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# MEMORANDUM

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**To:** Human Services Subcommittee

**From:** John Terpening, Legislative Fiscal Office  
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**Date:** June 12, 2013

**Subject:** SB 421 Work Session Recommendations

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SB 421 relates to civil commitments. The measure authorizes a district attorney to initiation commitment proceeding if there is reason to believe a person is an extremely dangerous mentally ill person. The measure allows the court to order the person under the jurisdiction of the Psychiatric Security Review Board (PSRB). The measure establishes the protocol for admitting, reviewing, and discharging civil commitments of “extremely dangerous mentally ill” individuals.

The measure, the original staff measure summary, preliminary Joint Committee on Ways and Means staff measure summary, revenue impact statement [if available], and fiscal impact statement are available on the Oregon Legislative Information System (OLIS).

The measure previously had a public hearing in the Human Services Subcommittee on May 15<sup>th</sup>, 2013.

The measure has an estimated fiscal impact to the Oregon Health Authority of \$169,571 General Fund and \$36,100 General Fund to the Psychiatric Security Review Board in the 2013-2015 biennium.

The –A9 amendment includes the same language as the –A7 amendment with technical changes by Legislative Council (see memo attached) and General Fund appropriations for the Oregon Health Authority and the Psychiatric Security Review Board.

## **Motion to Move Measure**

The measure is recommended to be amended and moved to the full Committee on Joint Ways and Means, as amended.

**Motion: Move the dash A9 amendment into SB 421.**

**Motion: Move SB 421 with the dash A9 amendment to the full committee with a “do pass as amended” recommendation.**

**Assignment of Carriers**

Full: \_\_\_\_\_

2nd Chamber: \_\_\_\_\_

**PROPOSED AMENDMENTS TO  
A-ENGROSSED SENATE BILL 421**

1 On page 1 of the printed A-engrossed bill, line 2, after “ORS” delete the  
2 rest of the line and insert “426.095, 426.110, 426.135, 426.160, 426.241 and  
3 426.250; appropriating money;”.

4 Delete lines 5 through 23 and delete pages 2 and 3 and insert:

5 **“SECTION 1. Sections 2 and 3 of this 2013 Act are added to and**  
6 **made a part of ORS chapter 426.**

7 **“SECTION 2. (1) For the purposes of this section and section 3 of**  
8 **this 2013 Act:**

9 **“(a) A person is ‘extremely dangerous’ if the person:**

10 **“(A) Is at least 18 years of age;**

11 **“(B) Is exhibiting symptoms or behaviors of a mental disorder sub-**  
12 **stantially similar to those that preceded the act described in sub-**  
13 **section (3)(a)(C) of this section; and**

14 **“(C) Because of a mental disorder:**

15 **“(i) Presents a serious danger to the safety of other persons by**  
16 **reason of an extreme risk that the person will inflict grave or poten-**  
17 **tially lethal physical injury on other persons; and**

18 **“(ii) Unless committed, will continue to represent an extreme risk**  
19 **to the safety of other persons in the foreseeable future.**

20 **“(b) ‘Mental disorder’ does not include:**

21 **“(A) A disorder manifested solely by repeated criminal or otherwise**  
22 **antisocial conduct; or**

1       **“(B) A disorder constituting solely a personality disorder.**

2       **“(c) A mental disorder is ‘resistant to treatment’ if, after receiving**  
3 **care from a licensed psychiatrist and exhausting all reasonable psy-**  
4 **chiatric treatment, or after refusing psychiatric treatment, the person**  
5 **continues to be significantly impaired in the person’s ability to make**  
6 **competent decisions and to be aware of and control extremely dan-**  
7 **gerous behavior.**

8       **“(2)(a) A district attorney may petition the court to initiate com-**  
9 **mitment proceedings described in this section if there is reason to**  
10 **believe a person is an extremely dangerous mentally ill person. The**  
11 **petition shall immediately be served upon the person.**

12       **“(b) The person shall be advised in writing of:**

13       **“(A) The allegation that the person is an extremely dangerous**  
14 **mentally ill person and may be committed to the jurisdiction of the**  
15 **Psychiatric Security Review Board for a maximum period of 24**  
16 **months; and**

17       **“(B) The right to a hearing to determine whether the person is an**  
18 **extremely dangerous mentally ill person, unless the person consents**  
19 **to the commitment by waiving the right to a hearing in writing after**  
20 **consultation with legal counsel.**

21       **“(c) A person against whom a petition described in this subsection**  
22 **is filed shall have the following:**

23       **“(A) The right to obtain suitable legal counsel possessing skills and**  
24 **experience commensurate with the nature of the allegations and**  
25 **complexity of the case and, if the person is without funds to retain**  
26 **legal counsel, the right to have the court appoint legal counsel;**

27       **“(B) The right to subpoena witnesses and to offer evidence on behalf**  
28 **of the person at the hearing;**

29       **“(C) The right to cross-examine any witnesses who appear at the**  
30 **hearing; and**

1       **“(D) The right to examine all reports, documents and information**  
2 **that the court considers, including the right to examine the reports,**  
3 **documents and information prior to the hearing, if available.**

