

House Bill 3429

Sponsored by Representative WEIDNER; Representative THOMPSON

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 **as introduced**.

Authorizes peace officer, community mental health program director or director's designee to take into emergency custody person with mental illness who is not complying with medication regimen and is at risk of being dangerous to self.

A BILL FOR AN ACT

1
2 Relating to persons with mental illness; amending ORS 426.005, 426.180, 426.228, 426.231, 426.232,
3 426.233 and 426.234.

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

5 **SECTION 1.** ORS 426.005 is amended to read:

6 426.005. (1) As used in ORS 426.005 to 426.390, unless the context requires otherwise:

7 (a) **“At risk of being dangerous to self” means not complying with a prescribed**
8 **medication regimen that will prevent a person from being dangerous to self.**

9 [*(a) “Authority” means the Oregon Health Authority.*]

10 (b) “Community mental health program director” means the director of an entity that provides
11 the services described in ORS 430.630 (3) to (5).

12 (c) “Director of the facility” means a superintendent of a state mental hospital, the chief of
13 psychiatric services in a community hospital or the person in charge of treatment and rehabilitation
14 programs at other treatment facilities.

15 (d) “Facility” means a state mental hospital, community hospital, residential facility,
16 detoxification center, day treatment facility or such other facility as the **Oregon Health** Authority
17 determines suitable, any of which may provide diagnosis and evaluation, medical care, detoxification,
18 social services or rehabilitation for committed mentally ill persons.

19 (e) “Mentally ill person” means a person who, because of a mental disorder, is one or more of
20 the following:

21 (A) Dangerous to self or others.

22 (B) Unable to provide for basic personal needs and is not receiving such care as is necessary
23 for health or safety.

24 (C) A person:

25 (i) With a chronic mental illness, as defined in ORS 426.495;

26 (ii) Who, 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) Who is exhibiting symptoms or behavior substantially similar to those that preceded and led
29 to one or more of the hospitalizations or inpatient placements referred to in sub-subparagraph (ii)
30 of this subparagraph; and

31 (iv) Who, unless treated, will continue, to a reasonable medical probability, to physically or

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 mentally deteriorate so that the person will become a person described under either subparagraph
 2 (A) or (B) of this paragraph or both.

3 (f) “Nonhospital facility” means any facility, other than a hospital, that is approved by the au-
 4 thority to provide adequate security, psychiatric, nursing and other services to persons under ORS
 5 426.232 or 426.233.

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

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

11 **SECTION 2.** ORS 426.180, as amended by section 1, chapter 25, Oregon Laws 2012, is amended
 12 to read:

13 426.180. (1) ORS 426.180 to 426.210 apply to the commitment of an individual in Indian country
 14 if the state does not have jurisdiction over the individual.

15 (2) As used in this section and ORS 426.200 and 426.210, “hospital” means a hospital that is li-
 16 censed under ORS chapter 441, other than an institution listed in ORS 426.010.

17 (3) If the court of a tribe having jurisdiction over an individual issues an order finding that the
 18 individual is **at risk of being dangerous to self or is** dangerous to self or to any other person and
 19 is in need of immediate care, custody or treatment for mental illness, a person may request that the
 20 individual be taken by a tribal police officer or other peace officer to a hospital or nonhospital fa-
 21 cility by submitting to the officer a certified copy of the order and an affidavit that includes:

22 (a) The name and address of the nearest relative or legal guardian of the individual; and

23 (b) A medical history completed by one of the following, who may not be related to the indi-
 24 vidual by blood or marriage:

25 (A) The tribe’s mental health authority, if the tribe has entered into an agreement with the state
 26 pursuant to ORS 430.630 (9)(a)(B);

27 (B) A physician licensed by the Oregon Medical Board; or

28 (C) A qualified mental health professional.

29 (4) Upon receipt of the order and affidavit described in subsection (3) of this section, the tribal
 30 police officer or other peace officer shall immediately transport the individual to a hospital or a
 31 nonhospital facility and present the individual to the hospital or nonhospital facility accompanied
 32 by the court order and affidavit.

