

---

# MEMORANDUM

Legislative Fiscal Office  
900 Court St. NE, Room H-178  
Salem, Oregon 97301  
Phone 503-986-1828  
FAX 503-373-7807

---

---

**To:** Public Safety Subcommittee of the Joint Committee on Ways and Means

**From:** Kim To, Legislative Fiscal Office, 503-986-1830

**Date:** June 26, 2013

**Subject:** HB 2594 Relating to commitment of persons with mental illness  
Work Session Recommendation

---

House Bill House Bill 2594 modifies statutes relating to civil commitment proceedings to allow courts the option of ordering assisted outpatient treatment (AOT). The bill stipulates that assisted outpatient treatment does not include taking the person into custody or forced medication. AOT is intended for adults diagnosed with a serious mental illness who are unlikely to live safely in the community without supervision and treatment, and who also are unlikely to voluntarily participate in treatment, but requires treatment to prevent deterioration in the person's condition. The court retains jurisdiction over the person until either the end of the period of the assisted outpatient treatment or until the court finds that the person no longer meets the criteria for participation in assisted outpatient treatment. The provisions of this bill apply to determinations or adjudications of whether a person is a person with mental illness that are made on or after January 1, 2014.

The measure previously had hearings in the House Committee on Judiciary on 2/21/2013, 4/15/2013, 4/18/2013, and 4/26/2013. A public hearing was held for the bill in this Subcommittee on 5/14/2013.

The original staff measure summary, the - A8 amendment, and fiscal impact statement are attached to this memo, and available on the Oregon Legislative Information System (OLIS).

## **The amendment**

The - A8 amendment removes the Oregon Health Authority's obligation to fund outpatient treatment, and provides that if a county lacks sufficient funds, the county is not required to provide treatment, services or supervision of persons ordered to undergo assisted outpatient treatment. In addition, the - A8 amendment resolves conflicts in the event that Senate Bill 426 becomes law. Finally, the - A8 amendment adds a General Fund appropriation in the amount of \$100,000 for the 2013-15 biennium for the Oregon Judicial Department to carry out the provisions of this bill.

**Fiscal impact with the - A8 amendment**

Assuming that passage of this bill would result in a 1% to 2% increase in civil commitment cases filed in circuit courts, and additionally, that 1% to 2% of civil commitment cases would result in a hearing on whether to order a person to assisted outpatient treatment, OJD estimates the fiscal impact of this bill could range roughly between \$47,288 and \$90,976 General Fund per biennium plus the cost of case management for the courts.

**Recommendation**

LFO recommends moving the - A8 amendment into the bill.

**Motion**

**Motion: Senator/Representative \_\_\_\_\_:**

**I move the dash A8 amendment into HB 2594.**

**Recommendation**

LFO recommends the measure, as amended, be moved to the Full Committee.

**Motion**

**Motion: Senator/Representative \_\_\_\_\_:**

**I move HB 2594 with the dash A8 amendment to the Full Committee with a "do pass" recommendation as amended.**

**Assignment of Carriers**

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

Senate: \_\_\_\_\_

House: \_\_\_\_\_

**PROPOSED AMENDMENTS TO  
A-ENGROSSED HOUSE BILL 2594  
(INCLUDING AMENDMENTS TO RESOLVE CONFLICTS)**

- 1 On page 1 of the printed A-engrossed bill, line 2, delete “and”.
- 2 Delete lines 3 through 9 and insert “426.070, 426.130 and 426.237; and ap-  
3 propriating money.”.
- 4 Delete lines 11 through 25.
- 5 On page 2, delete lines 1 through 41.
- 6 In line 42, delete “1a” and insert “1” and delete “1b” and insert “2”.
- 7 In line 44, delete “1b” and insert “2”.
- 8 On page 3, line 27, delete “shall” and insert “may”.
- 9 Delete lines 33 and 34 and insert:  
10 “(6) This section does not:  
11 “(a) Prevent a court from appointing a guardian ad litem to act for the  
12 person; or  
13 “(b) Require a county to provide treatment or services to, or supervision  
14 of, the person if the county lacks sufficient funds for such purposes.”.
- 15 In line 35, delete “1c” and insert “3”.
- 16 On page 4, line 26, delete “1b” and insert “2”.
- 17 On page 5, line 15, delete “1d” and insert “4”.
- 18 On page 6, line 2, delete “1b” and insert “2”.
- 19 In line 13, delete “1e” and insert “5”.
- 20 On page 8, delete lines 39 through 45 and delete pages 9 through 72 and  
21 insert:

1       **“SECTION 6. If Senate Bill 426 becomes law, section 4 of this 2013**  
2 **Act (amending ORS 426.130) is repealed and ORS 426.130, as amended**  
3 **by section 30, chapter \_\_\_, Oregon Laws 2013 (Enrolled Senate Bill 426),**  
4 **is amended to read:**

5       “426.130. (1) After hearing all of the evidence, and reviewing the findings  
6 of the examiners, the court shall determine whether the person has a mental  
7 illness and is in need of treatment. If, in the opinion of the court, the person:

8       “[(a) *Does not have a mental illness, the person shall be discharged forth-*

9 *with.*]  
10       “[(b)] (a) Is a person with mental illness based upon clear and convincing  
11 evidence, the court:

12       “(A) Shall order the release of the person and dismiss the case if:

13       “(i) The person is willing and able to participate in treatment on a vol-  
14 untary basis; and

15       “(ii) The court finds that the person will probably do so.