4       **“(d) The court shall appoint an examiner as described in ORS**  
5 **426.110 to evaluate the person.**

6       **“(3)(a) Upon receipt of a petition filed under subsection (2) of this**  
7 **section, the court shall schedule a hearing. At the hearing, the court**  
8 **shall order the person committed as an extremely dangerous mentally**  
9 **ill person under the jurisdiction of the Psychiatric Security Review**  
10 **Board for a maximum of 24 months if the court finds, by clear and**  
11 **convincing evidence, that:**

12       **“(A) The person is extremely dangerous;**

13       **“(B) The person suffers from a mental disorder that is resistant to**  
14 **treatment; and**

15       **“(C) Because of the mental disorder that is resistant to treatment,**  
16 **the person committed one of the following acts:**

17       **“(i) Caused the death of another person;**

18       **“(ii) Caused serious physical injury to another person by means of**  
19 **a dangerous weapon;**

20       **“(iii) Caused physical injury to another person by means of a**  
21 **firearm as defined in ORS 166.210 or an explosive as defined in ORS**  
22 **164.055;**

23       **“(iv) Engaged in oral-genital contact with a child under 14 years of**  
24 **age;**

25       **“(v) Forcibly compelled sexual intercourse, oral-genital contact or**  
26 **the penetration of another person’s anus or vagina; or**

27       **“(vi) Caused a fire or explosion that damaged the protected property**  
28 **of another, as those terms are defined in ORS 164.305, or placed an-**  
29 **other person in danger of physical injury, and the fire or explosion**  
30 **was not the incidental result of normal and usual daily activities.**

1       **“(b) The court shall further commit the person to a state hospital**  
2 **for custody, care and treatment if the court finds, by clear and con-**  
3 **vincing evidence, that the person cannot be controlled in the commu-**  
4 **nity with proper care, medication, supervision and treatment on**  
5 **conditional release.**

6       **“(c) The court shall specify in the order whether any person who**  
7 **would be considered a victim as defined in ORS 131.007 of the act de-**  
8 **scribed in paragraph (a)(C) of this subsection, if the act had been**  
9 **criminally prosecuted, requests notification of any order or hearing,**  
10 **conditional release, discharge or escape of the person committed under**  
11 **this section.**

12       **“(d) The court shall be fully advised of all drugs and other treat-**  
13 **ment known to have been administered to the alleged extremely dan-**  
14 **gerous mentally ill person that may substantially affect the ability of**  
15 **the person to prepare for, or to function effectively at, the hearing.**

16       **“(e) The provisions of ORS 40.230, 40.235, 40.240, 40.250 and 179.505**  
17 **do not apply to the use of the examiner’s report and the court may**  
18 **consider the report as evidence.**

19       **“(4) The findings of the court that a person committed an act de-**  
20 **scribed in subsection (3)(a)(C) of this section may not be admitted in**  
21 **a criminal prosecution.**

22       **“(5) A person committed under this section shall remain under the**  
23 **jurisdiction of the board for a maximum of 24 months unless the board**  
24 **conducts a hearing and makes the findings described in subsection**  
25 **(6)(d) of this section.**

26       **“(6)(a) The board shall hold a hearing six months after the initial**  
27 **commitment described in subsection (3) of this section, and thereafter**  
28 **six months after a further commitment described in section 3 of this**  
29 **2013 Act, to determine the placement of the person and whether the**  
30 **person is eligible for conditional release or early discharge. The board**

1 shall provide written notice of the hearing to the person, the person's  
2 legal counsel and the office of the district attorney who filed the initial  
3 petition under subsection (2) of this section within a reasonable time  
4 prior to the hearing. The board shall further notify the person of the  
5 following:

6 “(A) The nature of the hearing and possible outcomes;

7 “(B) The right to appear at the hearing and present evidence;

8 “(C) The right to be represented by legal counsel and, if the person  
9 is without funds to retain legal counsel, the right to have the court  
10 appoint legal counsel;

11 “(D) The right to subpoena witnesses;

12 “(E) The right to cross-examine witnesses who appear at the hear-  
13 ing; and

14 “(F) The right to examine all reports, documents and information  
15 that the board considers, including the right to examine the reports,  
16 documents and information prior to the hearing if available.

17 “(b) If the board determines at the hearing that the person still  
18 suffers from a mental disorder that is resistant to treatment and  
19 continues to be extremely dangerous, and that the person cannot be  
20 controlled in the community with proper care, medication, supervision  
21 and treatment if conditionally released, the person shall remain com-  
22 mitted to a state hospital.

23 “(c) If the board determines at the hearing that the person still  
24 suffers from a mental disorder that is resistant to treatment and  
25 continues to be extremely dangerous, but finds that the person can  
26 be controlled in the community with proper care, medication, super-  
27 vision and treatment if conditionally released, the board shall condi-  
28 tionally release the person.

29 “(d) If the board determines at the hearing that the person no  
30 longer suffers from a mental disorder that is resistant to treatment

1 or is no longer extremely dangerous, the board shall discharge the  
2 person. The discharge of a person committed under this section does  
3 not preclude commitment of the person pursuant to ORS 426.005 to  
4 426.390.