33 (5) The director of the hospital or nonhospital facility may refuse to admit the individual if the
 34 director or an attending physician, after reviewing the documents accompanying the individual, is
 35 not satisfied that an emergency exists or that the individual is **at risk of being dangerous to self**
 36 **or is** dangerous to self or others and in need of immediate care, custody or treatment for mental
 37 illness.

38 (6) If the hospital or nonhospital facility admits the individual, the director or attending physi-
 39 cian shall notify the community mental health program director for the area and the circuit court
 40 with jurisdiction in the area where the facility is located. Upon receipt of the notice, the community
 41 mental health program director shall initiate commitment proceedings in accordance with ORS
 42 426.070.

43 (7) If an individual is admitted to a hospital or nonhospital facility under this section, any phy-
 44 sician treating the individual shall give the individual the warning under ORS 426.123.

45 (8) This section may be applied as provided by agreement with the governing body of the res-

1 ervation. Payment of costs for a commitment made under this section shall be as provided under
 2 ORS 426.250.

3 (9) The director of the hospital or nonhospital facility or attending physician shall notify the
 4 appropriate tribe regarding all actions taken under ORS 426.180 to 426.210 no later than 24 hours
 5 after the action is taken, except for information protected from disclosure by state or federal law.

6 **SECTION 3.** ORS 426.228 is amended to read:

7 426.228. (1) A peace officer may take into custody a person who the officer has probable cause
 8 to believe is **at risk of being dangerous to self or is** dangerous to self or to any other person and
 9 is in need of immediate care, custody or treatment for mental illness. As directed by the community
 10 mental health program director, a peace officer shall remove a person taken into custody under this
 11 section to the nearest hospital or nonhospital facility approved by the Oregon Health Authority. The
 12 officer shall prepare a written report and deliver it to the treating physician. The report shall state:

- 13 (a) The reason for custody;
- 14 (b) The date, time and place the person was taken into custody; and
- 15 (c) The name of the community mental health program director and a telephone number where
 16 the director may be reached at all times.

17 (2) A peace officer shall take a person into custody when the community mental health program
 18 director, pursuant to ORS 426.233, notifies the peace officer that the director has probable cause to
 19 believe that the person is imminently dangerous to self or to any other person **or at risk of being**
 20 **dangerous to self.** As directed by the community mental health program director, the peace officer
 21 shall remove the person to a hospital or nonhospital facility approved by the authority. The com-
 22 munity mental health program director shall prepare a written report that the peace officer shall
 23 deliver to the treating physician. The report shall state:

- 24 (a) The reason for custody;
- 25 (b) The date, time and place the person was taken into custody; and
- 26 (c) The name of the community mental health program director and a telephone number where
 27 the director may be reached at all times.

28 (3) If more than one hour will be required to transport the person to the hospital or nonhospital
 29 facility from the location where the person was taken into custody, the peace officer shall obtain,
 30 if possible, a certificate from a physician licensed by the Oregon Medical Board stating that the
 31 travel will not be detrimental to the person's physical health and that the person is **at risk of being**
 32 **dangerous to self or is** dangerous to self or to any other person and is in need of immediate care
 33 or treatment for mental illness. The physician shall have personally examined the allegedly mentally
 34 ill person within 24 hours prior to signing the certificate.

35 (4) When a peace officer or other authorized person, acting under this section, delivers a person
 36 to a hospital or nonhospital facility, a physician licensed by the Oregon Medical Board shall exam-
 37 ine the person immediately. If the physician finds the person to be in need of emergency care or
 38 treatment for mental illness, the physician shall proceed under ORS 426.232, otherwise the person
 39 shall not be retained in custody. If the person is to be released from custody, the peace officer or
 40 the community mental health program director shall return the person to the place where the person
 41 was taken into custody unless the person declines that service.

42 (5) A peace officer may transfer a person in custody under this section to the custody of a per-
 43 son authorized by the county governing body under ORS 426.233 (3). The peace officer may meet the
 44 authorized person at any location that is in accordance with ORS 426.140 to effect the transfer.
 45 When transferring a person in custody to an authorized person, the peace officer shall deliver the

1 report required under subsections (1) and (2) of this section to the authorized person.

