff. Neither the physician nor the qualified mental health professional may be related by blood or marriage to the person.

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

(2) When approving a person for emergency care or treatment at a nonhospital facility under this section, the physician shall notify immediately the community mental health and developmental disabilities program director in the county where the person was taken into custody and maintain the person, if the person is being held at a hospital, for as long as is feasible given the needs of the person for mental or physical health or safety. However, under no circumstances may the person be held for longer than five judicial days. [1993 c.484 §4; 1995 c.201 §3; 1997 c.531 §4]

Note: See note under 426.228.

426.233 Authority of community mental health and developmental disabilities program director and of other persons; costs of transportation. (1)(a) A community mental health and developmental disabilities program director operating under ORS 430.610 to 430.695 or a designee thereof, under authorization of a county governing body, may take one of the actions listed in paragraph (b) of this subsection when the community mental health and developmental disabilities program director or designee has probable cause to believe a person:

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

(B)(i) Is a mentally ill person placed on conditional release under ORS 426.125, outpatient commitment under ORS 426.127 or trial visit under ORS 426.273; and

(ii) Is dangerous to self or to any other person or is unable to provide for basic personal needs and is not receiving the care that is necessary for health and safety and is in need of immediate care, custody or treatment for mental illness.

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

(A) Notify a peace officer to take the person into custody and direct the officer to remove the person to a hospital or nonhospital facility approved by the Department of Human Services;

(B) Authorize involuntary admission of, or, if already admitted, cause to be involuntarily

retained in a nonhospital facility approved by the department, a person approved for care or treatment at a nonhospital facility by a physician under ORS 426.232;

(C) Notify a person authorized under subsection (3) of this section to take the person into custody and direct the authorized person to remove the person in custody to a hospital or nonhospital facility approved by the department;

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

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

(2) A designee under subsection (1) of this section must be recommended by the community mental health and developmental disabilities program director, meet the standards established by rule of the department and be approved by the county governing body before assuming the authority permitted under subsection (1) of this section.

(3) The county governing body may, upon recommendation by the community mental health and developmental disabilities program director, authorize any person to provide custody and secure transportation services for a person in custody under ORS 426.228. In authorizing a person under this subsection, the county governing body shall grant the person the authority to do the following:

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

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

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

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

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

(f) Retain a person in custody at the approved hospital or nonhospital facility until a physician makes a determination under ORS 426.232.

(4) A person authorized under subsection (3) of this section must be recommended by the community mental health and developmental disabilities program director, meet the standards established by rule of the department and be approved by the governing body before assuming the authority granted under this section.

(5) The costs of transporting a person as authorized under ORS 426.060, 426.228 or 426.235 by a person authorized under subsection (3) of this section shall be the responsibility of the county whose peace officer or community mental health and developmental disabilities program director directs the authorized person to take custody of a person and to transport the person to a facility approved by the department, but the county shall not be responsible for costs that exceed the amount provided by the state for that transportation. A person authorized to act under subsection (3) of this section shall charge the cost of emergency medical transportation to, and collect that cost from, the person, third party payers or otherwise legally responsible persons or agencies in the same manner that costs for the transportation of other persons are charged and collected. [1993 c.484 §5; 1997 c.531 §5]

Note: See note under 426.228.

