

# Oregon

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## Analysis

### **There are no criminal statutes explicitly addressing HIV exposure but prosecutions have arisen under general criminal laws.**

There are no statutes explicitly criminalizing HIV transmission or exposure in Oregon. Nonetheless, Oregon has prosecuted people living with HIV (PLHIV) for exposing others to HIV under general criminal laws, including attempted murder, assault, and reckless endangerment. Failing to disclose HIV status to sexual partners may result in prosecution and conviction.

In *State v. Hinkhouse*, a PLHIV appealed his conviction for 10 counts each of attempted murder and attempted assault after having sex with numerous people without disclosing his HIV status.<sup>1</sup> The defendant had refused to use a condom with several sexual partners and denied having HIV, despite being warned by his parole officer not to engage in unprotected sex.<sup>2</sup> According to the testimony of one sexual partner, the defendant said that if he ever acquired HIV, he would spread the virus to others.<sup>3</sup> At least one of the defendant's partners tested positive for HIV, though this fact was irrelevant to prosecution.<sup>4</sup> At trial, the defendant was sentenced to 70 years in prison.<sup>5</sup>

On appeal, the defendant argued he did not intend to kill or harm his sexual partners, only to gratify himself sexually.<sup>6</sup> The Court of Appeals of Oregon disagreed, finding his refusal to wear condoms, failure to disclose his HIV status, and the long pattern of conduct were all sufficient to show that "he acted deliberately to cause his victims serious bodily injury and death."<sup>7</sup> The court further reasoned that Hinkhouse's exposing the women to HIV was not merely for his own sexual gratification because, by contrast, he did use condoms and disclose his HIV status with the woman he planned to marry.<sup>8</sup>

Other prosecutions of PLHIV under Oregon's general criminal laws include:

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<sup>1</sup> 912 P.2d 921, 922 (Or. Ct. App. 1996), *adhered to as modified*, 915 P.2d 489 (Or. Ct. App. 1996); *HIV-Positive Man Guilty of Attempted Murder*, THE SEATTLE TIMES, Mar. 16, 1994, available at <http://community.seattletimes.nwsources.com/archive/?date=19940316&slug=1900486>.

<sup>2</sup> *Hinkhouse*, 912 P.2d at 922-23.

<sup>3</sup> *Id.* at 924.

<sup>4</sup> *Id.* at 922.

<sup>5</sup> Josh Meyer, *Non-Unanimous Jury Idea Appeals to Some Reformers*, L.A. TIMES, Sept. 28, 1994, available at [http://articles.latimes.com/1994-09-28/news/mn-44047\\_1\\_unanimous-jury](http://articles.latimes.com/1994-09-28/news/mn-44047_1_unanimous-jury).

<sup>6</sup> *Hinkhouse*, 912 P.2d at 922, 925.

<sup>7</sup> *Id.* at 925.

<sup>8</sup> *Id.*

- In 2013, a 37-year-old PLHIV was charged with sexual abuse, sodomy, unlawful sexual penetration, and recklessly endangering after he allegedly sexually abused a young child.<sup>9</sup> The reckless endangerment charge arose out of his HIV status.<sup>10</sup> He ultimately took a plea deal and was sentenced to 17 years' imprisonment for attempted sexual penetration and sexual abuse of a child.<sup>11</sup>
- In July 2012, a 21-year-old PLHIV was charged with attempted first-degree assault, attempted second-degree assault, and two counts of reckless endangerment for engaging in unprotected sexual relations with a female partner without disclosing his HIV status.<sup>12</sup>
- In June 2009, a 21-year-old PLHIV pled guilty to second-degree attempted assault and third-degree assault after having unprotected sex with a female partner without disclosing his status.<sup>13</sup> He was later sentenced to two years in prison with three years post-prison supervision.<sup>14</sup> He was further ordered to undergo sex offender evaluation.<sup>15</sup>

HIV status may also be a factor in sentencing. In *State v. Guayante*, a man living with HIV appealed his conviction for one count of sexual abuse and two counts each of attempted rape and sodomy of a 13-year-old girl.<sup>16</sup> On appeal, the defendant argued that the trial court acted without statutory authority when it relied on his HIV status as an aggravating factor in imposing a “disproportionately harsh sentence.”<sup>17</sup> The Court of Appeals of Oregon disagreed, stating that it was valid to consider as an aggravating factor the defendant’s knowledge of his status and willingness to “expose the 13-year old victim to an incurable fatal disease,”<sup>18</sup> in imposing maximum, consecutive sentences for sexual assault.<sup>19</sup> Though an older case, *Guyante* suggests that “exposure” to HIV during the commission of a crime may operate as an aggravating factor in sentencing—intent to transmit disease or actual transmission are not required and “exposure” is not meaningfully is not clearly defined.

