

Enrolled
House Bill 2111

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor John A. Kitzhaber for Oregon Health Authority)

CHAPTER

AN ACT

Relating to public health; creating new provisions; and amending ORS 433.001, 433.121, 433.123, 433.126, 433.128, 433.133 and 433.142.

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

SECTION 1. ORS 433.001 is amended to read:

433.001. As used in ORS 433.001 to 433.045 and 433.110 to 433.770 unless the context requires otherwise:

[(1)] *“Authority” means the Oregon Health Authority.*

[(2)] (1) “Communicable disease” has the meaning given that term in ORS 431.260.

[(3)] (2) “Control” means a person without a reportable disease about whom information is collected for purposes of comparison to a person or persons with the reportable disease.

[(4)] *“Director” means the Director of the Oregon Health Authority.*

[(5)] (3) “Disease outbreak” has the meaning given that term in ORS 431.260.

[(6)] (4) “Epidemic” has the meaning given that term in ORS 431.260.

[(7)] (5) “Health care provider” has the meaning given that term in ORS 433.443.

[(8)] *“Individual” means a natural person.*

[(9)] (6) “Individually identifiable health information” has the meaning given that term in ORS 433.443.

[(10)] (7) “Isolation” means the physical separation and confinement of a person or group of persons who are infected or reasonably believed to be infected with a communicable disease or possibly communicable disease from nonisolated persons to prevent or limit the transmission of the disease to nonisolated persons.

[(11)] (8) “Local public health administrator” has the meaning given that term in ORS 431.260.

[(12)] (9) “Property” means animals, inanimate objects, vessels, public conveyances, buildings and all other real or personal property.

[(13)] (10) “Public health measure” has the meaning given that term in ORS 431.260.

[(14)] (11) “Quarantine” means the physical separation and confinement of a person or group of persons who have been or may have been exposed to a communicable disease or possibly communicable disease and who do not show signs or symptoms of a communicable disease, from persons who have not been exposed to a communicable disease or possibly communicable disease, to prevent or limit the transmission of the disease to other persons.

[(15)] (12) “Reportable disease” has the meaning given that term in ORS 431.260.

(13) **“Simultaneous electronic transmission” means transmission by television, telephone or any other electronic or digital means if the form of transmission allows:**

(a) The court and the person making the appearance to communicate with each other during the proceeding; and

(b) A person who is represented by legal counsel to consult privately with the person's attorney during the proceeding.

[(16)] (14) "Toxic substance" has the meaning given that term in ORS 431.260.

SECTION 2. ORS 433.121 is amended to read:

433.121. (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 [may] **shall** post

the notice and order in a conspicuous place where the notice and order can be viewed by those detained or [may] **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.

SECTION 3. ORS 433.123 is amended to read:

433.123. (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 [may] **shall** post the petition and notice in a conspicuous place where the petition and notice can be viewed by those detained or [may] 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 [*extends*], **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) [*If*] **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 [*cannot*] **not** personally appear before the court because personal appearance [*poses*] **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 [*may*] **must** be conducted by legal counsel for the person or group of persons [*and*] **or must** be held at a location, or [*via*] **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 [*will*] **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 [*shall*] **must** be for a period not to exceed 60 days and [*shall*] **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 [*shall subject*] **subjects** the person in violation of the order to contempt proceedings under ORS 33.015 to 33.155.

SECTION 4. ORS 433.126 is amended to read:

433.126. (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.

SECTION 5. ORS 433.128 is amended to read:

433.128. When isolating or quarantining a person or group of persons in accordance with ORS 433.121 or 433.123, the Public Health Director or the local public health administrator shall adhere to the following conditions and principles:

(1) Isolation or quarantine must be by the least restrictive means necessary to prevent the spread of a communicable disease or possibly communicable disease to others or to limit exposure to or contamination with a toxic substance by others, and may include, but is not limited to, confinement to private homes or other public or private premises.

(2) Confinement may not be in a prison, jail or other facility where those charged with a crime or a violation of a municipal ordinance are incarcerated unless:

(a) The person or group of persons represents an immediate and serious physical threat to the staff or physical facilities of a hospital or other facility in which the person or group of persons has been confined; or

(b) A person has been found in contempt of court because of failure to obey a court order.

(3) Isolated persons must be confined separately from quarantined persons. If a facility is not capable of separating isolated persons from quarantined persons, either the isolated persons or the quarantined persons must be moved to a separate facility.

(4) The health status of an isolated or quarantined person must be monitored regularly to determine if the person requires continued isolation or quarantine.

(5) A quarantined person who subsequently becomes infected or is reasonably believed to have become infected with a communicable disease or possibly communicable disease that the Public Health Director or the local public health administrator believes poses a significant threat to the health and safety of other quarantined persons must be promptly placed in isolation.

(6) An isolated or quarantined person must be released as soon as practicable when the Public Health Director or local public health administrator determines that the person has been successfully decontaminated or that the person no longer poses a substantial risk of transmitting a communicable disease or possibly communicable disease that would constitute a serious or imminent threat to the health and safety of others.

