

Senate Bill 465

Sponsored by Senators PROZANSKI, KRUSE (at the request of Susan Morgan) (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 **as introduced**.

Specifies duties and liabilities of community mental health program with respect to commitment proceedings initiated for individuals with mental illness.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to community mental health programs; creating new provisions; amending ORS 426.133,
3 426.228, 426.233, 426.241, 426.250, 426.255, 426.297, 426.310 and 430.197; and declaring an emer-
4 gency.

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

6 **SECTION 1.** ORS 426.133 is amended to read:

7 426.133. (1) As used in ORS 426.005 to 426.390, "assisted outpatient treatment" may not be con-
8 strued to be a commitment under ORS 426.130 and does not include taking a person into custody
9 or the forced medication of a person.

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

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

13 (B) Has a mental disorder;

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

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

16 (b) As a result of being a person described in paragraph (a) of this subsection:

17 (A) Is incapable of surviving safely in the community without treatment; and

18 (B) Requires treatment to prevent a deterioration in the person's condition that will predictably
19 result in the person becoming a person with mental illness.

20 (3) In determining whether to issue the order under subsection (2) of this section, the court shall
21 consider, but is not limited to considering, the following factors:

22 (a) The person's ability to access finances in order to get food or medicine.

23 (b) The person's ability to obtain treatment for the person's medical condition.

24 (c) The person's ability to access necessary resources in the community without assistance.

25 (d) The degree to which there are risks to the person's safety.

26 (e) The likelihood that the person will decompensate without immediate care or treatment.

27 (f) The person's previous attempts to inflict physical injury on self or others.

28 (g) The person's history of mental health treatment in the community.

29 (h) The person's patterns of decompensation in the past.

30 (i) The person's risk of being victimized or harmed by others.

31 (j) The person's access to the means to inflict harm on self or others.

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 (4) The community mental health program director may recommend to the court a treatment
2 plan for a person participating in assisted outpatient treatment. The court may adopt the plan as
3 recommended or with modifications.

4 (5) The court retains jurisdiction over the person until the earlier of the end of the period of
5 the assisted outpatient treatment established under ORS 426.130 (2) or until the court finds that the
6 person no longer meets the criteria in subsection (2) of this section.

7 (6) This section does not:

8 (a) Prevent a court from appointing a guardian ad litem to act for the person; or

9 (b) Require a [county] **community mental health program** to provide treatment or services to,
10 or supervision of, the person if the [county] **community mental health program** lacks sufficient
11 funds for such purposes.

12 **SECTION 2.** ORS 426.228 is amended to read:

13 426.228. (1) A peace officer may take into custody a person who the officer has probable cause
14 to believe is dangerous to self or to any other person and is in need of immediate care, custody or
15 treatment for mental illness. As directed by the community mental health program director, a peace
16 officer shall remove a person taken into custody under this section to the nearest hospital or non-
17 hospital facility approved by the Oregon Health Authority. The officer shall prepare a written report
18 and deliver it to the treating physician. The report shall state:

19 (a) The reason for custody;

20 (b) The date, time and place the person was taken into custody; and

21 (c) The name of the community mental health program director and a telephone number where
22 the director may be reached at all times.

23 (2) A peace officer shall take a person into custody when the community mental health program
24 director, pursuant to ORS 426.233, notifies the peace officer that the director has probable cause to
25 believe that the person is imminently dangerous to self or to any other person. As directed by the
26 community mental health program director, the peace officer shall remove the person to a hospital
27 or nonhospital facility approved by the authority. The community mental health program director
28 shall prepare a written report that the peace officer shall deliver to the treating physician. The re-
29 port shall state:

30 (a) The reason for custody;

31 (b) The date, time and place the person was taken into custody; and

32 (c) The name of the community mental health program director and a telephone number where
33 the director may be reached at all times.

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

40 (4) When a peace officer or other authorized individual, acting under this section, delivers a
41 person to a hospital or nonhospital facility, a physician licensed by the Oregon Medical Board shall
42 examine the person immediately. If the physician finds the person to be in need of emergency care
43 or treatment for mental illness, the physician shall proceed under ORS 426.232, otherwise the person
44 [shall] **may** not be retained in custody. If the person is to be released from custody, the peace officer
45 or the community mental health program director shall return the person to the place where the

1 person was taken into custody unless the person declines that service.