### **It is a crime in Oregon to willfully transmit a communicable disease.**

It Class C felony, punishable by up to five years' imprisonment and a \$125,000 fine, to “willfully cause the spread of any communicable disease.”<sup>20</sup> The statute does not define its terms, but “caus[ing] the spread” suggests that actual transmission of disease is required for prosecution. “Communicable disease” is defined broadly to mean “a disease or condition, the infectious agent of which may be transmitted by any means from one person or from an animal to another person, that may result in

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<sup>9</sup> Lynne Terry, *HIV-positive Portland man, 37, arrested, may have infected young child*, THE OREGONIAN, Apr. 3, 2013, available at <http://www.oregonlive.com/portland/index.ssf/2013/04/hiv-positive-portland-man-37-f.html>.

<sup>10</sup> *Id.*

<sup>11</sup> Helen Jung, *North Portland man with HIV sentenced in sexual abuse of five-year old girl*, October 29, 2013, available at <http://www.oregonlive.com/portland/index.ssf/2013/10/north-portland-man-with-hiv-se.html>.

<sup>12</sup> Scott Graves, *Man with HIV facing charges of assault and endangering*, CURRY COASTAL PILOT, July 25, 2012, available at <http://www.currypilot.com/News/Local-News/Man-with-HIV-facing-charges-of-assault-and-endangering>.

<sup>13</sup> Karen Pate, *Man sentenced after sexual partner contracts HIV*, THE OREGONIAN, July 17, 2009, available at <http://www.oregonlive.com/washingtoncounty/index.ssf/2009/07/man-sentenced-after-sexual-par.html>.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> 783 P.2d 1030, 1031 (Or. Ct. App. 1989).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 1032.

<sup>20</sup> OR. REV. STAT. §§ 433.010, 433.990(2), 161.605(3), 161.625(1) (2016).

illness, death or severe disability.”<sup>21</sup> It is a broad definition that clearly encompasses HIV, as well as other STIs.

### **Public health officials may impose mandatory testing, examination or treatment in response to STIs and non-compliance can result in criminal punishment.**

Public health officials may require testing or medical examination of “any person who may have, or may have been exposed to, a communicable disease identified by rule of the Oregon Health Authority to be a reportable disease...”<sup>22</sup> Reportable STIs include chancroid, chlamydia, gonococcal infections, Hepatitis B, and syphilis.<sup>23</sup> A written order from public health officials must accompany mandatory testing or examination.<sup>24</sup> The order must identify the disease at issue and the basis for the belief that a person is infected; state whether laboratory confirmation is possible, and; include a statement that the person may refuse to submit to the testing or examination, in which case officials may seek the imposition of isolation or quarantine.<sup>25</sup> A person with a communicable disease may also be required to undergo a prescribed course of medication or other treatment. Refusal to comply may result in imposition of isolation or quarantine.<sup>26</sup> Health officials are required to “make every effort to obtain voluntary compliance” for any test, examination or treatment<sup>27</sup> and the measure must be the least restrictive alternative to minimize transmission to others.<sup>28</sup>

Violation of this statute is a Class C misdemeanor, punishable by up to 30 days’ incarceration and a \$1,250 fine.<sup>29</sup>

### **A person with a communicable disease may be subject to isolation or quarantine.**

When a public health official has probable cause to believe a person “requires immediate detention in order to avoid a clear and immediate danger to others,” the official may issue an emergency administrative order for isolation or quarantine.<sup>30</sup> The emergency order must describe the efforts made to secure voluntary compliance or why such efforts are not possible, the communicable disease at issue, and the anticipated duration of the order.<sup>31</sup> It must also include information supporting the reasonable beliefs that “a communicable disease . . . could spread to or contaminate others if remedial action is not taken” and that “the person...would pose a serious and imminent risk to the health and safety of others if not detained . . .”<sup>32</sup> Health officials may also petition a circuit court for a written ex

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<sup>21</sup> OR. REV. STAT. § 431A.005 (2016).