16       “(B) May order conditional release under this subparagraph subject to the  
17 qualifications and requirements under ORS 426.125. If the court orders  
18 conditional release under this subparagraph, the court shall establish a pe-  
19 riod of commitment for the conditional release.

20       “(C) May order commitment of the person with mental illness to the  
21 Oregon Health Authority for treatment if, in the opinion of the court, sub-  
22 paragraph (A) or (B) of this paragraph is not in the best interest of the  
23 person. If the court orders commitment under this subparagraph:

24       “(i) The court shall establish a period of commitment.

25       “(ii) The authority may place the committed person in outpatient com-  
26 mitment under ORS 426.127.

27       “(D) Shall order that the person be prohibited from purchasing or pos-  
28 sessing a firearm if, in the opinion of the court, there is a reasonable like-  
29 lihood the person would constitute a danger to self or others or to the  
30 community at large as a result of the person’s mental or psychological state

1 as demonstrated by past behavior or participation in incidents involving  
2 unlawful violence or threats of unlawful violence, or by reason of a single  
3 incident of extreme, violent, unlawful conduct. When a court makes an order  
4 under this subparagraph, the court shall cause a copy of the order to be de-  
5 livered to the sheriff of the county who will enter the information into the  
6 Law Enforcement Data System.

7 **“(b) Is not a person with mental illness, the court shall release the**  
8 **person from custody if the person has been detained under ORS**  
9 **426.070, 426.180, 426.228, 426.232 or 426.233 and:**

10 **“(A) Dismiss the case; or**

11 **“(B) Order the person to participate in assisted outpatient treat-**  
12 **ment in accordance with section 2 of this 2013 Act. The court may**  
13 **continue the proceeding for no more than seven days to allow time for**  
14 **the community mental health program director to develop the person’s**  
15 **assisted outpatient treatment plan.**

16 **“(2) A court that orders a conditional release, [or] a commitment or as-**  
17 **sisted outpatient treatment under this section shall establish a period of**  
18 **commitment or treatment for the person subject to the order. Any period**  
19 **of commitment ordered for commitment or conditional release under this**  
20 **section shall be for a period of time not to exceed 180 days. A period of**  
21 **assisted outpatient treatment shall be for a period of time not to ex-**  
22 **ceed 12 months.**

23 **“(3) If the commitment proceeding was initiated under 426.070 (1)(a) and**  
24 **if the notice included a request under ORS 426.070 (2)(d)(B), the court shall**  
25 **notify the two persons of the court’s determination under subsection (1) of**  
26 **this section.**

27 **“SECTION 7. In addition to and not in lieu of any other appropri-**  
28 **ation, there is appropriated to the Judicial Department for the**  
29 **biennium beginning July 1, 2013, out of the General Fund, the amount**  
30 **of \$100,000, which may be expended for carrying out the department’s**

1 **duties under this 2013 Act.”.**

2 \_\_\_\_\_

**A-Engrossed  
House Bill 2594**

Ordered by the House April 26  
Including House Amendments dated April 26

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Judiciary)

**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.

*[Modifies standard for court commitment of person with mental illness.]* **In commitment proceedings instituted against person alleged to have mental illness, offers court option of ordering "assisted outpatient treatment" for up to 12 months, during which period person is released from custody but court retains jurisdiction while person participates in outpatient treatment recommended by community mental health program director. Specifies criteria for court to order assisted outpatient treatment.**

Updates terminology.

**A BILL FOR AN ACT**

1  
2 Relating to commitment of persons with mental illness; creating new provisions; ~~and~~ amending ORS ~~426.070, 426.130 and~~  
3 ~~21.010, 109.322, 135.775, 166.250, 166.291, 166.470, 179.473, 408.570, 419C.529, 421.245, 421.284, 426.237; and~~  
4 ~~421.296, 426.005, 426.010, 426.060, 426.070, 426.072, 426.074, 426.075, 426.090, 426.095, 426.100, 426.110, 426.120, 426.123, 426.125, 426.127, 426.130, 426.135, 426.140, 426.150, 426.155, 426.160, 426.170, 426.223, 426.225, 426.228, 426.231, 426.232, 426.233, 426.234, 426.235, 426.237, 426.241,~~  
5 ~~426.250, 426.255, 426.273, 426.275, 426.278, 426.292, 426.297, 426.300, 426.301, 426.307, 426.310, 426.320, 426.335, 426.370, 426.385, 426.500, 428.310, 480.225, 677.225 and 680.205 and section 5,~~  
6 ~~chapter 826, Oregon Laws 2009.~~  
7  
8  
9

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

11  
12 ~~**STANDARD FOR CIVIL COMMITMENT OF**~~  
13 ~~**PERSON WITH MENTAL ILLNESS**~~  
14

15 ~~**SECTION 1.** ORS 426.005 is amended to read:~~

16 ~~426.005. (1) As used in ORS 426.005 to 426.390, unless the context requires otherwise:~~

17 ~~[(a) "Authority" means the Oregon Health Authority.]~~

18 ~~[(b)] (a) "Community mental health program director" means the director of an entity that pro-~~  
19 ~~vides the services described in ORS 430.630 (3) to (5).~~

20 ~~[(c)] (b) "Director of the facility" means a superintendent of a state [mental] hospital, the chief~~  
21 ~~of psychiatric services in a community hospital or the person in charge of treatment and rehabili-~~  
22 ~~tation programs at other treatment facilities.~~

