

A-Engrossed
Senate Bill 421

Ordered by the Senate April 30
Including Senate Amendments dated April 30

Sponsored by Senator PROZANSKI (at the request of Kristie Kilcullen and John Kilcullen) (Pre-session filed.)

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.

Authorizes district attorney to initiate commitment proceeding when person [*charged with certain crimes lacks capacity to stand trial and*] **with mental disorder has committed certain violent or sexual acts and is extremely dangerous and in need of commitment. Authorizes court to [establish commitment period of up to five years] commit person to jurisdiction of Psychiatric Security Review Board. Requires board to hold hearing six months after commitment, and thereafter every 24 months, to determine status of commitment. Authorizes treatment facility to request hearing to determine status of commitment. Provides for representation of person by counsel at commitment and status hearings. Provides for conditional release of person under certain circumstances. Specifies when person may be discharged from jurisdiction of board.**

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to civil commitments; creating new provisions; amending ORS 426.100, 426.160 and 426.250;
3 and declaring an emergency.

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 chapter 426.**

6 **SECTION 2. (1) As used in this section, "extremely dangerous" means that a person:**

7 **(a) Is exhibiting symptoms or behaviors substantially similar to those that preceded an**
8 **act described in subsection (3)(b) of this section;**

9 **(b) Presents a serious danger to the safety of other persons by reason of an extreme risk**
10 **that the person will inflict grave or potentially lethal physical injury on other persons; and**

11 **(c) Unless committed, will continue to represent an extreme risk to the safety of other**
12 **persons in the foreseeable future.**

13 **(2) A district attorney may petition the court to initiate commitment proceedings de-**
14 **scribed in this section if there is reason to believe a person is an extremely dangerous**
15 **mentally ill person.**

16 **(3) Upon receipt of a petition filed under subsection (2) of this section, the court shall**
17 **hold a hearing. After the hearing, the court shall order the person committed as an ex-**
18 **remely dangerous mentally ill person under the jurisdiction of the Psychiatric Security Re-**
19 **view Board if the court finds, by clear and convincing evidence, that:**

20 **(a) The person suffers from a mental disorder;**

21 **(b) The person committed one of the following acts while suffering from the mental dis-**
22 **order:**

23 **(A) Caused the death of another person;**

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) Caused serious physical injury to another person by means of a dangerous weapon;

2 (C) Caused physical injury to another person by means of a firearm as defined in ORS
3 166.210 or an explosive as defined in ORS 164.055;

4 (D) Engaged in oral-genital contact with a child under 14 years of age;

5 (E) Forcibly compelled sexual intercourse, oral-genital contact or the penetration of an-
6 other person's anus or vagina; or

7 (F) Caused a fire or explosion that damaged the protected property of another, as those
8 terms are defined in ORS 164.305, or placed another person in danger of physical injury, and
9 the fire or explosion was not the incidental result of normal and usual daily activities; and

10 (c) The person is extremely dangerous.

11 (4) The findings of the court that a person committed an act described in subsection
12 (3)(b) of this section may not be admitted in a criminal prosecution.

13 (5)(a) A person committed under subsection (3) of this section shall be committed to a
14 state hospital or, if the person is under 18 years of age, to a secure intensive community
15 inpatient facility for custody, care and treatment.

16 (b) The person shall remain committed in a state hospital or facility unless the board
17 conducts a hearing and makes the findings described in subsection (6)(b) of this section.

18 (c) The person shall remain under the jurisdiction of the board unless the board conducts
19 a hearing and makes the findings described in subsection (6)(c) of this section.

20 (6) The board shall hold a hearing six months after the commitment described in sub-
21 section (3) of this section, and thereafter every 24 months, to determine the status of the
22 person's commitment under the jurisdiction of the board.

23 (a) If the board determines at the hearing that the person still suffers from a mental
24 disorder and is still extremely dangerous, the person shall remain committed to a state
25 hospital or, if the person is under 18 years of age, to a secure intensive community inpatient
26 facility.

27 (b) If the board determines at the hearing that the person still suffers from a mental
28 disorder and continues to be a danger to others, but is not extremely dangerous, and that
29 the person can be controlled with proper care, medication, supervision and treatment if
30 conditionally released, the board shall conditionally release the person.

31 (c) If the board determines at the hearing that the person no longer suffers from a
32 mental disorder or, if so affected, no longer presents a danger to others that requires
33 treatment, the board shall discharge the person.

34 (7)(a) At any time during the commitment to a state hospital or secure intensive com-
35 munity inpatient facility, the superintendent of the state hospital or the director of the se-
36 cure intensive community in-patient facility may request a hearing described in subsection
37 (6) of this section to determine the status of the person's commitment under the jurisdiction
38 of the board.

39 (b) If the person had unadjudicated criminal charges at the time of the person's initial
40 commitment, the superintendent or director shall notify the district attorney who initiated
41 the charges of the request for the hearing.

