

**PROPOSED AMENDMENTS TO
HOUSE BILL 2594**

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
6 otherwise:

7 “[*(a)*] *‘Authority’ means the Oregon Health Authority.*]

8 “[*(b)*] **(a)** *‘Community mental health program director’ means the director*
9 *of an entity that provides the services described in ORS 430.630 (3) to (5).*

10 “[*(c)*] **(b)** *‘Director of the facility’ means a superintendent of a state*
11 *[mental] hospital, the chief of psychiatric services in a community hospital*
12 *or the person in charge of treatment and rehabilitation programs at other*
13 *treatment facilities.*

14 “[*(d)*] **(c)** *‘Facility’ means a state [mental] hospital, community hospital,*
15 *residential facility, detoxification center, day treatment facility or such other*
16 *facility as the **Oregon Health** Authority determines suitable[*any of which**
17 *may provide] **that provides** diagnosis and evaluation, medical care,*
18 *detoxification, social services or rehabilitation [for committed mentally ill*
19 *persons] **to persons committed to the authority under ORS 426.130.***

20 “[*(e)*] *‘Mentally ill person’ means a person who, because of a mental disorder,*
21 *is one or more of the following:]*

22 “[*(A)*] *Dangerous to self or others.]*

1 “[B] Unable to provide for basic personal needs and is not receiving such
2 care as is necessary for health or safety.]

3 “[C] A person:]

4 “[i] With a chronic mental illness, as defined in ORS 426.495;]

5 “[ii] Who, within the previous three years, has twice been placed in a
6 hospital or approved inpatient facility by the authority or the Department of
7 Human Services under ORS 426.060;]

8 “[iii] Who is exhibiting symptoms or behavior substantially similar to
9 those that preceded and led to one or more of the hospitalizations or inpatient
10 placements referred to in sub-subparagraph (ii) of this subparagraph; and]

11 “[iv] Who, unless treated, will continue, to a reasonable medical probabili-
12 ty, to physically or mentally deteriorate so that the person will become a per-
13 son described under either subparagraph (A) or (B) of this paragraph or
14 both.]

15 “[f] (d) ‘Nonhospital facility’ means any facility, other than a hospital,
16 that is approved by the authority to provide adequate security, psychiatric,
17 nursing and other services to persons under ORS 426.232 or 426.233.

18 “(e) ‘Person with mental illness’ means a person who, because of a
19 **mental disorder:**

20 “(A) **Is dangerous to self or to any other person;**

21 “(B) **Is unable to provide for basic personal needs and is not re-**
22 **ceiving such care as is necessary for health or safety; or**

23 “(C)(i) **Is a person with a chronic mental illness, as defined in ORS**
24 **426.495;**

25 “(ii) **Within the previous three years, has twice been placed in a**
26 **hospital or approved inpatient facility by the authority or the Depart-**
27 **ment of Human Services under ORS 426.060;**

28 “(iii) **Is exhibiting symptoms or behavior substantially similar to**
29 **those that preceded and led to one or more of the hospitalizations or**
30 **inpatient placements referred to in sub-subparagraph (ii) of this sub-**

1 paragraph; and

2 “(iv) Unless treated, will continue, to a reasonable medical proba-
3 bility, to physically or mentally deteriorate so that the person will
4 become a person described under either subparagraph (A) or (B) of this
5 paragraph or both.

6 “[g)] (f) ‘Prehearing period of detention’ means a period of time calcu-
7 lated from the initiation of custody during which a person may be detained
8 under ORS 426.228, 426.231, 426.232 or 426.233.

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

13

14 “ASSISTED OUTPATIENT TREATMENT

15

16 “SECTION 1a. Section 1b of this 2013 Act is added to and made a
17 part of ORS 426.005 to 426.390.

18 “SECTION 1b. (1) As used in ORS 426.005 to 426.390, “assisted out-
19 patient treatment” may not be construed to be a commitment under
20 ORS 426.130 and does not include taking a person into custody or the
21 forced medication of a person.

22 “(2) A court may issue an order requiring a person to participate
23 in assisted outpatient treatment if the court finds that the person:

24 “(a)(A) Is 18 years of age or older;

25 “(B) Has a mental disorder;

26 “(C) Will not obtain treatment in the community voluntarily; and

27 “(D) Is unable to make an informed decision to seek or to comply
28 with voluntary treatment; and

29 “(b) As a result of being a person described in paragraph (a) of this
30 subsection:

1 “(A) Is incapable of surviving safely in the community without
2 treatment; and

3 “(B) Requires treatment to prevent a deterioration in the person’s
4 condition that will predictably result in the person becoming a person
5 with mental illness.