2 (6) A person authorized under ORS 426.233 (3) shall take a person into custody when directed
3 to do so by a peace officer or by a community mental health program director under ORS 426.233.

4 (7) A person authorized under ORS 426.233 (3) shall perform the duties of the peace officer or
5 the community mental health program director required by this section and ORS 426.233 if the peace
6 officer or the director has not already done so.

7 (8) A person authorized under ORS 426.233 (3) may transfer a person in custody under this
8 section to the custody of another person authorized under ORS 426.233 (3) or a peace officer. The
9 authorized person transferring custody may meet another authorized person or a peace officer at
10 any location that is in accordance with ORS 426.140 to effect the transfer.

11 (9)(a) When a peace officer takes a person into custody under this section, and the peace officer
12 reasonably suspects that the person is a foreign national, the peace officer shall inform the person
13 of the person's right to communicate with an official from the consulate of the person's country.

14 (b) A peace officer is not civilly or criminally liable for failure to provide the information re-
15 quired by this subsection. Failure to provide the information required by this subsection does not
16 in itself constitute grounds for the exclusion of evidence that would otherwise be admissible in a
17 proceeding.

18 **SECTION 4.** ORS 426.231 is amended to read:

19 426.231. (1) A physician licensed by the Oregon Medical Board may hold a person for transpor-
20 tation to a treatment facility for up to 12 hours in a health care facility licensed under ORS chapter
21 431 and approved by the Oregon Health Authority if:

22 (a) The physician believes the person is **at risk of being dangerous to self or is** dangerous to
23 self or to any other person and is in need of emergency care or treatment for mental illness;

24 (b) The physician is not related to the person by blood or marriage; and

25 (c) An admitting physician at the receiving facility consents to the transporting.

26 (2) Before transporting the person, the physician shall prepare a written statement that:

27 (a) The physician has examined the person within the preceding 12 hours;

28 (b) An admitting physician at the receiving facility has consented to the transporting of the
29 person for examination and admission if appropriate; and

30 (c) The physician believes the person is **at risk of being dangerous to self or is** dangerous to
31 self or to any other person and is in need of emergency care or treatment for mental illness.

32 (3) The written statement required by subsection (2) of this section authorizes a peace officer,
33 a person authorized under ORS 426.233 or the designee of a community mental health program di-
34 rector to transport a person to the treatment facility indicated on the statement.

35 **SECTION 5.** ORS 426.232 is amended to read:

36 426.232. (1) When a physician licensed to practice medicine by the Oregon Medical Board be-
37 lieves a person who is brought to a hospital or nonhospital facility by a peace officer under ORS
38 426.228, a person authorized under ORS 426.233 or a person who is at a hospital or nonhospital fa-
39 cility is **at risk of being dangerous to self or is** dangerous to self or to any other person and is
40 in need of emergency care or treatment for mental illness, the physician may do one of the following:

41 (a) After consulting with a physician or a qualified mental health professional, as defined by rule
42 of the Oregon Health Authority, detain the person and cause the person to be admitted or, if the
43 person is already admitted, cause the person to be retained in a hospital where the physician has
44 admitting privileges or is on staff. Neither the physician nor the qualified mental health professional
45 may be related by blood or marriage to the person.

1 (b) Approve the person for emergency care or treatment at a nonhospital facility approved by
2 the authority.

3 (2) When approving a person for emergency care or treatment at a nonhospital facility under
4 this section, the physician shall notify immediately the community mental health program director
5 in the county where the person was taken into custody and maintain the person, if the person is
6 being held at a hospital, for as long as is feasible given the needs of the person for mental or
7 physical health or safety. However, under no circumstances may the person be held for longer than
8 five judicial days.

