

HOUSE AMENDMENTS TO HOUSE BILL 2594

By COMMITTEE ON JUDICIARY

April 26

- 1 On page 1 of the printed bill, line 6, after “426.223,” insert “426.225.”
2 Delete lines 15 through 31.
3 On page 2, delete lines 1 through 33 and insert:
4 “**SECTION 1.** ORS 426.005 is amended to read:
5 “426.005. (1) As used in ORS 426.005 to 426.390, unless the context requires otherwise:
6 “[*(a)* ‘Authority’ means the Oregon Health Authority.]
7 “[*(b)*] (a) ‘Community mental health program director’ means the director of an entity that pro-
8 vides the services described in ORS 430.630 (3) to (5).
9 “[*(c)*] (b) ‘Director of the facility’ means a superintendent of a state [*mental*] hospital, the chief
10 of psychiatric services in a community hospital or the person in charge of treatment and rehabili-
11 tation programs at other treatment facilities.
12 “[*(d)*] (c) ‘Facility’ means a state [*mental*] hospital, community hospital, residential facility,
13 detoxification center, day treatment facility or such other facility as the **Oregon Health Authority**
14 determines suitable[, *any of which may provide*] **that provides** diagnosis and evaluation, medical
15 care, detoxification, social services or rehabilitation [*for committed mentally ill persons*] **to persons**
16 **committed to the authority under ORS 426.130.**
17 “[*(e)* ‘Mentally ill person’ means a person who, because of a mental disorder, is one or more of the
18 following:]
19 “[*(A)* Dangerous to self or others.]
20 “[*(B)* Unable to provide for basic personal needs and is not receiving such care as is necessary for
21 health or safety.]
22 “[*(C)* A person:]
23 “[*(i)* With a chronic mental illness, as defined in ORS 426.495;]
24 “[*(ii)* Who, within the previous three years, has twice been placed in a hospital or approved inpa-
25 tient facility by the authority or the Department of Human Services under ORS 426.060;]
26 “[*(iii)* Who is exhibiting symptoms or behavior substantially similar to those that preceded and led
27 to one or more of the hospitalizations or inpatient placements referred to in sub-subparagraph (ii) of
28 this subparagraph; and]
29 “[*(iv)* Who, unless treated, will continue, to a reasonable medical probability, to physically or
30 mentally deteriorate so that the person will become a person described under either subparagraph (A)
31 or (B) of this paragraph or both.]
32 “[*(f)*] (d) ‘Nonhospital facility’ means any facility, other than a hospital, that is approved by the
33 authority to provide adequate security, psychiatric, nursing and other services to persons under ORS
34 426.232 or 426.233.
35 “(e) ‘Person with mental illness’ means a person who, because of a mental disorder:

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

2 “(g) The person’s history of mental health treatment in the community.

3 “(h) The person’s patterns of decompensation in the past.

4 “(i) The person’s risk of being victimized or harmed by others.

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

6 “(4) The community mental health program director shall recommend to the court a
7 treatment plan for a person participating in assisted outpatient treatment. The court may
8 adopt the plan as recommended or with modifications.

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

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

14 “**SECTION 1c.** ORS 426.070 is amended to read:

15 “426.070. (1) Any of the following may initiate commitment procedures under this section by
16 giving the notice described under subsection (2) of this section:

17 “(a) Two persons;

18 “(b) The county health officer; or

19 “(c) Any magistrate.

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

21 “(a) It must be in writing under oath;

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

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

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

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

30 “(B) Of the court’s determination under ORS 426.130 (1); and

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

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

36 “(a) Immediately notify the judge of the court having jurisdiction for that county under ORS
37 426.060 of the notification described in subsections (1) and (2) of this section.

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

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

45 “(4) Upon completion, a recommendation based upon the investigation report under ORS 426.074

1 shall be promptly submitted to the court. If the community mental health program director deter-
2 mines that probable cause does not exist to believe that a person released from detention under ORS
3 426.234 (2)(c) or (3)(b) is a [*mentally ill*] person **with mental illness**, the community mental health
4 program director [*shall not submit a recommendation to the court*] **may recommend assisted out-**
5 **patient treatment in accordance with section 1b of this 2013 Act.**

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

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

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

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

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

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

28 “(ii) The warning under ORS 426.123; and

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

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

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

39 “**SECTION 1d.** ORS 426.130 is amended to read:

40 “426.130. (1) After hearing all of the evidence, and reviewing the findings of the [*examining*
41 *persons*] **examiners**, the court shall determine whether the person [*is mentally ill*] **has a mental**
42 **illness and is in need of treatment**. If, in the opinion of the court, the person [*is*]:

43 “[*a*] *Not mentally ill, the person shall be discharged forthwith.*]

