

Senate Bill 525

Sponsored by COMMITTEE ON JUDICIARY (at the request of Thomas Coleman)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires finding of continued danger to self or others for each extension of commitment of person with mental illness. Requires service of certification upon legal representative, guardian or Oregon Advocacy Center. Permits legal representative, guardian or Oregon Advocacy Center to contest continued commitment.

A BILL FOR AN ACT

1
2 Relating to extension of commitment of person with mental illness; amending ORS 426.300, 426.301
3 and 426.307.

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

5 **SECTION 1.** ORS 426.301 is amended to read:

6 426.301. (1) At the end of [*the*] **each** 180-day period of commitment, any person whose status has
7 not been changed to voluntary shall be released unless the Department of Human Services certifies
8 to the court in the county where the treating facility is located that [*the person is still mentally ill*
9 *and in need of further treatment*] **there is probable cause to believe that failure to retain the**
10 **person in custody would pose serious harm or danger to the person or to others. The cer-**
11 **tification must include a meaningful explanation of the basis for the determination.** The de-
12 partment, pursuant to its rules, may delegate to the director of the treating facility the
13 responsibility for making the certification. The director of the treating facility shall consult with the
14 community mental health and developmental disabilities program director of the county of residence
15 prior to making the certification. If the certification is made, the person will not be released, but
16 the director of the treating facility shall immediately issue a copy of the certification to the person
17 and to the community mental health and developmental disabilities program director of the county
18 of residence.

19 (2) The certification shall be served upon the person by the director of the facility wherein the
20 person is confined or the designee of the director. The director of the facility shall inform the court
21 in writing that service has been made and the date thereof.

22 (3) The certification shall advise the person of all the following:

23 (a) That the department or facility has requested that commitment be continued for an addi-
24 tional period of time.

25 (b) That the person may consult with legal counsel and that legal counsel will be provided for
26 the person without cost if the person is unable to afford legal counsel.

27 (c) That the person may protest this further commitment within 14 days, and if the person does
28 not commitment will be continued for an indefinite period of time up to 180 days.

29 (d) That if the person does protest a further period of commitment, the person is entitled to a
30 hearing before the court on whether commitment should be continued.

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

1 (e) That the person may protest either orally or in writing by signing the form accompanying
 2 the certification[;].

3 (f) That the person is entitled to have a physician or other qualified person as recommended
 4 by the department, other than a member of the staff at the facility where the person is confined,
 5 examine the person and report to the court the results of the examination.

6 [(f)] (g) That the person may subpoena witnesses and offer evidence on behalf of the person at
 7 the hearing.

8 [(g)] (h) That if the person is without funds to retain legal counsel or an examining physician
 9 or qualified person as recommended by the department, the court will appoint legal counsel, a phy-
 10 sician or other qualified person.

11 (4) Nothing in subsection (3) of this section requires the giving of the warning under ORS
 12 426.123.

13 (5) The person serving the certification shall read and deliver the certification to the person and
 14 ask whether the person protests a further period of commitment. The person may protest further
 15 commitment either orally or by signing a simple protest form to be given to the person with the
 16 certification. If the person does not protest a further period of commitment within 14 days of service
 17 of the certification, the department or facility shall so notify the court and the court shall, without
 18 further hearing, order the commitment of the person for an additional indefinite period of time up
 19 to 180 days.

20 **(6) The legal representative or guardian of the person or, if the person does not have a**
 21 **legal representative or guardian, the system described in ORS 192.517 must:**

22 (a) **Be served in accordance with subsection (2) of this section with a copy of the certif-**
 23 **ication required by subsection (1) of this section; and**

24 (b) **Be given an opportunity to protest further commitment as described in subsection (3)**
 25 **of this section.**

26 **SECTION 2.** ORS 426.300 is amended to read:

27 426.300. (1) The Department of Human Services shall, by filing a written certificate with the last
 28 committing court and the court of residence, discharge any patient from court commitment, except
 29 one held upon an order of a court or judge having criminal jurisdiction in an action or proceeding
 30 arising out of criminal offense when in its opinion the individual [is] no longer [a *mentally ill*
 31 *person*] **poses serious harm or danger to the person or to others** or when in its opinion the
 32 transfer of the individual to a voluntary status is in the best interest of the treatment of the patient.

33 (2) The department may sign applications for public assistance on behalf of those patients who
 34 may be eligible for public assistance.

35 **SECTION 3.** ORS 426.307 is amended to read:

36 426.307. If the person requests a hearing under ORS 426.301 or if the court proceeds under ORS
 37 426.275 (5), the following provisions apply as described:

38 (1) The hearing shall be conducted as promptly as possible and at a time and place as the court
 39 may direct.

40 (2) If the person requests a continuance in order to prepare for the hearing or to obtain legal
 41 counsel to represent the person, the court may grant postponement and detention during
 42 postponement as provided under ORS 426.095.

43 (3) The person has the right to representation by or appointment of counsel as provided under
 44 ORS 426.100 subject to ORS 135.055, 151.216 and 151.219.

45 (4) If the person requests an examination by a physician or other qualified person as recom-

1 mended by the Department of Human Services and is without funds to retain a physician or other
2 qualified person for purposes of the examination, the court shall appoint a physician or other qual-
3 ified person, other than a member of the staff from the facility where the person is confined, to ex-
4 amine the person at no expense to the person and to report to the court the results of the
5 examination.

6 (5) The provisions of ORS 40.230, 40.235, 40.240 and 40.250 do not apply to the use of medical
7 records from the current period of commitment or to testimony related to such records or period
8 of commitment in connection with hearings under this section. The court may consider as evidence
9 such reports and testimony.

10 (6) The court shall then conduct a hearing and after hearing the evidence and reviewing the
11 recommendations of the treating and examining physicians or other qualified persons, the court shall
12 determine whether the person *[is]* still *[a mentally ill person and in need of further treatment]* **poses**
13 **serious harm or danger to the person or to others**. If in the opinion of the court the individual
14 *[is]* still *[a mentally ill person by clear and convincing evidence and in need of further treatment]* **poses**
15 **serious harm or danger to the person or to others**, the court may order commitment to the de-
16 partment for an additional indefinite period of time up to 180 days.

17 (7) At the end of the 180-day period, the person shall be released unless the department or fa-
18 cility again certifies to the committing court that *[the person is still a mentally ill person and in need*
19 *of further treatment]* **there is probable cause to believe that failure to retain the person in**
20 **custody would pose serious harm or danger to the person or to others**, in which event the
21 procedures set forth in ORS 426.301 to 426.307 shall be followed.

22