5 “(7)(a) At any time during the commitment to a state hospital, the  
6 superintendent of the state hospital may request a hearing to deter-  
7 mine the status of the person’s commitment under the jurisdiction of  
8 the board. The request shall be accompanied by a report setting forth  
9 the facts supporting the request. If the request is for conditional re-  
10 lease, the request shall be accompanied by a verified conditional re-  
11 lease plan. The hearing shall be conducted as described in subsection  
12 (6) of this section.

13 “(b) The board may make the findings described in subsection (6)(c)  
14 of this section and conditionally release the person without a hearing  
15 if the office of the district attorney who filed the initial petition under  
16 subsection (2) of this section does not object to the conditional release.

17 “(c) At any time during conditional release, a state or local mental  
18 health facility providing treatment to the person may request a hear-  
19 ing to determine the status of the person’s commitment under the  
20 jurisdiction of the board. The hearing shall be conducted as described  
21 in subsection (6) of this section.

22 “(8)(a) If the board orders the conditional release of a person under  
23 subsection (6)(c) of this section, the board shall order conditions of  
24 release that may include a requirement to report to any state or local  
25 mental health facility for evaluation. The board may further require  
26 cooperation with, and acceptance of, psychiatric or psychological  
27 treatment from the facility. Conditions of release may be modified by  
28 the board from time to time.

29 “(b) When a person is referred to a state or local mental health  
30 facility for an evaluation under this subsection, the facility shall per-



1 form the evaluation and submit a written report of its findings to the  
2 board. If the facility finds that treatment of the person is appropriate,  
3 the facility shall include its recommendations for treatment in the  
4 report to the board.

5 “(c) Whenever treatment is provided to the person by a state or  
6 local mental health facility under this subsection, the facility shall  
7 furnish reports to the board on a regular basis concerning the progress  
8 of the person.

9 “(d) Copies of all reports submitted to the board pursuant to this  
10 subsection shall be furnished to the person and to the person’s legal  
11 counsel, if applicable. The confidentiality of these reports is deter-  
12 mined pursuant to ORS 192.501 to 192.505.

13 “(e) The state or local mental health facility providing treatment  
14 to the person under this subsection shall comply with the conditional  
15 release order and any modifications of the conditions ordered by the  
16 board.

17 “(9)(a) If at any time while the person is conditionally released it  
18 appears that the person has violated the terms of the conditional re-  
19 lease, the board may order the person returned to a state hospital for  
20 evaluation or treatment. A written order of the board is sufficient  
21 warrant for any law enforcement officer to take the person into cus-  
22 tody. A sheriff, municipal police officer, parole or probation officer or  
23 other peace officer shall execute the order, and the person shall be  
24 returned to the state hospital as soon as practicable.

25 “(b) The director of a state or local mental health facility providing  
26 treatment to a person under subsection (8) of this section may request  
27 that the board issue a written order for a person on conditional release  
28 to be taken into custody if there is reason to believe that the person  
29 can no longer be controlled in the community with proper care,  
30 medication, supervision and treatment.

1       “(c) Within 30 days following the return of the person to a state  
2 hospital, the board shall conduct a hearing to determine if, by a pre-  
3 ponderance of the evidence, the person is no longer fit for conditional  
4 release. The board shall provide written notice of the hearing to the  
5 person, the person’s legal counsel and the office of the district attor-  
6 ney who filed the initial petition under subsection (2) of this section  
7 within a reasonable time prior to the hearing. The notice shall advise  
8 the person of the nature of the hearing, the right to have the court  
9 appoint legal counsel and the right to subpoena witnesses, examine  
10 documents considered by the board and cross-examine all witnesses  
11 who appear at the hearing.

12       “(10)(a) If the person had unadjudicated criminal charges at the  
13 time of the person’s initial commitment under this section and the  
14 state hospital or the state or local mental health facility providing  
15 treatment to the person intends to recommend discharge of the person  
16 at an upcoming hearing, the superintendent of the state hospital or  
17 the director of the facility shall provide written notice to the board  
18 and the district attorney of the county where the criminal charges  
19 were initiated of the discharge recommendation at least 45 days before  
20 the hearing. The notice shall be accompanied by a report describing  
21 the person’s diagnosis and the treatment the person has received.

22       “(b) Upon receiving the notice described in this subsection, the  
23 district attorney may request an order from the court in the county  
24 where the criminal charges were initiated for an evaluation to deter-  
25 mine if the person is fit to proceed in the criminal proceeding. The  
26 court may order the state hospital or the state or local mental health  
27 facility providing treatment to the person to perform the evaluation.  
28 The hospital or facility shall provide copies of the evaluation to the  
29 district attorney, the person and the person’s legal counsel, if appli-  
30 cable.

1       “(c) The person committed under this section may not waive an  
2 evaluation ordered by the court to determine if the person is fit to  
3 proceed with the criminal proceeding as described in this subsection.

4       “(11) The board shall make reasonable efforts to notify any person  
5 described in subsection (3)(c) of this section of any order or hearing,  
6 conditional release, discharge or escape of the person committed under  
7 this section.

