



Jane E. Vetto
County Counsel

June 26, 2025

BCC Agenda Date/Item: _____

Scott C. Ciecko
Amanda Keller
Shawn Lillegren
Jeffrey D. Munns
Sarah Foreman
Caleb Huegel
Angela Hajihashemi
Joseph Lucas
Ryan Hammond
Assistants

Board of Clackamas County
Commissioners

Approval of a Board Order Designating the Office of County Counsel as Responsible for Representing the State’s Interest in Civil Commitment Proceedings.

Previous Board Action/Review	None.		
Performance Clackamas	Which indicator of success does this item affect? Ensuring Safe, Healthy, and Secure Communities		
Counsel Review	Yes, by Assistant Legal Counsel Joseph Lucas	Procurement Review	N/A, Item is a Board Order
Contact Person	Joseph Lucas	Contact Phone	(503) 742-5398

EXECUTIVE SUMMARY: Chapter 426 of the Oregon Revised Statutes (ORS) regulates the commitment process. More specifically, ORS 426.005 through ORS 426.395 regulates the commitment of a “person with mental illness.” Under ORS 426.005(1)(f), a “person with mental illness” is someone who, due to a mental disorder, is “[d]angerous to self or others” or is “unable to provide for basic personal needs that are necessary to avoid serious physical harm in the near future, and is not receiving such care as is necessary to avoid such harm.” Hearings are held in Clackamas County Circuit Court (the Court) to determine whether an individual is a “person with a mental illness.” These hearings may be held at the Clackamas County Courthouse. In addition, under ORS 426.095(1), “[t]he hearing may be held in a hospital, the person’s home or in some other place convenient to the court and the person alleged to have a mental illness.” Typically, the hearings are held at the healthcare facility where the person alleged to have a mental illness is receiving treatment. The District Attorney’s Office currently represents the state’s interest in these hearings.

Under ORS 426.130, if the Court determines that the individual is a “person with a mental illness,” at the

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hearing the Court then also makes the determination whether to: (1) release the person and dismiss the case, or (2) order a conditional release subject to qualifications and requirements, or (3) “order commitment of the person [. . .] to the Oregon Health Authority for treatment[.]”

Oregon State Bar Informal Opinion 95-1 indicated that the Office of County Counsel’s involvement in civil commitment hearings requires a waiver by the State of Oregon of any conflicts of interest. We have obtained that waiver from the State of Oregon’s Department of Justice (signed and dated June 11, 2025). The District Attorney does not object to the Board designating the Office of County Counsel as primarily responsible for representing the state’s interest in commitment proceedings, and the District Attorney’s Office is willing to represent the state’s interest in commitment proceedings when a substitute representative is needed.

Shifting the primary responsibility of representing the state’s interests from the District Attorney’s Office to the Office of County Counsel would allow the District Attorney’s Office to reallocate their resources. Under this proposed Board Order, the state’s interest will be primarily represented by a specific dedicated Assistant Legal Counsel from the County Counsel’s Office. This will provide increased subject matter expertise and consistency in representation. Moreover, it will provide further clarity, especially for the person alleged to have a mental illness, that it is a civil process rather than a criminal process. In addition, this proposed Board Order designates the Clackamas County District Attorney’s office as the alternative representative of the state’s interest in commitment proceedings when a substitute representative is needed, which will help ensure that proper coverage is always available.

RECOMMENDATION: Staff recommends approval of the Board Order designating that the Office of County Counsel is responsible for representing the state’s interest in commitment proceedings conducted pursuant to ORS 426.005 through ORS 426.395.

Respectfully submitted,



Joseph Lucas
Assistant Legal Counsel
Office of County Counsel

BEFORE THE BOARD OF COUNTY COMMISSIONERS

OF CLACKAMAS COUNTY, STATE OF OREGON

In the Matter of Approving an Order Designating the Office of County Counsel as Responsible for Representing the State’s Interest in Commitment Proceedings



Board Order No.

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Whereas, this is before the Clackamas County Board of Commissioners (the “Board”) at this time, and it appearing that the Board is able to designate the Office of County Counsel as responsible for representing the state’s interest in commitment proceedings; and

Whereas, Oregon Revised Statute (ORS) 426.005(1)(f) defines a “[p]erson with mental illness” as including, among other criteria, “a person who, because of a mental disorder, is [. . .] [d]angerous to self or others” or is “unable to provide for basic personal needs that are necessary to avoid serious physical harm in the near future, and is not receiving such care as is necessary to avoid such harm.”; and

Whereas, ORS 426.005 through ORS 426.395 regulates the commitment of a “person with mental illness”; and

Whereas, under ORS 426.100(4), “the responsibility for representing the state’s interest in commitment proceedings” is “[t]he district attorney if requested to do so by the governing body of the county” or “[i]n lieu of the district attorney [. . .], a counsel designated by the governing body of a county shall take the responsibility.”; and

Whereas, designating the Office of County Counsel as primarily responsible for representing the state’s interest in commitment proceedings would allow the District Attorney’s Office to reallocate their resources; and

Whereas, the District Attorney does not object to the Board designating the Office of County Counsel as primarily responsible for representing the state’s interest in commitment proceedings; and

Whereas, the District Attorney’s Office is willing to represent the state’s interest in commitment proceedings when a substitute representative is needed; and

Whereas, Oregon State Bar Informal Opinion 95-1 indicated that the Office of County Counsel’s involvement in civil commitment hearings requires a waiver by the State of Oregon of any conflicts of interest; and

Whereas, the Office of County Counsel has obtained that waiver from the Oregon Department of Justice, which waiver was signed and dated June 11, 2025; and

Whereas, the Office of County Counsel is willing, capable, and ready to assume this responsibility of representing the state’s interest in commitment proceedings.

BEFORE THE BOARD OF COUNTY COMMISSIONERS

OF CLACKAMAS COUNTY, STATE OF OREGON

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NOW THEREFORE, the Clackamas County Board of Commissioners do hereby order and designate that the Office of County Counsel is responsible for representing the state's interest in commitment proceedings conducted pursuant to ORS 426.005 through ORS 426.395. The Clackamas County District Attorney's Office is designated as the alternative representative of the state's interest in commitment proceedings when a substitute representative is needed.

DATED this _____ day of _____, 2025

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary