

D R A F T

SUMMARY

Requires superintendent of state hospital or director of committing facility to notify court if defendant found unfit to proceed requires involuntary medication to gain or regain fitness to proceed. Requires court to consider specified factors when determining whether to order involuntary medication of defendant.

A BILL FOR AN ACT

1
2 Relating to involuntary medication of defendants; creating new provisions;
3 and amending ORS 426.385.

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

5 **SECTION 1. Section 2 of this 2015 Act is added to and made a part**
6 **of ORS 161.315 to 161.351.**

7 **SECTION 2. (1) The superintendent of a state hospital or director**
8 **of a facility to which a defendant is committed under ORS 161.370 shall**
9 **immediately notify the committing court in writing if:**

10 **(a) The defendant requires medication in order to gain or regain**
11 **fitness to proceed;**

12 **(b) The defendant is refusing to take the medication; and**

13 **(c) There is no other basis for the hospital or facility to administer**
14 **the medication without the defendant's consent.**

15 **(2) Upon receipt of the written notice described in subsection (1) of**
16 **this section, the court shall:**

17 **(a) Provide a copy of the notice to the district attorney and counsel**
18 **for the defendant.**

19 **(b) Order the superintendent or director to provide a written plan**

1 for medical treatment necessary for the defendant to gain or regain
2 fitness to proceed. The plan must contain:

3 (A) A description of the defendant's medical diagnosis and all
4 medically appropriate treatment for the diagnosis;

5 (B) The names of medications necessary for the defendant to gain
6 or regain fitness to proceed and their known side effects; and

7 (C) An explanation of whether treatment less intrusive than
8 medication would produce the same result as the medication.

9 (3) The district attorney and counsel for the defendant may inspect
10 any plan for medical treatment provided to the court pursuant to
11 subsection (2) of this section.

12 (4) Except as provided in subsection (5) of this section, upon receipt
13 of the plan for medical treatment, the court shall hold a hearing.
14 Other evidence on the issue of medicating the defendant without the
15 defendant's consent may be introduced by either party. The court may
16 order the medication of the defendant without the defendant's consent
17 only if the court makes the following findings:

18 (a) Important state interests are at stake in prosecuting the de-
19 fendant;

20 (b) Medication of the defendant will significantly further the im-
21 portant state interests because:

22 (A) It is substantially likely that medication will cause the defend-
23 ant to gain or regain fitness to proceed; and

24 (B) It is substantially unlikely that medication will cause side ef-
25 fects that will impair the fairness of the criminal proceedings;

26 (c) Medication is necessary to further the important state interests
27 because there are no less intrusive treatments that would produce the
28 same result; and

29 (d) The administration of medication is medically appropriate be-
30 cause it is in the defendant's best medical interest in light of the
31 defendant's medical condition.

1 **(5) The court may make the findings described in subsection (4) of**
2 **this section without holding a hearing if the defendant, directly or**
3 **through defense counsel, affirmatively waives the hearing.**

4 **SECTION 3.** ORS 426.385 is amended to read:

5 426.385. (1) Every person with mental illness committed to the Oregon
6 Health Authority shall have the right to:

7 (a) Communicate freely in person and by reasonable access to telephones;

8 (b) Send and receive sealed mail, except that this right may be limited for
9 security reasons in state institutions as described in ORS 426.010;

10 (c) Wear the clothing of the person;

11 (d) Keep personal possessions, including toilet articles;

12 (e) Religious freedom;

13 (f) A private storage area with free access thereto;

14 (g) Be furnished with a reasonable supply of writing materials and
15 stamps;

16 (h) A written treatment plan, kept current with the progress of the per-
17 son;

18 (i) Be represented by counsel whenever the substantial rights of the per-
19 son may be affected;

20 (j) Petition for a writ of habeas corpus;

21 (k) Not be required to perform routine labor tasks of the facility except
22 those essential for treatment;

23 (L) Be given reasonable compensation for all work performed other than
24 personal housekeeping duties;

25 (m) Daily access to fresh air and the outdoors, except that this right may
26 be limited when it would create significant risk of harm to the person or
27 others;

28 (n) Such other rights as may be specified by rule; and

29 (o) Exercise all civil rights in the same manner and with the same effect
30 as one not admitted to the facility, including, but not limited to, the right
31 to dispose of real property, execute instruments, make purchases, enter con-

1 tractual relationships, and vote, unless the person has been adjudicated in-
2 competent and has not been restored to legal capacity. Disposal of personal
3 property in possession of the person in a state institution described in ORS
4 426.010 is subject to limitation for security reasons.

5 (2)(a) A person must be immediately informed, orally and in writing, of
6 any limitation:

7 (A) Of the right to send or receive sealed mail under subsection (1)(b) of
8 this section;

9 (B) Regarding the disposal of personal property under subsection (1)(o)
10 of this section; and

11 (C) Of the right to daily access to fresh air and the outdoors under sub-
12 section (1)(m) of this section.

13 (b) Any limitation under this subsection and the reasons for the limita-
14 tion must be stated in the person's written treatment plan.

15 (c) The person has the right to challenge any limitation under this sub-
16 section pursuant to rules adopted by the authority. The person must be in-
17 formed, orally and in writing, of this right.

18 (3) A person with mental illness committed to the authority shall have
19 the right to be free from potentially unusual or hazardous treatment proce-
20 dures, including convulsive therapy, unless the person has given express and
21 informed consent or authorized the treatment pursuant to ORS 127.700 to
22 127.737. This right may be denied to a person **under the circumstances**
23 **described in section 2 of this 2015 Act, or may be denied to a person** for
24 good cause as defined in administrative rule [*only*] by the director of the
25 facility in which the person is confined[, *but only*] after consultation with
26 and approval of an independent examining physician. Any denial shall be
27 entered into the person's treatment record and shall include the reasons for
28 the denial. A person with mental illness may not be subjected to
29 psychosurgery, as defined in ORS 677.190 (21)(b).

30 (4) Mechanical restraints shall not be applied to a person admitted to a
31 facility unless it is determined by the chief medical officer of the facility or

1 designee to be required by the medical needs of the person. Every use of a
2 mechanical restraint and the reasons for using a mechanical restraint shall
3 be made a part of the clinical record of the person over the signature of the
4 chief medical officer of the facility or designee.

5 (5) Nothing in this section prevents the authority from acting to exclude
6 contraband from its facilities and to prevent possession or use of contraband
7 in its facilities.

8 (6) As used in this section:

9 (a) "Contraband" has the meaning given that term in ORS 162.135.

10 (b) "Security reasons" means the protection of the person with mental
11 illness from serious and immediate harm and the protection of others from
12 threats or harassment as defined by rule of the authority.

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