2 (5) A peace officer may transfer a person in custody under this section to the custody of an in-
 3 dividual authorized by the [*county governing body*] **community mental health program director**
 4 under ORS 426.233 (3). The peace officer may meet the authorized individual at any location that is
 5 in accordance with ORS 426.140 to effect the transfer. When transferring a person in custody to an
 6 authorized individual, the peace officer shall deliver the report required under subsections (1) and
 7 (2) of this section to the authorized individual.

8 (6) An individual authorized under ORS 426.233 (3) shall take a person into custody when di-
 9 rected to do so by a peace officer or by a community mental health program director under ORS
 10 426.233.

11 (7) An individual authorized under ORS 426.233 (3) shall perform the duties of the peace officer
 12 or the community mental health program director required by this section and ORS 426.233 if the
 13 peace officer or the director has not already done so.

14 (8) An individual authorized under ORS 426.233 (3) may transfer a person in custody under this
 15 section to the custody of another individual authorized under ORS 426.233 (3) or a peace officer. The
 16 individual transferring custody may meet another authorized individual or a peace officer at any
 17 location that is in accordance with ORS 426.140 to effect the transfer.

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

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

25 **SECTION 3.** ORS 426.233 is amended to read:

26 426.233. (1)(a) A community mental health program director operating under ORS 430.610 to
 27 430.695 or a designee of the director[, *under authorization of a county governing body,*] may take one
 28 of the actions listed in paragraph (b) of this subsection when the community mental health program
 29 director or designee has probable cause to believe a person:

30 (A) Is dangerous to self or to any other person and is in need of immediate care, custody or
 31 treatment for mental illness; or

32 (B)(i) Is a person with mental illness placed on conditional release under ORS 426.125, outpatient
 33 commitment under ORS 426.127 or trial visit under ORS 426.273; and

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

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

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

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

44 (C) Notify an individual authorized under subsection (3) of this section to take the person into
 45 custody and direct the authorized individual to remove the person in custody to a hospital or non-

1 hospital facility approved by the authority;

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

5 (E) Direct an individual authorized under subsection (3) of this section to transport a person in
6 custody from a facility approved by the authority to another facility approved by the authority as
7 provided under ORS 426.060.

8 (2) A designee under subsection (1) of this section must [*be recommended by the community*
9 *mental health program director,*] meet the standards established by rule of the authority and be ap-
10 proved by the [*county governing body*] **community mental health program director** before as-
11 suming the authority permitted under subsection (1) of this section.

12 (3) The [*county governing body may, upon recommendation by the*] community mental health
13 program director[,] **may** authorize any individual to provide custody and secure transportation ser-
14 vices for a person in custody under ORS 426.228. In authorizing an individual under this subsection,
15 the [*county governing body*] **community mental health program director** shall grant the individual
16 the authority to do the following:

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

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

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

22 (d) Transfer a person in custody to another individual authorized under this subsection or a
23 peace officer;

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

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

29 (4) An individual authorized under subsection (3) of this section must [*be recommended by the*
30 *community mental health program director,*] meet the standards established by rule of the authority
31 and be approved by the [*governing body*] **community mental health program director** before as-
32 suming the authority granted under this section.

33 (5) The costs of transporting a person under ORS 426.060, 426.228 or 426.235 by an individual
34 authorized under subsection (3) of this section shall be the responsibility of the [*county whose peace*
35 *officer or community mental health program director directs the authorized individual*] **community**
36 **mental health program in the county in which the authorized individual is directed by a**
37 **peace officer or a community mental health program director** to take custody of a person and
38 to transport the person to a facility approved by the authority[, *but the county shall not be respon-*
39 *sible for costs that exceed the amount provided by the state for that transportation*]. An individual au-
40 thorized to act under subsection (3) of this section shall charge the cost of emergency medical
41 transportation to, and collect that cost from, the person, third party payers or other legally or fi-
42 nancially responsible individuals or entities in the same manner that costs for the transportation
43 of other persons are charged and collected.

44 **SECTION 4.** ORS 426.241 is amended to read:

45 426.241. (1) The cost of emergency psychiatric care, custody and treatment related to or result-

1 ing from such psychiatric condition, provided by a hospital or other facility approved by the Oregon
 2 Health Authority and the community mental health program director of the county in which the
 3 facility is located, except a state hospital, for a person alleged to have a mental illness who is ad-
 4 mitted or detained under ORS 426.070, 426.140, 426.228, 426.232 or 426.233, or for a person with
 5 mental illness who is admitted or detained under ORS 426.150, 426.223, 426.273, 426.275 or 426.292,
 6 shall be paid by the **community mental health program in the** county of which the person is a
 7 resident from state funds provided to the [county] **community mental health program** for this
 8 purpose. The [county] **community mental health program** is responsible for the cost when state
 9 funds provided to the [county] **community mental health program** are exhausted. The hospital or
 10 other facility shall charge to and collect from the person, third party payers or other legally or fi-
 11 nancially responsible individuals or entities the costs of the emergency care, custody and treatment,
 12 as it would for any other patient, and any funds received shall be applied as an offset to the cost
 13 of the services provided under this section.