23 ~~[(d)] (c) "Facility" means a state [mental] hospital, community hospital, residential facility,~~  
24 ~~detoxification center, day treatment facility or such other facility as the Oregon Health Authority~~  
25 ~~determines suitable, any of which may provide} **that provides** diagnosis and evaluation, medical~~

**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 ~~care, detoxification, social services or rehabilitation [for committed mentally ill persons] to persons~~  
2 ~~committed to the authority under ORS 426.130.~~

3 ~~[(e) “Mentally ill person” means a person who, because of a mental disorder, is one or more of the~~  
4 ~~following:]~~

5 ~~[(A) Dangerous to self or others.]~~

6 ~~[(B) Unable to provide for basic personal needs and is not receiving such care as is necessary for~~  
7 ~~health or safety.]~~

8 ~~[(C) A person:]~~

9 ~~[(i) With a chronic mental illness, as defined in ORS 426.495;]~~

10 ~~[(ii) Who, within the previous three years, has twice been placed in a hospital or approved inpatient~~  
11 ~~facility by the authority or the Department of Human Services under ORS 426.060;]~~

12 ~~[(iii) Who is exhibiting symptoms or behavior substantially similar to those that preceded and led~~  
13 ~~to one or more of the hospitalizations or inpatient placements referred to in sub-subparagraph (ii) of~~  
14 ~~this subparagraph; and]~~

15 ~~[(iv) Who, unless treated, will continue, to a reasonable medical probability, to physically or men-~~  
16 ~~tally deteriorate so that the person will become a person described under either subparagraph (A) or~~  
17 ~~(B) of this paragraph or both.]~~

18 ~~[(f)] (d) “Nonhospital facility” means any facility, other than a hospital, that is approved by the~~  
19 ~~authority to provide adequate security, psychiatric, nursing and other services to persons under ORS~~  
20 ~~426.232 or 426.233.~~

21 ~~(e) “Person with mental illness” means a person who, because of a mental disorder:~~

22 ~~(A) Is dangerous to self or to any other person;~~

23 ~~(B) Is unable to provide for basic personal needs and is not receiving such care as is~~  
24 ~~necessary for health or safety; or~~

25 ~~(C)(i) Is a person with a chronic mental illness, as defined in ORS 426.495;~~

26 ~~(ii) Within the previous three years, has twice been placed in a hospital or approved in-~~  
27 ~~patient facility by the authority or the Department of Human Services under ORS 426.060;~~

28 ~~(iii) Is exhibiting symptoms or behavior substantially similar to those that preceded and~~  
29 ~~led to one or more of the hospitalizations or inpatient placements referred to in sub-~~  
30 ~~subparagraph (ii) of this subparagraph; and~~

31 ~~(iv) Unless treated, will continue, to a reasonable medical probability, to physically or~~  
32 ~~mentally deteriorate so that the person will become a person described under either sub-~~  
33 ~~paragraph (A) or (B) of this paragraph or both.~~

34 ~~[(g)] (f) “Prehearing period of detention” means a period of time calculated from the initiation~~  
35 ~~of custody during which a person may be detained under ORS 426.228, 426.231, 426.232 or 426.233.~~

36 ~~(2) Whenever a community mental health program director, director of the facility, superinten-~~  
37 ~~dent of a state hospital or administrator of a facility is referred to, the reference includes any~~  
38 ~~designee such person has designated to act on the person’s behalf in the exercise of duties.~~

39  
40 ~~ASSISTED OUTPATIENT TREATMENT~~

41  
42 ~~SECTION 1a.~~ Section <sup>2</sup>~~1b~~ of this 2013 Act is added to and made a part of ORS 426.005 to  
43 ~~426.390.~~

44 ~~SECTION 1b.~~ (1) As used in ORS 426.005 to 426.390, “assisted outpatient treatment” may  
45 not be construed to be a commitment under ORS 426.130 and does not include taking a per-



son into custody or the forced medication of a person.

(2) A court may issue an order requiring a person to participate in assisted outpatient treatment if the court finds that the person:

(a)(A) Is 18 years of age or older;

(B) Has a mental disorder;

(C) Will not obtain treatment in the community voluntarily; and

(D) Is unable to make an informed decision to seek or to comply with voluntary treatment; and

(b) As a result of being a person described in paragraph (a) of this subsection:

(A) Is incapable of surviving safely in the community without treatment; and

(B) Requires treatment to prevent a deterioration in the person's condition that will predictably result in the person becoming a person with mental illness.

(3) In determining whether to issue the order under subsection (2) of this section, the court shall consider, but is not limited to considering, the following factors:

(a) The person's ability to access finances in order to get food or medicine.

(b) The person's ability to obtain treatment for the person's medical condition.

(c) The person's ability to access necessary resources in the community without assistance.

(d) The degree to which there are risks to the person's safety.

(e) The likelihood that the person will decompensate without immediate care or treatment.

(f) The person's previous attempts to inflict physical injury on self or others.

(g) The person's history of mental health treatment in the community.

(h) The person's patterns of decompensation in the past.

(i) The person's risk of being victimized or harmed by others.

(j) The person's access to the means to inflict harm on self or others.

(4) The community mental health program director <sup>may</sup> ~~shall~~ recommend to the court a treatment plan for a person participating in assisted outpatient treatment. The court may adopt the plan as recommended or with modifications.

(5) The court retains jurisdiction over the person until the earlier of the end of the period of the assisted outpatient treatment established under ORS 426.130 (2) or until the court finds that the person no longer meets the criteria in subsection (2) of this section.