8       “(12) The board shall adopt rules to carry out the provisions of this  
9 section and section 3 of this 2013 Act.

10       “(13) Any time limitation described in ORS 131.125 to 131.155 does  
11 not run during a commitment described in this section or a further  
12 commitment described in section 3 of this 2013 Act.

13       “SECTION 3. (1)(a) At the end of the 24-month period of commit-  
14 ment described in section 2 of this 2013 Act, any person who remains  
15 committed under the jurisdiction of the Psychiatric Security Review  
16 Board shall be discharged, unless the board certifies to the court in  
17 the county where the state hospital or state or local mental health  
18 facility providing treatment to the person is located that the person  
19 is still extremely dangerous and suffers from a mental disorder that  
20 is resistant to treatment. The board, pursuant to its rules, may dele-  
21 gate to the superintendent of the state hospital or the director of the  
22 state or local mental health facility providing treatment to the person  
23 the responsibility for making the certification. If the certification is  
24 made, the person will not be released.

25       “(b) The board may additionally certify that the person cannot be  
26 controlled in the community with proper care, medication, supervision  
27 and treatment on conditional release and must be committed to a  
28 state hospital. The board, pursuant to its rules, may delegate to the  
29 superintendent of the state hospital or the director of the state or local  
30 mental health facility providing treatment to the person the responsi-

1 **bility for making the additional certification.**

2 **“(2) The certification shall immediately be served upon the person**  
3 **by the superintendent of the state hospital or the director of the state**  
4 **or local mental health facility providing treatment to the person. The**  
5 **superintendent or director shall inform the court in writing that ser-**  
6 **vice has been made and the date thereof.**

7 **“(3) The certification shall advise the person of all the following:**

8 **“(a) That the board, hospital or facility has requested that com-**  
9 **mitment be continued for an additional 24 months.**

10 **“(b) That the person may protest this further commitment within**  
11 **14 days, and that, if the person does not protest, the commitment will**  
12 **be continued for a maximum of 24 months.**

13 **“(c) That the person may consult with legal counsel when deciding**  
14 **whether to protest the further commitment and that legal counsel will**  
15 **be provided for the person without cost if the person is without funds**  
16 **to retain legal counsel.**

17 **“(d) That the person may protest a further period of commitment**  
18 **either orally or in writing by signing the form accompanying the cer-**  
19 **tification.**

20 **“(e) That if the person does protest a further period of commitment,**  
21 **the person is entitled to a hearing before the court to determine**  
22 **whether commitment should be continued.**

23 **“(f) That the person is entitled to have a psychologist or psychia-**  
24 **trist, other than a member of the staff at the facility where the person**  
25 **is being treated, examine the person and report to the court the re-**  
26 **sults of the examination at the hearing.**

27 **“(g) That the person may subpoena witnesses and offer evidence on**  
28 **behalf of the person at the hearing.**

29 **“(h) That if the person is without funds to retain legal counsel or**  
30 **an examining psychologist or psychiatrist for the hearing, the court**

1 will appoint legal counsel or an examining psychologist or psychiatrist.

2 “(4) The person serving the certification shall read and deliver the  
3 certification to the person and ask whether the person protests a fur-  
4 ther period of commitment. The person may protest a further period  
5 of commitment and request a hearing either orally or by signing a  
6 simple protest form to be given to the person with the certification.  
7 If the person does not protest a further period of commitment within  
8 14 days of service of the certification, the board, hospital or facility  
9 shall so notify the court, and the court shall, without further hearing,  
10 order the commitment of the person to the jurisdiction of the board  
11 for a maximum of 24 months. The court shall further order that the  
12 person be committed to a state hospital if a certification under sub-  
13 section (1)(b) of this section has been made.

14 “(5) When the person protests a further period of commitment and  
15 requests a hearing, the board, hospital or facility shall immediately  
16 notify the court, and the court shall have the person brought before  
17 it and shall again advise the person that the board, hospital or facility  
18 has requested that commitment be continued for an additional period  
19 of time and that if the person does not protest this commitment the  
20 commitment will be continued for a maximum of 24 months. The  
21 person shall also be informed of the rights set forth in subsection (3)  
22 of this section.

23 “(6) If the person requests a hearing under subsections (4) and (5)  
24 of this section, the following provisions apply as described:

25 “(a) The hearing shall be conducted as promptly as possible and at  
26 a time and place as the court may direct.

27 “(b) If the person requests a continuance in order to prepare for the  
28 hearing or to obtain legal counsel to represent the person, the court  
29 may grant postponement and detention during postponement as de-  
30 scribed in ORS 426.095 (2)(c).

1       “(c) The person has the right to representation by or appointment  
2 of legal counsel subject to ORS 135.055, 151.216 and 151.219.

3       “(d) If the person requests an examination by a psychologist or  
4 psychiatrist and is without funds to retain a psychologist or psychia-  
5 trist for purposes of the examination, the court shall appoint a psy-  
6 chologist or psychiatrist, other than a member of the staff from the  
7 facility where the person is being treated, to examine the person at  
8 no expense to the person and to report to the court the results of the  
9 examination.

