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D R A F T

SUMMARY

Digest: The Act changes laws about people confined in the state mental hospital. (Flesch Readability Score: 60.7).

Provides that the county is responsible for costs when an expert witness from the state mental hospital is required to appear in person in court.

Requires entities ordered by the court to provide the state mental hospital with records to provide the records prior to a defendant's admission to the hospital.

Authorizes the superintendent of the state mental hospital, or designee, to report suspected abuse of an adult to a report recipient in the county in which the alleged abuse occurred.

Exempts the Oregon State Hospital from the requirement to adopt and enforce policies requiring the scheduling of follow-up appointments seven days after discharge.

Eliminates the requirement for the superintendent of certain hospitals to notify the Department of Transportation concerning a person released from the hospital who should not drive. Eliminates the requirement that the department suspend the person's driving privileges upon receipt of the notification.

A BILL FOR AN ACT

Relating to persons confined in the state mental hospital; amending ORS 161.362, 161.373, 430.743, 441.054, 807.710, 809.380 and 809.419; and repealing ORS 807.700.

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

SECTION 1. ORS 161.362 is amended to read:

161.362. (1) A recommendation provided by a certified evaluator, pursuant to ORS 161.355 to 161.371, that a defendant requires a hospital level of care due to the acuity of the defendant's symptoms must be based upon the defendant's current diagnosis and symptomatology, the defendant's current ability to engage in treatment, present safety concerns relating to the defendant and any other pertinent information known to the evaluator. If the defendant is in a placement in a facility, the evaluator may defer to the treatment provider's

NOTE: Matter in **boldfaced** type in amended text is new; matter [*italicized and bracketed*] is existing text to be omitted. New sections are in **boldfaced** type.

recommendation regarding whether a hospital level of care is needed.

(2) A determination by a community mental health program director, or the director's designee, pursuant to ORS 161.355 to 161.371, that appropriate community restoration services are not present and available in the community must include information concerning the specific services necessary to safely allow the defendant to gain or regain fitness to proceed in the community and must specify the necessary services that are not present and available in the community.

(3)(a) Reports resulting from examinations performed by a certified evaluator, and documents containing the recommendations of or resulting from consultations with a community mental health program director or the director's designee, prepared under ORS 161.355 to 161.371, and any document submitted to the court by a state mental hospital or other facility to which the defendant is committed or in which the defendant is placed, related to the proceedings under ORS 161.355 to 161.371, are confidential and may be made available only:

(A) To the court, prosecuting attorney, defense attorney, agent of the prosecuting or defense attorney, defendant, community mental health program director or designee, state mental hospital and any facility in which the defendant is housed; or

(B) As ordered by a court.

(b) Any facility in which a defendant is housed may not use a report or document described in paragraph (a) of this subsection to support a disciplinary action against the defendant.

(c) Nothing in this subsection prohibits:

(A) The prosecuting attorney, defense attorney or agent of the prosecuting or defense attorney from discussing the contents of a report or document described in paragraph (a) of this subsection with witnesses or victims as otherwise permitted by law.

(B) The disclosure of reports or documents described in paragraph (a) of this subsection, information contained in such reports or documents and any records or information used in the preparation of such reports or documents, as permitted under ORS 192.567 or for the purpose of continuity of care as authorized by law or ordered by the court.

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

services.

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

(b) If a certified evaluator or other expert witness from the state mental hospital is required to attend a hearing in person rather than via simultaneous electronic transmission, the county in which the hearing is taking place is responsible for the actual costs associated with the appearance.

SECTION 2. ORS 161.373 is amended to read:

161.373. (1) Unless otherwise prohibited by law or for good cause, all public bodies, as defined in ORS 174.109, and any private medical provider in possession of records concerning the defendant[,] shall[*, within five business days of receipt of the order,*] comply with a court order for the release of records to the state mental hospital or other facility designated by the Oregon Health Authority for the purpose of conducting an examination or evaluation under ORS 161.355 to 161.371.

[*(2) Notwithstanding subsection (1) of this section, the Oregon Youth Authority, the Department of Corrections, a community college district, a community college service district, a public university, a school district or an education service district may, after notifying the state hospital or other facility designated by the Oregon Health Authority, comply with the court order within 15 business days of receipt of the order without good cause.*]

[*(3) As used in this section, in the case of a community college district, a community college service district, a public university, a school district or an education service district, "business day" does not include any day on which the central administration offices of the district or university are closed.*]

(2) Public bodies and any private medical providers required to release records under this section shall provide the records prior to or upon admission of the defendant to the state mental hospital or other facility.