~~(6) This section does not prevent a court from appointing a guardian ad litem to act for the person.~~

**SECTION 1e.** ORS 426.070 is amended to read:

426.070. (1) Any of the following may initiate commitment procedures under this section by giving the notice described under subsection (2) of this section:

(a) Two persons;

(b) The county health officer; or

(c) Any magistrate.

(2) For purposes of subsection (1) of this section, the notice must comply with the following:

(a) It must be in writing under oath;

(b) It must be given to the community mental health program director or a designee of the director in the county where the *[allegedly mentally ill]* person **alleged to have a mental illness** resides;

(6) This section does not:  
(a) Prevent a court from appointing a guardian ad litem to act for the person; or  
(b) Require a county to provide treatment or services to, or supervision of, the person if the county lacks sufficient funds for such purposes.

1 (c) It must state that a person within the county other than the person giving the notice is a  
2 *[mentally ill]* person **with mental illness** and is in need of treatment, care or custody;

3 (d) If the commitment proceeding is initiated by two persons under subsection (1)(a) of this sec-  
4 tion, it may include a request that the court notify the two persons:

5 (A) Of the issuance or nonissuance of a warrant under this section; or

6 (B) Of the court's determination under ORS 426.130 (1); and

7 (e) If the notice contains a request under paragraph (d) of this subsection, it must also include  
8 the addresses of the two persons making the request.

9 (3) Upon receipt of a notice under subsections (1) and (2) of this section or when notified by a  
10 circuit court that the court received notice under ORS 426.234, the community mental health pro-  
11 gram director, or designee of the director, shall:

12 (a) Immediately notify the judge of the court having jurisdiction for that county under ORS  
13 426.060 of the notification described in subsections (1) and (2) of this section.

14 (b) Immediately notify the Oregon Health Authority if commitment is proposed because the  
15 person appears to be a *[mentally ill]* person **with mental illness**, as defined in ORS 426.005 (1)(e)(C).  
16 When such notice is received, the authority may verify, to the extent known by the authority,  
17 whether or not the person meets the criteria described in ORS 426.005 (1)(e)(C)(i) and (ii) and so  
18 inform the community mental health program director or designee of the director.

19 (c) Initiate an investigation under ORS 426.074 to determine whether there is probable cause to  
20 believe that the person is in fact a *[mentally ill]* person **with mental illness**.

21 (4) Upon completion, a recommendation based upon the investigation report under ORS 426.074  
22 shall be promptly submitted to the court. If the community mental health program director deter-  
23 mines that probable cause does not exist to believe that a person released from detention under ORS  
24 426.234 (2)(c) or (3)(b) is a *[mentally ill]* person **with mental illness**, the community mental health  
25 program director *[shall not submit a recommendation to the court]* **may recommend assisted out-**  
26 **patient treatment in accordance with section ~~1b~~<sup>2</sup> of this 2013 Act.**

27 (5) When the court receives notice under subsection (3) of this section:

28 (a) If the court, following the investigation, concludes that there is probable cause to believe  
29 that the person investigated is a *[mentally ill]* person **with mental illness**, it shall, through the is-  
30 suance of a citation as provided in ORS 426.090, cause the person to be brought before it at a time  
31 and place as it may direct, for a hearing under ORS 426.095 to determine whether the person is  
32 *[mentally ill]* **a person with mental illness**. The person shall be given the opportunity to appear  
33 voluntarily at the hearing unless the person fails to appear or unless the person is detained pursuant  
34 to paragraph (b) of this subsection.

35 (b)(A) *[The judge may cause the allegedly mentally ill person to be taken into custody pending the*  
36 *investigation or hearing by issuing a warrant of detention under this subsection. A judge may only*  
37 *issue a warrant under this subsection]* If the court finds that there is probable cause to believe that  
38 failure to take the person into custody **pending the investigation or hearing** would pose serious  
39 harm or danger to the person or to others,[]

40 *[(B) To cause the custody of a person under this paragraph, the judge must]* **the court may** issue  
41 a warrant of detention to the community mental health program director or designee[,] **or** the sheriff  
42 of the county or designee[,] directing *[that person]* **the director, sheriff or a designee** to take the  
43 *[allegedly mentally ill]* person **alleged to have a mental illness** into custody and produce the person  
44 at the time and place stated in the warrant.

45 *[(C)]* **(B)** At the time the person is taken into custody, the person shall be informed by the

1 community mental health program director, the sheriff or a designee of the following:

2 (i) The person's rights with regard to representation by or appointment of counsel as described  
3 in ORS 426.100;

4 (ii) The warning under ORS 426.123; and

5 (iii) The person's right, if the community mental health program director, sheriff or designee  
6 reasonably suspects that the person is a foreign national, to communicate with an official from the  
7 consulate of the person's country. A community mental health program director, sheriff or designee  
8 is not civilly or criminally liable for failure to provide the information required by this sub-  
9 subparagraph. Failure to provide the information required by this sub-subparagraph does not in itself  
10 constitute grounds for the exclusion of evidence that would otherwise be admissible in a proceeding.

11 [(D)] (C) The court may make any orders for the care and custody of the person prior to the  
12 hearing as it considers necessary.

13 (c) If the notice includes a request under subsection (2)(d)(A) of this section, the court shall  
14 notify the two persons of the issuance or nonissuance of a warrant under this subsection.