(7) The needs of a person who is isolated or quarantined must be addressed to the greatest extent practicable in a systematic and competent fashion, including, but not limited to, providing adequate food, medication, competent medical care, clothing, shelter and means of communication with other persons who are in isolation or quarantine and persons who are not under isolation or quarantine.

(8) Premises used for isolation or quarantine must, to the extent practicable, be maintained in a safe and hygienic manner to lessen the likelihood of further transmission of a communicable disease or possibly communicable disease or of further harm to persons who are isolated and quarantined.

(9) Cultural and religious beliefs should be considered to the extent practicable in addressing the needs of persons who are isolated or quarantined and in establishing and maintaining premises used for isolation or quarantine.

(10)(a) Isolation or quarantine shall not abridge the right of any person to rely exclusively on spiritual means to treat a communicable disease or possibly communicable disease in accordance with religious or other spiritual tenets and practices.

(b) Nothing in ORS 433.126 to 433.138, 433.142 and 433.466 prohibits a person who relies exclusively on spiritual means to treat a communicable disease or possibly communicable disease and who is infected with a communicable disease or has been exposed to a toxic substance from being isolated or quarantined in a private place of the person's own choice, provided the private place is approved by the Public Health Director or the local health administrator and the person who is isolated or quarantined complies with all laws, rules and regulations governing control, sanitation, isolation and quarantine.

(11) Prior to placing a person or group of persons subject to isolation or quarantine in a health care facility as defined in ORS 442.015, the Public Health Director or the local public health administrator must provide to the managers of the health care facility notice of the intention to seek authorization from the **circuit** court to place a person or group of persons in isolation or quarantine in the facility and must consult with the managers of the health care facility regarding how to best meet the requirements of this section.

(12) The Public Health Director or local public health administrator shall provide adequate means of communication between a person or a group of persons who is isolated or quarantined and legal counsel for the person or group of persons.

SECTION 6. ORS 433.133 is amended to read:

433.133. (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 [*must*] **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 [*Oregon Health Authority*] **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 [*authority*] **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 [*must*] **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 [*shall*] **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 [(c)] **(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 [*via*] **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.

SECTION 7. ORS 433.142 is amended to read:

433.142. (1) As used in this section, “to isolate property” means to restrict access to property in a manner that reduces or prevents exposure to a toxic substance by persons.

(2) The Public Health Director or a local public health administrator may petition the **circuit** court to isolate property if there is reason to believe the property is contaminated with a toxic substance that poses a serious risk to the health and safety of others.

(3) The petition must:

(a) Describe the property subject to isolation;

(b)(A) Describe the reasonable efforts made to obtain voluntary compliance from the owner or custodian of the property with public health measures necessary to isolate the property; 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;

(c) Describe the suspected toxic substance and the health effects of exposure to the toxic substance;

(d) Provide information supporting the reasonable belief of the Public Health Director or the local public health administrator that the toxic substance could spread to or contaminate others if remedial action is not taken;

(e) Provide information supporting the reasonable belief of the Public Health Director or the local public health administrator that the toxic substance poses a serious risk to the health and safety of others if the property is not isolated;

(f) Explain why isolation of the property is the least restrictive means available to prevent a serious risk to the health and safety of others; and

(g) Explain whether the property subject to isolation can be decontaminated or whether the property must be destroyed.

(4) The petition must be personally served on the owner or custodian of the property.

(5)(a) The court *[must]* **shall** hold a hearing within 72 hours of the filing of the petition, exclusive of Saturdays, Sundays and legal holidays.

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

(c) A hearing may be waived by the owner or custodian of the property.

(6) The court shall grant the petition if, by clear and convincing evidence, the court finds that isolation of property contaminated with a toxic substance is necessary to prevent a serious risk to the health and safety of others. An order authorizing isolation *[shall be]* **remains** in effect until the toxic substance no longer poses a serious risk to the health and safety of others.

(7) The court order must:

(a) Identify the property to be isolated;

(b) Specify factual findings warranting isolation, including a description of the toxic substance believed to be contaminating the property;

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

(d) Describe the remedial actions necessary to neutralize or remove the contamination.

SECTION 8. Section 9 of this 2011 Act is added to and made a part of ORS 433.110 to 433.770.

SECTION 9. (1) The circuit court shall cause to be recorded in the court records:

(a) A full account of proceedings at hearings conducted pursuant to ORS 433.121, 433.123, 433.133 and 433.136;

(b) The petitions, affidavits, judgments and orders of the court; and

(c) A copy of the orders issued.

(2) Any portion of the account of the proceedings, the transcript of testimony, the petition, any affidavit, judgment, order of the court, recording of the proceeding or any other court record may be disclosed only:

(a) Upon request of a person subject to the proceedings or the legal representative or attorney of the person;

(b) To the Public Health Director or a local public health administrator; or

(c) Pursuant to court order, when the court finds that the petitioner's interest in public disclosure outweighs the privacy interests of the individual who is the subject of the petition.

Passed by House March 16, 2011

Repassed by House June 17, 2011

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Ramona Kenady Line, Chief Clerk of House

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

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Peter Courtney, President of Senate

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Approved:

.....M,....., 2011

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

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Kate Brown, Secretary of State