<sup>22</sup> OR. REV. STAT. § 433.035(1)(a) (2016).

<sup>23</sup> See *Oregon Disease Reporting: What is Reportable and When*

OREGON HEALTH AUTHORITY, <https://public.health.oregon.gov/DiseasesConditions/CommunicableDisease/ReportingCommunicableDisease/Pages/reportable.aspx> (last visited December 16, 2016).

<sup>24</sup> OR. REV. STAT. § 433.035(1)(b)(2016).

<sup>25</sup> OR. REV. STAT. §§ 433.035(1)(b)(A), 433.035(1)(b)(B), 433.035(1)(b)(C) (2016).

<sup>26</sup> OR. REV. STAT. § 433.035(3)(2016).

<sup>27</sup> OR. REV. STAT. § 433.035(4)(2016).

<sup>28</sup> OR. REV. STAT. § 433.035(5)(2016).

<sup>29</sup> OR. REV. STAT. §§ 433.990(3), 161.615(3), 161.635(c) (2016).

<sup>30</sup> OR. REV. STAT. § 433.121(1) (2016).

<sup>31</sup> OR. REV. STAT. §§ 433.121(1)(c)(A), 433.121(1)(c)(B), 433.121(1)(d) (2016).

<sup>32</sup> OR. REV. STAT. §§ 433.121(1)(e), 433.121(1)(f) (2016).

parte order—the petition must include the same information as an emergency administrative order.<sup>33</sup> In either case, the order must be personally served on the restricted individual within 12 hours of its issuance<sup>34</sup> and the detention may last no longer than 72 hours without petitioning the circuit court for an order authorizing quarantine or isolation.<sup>35</sup>

A petition to the circuit court must include similar information to the above detailing the basis and terms of the order.<sup>36</sup> The person subject to the restriction is entitled to legal counsel<sup>37</sup> and a hearing on the petition is scheduled within 72 hours of filing.<sup>38</sup> The court will grant the petition upon a finding, by clear and convincing evidence, that the restriction is “necessary to prevent a serious risk to the health and safety of others.”<sup>39</sup> The resulting order for restriction may not exceed 60 days for non-airborne diseases.<sup>40</sup> Failure to obey an order will subject the restricted individual to contempt of court proceedings.<sup>41</sup> A person subject to a restriction is always free to apply to the circuit court for an order to show cause why the person should not be released.<sup>42</sup>

### **Medical information may be released to support enforcement of public health laws, including prosecution for disease transmission and non-compliance with public health orders.**

Information obtained by public health officials in the course of investigating a reportable disease is confidential, but there are several notable exceptions.<sup>43</sup> The information may be released “as required for the administration or enforcement of public health laws or rules” during the examination of a public health official during a judicial or administrative proceeding.<sup>44</sup> Public health laws and rules include felony punishment for willful transmission of communicable disease<sup>45</sup> and so it is possible the information could be disclosed in a criminal proceeding. Medical information may also be released to law enforcement officials to assist with the enforcement of restrictive measures, such as quarantine or isolation.<sup>46</sup> It is unclear how or if the information could be used in a future legal proceeding.

***Important note:** While we have made an effort to ensure that this information is current, the law is always changing and we cannot guarantee the accuracy of the information provided. This information may or may not be applicable to your specific situation and, as such, should not be used as a substitute for legal advice.*

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<sup>33</sup> OR. REV. STAT. §§ 433.121(2)(a), 433.121(2)(b) (2016).

<sup>34</sup> OR. REV. STAT. § 433.121(3) (2016). A variety of information must be included in the notice, including the individual's right to counsel, the right to petition the circuit court for release, sanctions for non-compliance, etc. OR. REV. STAT. § 433.126(1) (2016)

<sup>35</sup> OR. REV. STAT. § 433.121(4) (2016).

<sup>36</sup> OR. REV. STAT. § 433.123(2) (2016).

<sup>37</sup> OR. REV. STAT. § 433.123(4) (2016).

<sup>38</sup> OR. REV. STAT. § 433.123(6) (2016).

<sup>39</sup> OR. REV. STAT. § 433.123(8) (2016).

<sup>40</sup> OR. REV. STAT. § 433.123(8)(a)(2016). The order may be extended if its demonstrated by clear and convincing evidence that continued restriction is necessary to prevent a serious threat to the health and safety of others. OR. REV. STAT. § 433.123(10)(d)(2016).