15 ~~SECTION 1d.~~ ORS 426.130 is amended to read:

16 426.130. (1) After hearing all of the evidence, and reviewing the findings of the [*examining per-*  
17 *sons*] **examiners**, the court shall determine whether the person [*is mentally ill*] **has a mental illness**  
18 **and is in need of treatment**. If, in the opinion of the court, the person [*is*]:

19 [(a) *Not mentally ill, the person shall be discharged forthwith.*]

20 [(b)] (a) [*Mentally ill*] **Is a person with mental illness** based upon clear and convincing evi-  
21 dence, the court:

22 (A) Shall order the release of the [*individual*] **person** and dismiss the case if:

23 (i) The [*mentally ill*] person is willing and able to participate in treatment on a voluntary basis;  
24 and

25 (ii) The court finds that the person will probably do so.

26 (B) May order conditional release under this subparagraph subject to the qualifications and re-  
27 quirements under ORS 426.125. If the court orders conditional release under this subparagraph, the  
28 court shall establish a period of commitment for the conditional release.

29 (C) May order commitment of the [*individual*] **person with mental illness** to the Oregon Health  
30 Authority for treatment if, in the opinion of the court, subparagraph (A) or (B) of this paragraph is  
31 not in the best interest of the [*mentally ill*] person. If the court orders commitment under this sub-  
32 paragraph:

33 (i) The court shall establish a period of commitment.

34 (ii) The authority may place the committed person in outpatient commitment under ORS 426.127.

35 (D) Shall order that the person be prohibited from purchasing or possessing a firearm if, in the  
36 opinion of the court, there is a reasonable likelihood the person would constitute a danger to self  
37 or others or to the community at large as a result of the person's mental or psychological state as  
38 demonstrated by past behavior or participation in incidents involving unlawful violence or threats  
39 of unlawful violence, or by reason of a single incident of extreme, violent, unlawful conduct. When  
40 a court makes an order under this subparagraph, the court shall cause a copy of the order to be  
41 delivered to the sheriff of the county who will enter the information into the Law Enforcement Data  
42 System.

43 **(b) Is not a person with mental illness, the court shall release the person from custody**  
44 **if the person has been detained under ORS 426.070, 426.180, 426.228, 426.232 or 426.233 and:**

45 **(A) Dismiss the case; or**

1       **(B) Order the person to participate in assisted outpatient treatment in accordance with**  
2 **section ~~1b~~<sup>2</sup> of this 2013 Act. The court may continue the proceeding for no more than seven**  
3 **days to allow time for the community mental health program director to develop the person's**  
4 **assisted outpatient treatment plan.**

5       (2) A court that orders a conditional release, [*or*] a commitment **or assisted outpatient treat-**  
6 **ment** under this section shall establish a period of commitment for the person subject to the order.  
7 Any period of commitment ordered for commitment or conditional release under this section shall  
8 be for a period of time not to exceed 180 days. **A period of assisted outpatient treatment shall**  
9 **be for a period of time not to exceed 12 months.**

10       (3) If the commitment proceeding was initiated under ORS 426.070 (1)(a) and if the notice in-  
11 cluded a request under ORS 426.070 (2)(d)(B), the court shall notify the two persons of the court's  
12 determination under subsection (1) of this section.

13       **SECTION ~~1e~~<sup>5</sup>.** ORS 426.237 is amended to read:

14       426.237. (1) During a prehearing period of detention as provided in ORS 426.070, 426.140, 426.232  
15 or 426.233, the community mental health program director shall do one of the following:

16       (a) Recommend, in an investigation report as provided in ORS 426.074, that the circuit court not  
17 proceed further in the matter if the community mental health program director does not believe the  
18 person is a [*mentally ill*] person **with mental illness or that the person is in need of assisted**  
19 **outpatient treatment.**

20       (b) No later than three judicial days after initiation of a prehearing period of detention as pro-  
21 vided in ORS 426.070, 426.140, 426.232 or 426.233, certify the detained person for a 14-day period of  
22 intensive treatment if:

23       (A) The community mental health program director and a psychiatrist, as defined by rule by the  
24 Oregon Health Authority, have probable cause to believe the person is a [*mentally ill*] person **with**  
25 **mental illness;**

26       (B) The community mental health program director in the county where the person resides  
27 verbally approves the arrangements for payment for the services at the hospital or nonhospital fa-  
28 cility; and

29       (C) The community mental health program director locates a hospital or nonhospital facility  
30 that:

31       (i) Is approved by the authority and the community mental health program director in the  
32 county where the person resides; and

33       (ii) Can, in the opinion of the community mental health program director and the psychiatrist,  
34 provide intensive care or treatment for mental illness necessary and sufficient to meet the emer-  
35 gency psychiatric needs of the person.

36       (c) Recommend, in an investigation report as provided in ORS 426.074, that the circuit court  
37 hold a hearing under ORS 426.070 to 426.130 if the community mental health program director has  
38 probable cause to believe the person is a [*mentally ill*] person **with mental illness or that the**  
39 **person is in need of assisted outpatient treatment.**

40       (2)(a) If the circuit court adopts the recommendation of the community mental health program  
41 director under subsection (1)(a) of this section, the circuit court shall enter an order releasing the  
42 person and dismissing the case. Unless the person agrees to voluntary treatment, if the person is  
43 being detained in a:

44       (A) Nonhospital facility, the community mental health program director shall make discharge  
45 plans and [*insure*] **ensure** the discharge of the person.

1 (B) Hospital, the treating physician shall make discharge plans and discharge the person.

2 (b) Upon release of the person, the community mental health program director shall attempt to  
3 notify the person's next of kin if the person consents to the notification.

