

House Bill 2552

Sponsored by Representative HACK (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**.

Requires Oregon Health Authority to operate, on each campus of Oregon State Hospital, facility to provide short-term mental health treatment and residential care. Authorizes peace officer to take persons in immediate need for mental health treatment to state hospital short-term treatment facilities.

A BILL FOR AN ACT

1
2 Relating to persons in need of mental health treatment; amending ORS 426.005, 426.010, 426.100,
3 426.130, 426.160, 426.228 and 426.241.

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

5 **SECTION 1.** ORS 426.010 is amended to read:

6 426.010. (1) Except as otherwise ordered by the Oregon Health Authority pursuant to ORS
7 179.325, the Oregon State Hospital campuses in Salem, Marion County, and in Junction City, Lane
8 County, shall be used as state hospitals for the care and treatment of persons with mental illness
9 who are assigned to the care of the institutions by the authority or who have previously been
10 committed to the institutions.

11 **(2) The authority shall operate on each campus of the Oregon State Hospital a facility**
12 **to provide short-term mental health treatment and residential care to individuals taken into**
13 **custody by a peace officer under ORS 426.228.**

14 **SECTION 2.** ORS 426.005 is amended to read:

15 426.005. (1) As used in ORS 426.005 to 426.390, unless the context requires otherwise:

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

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

21 (c) "Facility" means a state [*mental*] hospital, **facility described in ORS 426.010 (2)**, community
22 hospital, residential facility, detoxification center, day treatment facility or such other facility as the
23 authority determines suitable that provides diagnosis and evaluation, medical care, detoxification,
24 social services or rehabilitation to persons [*who are in custody during a prehearing period of de-*
25 *tention or who have been committed to the Oregon Health Authority under ORS 426.130*] **in need of**
26 **mental health treatment.**

27 (d) "Licensed independent practitioner" means:

28 (A) A physician, as defined in ORS 677.010; or

29 (B) A nurse practitioner certified under ORS 678.375 and authorized to write prescriptions under
30 ORS 678.390.

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 (e) “Nonhospital facility” means any facility, other than a hospital, that is approved by the au-
 2 thority to provide adequate security, psychiatric, nursing and other services to persons under ORS
 3 **426.228**, 426.232 or 426.233.

4 (f) “Person with mental illness” means a person who, because of a mental disorder, is one or
 5 more of the following:

6 (A) Dangerous to self or others.

7 (B) Unable to provide for basic personal needs that are necessary to avoid serious physical harm
 8 in the near future, and is not receiving such care as is necessary to avoid such harm.

9 (C) A person:

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

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

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

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

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

21 **(h) “State hospital” means a state hospital described in ORS 426.010 (1).**

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

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

26 426.100. (1) At the time the person alleged to have a mental illness is brought before the court,
 27 the court 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 persons alleged to have a mental ill-
 34 ness 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 (3) When provided under subsection (2) of this section, a person alleged to have a mental illness
 40 has the following rights relating to representation by or appointment of counsel:

41 (a) The right to obtain suitable legal counsel possessing skills and experience commensurate
 42 with the nature of the allegations and complexity of the case during the proceedings.

43 (b) If the person is determined to be financially eligible for appointed counsel at state expense,
 44 the court will appoint legal counsel to represent the person. If counsel is appointed at state expense,
 45 payment of expenses and compensation relating to legal counsel shall be made as provided under

1 ORS 426.250.

2 (c) If the person alleged to have a mental illness does not request legal counsel, the legal
 3 guardian, relative or friend may request the assistance of suitable legal counsel on behalf of the
 4 person.

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

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

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

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

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

- 17 (A) Recommitment proceedings under ORS 426.307; or
- 18 (B) Proceedings under ORS [426.228,] 426.232 or 426.233.

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

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

27 **SECTION 4.** ORS 426.130 is amended to read:

28 426.130. (1) After hearing all of the evidence, and reviewing the findings of the examiners, the
 29 court shall determine whether the person has a mental illness and is in need of treatment. If, in the
 30 opinion of the court, the person:

31 (a) Is a person with mental illness based upon clear and convincing evidence, the court:

- 32 (A) Shall order the release of the person and dismiss the case if:
- 33 (i) The person is willing and able to participate in treatment on a voluntary basis; and
- 34 (ii) The court finds that the person will probably do so.