<sup>41</sup> OR. REV. STAT. § 433.123(13)(2016). Available penalties for a person in contempt of court include confinement and/or fines. OR. REV. STAT. § 33.105 (2016).

<sup>42</sup> OR. REV. STAT. § 433.133(1)(a) (2016)

<sup>43</sup> OR. REV. STAT. § 433.008(1)(a) (2016).

<sup>44</sup> OR. REV. STAT. § 433.008(1)(b) (2016).

<sup>45</sup> OR. REV. STAT. § 433.010 (2016).

<sup>46</sup> OR. REV. STAT. § 433.008(2)(c) (2016).

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## Oregon Revised Statutes

*Note: Provisions imposing punitive restrictions or listing criminal sentences are denoted with \*\* and are generally listed first. Thereafter, provisions within a particular title are listed numerically.*

### TITLE 36, PUBLIC HEALTH AND SAFETY

#### **OR. REV. STAT. § 433.010 (2016)** \*\*

*Spreading disease prohibited; health certificates to be issued by physicians; rules.*

(1) No person shall willfully cause the spread of any communicable disease within this state.

#### **OR. REV. STAT. § 433.990 (2016)** \*\*

*Penalties*

(2) Violation of ORS 433.010 is a Class C felony.

(3) Violation of ORS 433.035 is a Class C misdemeanor.

### TITLE 16, CRIMES AND PUNISHMENTS

#### **OR. REV. STAT. § 161.605 (2016)** \*\*

*Maximum prison terms for felonies*

The maximum term of an indeterminate sentence of imprisonment for a felony is as follows:

(3) For a Class C felony, 5 years.

#### **OR. REV. STAT. § 161.615 (2016)** \*\*

*Prison terms for misdemeanors*

Sentences for misdemeanors shall be for a definite term. The court shall fix the term of imprisonment within the following maximum limitations:

(3) For a Class C misdemeanor, 30 days.

#### **OR. REV. STAT. § 161.625 (2016)** \*\*

*Fines for felonies*

(1) A sentence to pay a fine for a felony shall be a sentence to pay an amount, fixed by the court, not exceeding:

(d) \$125,000 for a Class C felony.

#### **OR. REV. STAT. § 161.635 (2016)** \*\*

*Fines for misdemeanors*

(1) A sentence to pay a fine for a misdemeanor shall be a sentence to pay an amount, fixed by the court, not exceeding:

(c) \$ 1,250 for a Class C misdemeanor.

## **TITLE 36, PUBLIC HEALTH AND SAFETY**

### **OR. REV. STAT. § 431A.005 (2016)<sup>47</sup>**

#### *Definitions*

As used in ORS 431A.005 to 431A.020:

(2) "Communicable disease" means a disease or condition, the infectious agent of which may be transmitted by any means from one person or from an animal to another person, that may result in illness, death or severe disability.

(3) "Condition of public health importance" means a disease, syndrome, symptom, injury or other threat to public health that is identifiable on an individual or community level.

(10) "Reportable disease" means a disease or condition, the reporting of which enables a public health authority to take action to protect or to benefit the public health.

### **OR. REV. STAT. § 433.008 (2016)**

#### *Confidentiality of disclosure; exceptions; privilege*

(1)

(a) Except as provided in subsection (2) of this section, information obtained by the Oregon Health Authority or a local public health administrator in the course of an investigation of a reportable disease or disease outbreak is confidential and is exempt from disclosure under ORS 192.410 to 192.505.

(b) Except as required for the administration or enforcement of public health laws or rules, a state or local public health official or employee may not be examined in an administrative or judicial proceeding about the existence or contents of a reportable disease report or other information received by the authority or local public health administrator in the course of an investigation of a reportable disease or disease outbreak.

(2) The authority or a local public health administrator may release information obtained during an investigation of a reportable disease or disease outbreak to:

(c) Law enforcement officials to the extent necessary to carry out the authority granted to the Public Health Director and local public health administrators under ORS 433.121, 433.128, 433.131, 433.138 and 433.142;

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<sup>47</sup> Title 36, Chapter 433 of Oregon's public health statutes governs the control of disease. As currently drafted, that Chapter relies on the definition of communicable disease provided in OR. REV. STAT. § 431.260. (2016), which was renumbered, effective July 2015, to be OR. REV. STAT. § 431A.005 (2016).