4 (3)(a) If the detained person is certified for treatment under subsection (1)(b) of this section, the  
5 community mental health program director shall:

6 (A) Deliver immediately a certificate to the court having jurisdiction under ORS 426.060; and

7 (B) Orally inform the person of the certification and deliver a copy of the certificate to the  
8 person.

9 (b) The certificate required by paragraph (a) of this subsection shall include:

10 (A) A written statement under oath by the community mental health program director and the  
11 psychiatrist that they have probable cause to believe the person is a [*mentally ill*] person **with**  
12 **mental illness** in need of care or treatment for mental illness;

13 (B) A treatment plan that describes, in general terms, the types of treatment and medication to  
14 be provided to the person during the 14-day period of intensive treatment;

15 (C) A notice of the person's right to an attorney and that an attorney will be appointed by the  
16 court or as otherwise obtained under ORS 426.100 (3);

17 (D) A notice that the person has a right to request and be provided a hearing under ORS 426.070  
18 to 426.130 at any time during the 14-day period; and

19 (E) The date and time the copy of the certificate was delivered to the person.

20 (c) Immediately upon receipt of a certificate under paragraph (a) of this subsection, the court  
21 shall notify the person's attorney or appoint an attorney for the person if the person cannot afford  
22 one. Within 24 hours of the time the certificate is delivered to the court, the person's attorney shall  
23 review the certificate with the person. If the person and the person's attorney consent to the cer-  
24 tification within one judicial day of the time the certificate is delivered to the circuit court and,  
25 except as provided in subsection (4) of this section, the court shall postpone the hearing required  
26 by ORS 426.070 to 426.130 for 14 days.

27 (d) When a person is certified for treatment under subsection (1)(b) of this section and accepts  
28 the certification:

29 (A) Except as otherwise provided in this paragraph, all methods of treatment, including the  
30 prescription and administration of drugs, shall be the sole responsibility of the treating physician.  
31 However, the person shall not be subject to electroshock therapy or unduly hazardous treatment and  
32 shall receive usual and customary treatment in accordance with medical standards in the commu-  
33 nity.

34 (B) Except when the person expressly refuses treatment, the treating physician shall treat the  
35 person within the scope of the treatment plan provided the person under paragraph (b) of this sub-  
36 section. The person's refusal of treatment constitutes sufficient grounds for the community mental  
37 health program director to request a hearing as provided in subsection (4)(a) of this section.

38 (C) If the person is in a hospital and the community mental health program director locates a  
39 nonhospital facility, approved by the authority, that, in the opinion of the community mental health  
40 program director and the treating physician, can provide care or treatment for mental illness nec-  
41 essary and sufficient to meet the emergency psychiatric needs of the person, the treating physician  
42 shall discharge the person from the hospital and the community mental health program director  
43 shall remove the person to the nonhospital facility for the remainder of the 14-day intensive treat-  
44 ment period. If, however, in the opinion of the treating physician, the person's condition requires the  
45 person to receive medical care or treatment, the physician shall retain the person in the hospital.

1 (D) If the person is in a nonhospital facility, the community mental health program director shall  
2 transfer the person to a hospital approved by the authority under the following conditions:

3 (i) If, in the opinion of a physician, the person's condition requires the person to receive medical  
4 care or treatment in a hospital; and

5 (ii) The physician agrees to admit the person to a hospital, approved by the authority, where the  
6 physician has admitting privileges.

7 (E) If the person is transferred as provided in subparagraph (C) or (D) of this paragraph, the  
8 community mental health program director shall notify the circuit court, in the county where the  
9 certificate was filed, of the location of the person. The person may appeal the transfer as provided  
10 by rules of the authority.

11 (e) If the person is in a hospital, the treating physician may discharge the person at any time  
12 during the 14-day period. The treating physician shall confer with the community mental health  
13 program director and the person's next of kin, if the person consents to the consultation, prior to  
14 discharging the person. Immediately upon discharge of the person, the treating physician shall no-  
15 tify the court in the county in which the certificate was filed initially.

16 (f) If the person is in a nonhospital facility, the community mental health program director may  
17 discharge the person at any time during the 14-day period. The community mental health program  
18 director shall consult with the treating physician and the person's next of kin, if the person consents  
19 to the consultation, prior to discharging the person. Immediately upon discharge of the person, the  
20 community mental health program director shall notify the court in the county in which the certifi-  
21 cate was filed initially.

22 (g) The person may agree to voluntary treatment at any time during the 14-day period. When a  
23 person agrees to voluntary treatment under this paragraph, the community mental health program  
24 director immediately shall notify the court in the county in which the certificate was filed initially.

25 (h) A person consenting to 14 days of treatment under subsection (3)(c) of this section shall not  
26 be held longer than 14 days from the time of consenting without a hearing as provided in ORS  
27 426.070 to 426.130.

28 (i) When the court receives notification under paragraph (e), (f) or (g) of this subsection, the  
29 court shall dismiss the case.

30 (4) The judge of the circuit court shall immediately commence proceedings under ORS 426.070  
31 to 426.130 when:

32 (a) The person consenting to 14 days of treatment or the community mental health program di-  
33 rector requests a hearing. The hearing shall be held without unreasonable delay. In no case shall  
34 the person be held in a hospital or nonhospital facility longer than five judicial days after the re-  
35 quest for a hearing is made without a hearing being held under ORS 426.070 to 426.130.

36 (b) The community mental health program director acts under subsection (1)(c) of this section.  
37 In no case shall the person be held longer than five judicial days without a hearing under this  
38 subsection.