35 (B) May order conditional release under this subparagraph subject to the qualifications and re-
 36 quirements under ORS 426.125. If the court orders conditional release under this subparagraph, the
 37 court shall establish a period of commitment for the conditional release.

38 (C) May order commitment of the person with mental illness to the Oregon Health Authority for
 39 treatment if, in the opinion of the court, subparagraph (A) or (B) of this paragraph is not in the best
 40 interest of the person. If the court orders commitment under this subparagraph:

- 41 (i) The court shall establish a period of commitment.
- 42 (ii) The authority may place the committed person in outpatient commitment under ORS 426.127.

43 (D) Shall order that the person be prohibited from purchasing or possessing a firearm if, in the
 44 opinion of the court, there is a reasonable likelihood the person would constitute a danger to self
 45 or others or to the community at large as a result of the person’s mental or psychological state as

1 demonstrated by past behavior or participation in incidents involving unlawful violence or threats
 2 of unlawful violence, or by reason of a single incident of extreme, violent, unlawful conduct. When
 3 a court makes an order under this subparagraph, the court shall cause a copy of the order to be
 4 delivered to the sheriff of the county who will enter the information into the Law Enforcement Data
 5 System.

6 (b) Is not a person with mental illness, the court shall release the person from custody if the
 7 person has been detained under ORS 426.070, 426.180, [426.228,] 426.232 or 426.233 and:

8 (A) Dismiss the case; or

9 (B) Order the person to participate in assisted outpatient treatment in accordance with ORS
 10 426.133. The court may continue the proceeding for no more than seven days to allow time for the
 11 community mental health program director to develop the person's assisted outpatient treatment
 12 plan.

13 (2) A court that orders a conditional release, a commitment or assisted outpatient treatment
 14 under this section shall establish a period of commitment or treatment for the person subject to the
 15 order. Any period of commitment ordered for commitment or conditional release under this section
 16 shall be for a period of time not to exceed 180 days. A period of assisted outpatient treatment shall
 17 be for a period of time not to exceed 12 months.

18 (3) If the commitment proceeding was initiated under ORS 426.070 (1)(a) and if the notice in-
 19 cluded a request under ORS 426.070 (2)(d)(B), the court shall notify the two persons of the court's
 20 determination under subsection (1) of this section.

21 **SECTION 5.** ORS 426.160 is amended to read:

22 426.160. (1) The court having jurisdiction over any proceeding conducted pursuant to ORS
 23 426.005, 426.060 to 426.170, 426.217, [426.228,] 426.255 to 426.292, 426.300 to 426.309, 426.385, 426.395,
 24 426.701 and 426.702 may not disclose any part of the record of the proceeding or commitment to any
 25 person except:

26 (a) The court shall, pursuant to rules adopted by the Department of State Police, transmit the
 27 minimum information necessary, as defined in ORS 181A.290, to the Department of State Police for
 28 persons described in ORS 181A.290 (1)(a) or (b) to enable the department to access and maintain the
 29 information and transmit the information to the federal government as required under federal law;

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

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

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

33 or

34 (e) Pursuant to court order.

35 (2) In any proceeding described in subsection (1) of this section that is before the Supreme Court
 36 or the Court of Appeals, the limitations on disclosure imposed by this section apply to the appellate
 37 court record and to the trial court record while it is in the appellate court's custody. The appellate
 38 court may disclose information from the trial or appellate court record in a decision, as defined in
 39 ORS 19.450, provided that the court uses initials, an alias or some other convention for protecting
 40 against public disclosure the identity of the person subject to the proceeding.

41 **SECTION 6.** ORS 426.228 is amended to read:

42 426.228. (1) A peace officer may take into custody a person who the officer has probable cause
 43 to believe is dangerous to self or to any other person and is in need of immediate care, custody or
 44 treatment for mental illness. [As directed by the community mental health program director,] A peace
 45 officer shall remove a person taken into custody under this section to the nearest hospital or non-

1 hospital facility approved by the Oregon Health Authority. The officer shall prepare a written report
 2 and deliver it to the licensed independent practitioner who is treating the person. The report shall
 3 state:

4 (a) The reason for custody;