**OR. REV. STAT. § 433.035 (2016)**

*Testing or examination of persons with certain diseases or conditions; order for medication or treatment*

(1)

(a) The Public Health Director or a local public health administrator may require testing or medical examination of any person who may have, or may have been exposed to, a communicable disease identified by rule of the Oregon Health Authority to be a reportable disease, a new or uncommon disease of potential public health significance, or a condition that is the basis of a state of public health emergency declared by the Governor as authorized by ORS 433.441. The Public Health Director or the local public health administrator must issue a written order for testing or medical examination pursuant to this section.

(b) A written order must:

(A) Include findings stating the communicable disease that the Public Health Director or the local public health administrator believes the person has and the reasons for that belief.

(B) State whether medical or laboratory confirmation of the disease is feasible and possible and whether such confirmation would enable control measures to be taken to minimize infection of others with the disease.

(C) Include a statement that the person may refuse to submit to the testing or medical examination and that if the testing or examination is refused, the Public Health Director or the local public health administrator may seek the imposition of a public health measure, including isolation or quarantine pursuant to ORS 433.121 or 433.123.

(2) When a person is directed to submit to a test or examination under this section and the person agrees to do so, the person shall submit to any testing or examination as may be necessary to establish the presence or absence of the communicable disease for which the testing or examination was directed. The examination shall be carried out by the local health officer or a physician licensed by the Oregon Medical Board or the Oregon Board of Naturopathic Medicine. A written report of the results of the test or examination shall be provided to the person ordering the test or examination, and upon request, to the person tested or examined. Laboratory examinations, if any, shall be carried out by the laboratory of the authority whenever the examinations are within the scope of the tests conducted by the laboratory. If treatment is needed, the person or the parent or guardian of the person shall be liable for the costs of treatment based on the examination carried out under this section, if the person liable is able to pay the treatment costs. Cost of any examination performed by a physician in private practice shall be paid from public funds available to the local public health administrator, if any, or from county funds available for general governmental expenses in the county that the local public health administrator serves or in the county where the person tested or examined resides if the local public health administrator serves more than one county or the test or examination was ordered by the Public Health Director or local public health administrator.

(3) If a person has a communicable disease, a new or uncommon disease of potential public health significance, or a condition that is the basis of a state of public health emergency, the Public Health Director or the local public health administrator may issue an order requiring the person to complete an appropriate prescribed course of medication or other treatment for the communicable disease, including directly observed therapy if appropriate, and to follow infection control provisions for the disease. The

order shall also include statements that the person may refuse the medication or other treatment and that the person's failure to comply with the order issued under this subsection may result in the Public Health Director or the local public health administrator seeking the imposition of a public health measure, including isolation or quarantine as authorized by ORS 433.121 and 433.123.

(4) The Public Health Director or the local public health administrator must make every effort to obtain voluntary compliance from a person for any testing, medical examination and treatment required under this section.

(5) Any action taken by the Public Health Director or the local public health administrator under this section to compel testing, medical examination or treatment of a person who has a communicable disease, a new or uncommon disease of potential public health significance, or a condition that is the basis of a state of public health emergency must be the least restrictive alternative available to accomplish the results necessary to minimize the transmission of the disease to others.

**OR. REV. STAT. § 433.121 (2016)**

*Emergency administrative order for isolation or quarantine; contents; ex parte court order*

(1) The Public Health Director or a local public health administrator may issue an emergency administrative order causing a person or group of persons to be placed in isolation or quarantine if the Public Health Director or the local public health administrator has probable cause to believe that a person or group of persons requires immediate detention in order to avoid a clear and immediate danger to others and that considerations of safety do not allow initiation of the petition process set out in ORS 433.123. An administrative order issued under this section must:

