

# Enrolled House Bill 2312

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of House Interim Committee on Judiciary for Oregon Advocacy Center)

CHAPTER .....

AN ACT

Relating to rights of mentally ill persons committed to the Department of Human Services; amending ORS 426.385.

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

**SECTION 1.** ORS 426.385 is amended to read:

426.385. (1) Every mentally ill person committed to the Department of Human Services shall have the right to:

- (a) Communicate freely in person and by reasonable access to telephones;
- (b) Send and receive sealed mail, except that this right may be limited for security reasons in state institutions as described in ORS 426.010;
- (c) Wear the clothing of the person;
- (d) Keep personal possessions, including toilet articles;
- (e) Religious freedom;
- (f) A private storage area with free access thereto;
- (g) Be furnished with a reasonable supply of writing materials and stamps;
- (h) A written treatment plan, kept current with the progress of the person;
- (i) Be represented by counsel whenever the substantial rights of the person may be affected;
- (j) Petition for a writ of habeas corpus;
- (k) Not be required to perform routine labor tasks of the facility except those essential for treatment;

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

**(m) Daily access to fresh air and the outdoors, except that this right may be limited when it would create significant risk of harm to the person or others;**

[(m)] **(n)** Such other rights as may be specified by rule; and

[(n)] **(o)** Exercise all civil rights in the same manner and with the same effect as one not admitted to the facility, including, but not limited to, the right to dispose of real property, execute instruments, make purchases, enter contractual relationships, and vote, unless the person has been adjudicated incompetent and has not been restored to legal capacity. Disposal of personal property in possession of the person in a state institution described in ORS 426.010 is subject to limitation for security reasons.

(2)(a) A person must be immediately informed, verbally and in writing, of any limitation:

(A) Of the right to send or receive sealed mail under subsection (1)(b) of this section; [or]

(B) Regarding the disposal of personal property under subsection [(1)(n)] (1)(o) of this section[.]; **and**

**(C) Of the right to daily access to fresh air and the outdoors under subsection (1)(m) of this section.**

(b) Any limitation under this subsection and the reasons for the limitation must be stated in the person's written treatment plan.

(c) The person has the right to challenge any limitation under this subsection pursuant to rules adopted by the department. The person must be informed, verbally and in writing, of this right.

(3) Mentally ill persons committed to the department shall have the right to be free from potentially unusual or hazardous treatment procedures, including convulsive therapy, unless they have given their express and informed consent or authorized the treatment pursuant to ORS 127.700 to 127.737. This right may be denied to such persons for good cause as defined in administrative rule only by the director of the facility in which the person is confined, but only after consultation with and approval of an independent examining physician. Any denial shall be entered into the patient's treatment record and shall include the reasons for the denial. No patient shall be subjected to psychosurgery, as defined in ORS 677.190 (22)(b).

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

(5) Nothing in this section prevents the department from acting to exclude contraband from its facilities and to prevent possession or use of contraband in its facilities.

(6) As used in this section:

(a) "Contraband" has the meaning given that term in ORS 162.135.

(b) "Security reasons" means the protection of the mentally ill person from serious and immediate harm and the protection of others from threats or harassment as defined by rule of the department.

**Passed by House February 20, 2007**

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Chief Clerk of House

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Speaker of House

**Passed by Senate March 28, 2007**

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President of Senate

**Received by Governor:**

.....M.,....., 2007

**Approved:**

.....M.,....., 2007

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Governor

**Filed in Office of Secretary of State:**

.....M.,....., 2007

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Secretary of State