

Enrolled
House Bill 2594

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

CHAPTER

AN ACT

Relating to commitment of persons with mental illness; creating new provisions; amending ORS 426.070, 426.130 and 426.237; and appropriating money.

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

SECTION 1. Section 2 of this 2013 Act is added to and made a part of ORS 426.005 to 426.390.

SECTION 2. (1) As used in ORS 426.005 to 426.390, “assisted outpatient treatment” may not be construed to be a commitment under ORS 426.130 and does not include taking a person 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 may 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:

(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.

SECTION 3. 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;

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

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

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

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

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

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

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

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

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

(4) Upon completion, a recommendation based upon the investigation report under ORS 426.074 shall be promptly submitted to the court. If the community mental health program director determines that probable cause does not exist to believe that a person released from detention under ORS 426.234 (2)(c) or (3)(b) is a [*mentally ill*] person **with mental illness**, the community mental health program director [*shall not submit a recommendation to the court*] **may recommend assisted outpatient treatment in accordance with section 2 of this 2013 Act**.

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

(a) If the court, following the investigation, concludes that there is probable cause to believe that the person investigated is a [*mentally ill*] person **with mental illness**, it shall, through the issuance of a citation as provided in ORS 426.090, cause the person to be brought before it at a time and place as it may direct, for a hearing under ORS 426.095 to determine whether the person is

[mentally ill] a **person with mental illness**. The person shall be given the opportunity to appear voluntarily at the hearing unless the person fails to appear or unless the person is detained pursuant to paragraph (b) of this subsection.

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

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

[(C)] **(B)** At the time the person is taken into custody, the person shall be informed by the community mental health program director, the sheriff or a designee of the following:

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

(ii) The warning under ORS 426.123; and

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

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

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

SECTION 4. ORS 426.130 is amended to read:

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

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

[(b)] **(a)** [Mentally ill] **Is a person with mental illness** based upon clear and convincing evidence, the court:

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

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

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

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

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

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

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

(D) Shall order that the person be prohibited from purchasing or possessing a firearm if, in the opinion of the court, there is a reasonable likelihood the person would constitute a danger to self or others or to the community at large as a result of the person's mental or psychological state as demonstrated by past behavior or participation in incidents involving unlawful violence or threats

of unlawful violence, or by reason of a single incident of extreme, violent, unlawful conduct. When a court makes an order under this subparagraph, the court shall cause a copy of the order to be delivered to the sheriff of the county who will enter the information into the Law Enforcement Data System.

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

(A) Dismiss the case; or

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

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

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

SECTION 5. ORS 426.237 is amended to read:

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

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

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

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

(B) The community mental health program director in the county where the person resides verbally approves the arrangements for payment for the services at the hospital or nonhospital facility; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) If the person is in a hospital, the treating physician may discharge the person at any time during the 14-day period. The treating physician shall confer with the community mental health program director and the person's next of kin, if the person consents to the consultation, prior to discharging the person. Immediately upon discharge of the person, the treating physician shall notify the court in the county in which the certificate was filed initially.

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

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

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

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

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

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

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

SECTION 6. If Senate Bill 426 becomes law, section 4 of this 2013 Act (amending ORS 426.130) is repealed and ORS 426.130, as amended by section 30, chapter 360, Oregon Laws 2013 (Enrolled Senate Bill 426), is amended to read:

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

[(a) Does not have a mental illness, the person shall be discharged forthwith.]

[(b)] (a) Is a person with mental illness based upon clear and convincing evidence, the court:

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

(i) The person is willing and able to participate in treatment on a voluntary basis; and

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

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

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

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

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

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

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

(A) Dismiss the case; or

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

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

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

SECTION 7. In addition to and not in lieu of any other appropriation, there is appropriated to the Judicial Department for the biennium beginning July 1, 2013, out of the General Fund, the amount of \$100,000, which may be expended for carrying out the department's duties under this 2013 Act.

Passed by House July 3, 2013

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Ramona J. Line, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate July 6, 2013

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Peter Courtney, President of Senate

Received by Governor:

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Approved:

.....M.,....., 2013

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M.,....., 2013

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Kate Brown, Secretary of State