- (a) Identify the person or group of persons subject to isolation or quarantine;
- (b) Identify the premises where isolation or quarantine will take place, if known;
- (c)
  - (A) Describe the reasonable efforts made to obtain voluntary compliance with a request for an emergency public health action including requests for testing or medical examination, treatment, counseling, vaccination, decontamination of persons or animals, isolation, quarantine, and inspection and closure of facilities; or
  - (B) Explain why reasonable efforts to obtain voluntary compliance are not possible and why the pursuit of these efforts creates a risk of serious harm to others;
- (d) Describe the suspected communicable disease or toxic substance, if known, that is the basis for the issuance of the emergency administrative order and the anticipated duration of isolation or quarantine based on the suspected communicable disease or toxic substance;
- (e) Provide information supporting the reasonable belief of the Public Health Director or the local public health administrator that the person or group of persons is, or is suspected to be, infected with, exposed to, or contaminated with a communicable disease or toxic substance that could spread to or contaminate others if remedial action is not taken;
- (f) Provide information supporting the reasonable belief of the Public Health Director or the local public health administrator that the person or group of persons would pose a serious and



imminent risk to the health and safety of others if not detained for purposes of isolation or quarantine;

(g) Describe the medical basis for which isolation or quarantine is justified and explain why isolation or quarantine is the least restrictive means available to prevent a risk to the health and safety of others;

(h) Establish the time and date at which the isolation or quarantine commences; and

(i) Contain a statement of compliance with the conditions of and principles for isolation and quarantine specified in ORS 433.128.

(2)

(a) In lieu of issuing an emergency administrative order under subsection (1) of this section, the Public Health Director or a local public health administrator may petition the circuit court for a written ex parte order.

(b) The petition to the court and the court's order must include the information described in subsection (1) of this section.

(c) The Public Health Director or local public health administrator:

(A) Shall make reasonable efforts to serve the person or group of persons subject to isolation or quarantine with the petition before the petition is filed; and

(B) Is not required to provide prior notice of an ex parte proceeding at which the petition is being considered by the court.

(3) Within 12 hours of the issuance of an order under subsection (1) or (2) of this section, the person or group of persons detained or sought for detention must be personally served with the written notice required by ORS 433.126 and with a copy of any order issued under subsection (1) or (2) of this section. If copies of the notice and order cannot be personally served in a timely manner to a group of persons because the number of persons in the group makes personal service impracticable, the Public Health Director or the local public health administrator shall post the notice and order in a conspicuous place where the notice and order can be viewed by those detained or shall find other means to meaningfully communicate the information in the notice and order to those detained.

(4) A person or group of persons detained pursuant to an order issued under subsection (1) or (2) of this section may not be detained for longer than 72 hours unless a petition is filed under ORS 433.123.

(5) If the detention of a person or group of persons for longer than 72 hours is deemed necessary, immediately following the issuance of an order under subsection (1) or (2) of this section, the Public Health Director or the local public health administrator must petition the circuit court in accordance with ORS 433.123.

(6) A person or group of persons detained under subsection (1) or (2) of this section has the right to be represented by legal counsel in accordance with ORS 433.466.

**OR. REV. STAT. § 433.123 (2016)**

*Petition for court order for isolation or quarantine; contents; hearing on petition; contents of order; duration or isolation of quarantine*

(1) The Public Health Director or a local public health administrator may petition the circuit court for an order authorizing:

(a) The isolation or quarantine of a person or group of persons; or

(b) The continued isolation or quarantine of a person or group of persons detained under ORS 433.121.

(2) A petition filed under subsections (1) and (9) of this section must:

(a) Identify the person or group of persons subject to isolation or quarantine;

(b) Identify the premises where isolation or quarantine will take place, if known;

(c)

(A) Describe the reasonable efforts made to obtain voluntary compliance with a request for an emergency public health action, including requests for testing or medical examination, treatment, counseling, vaccination, decontamination of persons or animals, isolation, quarantine and inspection and closure of facilities; or

(B) Explain why reasonable efforts to obtain voluntary compliance are not possible and why the pursuit of these efforts creates a risk of serious harm to others;

(d) Describe the suspected communicable disease or toxic substance, if known, and the anticipated duration of isolation or quarantine based on the suspected communicable disease, infectious agent or toxic substance;

(e) Provide information supporting the reasonable belief of the Public Health Director or the local public health administrator that the person or group of persons is, or is suspected to be, infected with, exposed to, or contaminated with a communicable disease or toxic substance that could spread to or contaminate others if remedial action is not taken;

(f) Provide information supporting the reasonable belief of the Public Health Director or the local public health administrator that the person or group of persons would pose a serious risk to the health and safety of others if not detained for purposes of isolation or quarantine;

(g) Describe the medical basis for which isolation or quarantine is justified and explain why isolation or quarantine is the least restrictive means available to prevent a serious risk to the health and safety of others;

(h) Establish the time and date on which the isolation or quarantine commences; and

(i) Contain a statement of compliance with the conditions of and principles for isolation and quarantine specified in ORS 433.128.

