

House Bill 3347

Sponsored by Representative HOYLE

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**.

Modifies definition of "person with mental illness" as used in civil commitment statutes.

A BILL FOR AN ACT

Relating to persons with mental illness; amending ORS 426.005, 426.070 and 426.074.

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

SECTION 1. ORS 426.005 is amended to read:

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

(a) "Community mental health program director" means the director of an entity that provides the services described in ORS 430.630 (3) to (5).

(b) "Director of the facility" means a superintendent of a state mental hospital, the chief of psychiatric services in a community hospital or the person in charge of treatment and rehabilitation programs at other treatment facilities.

(c) "Facility" means a state mental hospital, community hospital, residential facility, detoxification center, day treatment facility or such other facility as the authority determines suitable that provides diagnosis and evaluation, medical care, detoxification, social services or rehabilitation to persons committed to the Oregon Health Authority under ORS 426.130.

(d) "Gravely disabled" means having a condition in which a person:

(A) Is in danger of serious physical harm resulting from a failure of the person to provide for basic personal needs for health or safety; or

(B) Manifests a severe deterioration in routine functioning evidenced by an escalating loss of cognitive or volitional control over the person's actions and is not receiving such care as is necessary for health or safety.

[(d)] **(e)** "Nonhospital facility" means any facility, other than a hospital, that is approved by the authority to provide adequate security, psychiatric, nursing and other services to persons under ORS 426.232 or 426.233.

[(e)] **(f)** "Person with mental illness" means a person who, because of a mental disorder, is one or more of the following:

(A) Dangerous to self or others.

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

(C) A person:

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

(ii) Who, within the previous three years, has twice been placed in a hospital or approved inpatient facility by the authority or the Department of Human Services under ORS 426.060;

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

4 (iv) Who, unless treated, will continue, to a reasonable medical probability, to physically or
 5 mentally deteriorate so that the person will become a person described under either subparagraph
 6 (A) or (B) of this paragraph or both.

7 **(D) Gravely disabled.**

8 **(E) Presenting a likelihood of serious physical harm.**

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

11 **(h) “Presenting a likelihood of serious physical harm” means that:**

12 **(A) There is a substantial risk that:**

13 **(i) The person will self-inflict physical harm, as evidenced by threats or attempts to**
 14 **commit suicide or self-inflict physical harm;**

15 **(ii) The person will inflict physical harm on another person, as evidenced by behavior that**
 16 **has caused such harm in the past or that places another person in reasonable fear of sus-**
 17 **taining such harm; or**

18 **(iii) The person will inflict physical harm on the property of other persons, as evidenced**
 19 **by behavior that has caused substantial loss or damage to the property of other persons in**
 20 **the past; or**

21 **(B) The person has threatened the physical safety of another person and the person has**
 22 **in the past committed one or more violent acts.**

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

26 **SECTION 2.** ORS 426.070 is amended to read:

27 426.070. (1) Any of the following may initiate commitment procedures under this section by giv-
 28 ing the notice described under subsection (2) of this section:

- 29 (a) Two persons;
- 30 (b) The county health officer; or
- 31 (c) Any magistrate.

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

- 33 (a) It must be in writing under oath;
- 34 (b) It must be given to the community mental health program director or a designee of the di-
 35 rector in the county where the person alleged to have a mental illness resides;

36 (c) It must state that a person within the county other than the person giving the notice is a
 37 person with mental illness and is in need of treatment, care or custody;

38 (d) If the commitment proceeding is initiated by two persons under subsection (1)(a) of this sec-
 39 tion, it may include a request that the court notify the two persons:

- 40 (A) Of the issuance or nonissuance of a warrant under this section; or
- 41 (B) Of the court’s determination under ORS 426.130 (1); and

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

44 (3) Upon receipt of a notice under subsections (1) and (2) of this section or when notified by a
 45 circuit court that the court received notice under ORS 426.234, the community mental health pro-

1 gram director, or designee of the director, shall:

2 (a) Immediately notify the judge of the court having jurisdiction for that county under ORS
3 426.060 of the notification described in subsections (1) and (2) of this section.

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

9 (c) Initiate an investigation under ORS 426.074 to determine whether there is probable cause to
10 believe that the person is in fact a person with mental illness.

11 (4) Upon completion, a recommendation based upon the investigation report under ORS 426.074
12 shall be promptly submitted to the court. If the community mental health program director deter-
13 mines that probable cause does not exist to believe that a person released from detention under ORS
14 426.234 (2)(c) or (3)(b) is a person with mental illness, the community mental health program director
15 may recommend assisted outpatient treatment in accordance with ORS 426.133.