39  
40 ~~CONFORMING AMENDMENTS~~

41  
42 ~~SECTION 2. ORS 21.010 is amended to read:~~

43 ~~21.010. (1) Except as provided in this section, the appellant in an appeal or the petitioner in a~~  
44 ~~judicial review in the Supreme Court or the Court of Appeals shall pay a filing fee of \$355 in the~~  
45 ~~manner prescribed by ORS 19.265. The respondent in such case and any other person appearing in~~

1       **“SECTION 6. If Senate Bill 426 becomes law, section 4 of this 2013**  
2 **Act (amending ORS 426.130) is repealed and ORS 426.130, as amended**  
3 **by section 30, chapter \_\_\_, Oregon Laws 2013 (Enrolled Senate Bill 426),**  
4 **is amended to read:**

5       “426.130. (1) After hearing all of the evidence, and reviewing the findings  
6 of the examiners, the court shall determine whether the person has a mental  
7 illness and is in need of treatment. If, in the opinion of the court, the person:

8       “[(a) *Does not have a mental illness, the person shall be discharged forth-*

9 *with.*]  
10       “[(b)] (a) Is a person with mental illness based upon clear and convincing  
11 evidence, the court:

12       “(A) Shall order the release of the person and dismiss the case if:

13       “(i) The person is willing and able to participate in treatment on a vol-  
14 untary basis; and

15       “(ii) The court finds that the person will probably do so.

16       “(B) May order conditional release under this subparagraph subject to the  
17 qualifications and requirements under ORS 426.125. If the court orders  
18 conditional release under this subparagraph, the court shall establish a pe-  
19 riod of commitment for the conditional release.

20       “(C) May order commitment of the person with mental illness to the  
21 Oregon Health Authority for treatment if, in the opinion of the court, sub-  
22 paragraph (A) or (B) of this paragraph is not in the best interest of the  
23 person. If the court orders commitment under this subparagraph:

24       “(i) The court shall establish a period of commitment.

25       “(ii) The authority may place the committed person in outpatient com-  
26 mitment under ORS 426.127.

27       “(D) Shall order that the person be prohibited from purchasing or pos-  
28 sessing a firearm if, in the opinion of the court, there is a reasonable like-  
29 lihood the person would constitute a danger to self or others or to the  
30 community at large as a result of the person’s mental or psychological state

1 as demonstrated by past behavior or participation in incidents involving  
2 unlawful violence or threats of unlawful violence, or by reason of a single  
3 incident of extreme, violent, unlawful conduct. When a court makes an order  
4 under this subparagraph, the court shall cause a copy of the order to be de-  
5 livered to the sheriff of the county who will enter the information into the  
6 Law Enforcement Data System.

7 **“(b) Is not a person with mental illness, the court shall release the**  
8 **person from custody if the person has been detained under ORS**  
9 **426.070, 426.180, 426.228, 426.232 or 426.233 and:**

10 **“(A) Dismiss the case; or**

11 **“(B) Order the person to participate in assisted outpatient treat-**  
12 **ment in accordance with section 2 of this 2013 Act. The court may**  
13 **continue the proceeding for no more than seven days to allow time for**  
14 **the community mental health program director to develop the person’s**  
15 **assisted outpatient treatment plan.**

16 **“(2) A court that orders a conditional release, [or] a commitment or as-**  
17 **sisted outpatient treatment under this section shall establish a period of**  
18 **commitment or treatment for the person subject to the order. Any period**  
19 **of commitment ordered for commitment or conditional release under this**  
20 **section shall be for a period of time not to exceed 180 days. A period of**  
21 **assisted outpatient treatment shall be for a period of time not to ex-**  
22 **ceed 12 months.**

23 **“(3) If the commitment proceeding was initiated under 426.070 (1)(a) and**  
24 **if the notice included a request under ORS 426.070 (2)(d)(B), the court shall**  
25 **notify the two persons of the court’s determination under subsection (1) of**  
26 **this section.**

27 **“SECTION 7. In addition to and not in lieu of any other appropri-**  
28 **ation, there is appropriated to the Judicial Department for the**  
29 **biennium beginning July 1, 2013, out of the General Fund, the amount**  
30 **of \$100,000, which may be expended for carrying out the department’s**



1 **duties under this 2013 Act.”.**

2 \_\_\_\_\_

**FISCAL IMPACT OF PROPOSED LEGISLATION**

**Measure: HB 2594 - A8**

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

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

Prepared by: Kim To  
Reviewed by: Linda Ames, Monica Brown, Steve Bender  
Date: 6/26/2013

**Measure Description:**

Modifies standard for court commitment of person with mental illness.

**Government Unit(s) Affected:**

Oregon Judicial Department (OJD), Public Defense Services Commission (PDSC), Oregon Health Authority (OHA), county health programs, Department of Justice (DOJ)

**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:**

House Bill 2594 modifies statutes relating to civil commitment proceedings instituted against person alleged to have mental illness to allow courts the option of ordering assisted outpatient treatment (AOT). The bill stipulates that assisted outpatient treatment does not include taking the person into custody or forced medication. AOT is intended for adults diagnosed with a serious mental illness who are unlikely to live safely in the community without supervision and treatment, and who also are unlikely to voluntarily participate in treatment, but requires treatment to prevent deterioration in the person's condition. The court retains jurisdiction over the person until either the end of the period of the assisted outpatient treatment or until the court finds that the person no longer meets the criteria for participation in assisted outpatient treatment. The provisions of this bill apply to determinations or adjudications of whether a person is a person with mental illness that are made on or after January 1, 2014.