6 “(3) In determining whether to issue the order under subsection (2)
7 of this section, the court shall consider, but is not limited to consid-
8 ering, the following factors:

9 “(a) The person’s ability to access finances in order to get food or
10 medicine.

11 “(b) The person’s ability to obtain treatment for the person’s med-
12 ical condition.

13 “(c) The person’s ability to access necessary resources in the com-
14 munity without assistance.

15 “(d) The degree to which there are risks to the person’s safety.

16 “(e) The likelihood that the person will decompensate without im-
17 mediate care or treatment.

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

20 “(g) The person’s history of mental health treatment in the com-
21 munity.

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

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

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

26 “(4) The community mental health program director shall recom-
27 mend to the court a treatment plan for a person participating in as-
28 sisted outpatient treatment. The court may adopt the plan as
29 recommended or with modifications.

30 “(5) The court retains jurisdiction over the person until the earlier

1 **of the end of the period of the assisted outpatient treatment estab-**
2 **lished under ORS 426.130 (2) or until the court finds that the person**
3 **no longer meets the criteria in subsection (2) of this section.**

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

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

7 **“426.070. (1) Any of the following may initiate commitment procedures**
8 **under this section by giving the notice described under subsection (2) of this**
9 **section:**

10 **“(a) Two persons;**

11 **“(b) The county health officer; or**

12 **“(c) Any magistrate.**

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

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

16 **“(b) It must be given to the community mental health program director**
17 **or a designee of the director in the county where the [*allegedly mentally***
18 ***ill*] person **alleged to have a mental illness** resides;**

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

22 **“(d) If the commitment proceeding is initiated by two persons under sub-**
23 **section (1)(a) of this section, it may include a request that the court notify**
24 **the two persons:**

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

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

27 **“(e) If the notice contains a request under paragraph (d) of this sub-**
28 **section, it must also include the addresses of the two persons making the**
29 **request.**

30 **“(3) Upon receipt of a notice under subsections (1) and (2) of this section**

1 or when notified by a circuit court that the court received notice under ORS
2 426.234, the community mental health program director, or designee of the
3 director, shall:

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

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

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

17 “(4) Upon completion, a recommendation based upon the investigation
18 report under ORS 426.074 shall be promptly submitted to the court. If the
19 community mental health program director determines that probable cause
20 does not exist to believe that a person released from detention under ORS
21 426.234 (2)(c) or (3)(b) is a [*mentally ill*] person **with mental illness**, the
22 community mental health program director [*shall not submit a recommen-*
23 *dation to the court*] **may recommend assisted outpatient treatment in**
24 **accordance with section 1b of this 2013 Act.**

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

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

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

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

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

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

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

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

24 “(iii) The person’s right, if the community mental health program direc-
25 tor, sheriff or designee reasonably suspects that the person is a foreign na-
26 tional, to communicate with an official from the consulate of the person’s
27 country. A community mental health program director, sheriff or designee is
28 not civilly or criminally liable for failure to provide the information required
29 by this sub-subparagraph. Failure to provide the information required by this
30 sub-subparagraph does not in itself constitute grounds for the exclusion of

1 evidence that would otherwise be admissible in a proceeding.

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

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

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

8 “426.130. (1) After hearing all of the evidence, and reviewing the findings
9 of the [*examining persons*] **examiners**, the court shall determine whether the
10 person [*is mentally ill*] **has a mental illness and is in need of**
11 **treatment.** If, in the opinion of the court, the person [*is*]:

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

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

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

17 “(i) The [*mentally ill*] person is willing and able to participate in treat-
18 ment on a voluntary basis; and

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

20 “(B) May order conditional release under this subparagraph subject to the
21 qualifications and requirements under ORS 426.125. If the court orders
22 conditional release under this subparagraph, the court shall establish a pe-
23 riod of commitment for the conditional release.

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

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

30 “(ii) The authority may place the committed person in outpatient com-

1 mitment under ORS 426.127.

2 “(D) Shall order that the person be prohibited from purchasing or pos-
3 sessed a firearm if, in the opinion of the court, there is a reasonable like-
4 lihood the person would constitute a danger to self or others or to the
5 community at large as a result of the person’s mental or psychological state
6 as demonstrated by past behavior or participation in incidents involving
7 unlawful violence or threats of unlawful violence, or by reason of a single
8 incident of extreme, violent, unlawful conduct. When a court makes an order
9 under this subparagraph, the court shall cause a copy of the order to be de-
10 livered to the sheriff of the county who will enter the information into the
11 Law Enforcement Data System.