10       “(e) The provisions of ORS 40.230, 40.235, 40.240, 40.250 and 179.505  
11 do not apply to the use of medical records from the current period of  
12 commitment or to testimony related to such records or period of  
13 commitment in connection with hearings under this section. The court  
14 may consider as evidence such reports and testimony.

15       “(f) The court shall then conduct a hearing. The court may take  
16 judicial notice of the findings regarding the act described in section 2  
17 (3)(a)(C) of this 2013 Act made by the court at the initial commitment.  
18 If, after hearing the evidence and reviewing the recommendations of  
19 the board and the state hospital or the state or local mental health  
20 facility providing treatment to the person, in the opinion of the court  
21 the person is still extremely dangerous and suffering from a mental  
22 disorder that is resistant to treatment by clear and convincing evi-  
23 dence, the court may order commitment to the jurisdiction of the  
24 board for an additional maximum of 24 months. The court shall fur-  
25 ther commit the person to a state hospital for custody, care and  
26 treatment if the court finds, by clear and convincing evidence, that  
27 the person cannot be controlled in the community with proper care,  
28 medication, supervision and treatment on conditional release.

29       “(g) At the end of the 24-month period, the person shall be dis-  
30 charged unless the board, hospital or facility again certifies to the

1 **committing court that the person is still an extremely dangerous**  
2 **mentally ill person and in need of further treatment, in which event**  
3 **the procedures set forth in this section shall be followed.**

4 **“SECTION 4.** ORS 426.095 is amended to read:

5 “426.095. The following is applicable to a commitment hearing held by a  
6 court under ORS 426.070:

7 “(1) The hearing may be held in a hospital, the person’s home or in some  
8 other place convenient to the court and the allegedly mentally ill person.

9 “(2) The court shall hold the hearing at the time established according  
10 to the following:

11 “(a) Except as provided by paragraph (b) or (c) of this subsection, a  
12 hearing shall be held five judicial days from the day a court under ORS  
13 426.070 issues a citation provided under ORS 426.090.

14 “(b) Except as provided by paragraph (c) of this subsection, if a person  
15 is detained by a warrant of detention under ORS 426.070, a hearing shall be  
16 held within five judicial days of the commencement of detention.

17 “(c) If requested under this paragraph, the court, for good cause, may  
18 postpone the hearing for not more than five judicial days in order to allow  
19 preparation for the hearing. The court may make orders for the care and  
20 custody of the person during a postponement as it deems necessary. If a  
21 person is detained before a hearing under ORS 426.070, 426.180, 426.228,  
22 426.232 or 426.233 **or section 3 of this 2013 Act** and the hearing is postponed  
23 under this paragraph, the court, for good cause, may allow the person to be  
24 detained during the postponement if the postponement is requested by the  
25 person or the legal counsel of the person. Any of the following may request  
26 a postponement under this paragraph:

27 “(A) The allegedly mentally ill **person or extremely dangerous men-**  
28 **tally ill** person.

29 “(B) The legal counsel or guardian of the allegedly mentally ill **person**  
30 **or extremely dangerous mentally ill** person.

1       “(C) The person representing the state’s interest.

2       “(3) The allegedly mentally ill person and the person representing the  
3 state’s interest shall have the right to cross-examine all the following:

4       “(a) Witnesses.

5       “(b) The person conducting the investigation.

6       “(c) The examining physicians or other qualified persons recommended by  
7 the Oregon Health Authority who have examined the person.

8       “(4) The provisions of ORS 40.230, 40.235, 40.240 and 40.250 shall not apply  
9 to and the court may consider as evidence any of the following:

10       “(a) Medical records for the current involuntary prehearing period of de-  
11 tention.

12       “(b) Statements attributed by the maker of the medical records or the  
13 investigation report to witnesses concerning their own observations in the  
14 absence of objection or if such persons are produced as witnesses at the  
15 hearing available for cross-examination.

16       “(c) The testimony of any treating physicians, nurses or social workers  
17 for the prehearing period of detention. Any treating physician, nurse or so-  
18 cial worker who is subpoenaed as a witness for the proceeding shall testify  
19 as an expert witness under the provisions of ORS 40.410, 40.415, 40.420 and  
20 40.425 and is subject to treatment as an expert witness in the payment of  
21 witness fees and costs.

22       “(d) The investigation report prepared under ORS 426.074. Subject to the  
23 following, the investigation report shall be introduced in evidence:

24       “(A) Introduction of the report under this paragraph does not require the  
25 consent of the allegedly mentally ill person.

26       “(B) Upon objection by any party to the action, the court shall exclude  
27 any part of the investigation report that may be excluded under the Oregon  
28 Evidence Code on grounds other than those set forth in ORS 40.230, 40.235,  
29 40.240 or 40.250.

30       “(C) Neither the investigation report nor any part thereof shall be intro-



1   duced into evidence under this paragraph unless the investigator is present  
2   during the proceeding to be cross-examined or unless the presence of the  
3   investigator is waived by the allegedly mentally ill person or counsel for the  
4   allegedly mentally ill person.

