

(Including Amendments to Resolve Conflicts)

B-Engrossed House Bill 2594

Ordered by the House July 3
Including House Amendments dated April 26 and July 3

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.

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 if recommended by community mental health program director. Specifies criteria for court to order assisted outpatient treatment.

[Updates terminology.]

Appropriates moneys from General Fund to Judicial Department for purposes of Act.

A BILL FOR AN ACT

1
2 Relating to commitment of persons with mental illness; creating new provisions; amending ORS
3 426.070, 426.130 and 426.237; and appropriating money.

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

5 **SECTION 1. Section 2 of this 2013 Act is added to and made a part of ORS 426.005 to**
6 **426.390.**

7 **SECTION 2. (1) As used in ORS 426.005 to 426.390, "assisted outpatient treatment" may**
8 **not be construed to be a commitment under ORS 426.130 and does not include taking a per-**
9 **son into custody or the forced medication of a person.**

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

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

13 **(B) Has a mental disorder;**

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

15 **(D) Is unable to make an informed decision to seek or to comply with voluntary treat-**
16 **ment; and**

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

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

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

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

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

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

2 **(c) The person's ability to access necessary resources in the community without assist-**
3 **ance.**

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

5 **(e) The likelihood that the person will decompensate without immediate care or treat-**
6 **ment.**

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

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

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

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

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

12 **(4) The community mental health program director may recommend to the court a**
13 **treatment plan for a person participating in assisted outpatient treatment. The court may**
14 **adopt the plan as recommended or with modifications.**

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

18 **(6) This section does not:**

19 **(a) Prevent a court from appointing a guardian ad litem to act for the person; or**

20 **(b) Require a county to provide treatment or services to, or supervision of, the person**
21 **if the county lacks sufficient funds for such purposes.**

22 **SECTION 3.** ORS 426.070 is amended to read:

23 426.070. (1) Any of the following may initiate commitment procedures under this section by giv-
24 ing the notice described under subsection (2) of this section:

25 (a) Two persons;

26 (b) The county health officer; or

27 (c) Any magistrate.

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

29 (a) It must be in writing under oath;

30 (b) It must be given to the community mental health program director or a designee of the di-
31 rector in the county where the [*allegedly mentally ill*] person **alleged to have a mental illness** re-
32 sides;

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

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

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

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

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

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

44 (a) Immediately notify the judge of the court having jurisdiction for that county under ORS
45 426.060 of the notification described in subsections (1) and (2) of this section.

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

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

8 (4) Upon completion, a recommendation based upon the investigation report under ORS 426.074
9 shall be promptly submitted to the court. If the community mental health program director deter-
10 mines that probable cause does not exist to believe that a person released from detention under ORS
11 426.234 (2)(c) or (3)(b) is a [*mentally ill*] person **with mental illness**, the community mental health
12 program director [*shall not submit a recommendation to the court*] **may recommend assisted out-**
13 **patient treatment in accordance with section 2 of this 2013 Act.**

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

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

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

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

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

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

36 (ii) The warning under ORS 426.123; and

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

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

45 (c) If the notice includes a request under subsection (2)(d)(A) of this section, the court shall

1 notify the two persons of the issuance or nonissuance of a warrant under this subsection.

2 **SECTION 4.** ORS 426.130 is amended to read:

3 426.130. (1) After hearing all of the evidence, and reviewing the findings of the [*examining per-*
4 *sons*] **examiners**, the court shall determine whether the person [*is mentally ill*] **has a mental illness**
5 **and is in need of treatment**. If, in the opinion of the court, the person [*is*]:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 **SECTION 5.** ORS 426.237 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 (B) A treatment plan that describes, in general terms, the types of treatment and medication to

1 be provided to the person during the 14-day period of intensive treatment;

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

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

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

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

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

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

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

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

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

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

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

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

43 (e) If the person is in a hospital, the treating physician may discharge the person at any time
44 during the 14-day period. The treating physician shall confer with the community mental health
45 program director and the person's next of kin, if the person consents to the consultation, prior to

1 discharging the person. Immediately upon discharge of the person, the treating physician shall no-
2 tify the court in the county in which the certificate was filed initially.

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

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

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

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

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

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

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

26 **SECTION 6. If Senate Bill 426 becomes law, section 4 of this 2013 Act (amending ORS**
27 **426.130) is repealed and ORS 426.130, as amended by section 30, chapter 360, Oregon Laws 2013**
28 **(Enrolled Senate Bill 426), is amended to read:**

29 426.130. (1) After hearing all of the evidence, and reviewing the findings of the examiners, the
30 court shall determine whether the person has a mental illness and is in need of treatment. If, in the
31 opinion of the court, the person:

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

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

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

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

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

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

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

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

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

45 (D) Shall order that the person be prohibited from purchasing or possessing a firearm if, in the

1 opinion of the court, there is a reasonable likelihood the person would constitute a danger to self
2 or others or to the community at large as a result of the person's mental or psychological state as
3 demonstrated by past behavior or participation in incidents involving unlawful violence or threats
4 of unlawful violence, or by reason of a single incident of extreme, violent, unlawful conduct. When
5 a court makes an order under this subparagraph, the court shall cause a copy of the order to be
6 delivered to the sheriff of the county who will enter the information into the Law Enforcement Data
7 System.

8 **(b) Is not a person with mental illness, the court shall release the person from custody**
9 **if the person has been detained under ORS 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 treatment in accordance with**
12 **section 2 of this 2013 Act. The court may continue the proceeding for no more than seven**
13 **days to allow time for the community mental health program director to develop the person's**
14 **assisted outpatient treatment plan.**

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

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

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