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

1 “(A) Shall order the release of the [*individual*] **person** and dismiss the case if:
2 “(i) The [*mentally ill*] person is willing and able to participate in treatment on a voluntary basis;
3 and
4 “(ii) The court finds that the person will probably do so.
5 “(B) May order conditional release under this subparagraph subject to the qualifications and
6 requirements under ORS 426.125. If the court orders conditional release under this subparagraph,
7 the court shall establish a period of commitment for the conditional release.
8 “(C) May order commitment of the [*individual*] **person with mental illness** to the Oregon
9 Health Authority for treatment if, in the opinion of the court, subparagraph (A) or (B) of this para-
10 graph is not in the best interest of the [*mentally ill*] person. If the court orders commitment under
11 this subparagraph:
12 “(i) The court shall establish a period of commitment.
13 “(ii) The authority may place the committed person in outpatient commitment under ORS
14 426.127.
15 “(D) Shall order that the person be prohibited from purchasing or possessing a firearm if, in the
16 opinion of the court, there is a reasonable likelihood the person would constitute a danger to self
17 or others or to the community at large as a result of the person’s mental or psychological state as
18 demonstrated by past behavior or participation in incidents involving unlawful violence or threats
19 of unlawful violence, or by reason of a single incident of extreme, violent, unlawful conduct. When
20 a court makes an order under this subparagraph, the court shall cause a copy of the order to be
21 delivered to the sheriff of the county who will enter the information into the Law Enforcement Data
22 System.
23 “(b) **Is not a person with mental illness, the court shall release the person from custody**
24 **if the person has been detained under ORS 426.070, 426.180, 426.228, 426.232 or 426.233 and:**
25 “(A) **Dismiss the case; or**
26 “(B) **Order the person to participate in assisted outpatient treatment in accordance with**
27 **section 1b of this 2013 Act. The court may continue the proceeding for no more than seven**
28 **days to allow time for the community mental health program director to develop the person’s**
29 **assisted outpatient treatment plan.**
30 “(2) A court that orders a conditional release, [*or*] a commitment **or assisted outpatient**
31 **treatment** under this section shall establish a period of commitment for the person subject to the
32 order. Any period of commitment ordered for commitment or conditional release under this section
33 shall be for a period of time not to exceed 180 days. **A period of assisted outpatient treatment**
34 **shall be for a period of time not to exceed 12 months.**
35 “(3) If the commitment proceeding was initiated under ORS 426.070 (1)(a) and if the notice in-
36 cluded a request under ORS 426.070 (2)(d)(B), the court shall notify the two persons of the court’s
37 determination under subsection (1) of this section.
38 “**SECTION 1e.** ORS 426.237 is amended to read:
39 “426.237. (1) During a prehearing period of detention as provided in ORS 426.070, 426.140,
40 426.232 or 426.233, the community mental health program director shall do one of the following:
41 “(a) Recommend, in an investigation report as provided in ORS 426.074, that the circuit court
42 not proceed further in the matter if the community mental health program director does not believe
43 the person is a [*mentally ill*] person **with mental illness or that the person is in need of assisted**
44 **outpatient treatment.**
45 “(b) No later than three judicial days after initiation of a prehearing period of detention as

1 provided in ORS 426.070, 426.140, 426.232 or 426.233, certify the detained person for a 14-day period
2 of intensive treatment if:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

42 “(D) A notice that the person has a right to request and be provided a hearing under ORS
43 426.070 to 426.130 at any time during the 14-day period; and

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

45 “(c) Immediately upon receipt of a certificate under paragraph (a) of this subsection, the court

1 shall notify the person's attorney or appoint an attorney for the person if the person cannot afford
2 one. Within 24 hours of the time the certificate is delivered to the court, the person's attorney shall
3 review the certificate with the person. If the person and the person's attorney consent to the cer-
4 tification within one judicial day of the time the certificate is delivered to the circuit court and,
5 except as provided in subsection (4) of this section, the court shall postpone the hearing required
6 by ORS 426.070 to 426.130 for 14 days.

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

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

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

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

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

28 “(i) If, in the opinion of a physician, the person's condition requires the person to receive med-
29 ical care or treatment in a hospital; and

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

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

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

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

1 icate was filed initially.

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

5 “(h) A person consenting to 14 days of treatment under subsection (3)(c) of this section shall not
6 be held longer than 14 days from the time of consenting without a hearing as provided in ORS
7 426.070 to 426.130.

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

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

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

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

19 On page 23, delete lines 10 through 45.

20 On page 24, delete lines 1 through 33 and insert:

21 “**NOTE:** Section 16 was deleted by amendment. Subsequent sections were not renumbered.”.

22 On page 31, delete lines 13 through 45.

23 On page 32, delete lines 1 and 2 and insert:

24 “**NOTE:** Section 28 was deleted by amendment. Subsequent sections were not renumbered.”.

25 On page 35, after line 15, insert:

26 “**SECTION 35a.** ORS 426.225 is amended to read:

27 “426.225. (1) If any person who has been committed to the Oregon Health Authority under ORS
28 426.127 or 426.130 [(1)(b)(B)] (1)(a)(B) or (C) requests, during this period of commitment, voluntary
29 admission to a state hospital, the superintendent shall cause the person to be examined immediately
30 by a physician. If the physician finds the person to be in need of immediate care or treatment for
31 mental illness, the person shall be voluntarily admitted upon request of the person.

32 “(2) If any person who has been committed to the authority under ORS 426.127 or 426.130
33 [(1)(b)(B)] (1)(a)(B) or (C) requests, during this period of commitment, voluntary admission to a fa-
34 cility approved by the authority, the administrator of the facility shall cause the person to be ex-
35 amined immediately by a physician. If the physician finds the person to be in need of immediate care
36 or treatment for mental illness, and the authority grants approval, the person shall be voluntarily
37 admitted upon request of the person.”.

38 On page 40, delete lines 32 through 45 and delete pages 41 and 42.

39 On page 43, delete lines 1 through 10 and insert:

40 “**NOTE:** Section 42 was deleted by amendment. Subsequent sections were not renumbered.”.

41 On page 70, line 36, after the period insert “Sections 1a and 1b of this 2013 Act and”.

42 In line 39, after “426.223,” insert “426.225,”.

43 In line 42, after “1” insert “, 1c”.