9 **SECTION 6.** ORS 426.233 is amended to read:

10 426.233. (1)(a) A community mental health program director operating under ORS 430.610 to
11 430.695 or a designee thereof, under authorization of a county governing body, may take one of the
12 actions listed in paragraph (b) of this subsection when the community mental health program di-
13 rector or designee has probable cause to believe a person:

14 (A) **Is at risk of being dangerous to self or** is dangerous to self or to any other person and
15 is in need of immediate care, custody or treatment for mental illness; or

16 (B)(i) Is a mentally ill person placed on conditional release under ORS 426.125, outpatient com-
17 mitment under ORS 426.127 or trial visit under ORS 426.273; and

18 (ii) Is dangerous to self or to any other person or is unable to provide for basic personal needs
19 and is not receiving the care that is necessary for health and safety and is in need of immediate
20 care, custody or treatment for mental illness.

21 (b) The community mental health program director or designee under the circumstances set out
22 in paragraph (a) of this subsection may:

23 (A) Notify a peace officer to take the person into custody and direct the officer to remove the
24 person to a hospital or nonhospital facility approved by the Oregon Health Authority;

25 (B) Authorize involuntary admission of, or, if already admitted, cause to be involuntarily re-
26 tained in a nonhospital facility approved by the authority, a person approved for care or treatment
27 at a nonhospital facility by a physician under ORS 426.232;

28 (C) Notify a person authorized under subsection (3) of this section to take the person into cus-
29 tody and direct the authorized person to remove the person in custody to a hospital or nonhospital
30 facility approved by the authority;

31 (D) Direct a person authorized under subsection (3) of this section to transport a person in
32 custody from a hospital or a nonhospital facility approved by the authority to another hospital or
33 nonhospital facility approved by the authority as provided under ORS 426.235; or

34 (E) Direct a person authorized under subsection (3) of this section to transport a person in
35 custody from a facility approved by the authority to another facility approved by the authority as
36 provided under ORS 426.060.

37 (2) A designee under subsection (1) of this section must be recommended by the community
38 mental health program director, meet the standards established by rule of the authority and be ap-
39 proved by the county governing body before assuming the authority permitted under subsection (1)
40 of this section.

41 (3) The county governing body may, upon recommendation by the community mental health
42 program director, authorize any person to provide custody and secure transportation services for a
43 person in custody under ORS 426.228. In authorizing a person under this subsection, the county
44 governing body shall grant the person the authority to do the following:

45 (a) Accept custody from a peace officer of a person in custody under ORS 426.228;

1 (b) Take custody of a person upon notification by the community mental health program director
2 under the provisions of this section;

3 (c) Remove a person in custody to an approved hospital or nonhospital facility as directed by
4 the community mental health program director;

5 (d) Transfer a person in custody to another person authorized under this subsection or a peace
6 officer;

7 (e) Transfer a person in custody from a hospital or nonhospital facility to another hospital fa-
8 cility or nonhospital facility when directed to do so by the community mental health program di-
9 rector; and

10 (f) Retain a person in custody at the approved hospital or nonhospital facility until a physician
11 makes a determination under ORS 426.232.

12 (4) A person authorized under subsection (3) of this section must be recommended by the com-
13 munity mental health program director, meet the standards established by rule of the authority and
14 be approved by the governing body before assuming the authority granted under this section.

15 (5) The costs of transporting a person as authorized under ORS 426.060, 426.228 or 426.235 by
16 a person authorized under subsection (3) of this section shall be the responsibility of the county
17 whose peace officer or community mental health program director directs the authorized person to
18 take custody of a person and to transport the person to a facility approved by the authority, but the
19 county shall not be responsible for costs that exceed the amount provided by the state for that
20 transportation. A person authorized to act under subsection (3) of this section shall charge the cost
21 of emergency medical transportation to, and collect that cost from, the person, third party payers
22 or otherwise legally responsible persons or agencies in the same manner that costs for the trans-
23 portation of other persons are charged and collected.

24 **SECTION 7.** ORS 426.234 is amended to read:

25 426.234. (1) At the time a person is admitted to or retained in a hospital or nonhospital facility
26 under ORS 426.232 or 426.233, a physician, nurse or qualified mental health professional at the
27 hospital or nonhospital facility shall:

28 (a) Inform the person of the person's right to representation by or appointment of counsel as
29 described in ORS 426.100;

30 (b) Give the person the warning under ORS 426.123;

31 (c) Immediately examine the allegedly mentally ill person;

32 (d) Set forth, in writing, the condition of the person and the need for emergency care or treat-
33 ment; and

34 (e) If the physician, nurse or qualified mental health professional reasonably suspects that the
35 person is a foreign national, inform the person of the person's right to communicate with an official
36 from the consulate of the person's country. A physician, nurse or qualified mental health profes-
37 sional is not civilly or criminally liable for failure to provide the information required by this par-
38 agraph. Failure to provide the information required by this paragraph does not in itself constitute
39 grounds for the exclusion of evidence that would otherwise be admissible in a proceeding.