5    “**SECTION 5.** ORS 426.110 is amended to read:

6    “426.110. The following requirements relating to the appointment of ex-  
7   aminers for purposes of a hearing under ORS 426.095 **or sections 2 and 3**  
8   **of this 2013 Act** apply as described:

9    “(1) The judge shall appoint one qualified examiner. If requested, the  
10   judge shall appoint one additional qualified examiner. A request for an ad-  
11   ditional examiner under this subsection must be made in writing and must  
12   be made by the allegedly mentally ill person or the attorney for the allegedly  
13   mentally ill person.

14   “(2) To be qualified for purposes of this section, an examiner must meet  
15   all of the following qualifications:

16    “(a) The person must agree to be an examiner.

17    “(b) The person must be one of the following:

18    “(A) A physician licensed by the Oregon Medical Board who is competent  
19   to practice psychiatry as provided by the Oregon Health Authority **or the**  
20   **Psychiatric Security Review Board** by rule.

21    “(B) Certified as a mental health examiner qualified to make examina-  
22   tions for involuntary commitment proceedings by the authority. The author-  
23   ity **or the Psychiatric Security Review Board** may establish, by rule,  
24   requirements for certification as a mental health examiner for purposes of  
25   this subparagraph.

26   “(3) The cost of examiners under this section shall be paid as provided  
27   under ORS 426.250.

28    “**SECTION 6.** ORS 426.135 is amended to read:

29    “426.135. If a person determined to be mentally ill as provided in ORS  
30   426.130, **or determined to be an extremely dangerous mentally ill per-**

1 **son under section 2 or 3 of this 2013 Act**, appeals the determination or  
2 disposition based thereon, and is determined to be financially eligible for  
3 appointed counsel at state expense, upon request of the person or upon its  
4 own motion, the court shall appoint suitable legal counsel to represent the  
5 person. The compensation for legal counsel and costs and expenses necessary  
6 to the appeal shall be determined and paid by the public defense services  
7 executive director as provided in ORS 135.055 if the circuit court is the ap-  
8 pellate court or as provided in ORS 138.500 if the Court of Appeals or Su-  
9 preme Court is the appellate court. The compensation, costs and expenses  
10 shall be paid as provided in ORS 138.500.”

11 On page 4, delete lines 1 through 27.

12 In line 28, delete “4” and insert “7”.

13 In line 31, delete the second comma and insert “or”.

14 In line 32, delete “or the director of the secure intensive community in-  
15 patient facility”.

16 On page 5, after line 4, insert:

17 **“SECTION 8.** ORS 426.241 is amended to read:

18 “426.241. (1) The cost of emergency psychiatric care, custody and treat-  
19 ment related to or resulting from such psychiatric condition, provided by a  
20 hospital or other facility approved by the Oregon Health Authority and the  
21 community mental health program director of the county in which the fa-  
22 cility is located, except a state mental hospital, for an allegedly mentally ill  
23 person admitted or detained under ORS 426.070, 426.140, 426.228, 426.232 or  
24 426.233, or for a mentally ill person admitted or detained under ORS 426.150,  
25 426.223, 426.273, 426.275 or 426.292, shall be paid by the county of which the  
26 person is a resident from state funds provided it for this purpose. The county  
27 is responsible for the cost when state funds available therefor are exhausted.  
28 The hospital or other facility shall charge to and collect from the person,  
29 third party payers or other persons or agencies otherwise legally responsible  
30 therefor, the costs of the emergency care, custody and treatment, as it would

1 for any other patient, and any funds received shall be applied as an offset  
2 to the cost of the services provided under this section.

3 “(2) If any person is admitted to or detained in a state mental hospital  
4 under ORS 426.070, 426.140, 426.180 to 426.210, 426.228, 426.232 or 426.233 for  
5 emergency care, custody or treatment, the authority shall charge to and  
6 collect from the person, third party payers or other persons or agencies  
7 otherwise legally responsible therefor, the costs as it would for other pa-  
8 tients of the state mental hospitals under the provisions of ORS 179.610 to  
9 179.770.

10 “(3) If any person is adjudged mentally ill under the provisions of ORS  
11 426.130, **or determined to be an extremely dangerous mentally ill person**  
12 **under section 2 or 3 of this 2013 Act**, and the person receives care and  
13 treatment in a state mental hospital, the person, third party payers or other  
14 persons or agencies otherwise legally responsible therefor, shall be required  
15 to pay for the costs of the hospitalization at the state hospital, as provided  
16 by ORS 179.610 to 179.770, if financially able to do so.

17 “(4) For purposes of this section and ORS 426.310 ‘resident’ means resi-  
18 dent of the county in which the person maintains a current mailing address  
19 or, if the person does not maintain a current mailing address within the  
20 state, the county in which the person is found, or the county in which a  
21 court-committed mentally ill person has been conditionally released.

22 “(5)(a) The authority may deny payment for part or all of the emergency  
23 psychiatric services provided by a hospital or nonhospital facility under ORS  
24 426.232, 426.233 or 426.237 when the authority finds, upon review, that the  
25 allegedly mentally ill person’s condition did not meet the admission criteria  
26 in ORS 426.232 (1), 426.233 (1) or 426.237 (1)(b)(A). The payer responsible un-  
27 der this section shall make a request for denial of payment for emergency  
28 psychiatric services provided under ORS 426.232, 426.233 or 426.237 in writing  
29 to the authority.