(3) The person or group of persons detained or sought for detention must be personally served with a copy of the petition filed with the court under subsection (1) of this section and with the written notice

required by ORS 433.126. If copies of the petition and notice cannot be personally served in a timely manner to a group of persons because the number of persons in the group makes personal service impracticable, the Public Health Director or the local public health administrator shall post the petition and notice in a conspicuous place where the petition and notice can be viewed by those detained or find other means to meaningfully communicate the information in the petition and notice to those detained.

(4) A person or group of persons subject to a petition filed under subsection (1) or (9) of this section has the right to be represented by legal counsel in accordance with ORS 433.466.

(5) Upon the filing of a petition under subsection (1) of this section to continue isolation or quarantine for a person or group of persons detained under an emergency administrative or ex parte order issued under ORS 433.121, the court shall issue an order extending the isolation or quarantine order until the court holds a hearing pursuant to subsection (6) of this section.

(6)

(a) The court shall hold a hearing on a petition filed under subsection (1) of this section within 72 hours of the filing of the petition, exclusive of Saturdays, Sundays and legal holidays.

(b) In extraordinary circumstances and for good cause shown, or with consent of the affected persons, the Public Health Director or the local public health administrator may apply to continue the hearing date for up to 10 days. The court may grant a continuance at its discretion, giving due regard to the rights of the affected persons, the protection of the public health, the severity of the public health threat and the availability of necessary witnesses and evidence.

(c) The hearing required under this subsection may be waived by consent of the affected persons.

d) The provisions of ORS 40.230, 40.235 and 40.240 do not apply to a hearing held under this subsection. Any evidence presented at the hearing that would be privileged and not subject to disclosure except as required by this paragraph shall be disclosed only to the court, the parties and their legal counsel or persons authorized by the court and may not be disclosed to the public.

(7) The Public Health Director or local public health administrator may request that a person or group of persons who is the subject of a petition filed under subsection (1) or (9) of this section not personally appear before the court because personal appearance would pose a risk of serious harm to others. If the court grants the director's or local public health administrator's request or if the court determines that personal appearance by the person or group of persons who is the subject of the petition poses a risk of serious harm to others, the court proceeding must be conducted by legal counsel for the person or group of persons or must be held at a location, or by any means, including simultaneous electronic transmission, that allows all parties to fully participate.

(8) The court shall grant the petition if, by clear and convincing evidence, the court finds that isolation or quarantine is necessary to prevent a serious risk to the health and safety of others. In lieu of or in addition to isolation or quarantine, the court may order the imposition of other public health measures appropriate to the public health threat presented. The court order must:

(a) Specify the maximum duration for the isolation or quarantine, which may not exceed 60 days unless there is substantial medical evidence indicating that the condition that is the basis of the public health threat is spread by airborne transmission and cannot be rendered noninfectious within 60 days or may recur after 60 days, in which case the maximum duration of the isolation or quarantine may not exceed a period of 180 days;

(b) Identify the person or group of persons subject to the order by name or shared or similar characteristics or circumstances;

(c) Specify the factual findings warranting imposition of isolation, quarantine or another public health measure;

(d) Include any conditions necessary to ensure that isolation or quarantine is carried out within the stated purposes and restrictions of this section; and

(e) Be served on all affected persons or groups in accordance with subsection (3) of this section.

(9) Prior to the expiration of a court order issued under subsection (8) or (10) of this section, the Public Health Director or the local public health administrator may petition the circuit court to continue isolation or quarantine. A petition filed under this subsection must comply with the requirements of subsections (2) to (8) of this section.

(10)

(a) The court shall hold a hearing on a petition filed under subsection (9) of this section within 72 hours of filing, exclusive of Saturdays, Sundays and legal holidays.

(b) In extraordinary circumstances and for good cause shown, or with consent of the affected persons, the Public Health Director or the local public health administrator may apply to continue the hearing date for up to 10 days. The court may grant a continuance at its discretion, giving due regard to the rights of the affected persons, the protection of the public health, the severity of the public health threat and the availability of necessary witnesses and evidence.

(c) The hearing required under this subsection may be waived by consent of the affected parties.