40 (2)(a) At the time the person is admitted to or retained in a hospital under ORS 426.232, the
41 physician shall contact the community mental health program director of the county in which the
42 person resides, if the county of residence is different from the county in which the hospital is lo-
43 cated. The community mental health program director may request that the physician notify the
44 circuit court in the county in which the person resides. If the community mental health program
45 director does not make the request authorized by this paragraph, the physician shall notify, imme-

1 diately and in writing, the circuit court in the county in which the person is hospitalized.

2 (b) At the time the person is admitted to a hospital under ORS 426.232 after being brought to
 3 the hospital by a peace officer under ORS 426.228, the physician shall contact the community mental
 4 health program director of the county in which the person is hospitalized. The community mental
 5 health program director of the county in which the person is hospitalized may request that the
 6 physician notify the circuit court in the county in which the person is hospitalized. If the community
 7 mental health program director does not make the request authorized by this paragraph, the physi-
 8 cian shall notify, immediately and in writing, the circuit court in the county in which the person
 9 was taken into custody.

10 (c) If, at any time prior to the hearing under ORS 426.070 to 426.130, the physician responsible
 11 for a person admitted or retained under ORS 426.232 determines that the person is not **at risk of**
 12 **being dangerous to self, is not** dangerous to self or others and is not in need of emergency care
 13 or treatment for mental illness, the physician may release the person from the detention authorized
 14 by ORS 426.232. The physician shall immediately notify the circuit court notified under this sub-
 15 section and the community mental health program director of the person's release from detention.

16 (3)(a) At the time the person is admitted to or retained in a nonhospital facility under ORS
 17 426.233, the community mental health program director in the county where the person was taken
 18 into custody shall contact the community mental health program director of the county in which the
 19 person resides, if the county of residence is different from the county in which the person was taken
 20 into custody. The community mental health program director of the county in which the person re-
 21 sides may request that the community mental health program director of the county in which the
 22 person was taken into custody notify the circuit court in the county where the person resides.
 23 Otherwise, the community mental health program director of the county in which the person was
 24 taken into custody shall notify, immediately and in writing, the circuit court in the county in which
 25 the person was taken into custody.

26 (b) If, at any time prior to the hearing under ORS 426.070 to 426.130, a community mental health
 27 program director, after consultation with a physician, determines that a person admitted or retained
 28 under ORS 426.233 is not **at risk of being dangerous to self, is not** dangerous to self or others
 29 and is not in need of immediate care, custody or treatment for mental illness, the community mental
 30 health program director may release the person from detention. The community mental health pro-
 31 gram director shall immediately notify the circuit court originally notified under paragraph (a) of
 32 this subsection of the person's release from detention.

33 (4) When the judge of the circuit court receives notice under subsection (2) or (3) of this section,
 34 the judge immediately shall commence proceedings under ORS 426.070 to 426.130. In a county having
 35 a population of 100,000 or more, and when feasible in a county with a lesser population, the com-
 36 munity mental health program director or designee who directs the peace officer or other authorized
 37 person to take a person into custody under ORS 426.233 shall not also conduct the investigation as
 38 provided for under ORS 426.074. Except when a person is being held under ORS 426.237 (1)(b), a
 39 person shall not be held under ORS 426.232 or 426.233 for more than five judicial days without a
 40 hearing being held under ORS 426.070 to 426.130.

41 (5) When the judge of the circuit court receives notice under subsection (2)(c) or (3)(b) of this
 42 section that a person has been released, and unless the court receives the recommendation required
 43 by ORS 426.070 (4), the judge shall dismiss the case no later than 14 days after the date the person
 44 was initially detained.