30 “(b) The authority may require the following to provide the authority

1 with any information that the authority determines is necessary to review  
2 a request for denial of payment made under this subsection or to conduct a  
3 review of emergency psychiatric services for the purpose of planning or de-  
4 fining authority rules:

5 “(A) A hospital or nonhospital facility approved under ORS 426.228 to  
6 426.235 or 426.237.

7 “(B) A physician or a person providing emergency psychiatric services  
8 under ORS 426.228 to 426.235 or 426.237.

9 “(c) The authority shall adopt rules necessary to carry out the purposes  
10 of this subsection.”.

11 In line 5, delete “5” and insert “9”.

12 In line 23, after “2” insert “or 3”.

13 In line 33, after “2” insert “or 3”.

14 After line 40, insert:

15 **“SECTION 10. In addition to and not in lieu of any other appropri-**  
16 **ation, there is appropriated to the Oregon Health Authority, for the**  
17 **biennium beginning July 1, 2013, out of the General Fund, the amount**  
18 **of \$169,571, for the purposes of carrying out the provisions of sections**  
19 **2 and 3 and the amendments to ORS 426.095, 426.110, 426.135, 426.160,**  
20 **426.241 and 426.250 by sections 4 to 9 of this 2013 Act.**

21 **“SECTION 11. In addition to and not in lieu of any other appropri-**  
22 **ation, there is appropriated to the Psychiatric Security Review Board,**  
23 **for the biennium beginning July 1, 2013, out of the General Fund, the**  
24 **amount of \$36,100, for the purposes of carrying out the provisions of**  
25 **sections 2 and 3 and the amendments to ORS 426.095, 426.110, 426.135,**  
26 **426.160, 426.241 and 426.250 by sections 4 to 9 of this 2013 Act.”.**

27 In line 41, delete “6” and insert “12”.

28

**FISCAL IMPACT OF PROPOSED LEGISLATION**

**Measure: SB 421 – A9**

Seventy-Seventh Oregon Legislative Assembly – 2013 Regular Session  
Legislative Fiscal Office

*Only Impacts on Original or Engrossed  
Versions are Considered Official*

Prepared by: John Terpening  
Reviewed by: Linda Ames, Steve Bender, Monica Brown  
Date: 6-12-2013

**Measure Description:**

Authorizes district attorney to initiate commitment proceeding when person charged with certain crimes lacks capacity to stand trial and is dangerous and in need of commitment.

**Government Unit(s) Affected:**

Oregon Criminal Justice Commission, Cities, Counties, Department of Justice, District Attorneys and their Deputies, Judicial Department, Oregon Health Authority (OHA), Public Defense Services Commission, Psychiatric Security Review Board

**Summary of Expenditure Impact:**

| <b>Agency – Fund Type</b>                        | <b>2013-2015 Biennium</b> | <b>2015-2017 Biennium</b> |
|--|---------------------------|---------------------------|
| Oregon Health Authority – General Fund           | \$169,571                 | \$174,145                 |
| <b>Agency – Fund Type</b>                        | <b>2013-2015 Biennium</b> | <b>2015-2017 Biennium</b> |
| Psychiatric Security Review Board – General Fund | \$36,100                  | \$36,100                  |

**Local Government Mandate:**

This bill does not affect local governments' service levels or shared revenues sufficient to trigger Section 15, Article XI of the Oregon Constitution.

**Analysis:**

The measure authorizes a district attorney to petition the court to initiate commitment proceedings if there is reason to believe a person is an extremely dangerous mentally ill person. The measure requires the court to conduct a hearing upon receipt of a petition and allows the court to order the person under the jurisdiction of the Psychiatric Security Review Board (PSRB) under certain circumstances. The measure stipulates that a person committed must be committed to a state hospital or secure intensive community inpatient facility and that PSRB must hold a hearing six months after the commitment and then every two years to determine the status of commitment. The measure also allows the state hospital or inpatient facility to request a commitment review hearing by PSRB. If a person discharged by PSRB has unadjudicated criminal charges at the time of commitment, PSRB must notify the district attorney who may request an evaluation to determine if person is fit for criminal proceeding.

The number of commitment proceedings that may be initiated is unknown. Based on Oregon Health Authority data, there are approximately 12 cases where they anticipate that an individual would have met the definitions of "extremely dangerous" and would be admitted as a civil commitment under the stipulations of this measure. The average length of stay for similar commitments in the past has been 190 days. The cost for a patient at the Oregon State Hospital is approximately \$20,636 per month. The Oregon Health Authority (OHA) anticipates that these 12 cases would stay on average an additional 20 days in the Oregon State Hospital as they await PSRB hearings and discharge placement. The estimated cost to OHA for the additional length of stay is \$169,571 General Fund in 2013-15.

As stipulated by the measure, these 12 individuals would fall under the oversight of PSRB. The agency estimates an additional 12 hearing days per biennium and an additional 6 appeals per biennium based on current appeal rates. PSRB does not anticipate the need for additional staff. The total estimated cost to PSRB for Board member hearing reimbursements, Attorney General Fees and other hearings costs is \$36,100 General Fund.