12 **“(b) Is not a person with mental illness, the court shall release the**
13 **person from custody if the person has been detained under ORS**
14 **426.070, 426.180, 426.228, 426.232 or 426.233 and:**

15 **“(A) Dismiss the case; or**

16 **“(B) Order the person to participate in assisted outpatient treat-**
17 **ment in accordance with section 1b of this 2013 Act. The court may**
18 **continue the proceeding for no more than seven days to allow time for**
19 **the community mental health program director to develop the person’s**
20 **assisted outpatient treatment plan.**

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

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

1 **“SECTION 1e.** ORS 426.237 is amended to read:

2 “426.237. (1) During a prehearing period of detention as provided in ORS
3 426.070, 426.140, 426.232 or 426.233, the community mental health program
4 director shall do one of the following:

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

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

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

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

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

21 “(i) Is approved by the authority and the community mental health pro-
22 gram director in the county where the person resides; and

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

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

1 **is in need of assisted outpatient treatment.**

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

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

9 “(B) Hospital, the treating physician shall make discharge plans and dis-
10 charge the person.

11 “(b) Upon release of the person, the community mental health program
12 director shall attempt to notify the person’s next of kin if the person con-
13 sents to the notification.

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

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

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

20 “(b) The certificate required by paragraph (a) of this subsection shall in-
21 clude:

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

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

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

1 (3);

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

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

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

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

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

24 “(B) Except when the person expressly refuses treatment, the treating
25 physician shall treat the person within the scope of the treatment plan pro-
26 vided the person under paragraph (b) of this subsection. The person’s refusal
27 of treatment constitutes sufficient grounds for the community mental health
28 program director to request a hearing as provided in subsection (4)(a) of this
29 section.

30 “(C) If the person is in a hospital and the community mental health pro-

1 gram director locates a nonhospital facility, approved by the authority, that,
2 in the opinion of the community mental health program director and the
3 treating physician, can provide care or treatment for mental illness neces-
4 sary and sufficient to meet the emergency psychiatric needs of the person,
5 the treating physician shall discharge the person from the hospital and the
6 community mental health program director shall remove the person to the
7 nonhospital facility for the remainder of the 14-day intensive treatment pe-
8 riod. If, however, in the opinion of the treating physician, the person's con-
9 dition requires the person to receive medical care or treatment, the physician
10 shall retain the person in the hospital.

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

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

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

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

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

30 “(f) If the person is in a nonhospital facility, the community mental

1 health program director may discharge the person at any time during the
2 14-day period. The community mental health program director shall consult
3 with the treating physician and the person's next of kin, if the person con-
4 sents to the consultation, prior to discharging the person. Immediately upon
5 discharge of the person, the community mental health program director shall
6 notify the court in the county in which the certificate was filed initially.

7 “(g) The person may agree to voluntary treatment at any time during the
8 14-day period. When a person agrees to voluntary treatment under this par-
9 agraph, the community mental health program director immediately shall
10 notify the court in the county in which the certificate was filed initially.

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

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

16 “(4) The judge of the circuit court shall immediately commence pro-
17 ceedings under ORS 426.070 to 426.130 when:

18 “(a) The person consenting to 14 days of treatment or the community
19 mental health program director requests a hearing. The hearing shall be held
20 without unreasonable delay. In no case shall the person be held in a hospital
21 or nonhospital facility longer than five judicial days after the request for a
22 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
24 (1)(c) of this section. In no case shall the person be held longer than five
25 judicial days without a hearing under this subsection.”.

26 On page 23, delete lines 10 through 45.

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

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

30 On page 31, delete lines 13 through 45.

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

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

4 On page 35, after line 15, insert:

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

6 “426.225. (1) If any person who has been committed to the Oregon Health
7 Authority under ORS 426.127 or 426.130 [(1)(b)(B)] **(1)(a)(B)** or (C) requests,
8 during this period of commitment, voluntary admission to a state hospital,
9 the superintendent shall cause the person to be examined immediately by a
10 physician. If the physician finds the person to be in need of immediate care
11 or treatment for mental illness, the person shall be voluntarily admitted
12 upon request of the person.

13 “(2) If any person who has been committed to the authority under ORS
14 426.127 or 426.130 [(1)(b)(B)] **(1)(a)(B)** or (C) requests, during this period of
15 commitment, voluntary admission to a facility approved by the authority, the
16 administrator of the facility shall cause the person to be examined imme-
17 diately by a physician. If the physician finds the person to be in need of
18 immediate care or treatment for mental illness, and the authority grants
19 approval, the person shall be voluntarily admitted upon request of the per-
20 son.”.

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

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

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

25 On page 70, line 36, after the period insert “Sections 1a and 1b of this
26 2013 Act and”.

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

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

29