SECTION 3. ORS 430.743 is amended to read:

430.743. (1)**(a)** When a report is required under ORS 430.765, an oral report shall be made immediately by telephone or otherwise to the Department of Human Services, the

designee of the department or a law enforcement agency within the county where the person making the report is at the time of contact. If known, the report shall include:

[*(a)*] **(A)** The name, age and present location of the allegedly abused adult;

[*(b)*] **(B)** The names and addresses of persons responsible for the adult's care;

[*(c)*] **(C)** The nature and extent of the alleged abuse, including any evidence of previous abuse;

[*(d)*] **(D)** Any information that led the person making the report to suspect that abuse has occurred plus any other information that the person believes might be helpful in establishing the cause of the abuse and the identity of the perpetrator; and

[*(e)*] **(E)** The date of the incident.

(b) Notwithstanding paragraph (a) of this subsection, the superintendent of the state mental hospital, or the superintendent's designee, may make the report to the department, the designee of the department or a law enforcement agency within the county in which the alleged abuse occurred, if the allegation concerns an adult who was or is committed to the custody of the state mental hospital.

(2) When a report is received by the department's designee under this section, the designee shall immediately determine whether abuse occurred and if the reported victim has sustained any serious injury. If so, the designee shall immediately notify the department. If there is reason to believe a crime has been committed, the designee shall immediately notify the law enforcement agency having jurisdiction within the county where the report was made. If the designee is unable to gain access to the allegedly abused adult, the designee may contact the law enforcement agency for assistance and the agency shall provide assistance. When a report is received by a law enforcement agency, the agency shall immediately notify the law enforcement agency having jurisdiction if the receiving agency does not. The receiving agency shall also immediately notify the department in cases of serious injury or death.

(3) Upon receipt of a report of abuse under this section, the department or its designee shall notify:

(a) The agency providing primary case management services to the adult; and

(b) The guardian or case manager of the adult, unless the notification would undermine the integrity of the investigation because the guardian or case manager is suspected of committing abuse.

SECTION 4. ORS 441.054 is amended to read:

441.054. (1) As used in this section:

(a) "Discharge" means the release of a patient from a hospital following admission to the hospital.

(b) "Lay caregiver" means:

(A) For a patient who is younger than 14 years of age, a parent or legal guardian of the patient.

(B) For a patient who is at least 14 years of age, an individual designated by the patient or a parent or legal guardian of the patient to the extent permitted under ORS 109.640 and 109.675.

(2) [*A*] **Except as provided in subsection (3) of this section, a** hospital shall adopt and enforce policies for the discharge of a patient who is hospitalized for mental health treatment. The policies must be publicly available and include, at a minimum, all of the following:

(a) Encouraging the patient to sign an authorization for the disclosure of information that is necessary for a lay caregiver to participate in the patient's discharge planning and to provide appropriate support to the patient following discharge including, but not limited to, discussing the patient's prescribed medications and the circumstances under which the patient or lay caregiver should seek immediate medical attention.

(b) Assessing the patient's risk of suicide, with input from the lay caregiver if appropriate.

(c) Assessing the long-term needs of the patient including:

(A) The patient's need for community-based services;

(B) The patient's capacity for self-care; and

(C) To the extent practicable, whether the patient can be properly cared for in the place where the patient was residing when the patient presented at the hospital.

(d) A process to coordinate the patient's care and transition the patient from an acute care setting to outpatient treatment that may include community-based providers, peer support, lay caregivers and others who can execute the patient's care plan following discharge.

(e) Scheduling follow-up appointments for no later than seven days after discharge or documenting why the seven-day goal could not be met.

(3) The Oregon State Hospital is exempt from the requirement to adopt and enforce a policy described in subsection (2)(e) of this section.

SECTION 5. ORS 807.700 is repealed.

SECTION 6. ORS 807.710 is amended to read:

807.710. (1) For the purposes of this section:

(a) "Physician" means a person who holds a degree of Doctor of Medicine or Doctor of Osteopathic Medicine and is licensed under ORS 677.100 to 677.228 and a person who holds a degree of Doctor of Naturopathic Medicine and is licensed under ORS chapter 685.