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

17 (a) If the court, following the investigation, concludes that there is probable cause to believe
18 that the person investigated is a person with mental illness, it shall, through the issuance of a ci-
19 tation as provided in ORS 426.090, cause the person to be brought before it at a time and place as
20 it may direct, for a hearing under ORS 426.095 to determine whether the person is a person with
21 mental illness. The person shall be given the opportunity to appear voluntarily at the hearing unless
22 the person fails to appear or unless the person is detained pursuant to paragraph (b) of this sub-
23 section.

24 (b)(A) If the court finds that there is probable cause to believe that failure to take the person
25 into custody pending the investigation or hearing would pose serious harm or danger to the person
26 or to others, the court may issue a warrant of detention to the community mental health program
27 director or designee or the sheriff of the county or designee directing the director, sheriff or a
28 designee to take the person alleged to have a mental illness into custody and produce the person
29 at the time and place stated in the warrant.

30 (B) At the time the person is taken into custody, the person shall be informed by the community
31 mental health program director, the sheriff or a designee of the following:

32 (i) The person's rights with regard to representation by or appointment of counsel as described
33 in ORS 426.100;

34 (ii) The warning under ORS 426.123; and

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

41 (C) The court may make any orders for the care and custody of the person prior to the hearing
42 as it considers necessary.

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

45 **SECTION 3.** ORS 426.074 is amended to read:

1 426.074. The following is applicable to an investigation initiated by a community mental health
 2 program director, or a designee of the director, as part of commitment procedures under ORS
 3 426.070 and 426.228 to 426.235:

4 (1) If the person alleged to have a mental illness is held in custody before the hearing the in-
 5 vestigation shall be completed at least 24 hours before the hearing under ORS 426.095, otherwise the
 6 investigation shall comply with the following time schedule:

7 (a) If the person can be located, the investigator shall contact the person within three judicial
 8 days from the date the community mental health program director or a designee receives a notice
 9 under ORS 426.070 alleging that the person has a mental illness and is in need of treatment.

10 (b) Within 15 days from the date the community mental health program director or a designee
 11 receives a notice under ORS 426.070, one of the following shall occur:

12 (A) The investigation shall be completed and submitted to the court.

13 (B) An application for extension shall be made to the court under paragraph (c) of this sub-
 14 section.

15 (c) The community mental health program director, a designee or the investigator may file for
 16 an extension of the time under paragraph (b) of this subsection only if one of the following occurs:

17 (A) A treatment option less restrictive than involuntary in-patient commitment is actively being
 18 pursued.

19 (B) The person alleged to have a mental illness cannot be located.

20 (d) A court may grant an extension under paragraph (c) of this subsection for a time and upon
 21 the terms and conditions the court considers appropriate.

22 (2) This subsection establishes a nonexclusive list of provisions applicable to the content of the
 23 investigation, as follows:

24 (a) The investigation conducted should, where appropriate, include an interview or examination
 25 of the person alleged to have a mental illness in the home of the person or other place familiar to
 26 the person.

27 (b) Whether or not the person consents, the investigation should include interviews with any
 28 individuals that the investigator has probable cause to believe have pertinent information regarding
 29 the investigation. If the person objects to the contact with any individual, the objection shall be
 30 noted in the investigator's report.

31 (c) The investigator shall be allowed access to physicians, nurses or social workers and to
 32 medical records compiled during the current involuntary prehearing period of detention to determine
 33 probable cause and to develop alternatives to commitment. If commitment is proposed because the
 34 person appears to be a person with mental illness as defined in ORS 426.005 [(1)(e)(C)] **(1)(f)(C)**, the
 35 investigator shall be allowed access to medical records necessary to verify the existence of criteria
 36 described in ORS 426.005 [(1)(e)(C)] **(1)(f)(C)**. The investigator shall include pertinent parts of the
 37 medical record in the investigation report. Records and communications described in this paragraph
 38 and related communications are not privileged under ORS 40.230, 40.235, 40.240 or 40.250.

39 (3) A copy of the investigation report shall be provided as soon as possible, but in no event later
 40 than 24 hours prior to the hearing, to the person and to the person's counsel. Copies shall likewise
 41 be provided to counsel assisting the court, to the examiners and to the court for use in questioning
 42 witnesses.

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