42 (8)(a) If the board orders conditional release of a person under subsection (6)(b) of this
43 section, the board shall order conditions of release that may include a requirement to report
44 to any state or local mental health facility for evaluation and cooperation with and accept-
45 ance of psychiatric or psychological treatment from the facility. Conditions of release may

1 **be modified by the board from time to time.**

2 **(b) If at any time while the person is conditionally released it appears that the person**
3 **has violated the terms of the conditional release or that the mental health of the person has**
4 **changed, the board may order the person returned for evaluation or treatment to a state**
5 **hospital or, if the person is under 18 years of age, to a secure intensive community inpatient**
6 **facility.**

7 **(c) Within 30 days following the return of the person to a state hospital or secure in-**
8 **tensive community inpatient facility, the board shall conduct a hearing as described in sub-**
9 **section (6) of this section to determine the status of the person's commitment under the**
10 **jurisdiction of the board.**

11 **(d) At any time during conditional release, the state or local mental health facility pro-**
12 **viding treatment to the person may request a hearing as described in subsection (6) of this**
13 **section to determine the status of the person's commitment under the jurisdiction of the**
14 **board. If the person had unadjudicated criminal charges at the time of the person's initial**
15 **commitment, the director of the facility shall notify the district attorney that initiated the**
16 **charges of the request for the hearing.**

17 **(9)(a) If the board discharges a person under subsection (6)(c) of this section and the**
18 **person had unadjudicated criminal charges at the time of the person's initial commitment:**

19 **(A) The board shall notify the district attorney that initiated the charges of the dis-**
20 **charge; and**

21 **(B) The district attorney may request an evaluation to determine if the person is fit to**
22 **proceed with the criminal proceeding.**

23 **(b) The person may not waive an evaluation to determine if the person is fit to proceed**
24 **with the criminal proceeding described in paragraph (a)(B) of this subsection.**

25 **SECTION 3.** ORS 426.100 is amended to read:

26 426.100. (1) At the time the allegedly mentally ill person is brought before the court, the court
27 shall advise the person of the following:

- 28 (a) The reason for being brought before the court;
- 29 (b) The nature of the proceedings;
- 30 (c) The possible results of the proceedings;
- 31 (d) The right to subpoena witnesses; and
- 32 (e) The person's rights regarding representation by or appointment of counsel.

33 (2) Subsection (3) of this section establishes the rights of allegedly mentally ill persons **and**
34 **allegedly extremely dangerous mentally ill persons** in each of the following circumstances:

- 35 (a) When the person is held by warrant of detention issued under ORS 426.070.
- 36 (b) In commitment hearings under ORS 426.095.
- 37 (c) When the person is detained as provided under ORS 426.228, 426.232 or 426.233.
- 38 (d) In recommitment hearings under ORS 426.307.

39 **(e) In commitment hearings, hearings for conditional release and discharge hearings**
40 **under section 2 of this 2013 Act.**

41 (3) When provided under subsection (2) of this section, [*an allegedly mentally ill*] a person has
42 the following rights relating to representation by or appointment of counsel:

- 43 (a) The right to obtain suitable legal counsel possessing skills and experience commensurate
44 with the nature of the allegations and complexity of the case during the proceedings.
- 45 (b) If the person is determined to be financially eligible for appointed counsel at state expense,

1 the court will appoint legal counsel to represent the person. If a person is appointed counsel at state
2 expense, payment of expenses and compensation relating to legal counsel shall be made as provided
3 under ORS 426.250.

4 (c) If the [*allegedly mentally ill*] person does not request legal counsel, the legal guardian, rela-
5 tive or friend may request the assistance of suitable legal counsel on behalf of the person.

6 (d) If no request for legal counsel is made, the court shall appoint suitable legal counsel unless
7 counsel is expressly, knowingly and intelligently refused by the person.

8 (e) If the person is being involuntarily detained before a hearing on the issue of commitment,
9 the right under paragraph (a) of this subsection to contact an attorney or under paragraph (b) of this
10 subsection to have an attorney appointed may be exercised as soon as reasonably possible.

11 (f) In all cases suitable legal counsel shall be present at the hearing and may be present at ex-
12 amination and may examine all witnesses offering testimony, and otherwise represent the person.

13 (4) The responsibility for representing the state's interest in commitment proceedings, including,
14 but not limited to, preparation of the state's case and appearances at commitment hearings is as
15 follows:

16 (a) The Attorney General's office shall have the responsibility relating to proceedings initiated
17 by state hospital staff that are any of the following:

18 (A) Recommitment proceedings under ORS 426.307; or

19 (B) Proceedings under ORS 426.228, 426.232 or 426.233.

20 (b) The district attorney if requested to do so by the governing body of the county.