These cost estimates could vary depending on the actual number of cases. If the number of cases and facility capacity exceeds these estimates, the agencies affected may need to return to the Legislative Assembly for additional resources.

There is a minimal fiscal impact to the Judicial Department, Public Defense Services Commission, and District Attorney's and their Deputies as a result of this measure.



STATE OF OREGON  
Legislative Counsel Committee

June 12, 2013

To: Senator Richard Devlin, Co-Chair  
Representative Peter Buckley, Co-Chair  
Joint Committee on Ways and Means

From: Jessica L. Minifie, Deputy Legislative Counsel

Subject: Amendments to A-engrossed Senate Bill 421

I am writing to call your attention to three changes I made in the amendments to A-engrossed Senate Bill 421.

This memo does not apply to the -8 amendments, as those contain only the appropriations for the Oregon Health Authority and the Psychiatric Security Review Board. However, the -9 amendments contain both the -7 amendments and the appropriations. In the review process, a few corrections to the -7 amendments were pointed out to me. They are:

1. The -9 amendments add section 3 of the amendments (in addition to section 2) to ORS chapter 426. This was done in order to pick up definitions and other provisions in the chapter. Sections 2 and 3 are closely connected to each other and both belong in chapter 426; section 3 should not have been omitted.
2. The -7 amendments incorrectly used the term "board" instead of "court" on page 2, line 29. In the -9 amendments, "board" was changed to "court." The context of the subsection makes the reference to the "board" nonsensical and this was a scrivener's error.
3. There was some concern that the waiver of the initial hearing, described on page 2, lines 15 to 17, of the -7 amendments, could be done without the advice of legal counsel. This was not the intent of the provision, and while I think it unlikely a court would ever allow this given the fact that the person has the explicit right to legal counsel during the proceeding (lines 20-23), I added the phrase "after consultation with legal counsel" to alleviate those concerns.

If you have any questions or concerns about these changes, please do not hesitate to contact me.

Encl.

Joint Committee on Ways and Means

Carrier – House: Rep.  
Carrier – Senate: Sen.

Revenue:

Fiscal:

Action:

Vote:

House

Yeas:

Nays:

Exc:

Senate

Yeas:

Nays:

Exc:

Prepared By: John Terpening, Legislative Fiscal Office

Meeting Date: [Full Committee Meeting Date]

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**WHAT THE MEASURE DOES:** Creates new standard of civil commitment for “extremely dangerous” people. Requires, when court makes finding, that person be supervised by Psychiatric Security Review Board (PSRB) and have initial review hearing in six months, and have their status reviewed only if requested by the hospital or treatment facility, or every two years, whichever comes first. Allows prosecuting attorney to petition court for commitment hearing. Directs hospital superintendent to petition for early termination of commitment where committed person no longer suffers from disease or defect, or is no longer extremely dangerous. Instructs supervisory agency to notify parties before commitment period ends, and hold hearing determining whether or not a new period of commitment should be set. Tolls statute of limitations for the duration of the commitment if there is a pending underlying crime. Allows prosecuting attorney to request an aid and assist evaluation be done in advance of any hearing where the person may be released from the jurisdiction of the PSRB.

**ISSUES DISCUSSED:**

- Fiscal impact of the measure
- -A9 Amendment

**EFFECT OF COMMITTEE AMENDMENT:** -A9 amendment establishes the process for admitting and discharging individuals meeting the “extremely dangerous mentally ill” criteria from a state institution and appropriates General Fund monies to Oregon Health Authority and Psychiatric Security Review Board for implementation of the measure.

**BACKGROUND:** In many cases, mental health services are only available to those individuals who are able to accept services voluntarily; the most severely ill are left untreated until their condition deteriorates to the point that they pose a clear and present danger to themselves or others. This raises significant issues where a person has been accused of committing a crime but is found unfit to stand trial. Oregon law currently sets a maximum time that a defendant may be held when the defendant is initially found to be unfit for trial. A defendant must be discharged at the end of a period equal to the maximum term which could be imposed if the person were convicted of the offense with which the person was charged, or three years, whichever is less. If it is determined that the person is unlikely to gain or regain capacity to stand trial, the charges must be dismissed and the defendant released, or civil commitment proceedings must begin, which only commit a person for 180 days at a time. This requires a new hearing every 180 days, unless the committed person stipulates to continue to commitment.

Two recent cases have brought this issue to the forefront in Oregon. The Spinosa case in Washington county where a man charged with murder would have been released from custody after being found “unable to aid and assist” his counsel in trial, and where the hospital stated that he received the maximum benefit through hospital involuntary civil commitments that he could receive. If a person is both unable to aid and assist, and no longer meets criteria for civil commitment under an undefined “maximum benefit” standard supplied by the hospital, then there is a gap where the



only other avenue is release into the community. The other case is that of Cheryl Kidd, the woman who killed Eugene Police Department Officer Chris Kilcullen, who is still in the Oregon State Hospital. Presently the state hospital is attempting to treat her into competence to aid and assist but, if unsuccessful, Ms. Kidd may fall into the same justice and community safety gap.