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

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

8 (2) A peace officer shall take a person into custody when the community mental health program
 9 director, pursuant to ORS 426.233, notifies the peace officer that the director has probable cause to
 10 believe that the person is imminently dangerous to self or to any other person. As directed by the
 11 community mental health program director, the peace officer shall remove the person to a hospital
 12 or nonhospital facility approved by the authority. The community mental health program director
 13 shall prepare a written report that the peace officer shall deliver to the licensed independent prac-
 14 titioner who is treating the person. The report shall state:

15 (a) The reason for custody;

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

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

19 (3) If more than one hour will be required to transport the person to the hospital or nonhospital
 20 facility from the location where the person was taken into custody, the peace officer shall obtain,
 21 if possible, a certificate from a licensed independent practitioner stating that the travel will not be
 22 detrimental to the person's physical health and that the person is dangerous to self or to any other
 23 person and is in need of immediate care or treatment for mental illness. The licensed independent
 24 practitioner shall have personally examined the person within 24 hours prior to signing the certifi-
 25 cate.

26 (4) When a peace officer or other authorized individual, acting under this section, delivers a
 27 person to a hospital or nonhospital facility, a licensed independent practitioner shall examine the
 28 person immediately. If the licensed independent practitioner finds the person to be in need of
 29 emergency care or treatment for mental illness, the licensed independent practitioner shall proceed
 30 under ORS 426.232, otherwise the person may not be retained in custody. If the person is to be re-
 31 leased from custody, the peace officer or the community mental health program director shall return
 32 the person to the place where the person was taken into custody unless the person declines that
 33 service.

34 (5) A peace officer may transfer a person in custody under this section to the custody of an in-
 35 dividual authorized by the community mental health program director under ORS 426.233 (3). The
 36 peace officer may meet the authorized individual at any location that is in accordance with ORS
 37 426.140 to effect the transfer. When transferring a person in custody to an authorized individual, the
 38 peace officer shall deliver the report required under subsections (1) and (2) of this section to the
 39 authorized individual.

40 (6) An individual authorized under ORS 426.233 (3) shall take a person into custody when di-
 41 rected to do so by a peace officer or by a community mental health program director under ORS
 42 426.233.

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

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

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

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

12 **SECTION 7.** ORS 426.241 is amended to read:

13 426.241. (1) The cost of emergency psychiatric care, custody and treatment related to or result-
14 ing from such psychiatric condition, provided by a hospital or other facility approved by the Oregon
15 Health Authority and the community mental health program director of the county in which the
16 facility is located, except a state hospital, for a person alleged to have a mental illness who is ad-
17 mitted or detained under ORS 426.070, 426.140, 426.228, 426.232 or 426.233, or for a person with
18 mental illness who is admitted or detained under ORS 426.150, 426.223, 426.273, 426.275 or 426.292,
19 shall be paid by the community mental health program in the county of which the person is a resi-
20 dent from state funds provided to the community mental health program for this purpose. The com-
21 munity mental health program is responsible for the cost when state funds provided to the
22 community mental health program are exhausted. The hospital or other facility shall charge to and
23 collect from the person, third party payers or other legally or financially responsible individuals or
24 entities the costs of the emergency care, custody and treatment, as it would for any other patient,
25 and any funds received shall be applied as an offset to the cost of the services provided under this
26 section.

27 (2) If any person is admitted to or detained in a state hospital **or a state hospital facility de-**
28 **scribed in ORS 426.010 (2)** under ORS 426.070, 426.140, 426.180 to 426.210, 426.228, 426.232 or
29 426.233 for emergency care, custody or treatment, the authority shall charge to and collect from the
30 person, third party payers or other legally or financially responsible individuals or entities the costs
31 as it would for other patients of the state hospitals under the provisions of ORS 179.610 to 179.770.

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

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

42 (5)(a) The authority may deny payment for part or all of the emergency psychiatric services
43 provided by a hospital or nonhospital facility under ORS 426.232, 426.233 or 426.237 when the au-
44 thority finds, upon review, that the condition of the person alleged to have a mental illness did not
45 meet the admission criteria in ORS 426.232 (1), 426.233 (1) or 426.237 (1)(b)(A). The payer responsible

1 under this section shall make a request for denial of payment for emergency psychiatric services
2 provided under ORS 426.232, 426.233 or 426.237 in writing to the authority.

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

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

8 (B) A physician or a person providing emergency psychiatric services under ORS 426.228 to
9 426.235 or 426.237.

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

11