(b) "Health care provider" means a person licensed, certified or otherwise authorized or permitted by the laws of this state to administer health care.

(2) In consultation with medical experts and experts on cognitive or functional impairments, the Department of Transportation shall adopt rules requiring reporting and:

(a) Designating physicians and health care providers required to report to the department a person whose cognitive or functional impairment affects that person's ability to safely operate a motor vehicle. **The rules shall specify that reporting is not required when a person is being discharged from the Oregon State Hospital to a secure facility.**

(b) Designating the cognitive or functional impairments that are likely to affect a person's ability to safely operate a motor vehicle.

(3) Determinations regarding a person's ability to safely operate a motor vehicle may not be based solely on the diagnosis of a medical condition or cognitive or functional impairment, but must be based on the actual effect of that condition or impairment on the person's ability to safely operate a motor vehicle.

(4) Reports required by the department under this section shall be upon forms prescribed or provided by the department. Each report shall include the person's name, address, date of birth, sex and a description of how the person's current medical status affects the person's ability to safely operate a motor vehicle. The department shall consider this information in determining the person's eligibility for a driver license or driver permit.

(5) A designated physician or health care provider may at any time report to the department a person whose cognitive or functional impairment affects that person's ability to safely operate a motor vehicle, without regard to whether that report is required by rules of the department adopted under subsection (2) of this section. If the report is made in good faith, the

physician or health care provider is immune from civil liability that might otherwise result from making the report. A designated physician or health care provider is immune from civil liability for failure to make a report under this section, without regard to whether that report is required by rules of the department adopted under subsection (2) of this section.

(6) Except as provided in ORS 802.240, reports made under this section are confidential and shall be used by the department only to determine the qualifications of persons to operate motor vehicles upon the highways.

SECTION 7. ORS 809.380 is amended to read:

809.380. All of the following apply to a person whose driving privileges have been suspended:

(1) The period of suspension shall last as long as provided for that particular suspension by law.

(2) During the period of suspension, the person is not entitled to exercise any driving privileges in this state except as provided under this subsection. Unless otherwise specifically provided by law, a person whose driving privileges are suspended may obtain, if the person qualifies, a hardship driver permit under ORS 807.240, and exercise driving privileges under the driver permit.

(3) Upon expiration of the suspension, the Department of Transportation shall reissue, upon request of the person, the suspended driving privileges and any license or driver permit that evidences the driving privileges. The reissuance shall be without requalification by the person except that the department may require the person to furnish evidence satisfactory to the department that the person is qualified to continue to exercise driving privileges in this state before the department reissues the driving privileges.

(4) The department may not issue any driving privileges in contradiction to this section.

(5) If the person fails to surrender to the department any license or driver permit issued as evidence of driving privileges that are suspended, the person is subject to the penalties under ORS 809.500.

(6) No reinstatement of suspended driving privileges will be made by the department until the fee for reinstatement of suspended driving privileges established under ORS 807.370 is paid to or waived by the department. The department may waive the reinstatement fee for any of the following reasons:

(a) The suspension occurred under ORS 809.419 for failure to take an examination upon request of the department under ORS 807.340.

(b) The suspension occurred under ORS 809.419 for failure to obtain required medical clearance upon request of the department under ORS 807.070 or 807.090.

(c) The suspension occurred under ORS 809.419 for incompetence to drive a motor vehicle or having a mental or physical condition or impairment that affects the person's ability to safely operate a motor vehicle.

[*(d) The suspension occurred under ORS 809.419 upon notification by the superintendent of a hospital under ORS 807.700 that a person should not drive.*]

[*(e)*] **(d)** The suspension occurred under ORS 809.419 upon notification by a court under ORS 810.375 that a person charged with a traffic offense has been found guilty except for insanity.

[*(f)*] **(e)** The department committed an error in issuing the suspension.

[*(g)*] **(f)** The suspension was the result of an error committed by an insurance company in issuing or failing to issue a certification of insurance or in canceling a certification of insurance filed with the department under ORS 806.270.