14 (2) If any person is admitted to or detained in a state hospital under ORS 426.070, 426.140,
 15 426.180 to 426.210, 426.228, 426.232 or 426.233 for emergency care, custody or treatment, the au-
 16 thority shall charge to and collect from the person, third party payers or other legally or financially
 17 responsible individuals or entities the costs as it would for other patients of the state hospitals un-
 18 der the provisions of ORS 179.610 to 179.770.

19 (3) If any person is adjudged to have a mental illness under the provisions of ORS 426.130, or
 20 determined to be an extremely dangerous person with mental illness under ORS 426.701 or 426.702,
 21 and the person receives care and treatment in a state hospital, the person, third party payers or
 22 other legally or financially responsible individuals or entities shall be required to pay for the costs
 23 of the hospitalization at the state hospital, as provided by ORS 179.610 to 179.770, if financially able
 24 to do so.

25 (4) For purposes of this section and ORS 426.310, "resident" means resident of the county in
 26 which the person maintains a current mailing address or, if the person does not maintain a current
 27 mailing address within the state, the county in which the person is found, or the county in which
 28 a court-committed person has been conditionally released.

29 (5)(a) The authority may deny payment for part or all of the emergency psychiatric services
 30 provided by a hospital or nonhospital facility under ORS 426.232, 426.233 or 426.237 when the au-
 31 thority finds, upon review, that the condition of the person alleged to have a mental illness did not
 32 meet the admission criteria in ORS 426.232 (1), 426.233 (1) or 426.237 (1)(b)(A). The payer responsible
 33 under this section shall make a request for denial of payment for emergency psychiatric services
 34 provided under ORS 426.232, 426.233 or 426.237 in writing to the authority.

35 (b) The authority may require the following to provide the authority with any information that
 36 the authority determines is necessary to review a request for denial of payment made under this
 37 subsection or to conduct a review of emergency psychiatric services for the purpose of planning or
 38 defining authority rules:

39 (A) A hospital or nonhospital facility approved under ORS 426.228 to 426.235 or 426.237.

40 (B) A physician or a person providing emergency psychiatric services under ORS 426.228 to
 41 426.235 or 426.237.

42 (c) The authority shall adopt rules necessary to carry out the purposes of this subsection.

43 **SECTION 5.** ORS 426.250 is amended to read:

44 426.250. The following is a nonexclusive list of responsibilities for payment of various costs re-
 45 lated to commitment proceedings under this chapter as described:

1 (1) Any physician or qualified professional recommended by the Oregon Health Authority who
2 is employed under ORS 426.110 to make an examination as to the mental condition of a person al-
3 leged to have a mental illness shall be allowed a fee as the court in its discretion determines rea-
4 sonable for the examination.

5 (2) Witnesses subpoenaed to give testimony shall receive the same fees as are paid in criminal
6 cases, and are subject to compulsory attendance in the same manner as provided in ORS 136.567 to
7 136.603. The attendance of out-of-state witnesses may be secured in the same manner as provided in
8 ORS 136.623 to 136.637. The party who subpoenas the witness or requests the court to subpoena the
9 witness is responsible for payment of the cost of the subpoena and payment for the attendance of
10 the witness at a hearing. When the witness has been subpoenaed on behalf of a person alleged to
11 have a mental illness who is represented by appointed counsel, the fees and costs allowed for that
12 witness shall be paid pursuant to ORS 135.055. If the costs of witnesses subpoenaed by the person
13 are paid as provided under this subsection, the procedure for subpoenaing witnesses shall comply
14 with ORS 136.570.

15 (3) If a person with a right to a counsel under ORS 426.100, 426.701 or 426.702 is determined to
16 be financially eligible for appointed counsel at state expense, the public defense services executive
17 director shall determine and pay, as provided in ORS 135.055, the reasonable expenses related to the
18 representation of the person and compensation for legal counsel. The expenses and compensation so
19 allowed shall be paid by the public defense services executive director from funds available for the
20 purpose.