(d) The court may continue the isolation or quarantine order if the court finds there is clear and convincing evidence that continued isolation or quarantine is necessary to prevent a serious threat to the health and safety of others. In lieu of or in addition to continued isolation or quarantine, the court may order the imposition of a public health measure appropriate to the public health threat presented.

(e) An order issued under this subsection must comply with the requirements of subsection (8) of this section.

(11) An order issued under subsection (10) of this section must be for a period not to exceed 60 days and must be served on all affected parties in accordance with subsection (3) of this section.

(12) In no case may a person or group of persons be in quarantine or isolation for longer than 180 days unless, following a hearing, a court finds that extraordinary circumstances exist and that the person or

group of persons subject to isolation or quarantine continues to pose a serious threat to the health and safety of others if detention is not continued.

(13) Failure to obey a court order issued under this section subjects the person in violation of the order to contempt proceedings under ORS 33.015 to 33.155.

**OR. REV. STAT. § 433.126 (2016)**

*Notice to persons subject to order; rules*

(1) The Public Health Director or the local public health administrator shall provide the person or group of persons detained or sought for detention under ORS 433.121 or 433.123 with a written notice informing the person or group of persons of:

- (a) The right to legal counsel, including how to request and communicate with counsel;
- (b) The right to petition the circuit court for release from isolation or quarantine and the procedures for filing a petition;
- (c) The conditions of and principles of isolation and quarantine specified in ORS 433.128;
- (d) The right to petition the court for a remedy regarding a breach of the conditions of isolation or quarantine imposed on the person or group of persons and the procedures for filing a petition; and
- (e) The sanctions that may be imposed for violating an order issued under ORS 433.121 or 433.123.

(2) The Public Health Director or the local public health administrator must ensure, to the extent practicable, that the person or group of persons receives the notice required under this section in a language and in a manner the person or group of persons can understand.

(3) The Public Health Director may adopt rules prescribing the form of notice required by this section.

**OR. REV. STAT. § 433.133 (2016)**

*Court hearing and order for release from isolation or quarantine or for remedy for breach of required conditions of isolation or quarantine*

(1)

- (a) Any person or group of persons who is isolated or quarantined pursuant to ORS 433.121 or 433.123 may apply to the circuit court for an order to show cause why the individual or group should not be released.
- (b) The court shall rule on the application to show cause within 48 hours of the filing of the application.
- (c) The court shall grant the application if there is a reasonable basis to support the allegations in the application, and the court shall schedule a hearing on the order requiring the Public Health Director or local public health administrator to appear and to show cause within five working days of the filing of the application.

(d) The issuance of an order to show cause and ordering the director or local public health administrator to appear and show cause does not stay or enjoin an isolation or quarantine order.

(2)

(a) A person or group of persons who is isolated or quarantined may request a hearing in the circuit court for remedies regarding breaches of the conditions of isolation or quarantine required by ORS 433.128.

(b) The court shall hold a hearing if there is a reasonable basis to believe there has been a breach of the conditions of isolation or quarantine required by ORS 433.128.

(c) A request for a hearing does not stay or enjoin an order for isolation or quarantine.

(d) Upon receipt of a request under this subsection alleging extraordinary circumstances justifying the immediate granting of relief, the court shall hold a hearing on the matters alleged as soon as practicable.

(e) If a hearing is not granted under paragraph (d) of this subsection, the court shall hold a hearing on the matters alleged within five days from receipt of the request.

(3) In any proceedings brought for relief under this section, in extraordinary circumstances and for good cause shown, or with consent of the petitioner or petitioners the Public Health Director or local public health administrator may move the court to extend the time for a hearing. The court in its discretion may grant the extension giving due regard to the rights of the affected persons, the protection of the public health, the severity of the emergency and the availability of necessary witnesses and evidence.

(4) If a person or group of persons who is detained cannot personally appear before the court because such an appearance poses a risk of serious harm to others, the court proceeding may be conducted by legal counsel for the person or group of persons and be held at a location, or by any means, including simultaneous electronic transmission, that allows all parties to fully participate.

(5) If the court finds, by clear and convincing evidence, that a person or group of persons no longer poses a serious risk to the health and safety to others, the court may order the release of that person or group of persons from isolation or quarantine.

(6) If the court finds by clear and convincing evidence that a person or group of persons is not being held in accordance with the conditions of isolation or quarantine required by ORS 433.128, the court may order an appropriate remedy to ensure compliance with ORS 433.128.