[*(h)*] **(g)** The department issued the suspension without error because the person failed to respond as required under ORS 806.150 or to furnish proof of exemption under ORS 806.210 from the filing requirement of ORS 806.200, but the department later determines that the person in fact was in compliance with financial responsibility requirements as of the date specified by the department by rule under ORS 806.150 or at the time of an accident described in ORS 806.200.

[*(i)*] **(h)** The department issued the suspension without error because the person was not in compliance with financial responsibility requirements as of the date specified by the department by rule under ORS 806.150 or at the time of an accident described in ORS 806.200, but the department later determines that the person reasonably and in good faith believed that the person was in compliance with financial responsibility requirements on the date specified by the department by rule under ORS 806.150 or at the time of the accident.

[*(j)*] **(i)** The suspension was the result of an error committed by an insurance company in notifying the department regarding the correctness of proof of compliance with financial responsibility requirements provided under ORS 806.150.

[*(k)*] **(j)** The suspension occurred because the person failed to make future responsibility filings but the department later determines that the reason for the failure was that the person was a military reservist or a member of a national guard unit that was ordered to active military duty to a location outside of the United States. The effective date of the military orders must be prior to the effective date of a suspension issued by the department for failure to make a future responsibility filing.

[*(L)*] **(k)** The department issued the suspension without error because the department received a notice to suspend from a court under ORS 809.220, but the department later determines that the person in fact was in compliance with the requirements of the court prior to the effective date of the suspension.

SECTION 8. ORS 809.419 is amended to read:

809.419. (1)(a) The Department of Transportation shall suspend the driving privileges of a person if the department requests the person to submit to examination under ORS 807.340 and the person fails to appear within a reasonable length of time after being notified to do so or fails to satisfactorily complete the required examination. A suspension under this subsection shall continue until the examination required by the department is successfully completed or until the person voluntarily surrenders the person's driving privileges to the department based upon the person's recognition that the person is no longer competent to drive.

(b) Upon suspension under this subsection, the department may issue an identification card to the person for identification purposes as described under ORS 807.400.

(2) The department shall suspend the driving privileges of a person if the department requests the person to obtain medical clearance under ORS 807.070 or 807.090 and the person fails to do so. The suspension under this subsection shall continue until the required medical clearance is received by the department or until the person voluntarily surrenders the person's driving privileges to the department based upon the person's recognition that the person is no longer competent to drive.

(3)(a) The department may suspend the driving privileges of a person who is incompetent to drive a motor vehicle because of a mental or physical condition or impairment that affects the person's ability to safely operate a motor vehicle upon the highways.

(b) A suspension under this subsection shall be subject to any conditions the department

determines to be necessary and shall continue for a period determined by the department or until the person voluntarily surrenders the person's driving privileges to the department based upon the person's recognition that the person is no longer competent to drive.

(c) The department may impose an immediate suspension of driving privileges of any person described in paragraph (a) of this subsection without hearing and without receiving a record of the conviction of the person of a crime if the department has reason to believe that the person may endanger people or property if the person's driving privileges are not immediately suspended. A suspension under this paragraph is subject to a post-imposition hearing under ORS 809.440. A person who is denied eligibility under ORS 807.090 is entitled to a hearing under ORS 809.440.

(4)(a) Whenever the department has reason to believe an individual with a motorcycle endorsement under ORS 807.170 is incompetent to operate a motorcycle, the department may revoke the endorsement.

(b) Upon revocation under this subsection, the endorsed license shall be surrendered to the department.

(c) Upon surrender of the endorsed license, the department may issue a license without endorsement for the unexpired period of the license.

[*(5) Upon notification by the superintendent of a hospital under ORS 807.700 that a person should not drive, the department shall immediately suspend the driving privileges of the released person. A suspension under this subsection is subject to administrative review under ORS 809.440 and shall continue until such time as the person produces a judicial judgment of competency or a certificate from the superintendent of the hospital that the person is competent, or establishes eligibility under ORS 807.090.*]

[*(6)*] **(5)** Upon notification by a court under ORS 810.375 that a person charged with a traffic offense has been found guilty except for insanity and committed to the jurisdiction of the Psychiatric Security Review Board under ORS 161.315 to 161.351, the department shall immediately suspend the driving privileges of the person. A suspension under this subsection is subject to administrative review under ORS 809.440 and shall continue until such time as the person establishes eligibility under ORS 807.090.