The dash – A8 amendment removes the Oregon Health Authority's obligation to fund outpatient treatment, and provides that if a county lacks sufficient funds, the county is not required to provide treatment, services or supervision of persons ordered to undergo assisted outpatient treatment. The – A8 amendment also resolves conflicts in the event that Senate Bill 426 becomes law.

Oregon Judicial Department (OJD)

The fiscal impact of this bill on the Oregon Judicial Department is indeterminate depending on the number of civil commitment cases that would result in a hearing on whether to order a person to assisted outpatient treatment. The Oregon Judicial Department provides the following projections as a point of reference: OJD reports that in 2011, under current law, there were 8,871 civil commitment cases filed in the circuit courts. Assuming that passage of this bill would result in a 1% to 2% increase in civil commitment cases filed in circuit courts, and additionally, that 1% to 2% of civil commitment cases would result in a hearing on whether to order a person to assisted outpatient treatment, OJD estimates the fiscal impact of this bill could range roughly between \$47,288 and \$90,976 General Fund per biennium.

Not included in the rough estimate above is the potential cost of case management for the courts. The measure allows courts to retain jurisdiction over the person until the end of the period for assisted outpatient treatment or until the court finds that the person no longer meets the criteria for assisted outpatient treatment, whichever is earlier. At this time, OJD cannot predict how each court will choose

to oversee and manage these cases, and therefore the extent to which this would affect judge and court staff.

The – A8 includes a \$100,000 General Fund appropriation for the Oregon Judicial Department to carry out the provisions of this bill.

#### Public Defense Services Commission (PDSC)

The fiscal impact of this bill on the Public Defense Services Commission is indeterminate depending on the number of civil commitment cases that would result in a hearing on whether to order a person to assisted outpatient treatment, as a result of this bill. The Public Defense Services Commission reports that the average cost of representation in civil commitment proceedings is \$350. Based on the Oregon Judicial Department assumption that passage of this bill could result in approximately 89 to 177 additional hearings each year, and assuming that the individual would be eligible in all cases, the Public Defense Services Commission estimates the fiscal impact of this bill on PDSC to be roughly between \$62,300 to \$123,900 General Fund per biennium.

#### Department of Justice (DOJ)

The fiscal impact to the Department of Justice is indeterminate depending on the number of civil commitment hearings initiated by state agencies, district attorneys, and offices of county counsel. DOJ reports that currently about six to seven attorneys handle, on a rotating basis, six to ten civil commitment hearings per month. If passage of this bill result in a 50% increase in these hearings, the Civil Enforcement Division would need an additional staffing to assist state agencies, district attorneys, and offices of county counsel in handling this increase in civil commitment hearings. This cost would be covered by attorney general fees paid by these entities.

#### County health programs

The fiscal impact of this bill on county health programs is indeterminate depending on the number of individuals ordered by the courts to receive assisted outpatient treatment, and the type and level of treatment services required by these individuals.

The – A8 amendment stipulates that if a county lacks sufficient funds, the county is not required to provide treatment, services or supervision of persons ordered to undergo assisted outpatient treatment. However, note that without funding, the assisted outpatient treatment ordered by the court would not be delivered.

REVENUE: No revenue impact

FISCAL: Fiscal statement issued

---

<b>Action:</b>	Do Pass as Amended and Be Printed Engrossed and Be Referred to the Committee on Ways and Means
<b>Vote:</b>	9 - 0 - 0
<b>Yeas:</b>	Barton, Cameron, Garrett, Hicks, Krieger, Olson, Tomei, Williamson, Barker
<b>Nays:</b>	0
<b>Exc.:</b>	0
<b>Prepared By:</b>	Mike Schmidt, Counsel
<b>Meeting Dates:</b>	2/21, 4/15, 4/18

---

**WHAT THE MEASURE DOES:** Creates new standards for courts to order people to engage in outpatient assisted treatment. Creates standard that person ordered to engage in outpatient assisted treatment is deteriorating to point that person will predictably become a person with mental illness as defined in ORS 426.005. Lists factors court shall consider when making such a determination. Conforms language across all statutes to “persons with mental illness” rather than “mentally ill person.” Allows people who would not meet the high standard required for inpatient commitment to be ordered to engage in outpatient treatment in the community they live in.

**ISSUES DISCUSSED:**

- Police officers are on the front lines of mental health crisis response, and will often look for ways to get people off of the streets but consistently find that people suffering or in crisis are turned away from hospitals because they do not meet the stringent criteria necessary for inpatient commitment.
- It is not intention of House Bill 2594 A to require forced medication, or to use jails or hospitals to punish people.
- Intention is to order people who would not voluntarily seek out mental health resources to meet with treatment providers, and to set them up with resources that may be able to help.

**EFFECT OF COMMITTEE AMENDMENT:** Makes new standard for outpatient assisted treatment that people who would not meet the high standard required for inpatient commitment could be ordered to engage in outpatient treatment in the community they live in.

**BACKGROUND:** Currently in Oregon the statutes, as interpreted through the case law, put a very high bar on the findings that a court has to make in order for a person to be civilly committed. Essentially, the law requires that the courts find by clear and convincing evidence that a person is imminently a danger to his/herself, others, or on the precipice of expiration due to an inability to care for their basic needs. House Bill 2594 A creates a new standard with lesser barriers for those who do not meet the high criteria required for inpatient commitment. A person meeting this new standard would be under jurisdiction of the court, and would be required to participate in outpatient assisted treatment.