21 (c) In lieu of the district attorney under paragraph (b) of this subsection, a counsel designated
22 by the governing body of a county shall take the responsibility. A county governing body may des-
23 ignate counsel to take responsibility under this paragraph either for single proceedings or for all
24 such proceedings the county will be obligated to pay for under ORS 426.250. If a county governing
25 body elects to proceed under this paragraph, the county governing body shall so notify the district
26 attorney. The expenses of an attorney appointed under this paragraph shall be paid as provided
27 under ORS 426.250.

28 **SECTION 4.** ORS 426.160 is amended to read:

29 426.160. (1) The court having jurisdiction over any proceeding conducted pursuant to ORS
30 426.005, 426.060 to 426.170, 426.217, 426.228, 426.255 to 426.292, 426.300 to 426.309, 426.385 and
31 426.395, **or the Psychiatric Security Review Board, the superintendent of the state hospital**
32 **or the director of the secure intensive community inpatient facility having jurisdiction over**
33 **or custody of a person committed pursuant to section 2 of this 2013 Act**, may not disclose any
34 part of the record of the proceeding **or commitment** to any person except:

35 (a) The court shall, pursuant to rules adopted by the Department of State Police, transmit the
36 minimum information necessary, as defined in ORS 181.740, to the Department of State Police for
37 persons described in ORS 181.740 (1)(a) or (b) to enable the department to access and maintain the
38 information and transmit the information to the federal government as required under federal law;

39 (b) As provided in ORS 426.070 (5)(c), 426.130 (3) or 426.170;

40 (c) On request of the person subject to the proceeding;

41 (d) On request of the person's legal representative or the attorney for the person or the state;

42 or

43 (e) Pursuant to court order.

44 (2) In any proceeding described in subsection (1) of this section that is before the Supreme Court
45 or the Court of Appeals, the limitations on disclosure imposed by this section apply to the appellate

1 court record and to the trial court record while it is in the appellate court's custody. The appellate
2 court may disclose information from the trial or appellate court record in a decision, as defined in
3 ORS 19.450, provided that the court uses initials, an alias or some other convention for protecting
4 against public disclosure the identity of the allegedly mentally ill person.

5 **SECTION 5.** ORS 426.250, as amended by section 4, chapter 25, Oregon Laws 2012, is amended
6 to read:

7 426.250. The following is a nonexclusive list of responsibilities for payment of various costs re-
8 lated to commitment proceedings under this chapter as described:

9 (1) Any physician or qualified person recommended by the Oregon Health Authority who is
10 employed under ORS 426.110 to make an examination as to the mental condition of a person alleged
11 to be mentally ill shall be allowed a fee as the court in its discretion determines reasonable for the
12 examination.

13 (2) Witnesses subpoenaed to give testimony shall receive the same fees as are paid in criminal
14 cases, and are subject to compulsory attendance in the same manner as provided in ORS 136.567 to
15 136.603. The attendance of out-of-state witnesses may be secured in the same manner as provided in
16 ORS 136.623 to 136.637. The party who subpoenas the witness or requests the court to subpoena the
17 witness is responsible for payment of the cost of the subpoena and payment for the attendance of
18 the witness at a hearing. When the witness has been subpoenaed on behalf of an allegedly mentally
19 ill person who is represented by appointed counsel, the fees and costs allowed for that witness shall
20 be paid pursuant to ORS 135.055. If the costs of witnesses subpoenaed by the allegedly mentally ill
21 person are paid as provided under this subsection, the procedure for subpoenaing witnesses shall
22 comply with ORS 136.570.

23 (3) If a person with a right to a counsel under ORS 426.100 **or section 2 of this 2013 Act** is
24 determined to be financially eligible for appointed counsel at state expense, the public defense ser-
25 vices executive director shall determine and pay, as provided in ORS 135.055, the reasonable ex-
26 penses related to the representation of the person and compensation for legal counsel. The expenses
27 and compensation so allowed shall be paid by the public defense services executive director from
28 funds available for the purpose.

29 (4) The authority shall pay the costs of expenses incurred under ORS 426.100 by the Attorney
30 General's office. Any costs for district attorneys or other counsel appointed to assume responsibility
31 for presenting the state's case shall be paid by the county where the commitment hearing is held,
32 subject to reimbursement under ORS 426.310.

33 (5) All costs incurred in connection with a proceeding under ORS 426.180 **or section 2 of this**
34 **2013 Act**, including the costs of transportation, commitment and delivery of the person, shall be paid
35 by the county of which the person is a resident. If the person is not a resident of this state, then
36 the costs incurred in connection with the proceeding shall be paid by the county from which the
37 emergency admission was made.

38 (6) All costs incurred in connection with a proceeding under ORS 426.180 for the commitment
39 of a person from a reservation, including the cost of transportation, commitment and delivery of the
40 person, shall be paid by the governing body of the reservation of which the person is a resident.

41 **SECTION 6. This 2013 Act being necessary for the immediate preservation of the public**
42 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**
43 **on its passage.**