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

25 (5) All costs incurred in connection with a proceeding under ORS 426.180, 426.701 or 426.702,
26 including the costs of transportation, commitment and delivery of the person, shall be paid by the
27 **community mental health program in the** county of which the person is a resident. If the person
28 is not a resident of this state, then the costs incurred in connection with the proceeding shall be
29 paid by the **community mental health program in the** county from which the emergency admis-
30 sion was made.

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

34 **SECTION 6.** ORS 426.255 is amended to read:

35 426.255. Costs of hearings conducted pursuant to ORS 426.307[,] and the fees for physicians and
36 other examiners shall be charged to the **community mental health program in the** county of the
37 person's residence in the same manner provided by ORS 426.310, whether the hearing is held in the
38 county of residence or county of the treating facility.

39 **SECTION 7.** ORS 426.297 is amended to read:

40 426.297. (1) The expenses of a proceeding under ORS 426.295 (2) shall be paid by the person with
41 mental illness, unless it appears from the affidavit of the person or other evidence that the person
42 is unable to pay the expenses. If the person is unable to pay, the expenses of the proceedings shall
43 be paid by the **community mental health program in the** county of which the person was a res-
44 ident at the time of admission. If the county of residence cannot be established, the **community**
45 **mental health program in the** county from which the person was admitted shall pay the expenses.

1 (2) The expenses of the proceeding under ORS 426.295 (3) shall be paid by the petitioner.

2 (3) Any physician employed by the court to make an examination as to the mental condition of
3 a person subject to a competency proceeding under ORS 426.295 or 426.380 to 426.390 shall be al-
4 lowed a reasonable professional fee by order of the court. Witnesses summoned and giving testimony
5 shall receive the same fees as are paid in ORS 44.415 (2).

6 **SECTION 8.** ORS 426.310 is amended to read:

7 426.310. (1) If a person with mental illness is a resident of some other county in this state, the
8 **community mental health program in the** county making the commitment shall be reimbursed
9 by the **community mental health program in the** county of which the person is a resident. All
10 reasonable and actual expenses incurred and paid by the [county] **community mental health pro-**
11 **gram** by reason of the care, custody, treatment, investigation, examination and commitment hearing
12 shall, upon presentation of a copy of the order of the judge making the examination and commit-
13 ment, together with a properly itemized and certified claim covering the expense, be promptly paid
14 to the [county] **community mental health program in the county in which the patient is com-**
15 **mitted** by the **community mental health program in the** county of which the person was a resi-
16 dent. The expenses reimbursed under this subsection shall include any expenses incurred to pay for
17 representation of the state's interest under ORS 426.100 and 426.250.

18 (2) If a person alleged to have a mental illness is a resident of some other county in this state,
19 a **community mental health program in the** county attempting a commitment shall be reimbursed
20 by the **community mental health program in the** county of which the person is a resident, as
21 defined in ORS 426.241, for all actual, reasonable expenses incurred and paid by the county at-
22 tempting commitment by reason of the care, custody, treatment, investigation, examination and
23 commitment hearing. The expenses reimbursed under this subsection shall include any expenses in-
24 curred to pay for representation of the state's interest under ORS 426.100 and 426.250.

25 **SECTION 9.** ORS 430.197 is amended to read:

26 430.197. The Mental Health Services Fund is established in the State Treasury, separate and
27 distinct from the General Fund. The Mental Health Services Fund comprises moneys collected or
28 received by the Oregon Health Authority, the Department of Human Services and the Department
29 of Corrections under ORS 179.640, 426.241 and 430.165. The moneys in the fund are continuously
30 appropriated to the Oregon Health Authority, the Department of Human Services and the Depart-
31 ment of Corrections for the purposes of paying the costs of:

32 (1) Services provided to a person in a state institution, as defined in ORS 179.610;

33 (2) Emergency psychiatric care, custody and treatment paid for by a [county] **community**
34 **mental health program** under ORS 426.241;

35 (3) Emergency care, custody or treatment provided to a person admitted to or detained in a state
36 mental hospital or nonhospital facility under ORS 426.070, 426.140, 426.180 to 426.210, 426.228,
37 426.232 or 426.233; and

38 (4) Programs operating under ORS 430.265, 430.306 to 430.375, 430.405, 430.415, 430.850 to
39 430.880, 813.500 and 813.510.

40 **SECTION 10.** The amendments to ORS 426.233, 426.241, 426.250, 426.255, 426.297, 426.310
41 and 430.197 by sections 3 to 9 of this 2015 Act apply to costs incurred on or after the effective
42 date of this 2015 Act.

43 **SECTION 11.** This 2015 Act being necessary for the immediate preservation of the public
44 peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect
45 on its passage.

