

House Bill 3234

Sponsored by Representative REYNOLDS (at the request of Department of Human Services)

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**.

Prohibits commitment of children with intellectual disabilities without consent of parent or legal guardian. Requires that individual be determined eligible for developmental disability services through Department of Human Services as condition of commitment based on intellectual disability. Removes requirement for new diagnostic evaluation in determining continued commitment beyond initial 12-month period.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to commitment of persons with intellectual disabilities; creating new provisions; amending
3 ORS 427.101, 427.215, 427.235, 427.245, 427.255, 427.265, 427.270, 427.290 and 427.300; and de-
4 claring an emergency.

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

6 **SECTION 1. Section 2 of this 2023 Act is added to and made a part of ORS 427.235 to**
7 **427.290.**

8 **SECTION 2. ORS 427.235 to 427.290 do not permit a court to order an involuntary com-**
9 **mitment of a minor child to the Department of Human Services without the consent of the**
10 **minor child's parent or legal guardian.**

11 **SECTION 3.** ORS 427.215 is amended to read:

12 427.215. For the purposes of ORS 427.235 to 427.290, a person with an intellectual disability is
13 in need of commitment for residential care, treatment and training if the person is *[either]*:

14 **(1) Determined eligible for developmental disability services under ORS 427.104; and**

15 *[(1)]* **(2)(a)** Dangerous to self or others; or

16 *[(2)]* **(b)** Unable to provide for the person's basic personal needs and not receiving care as is
17 necessary for the health, safety or habilitation of the person.

18 **SECTION 4.** ORS 427.235 is amended to read:

19 427.235. (1) Any two persons may notify the court having probate jurisdiction for the county or
20 the circuit court, if it is not the probate court but its jurisdiction has been extended to include
21 commitment of a person with an intellectual disability under ORS 3.275, that a person within the
22 county has an intellectual disability and is in need of commitment for residential care, treatment
23 and training. Such notice shall be in writing and sworn to before an officer qualified to administer
24 an oath and shall set forth the facts sufficient to show the need for investigation. The circuit court
25 shall forward notice to the community developmental disabilities program director in the county if
26 it finds the notice sufficient to show the need for investigation. The director or the designee of the
27 director shall immediately investigate to determine whether the person has an intellectual disability
28 and is in need of commitment for residential care, treatment and training.

29 (2) Any person who acts in good faith shall not be held civilly liable for making of the notifi-

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 cation under subsection (1) of this section.

2 (3) Any investigation conducted by the community developmental disabilities program director
3 or the designee of the director under subsection (1) of this section shall commence with an interview
4 or examination of the person alleged to have an intellectual disability, where possible, in the home
5 of the person or other place familiar to the person. Further investigation if warranted shall include
6 a diagnostic evaluation as described in ORS 427.105 and may also include interviews with the
7 person's relatives, neighbors, teachers and physician or naturopathic physician. The investigation
8 shall also determine if any alternatives to commitment are available. The investigator shall also
9 determine and recommend to the court whether the person is incapacitated and in need of a
10 guardian or conservator.

11 (4) The investigation report shall be submitted to the court within 30 days of receipt of notice
12 from the court. A copy of the investigation report and diagnostic evaluation, if any, shall also be
13 made available to the Department of Human Services and to the person alleged to have an intel-
14 lectual disability and, if the person is [*a minor or*] incapacitated, to the [*parents or*] guardian of the
15 person as soon as possible after its completion but in any case prior to a hearing held under ORS
16 427.245.

17 (5) Any person conducting an evaluation or investigation under this section shall in no way be
18 held civilly liable for conducting the investigation or performing the diagnostic evaluation.

19 (6) If requested by a person conducting an investigation under this section, a physician or
20 naturopathic physician who has examined the person alleged to have an intellectual disability may,
21 with patient authorization or in response to a court order, provide any relevant information the
22 physician or naturopathic physician has regarding the person alleged to have an intellectual disa-
23 bility.

24 **SECTION 5.** ORS 427.245 is amended to read:

25 427.245. (1) If the court, following receipt of an investigation report under ORS 427.235, con-
26 cludes that there is probable cause to believe that the subject of the investigation has an intellec-
27 tual disability and is in need of commitment for residential care, treatment and training, it shall,
28 through the issuance of a citation as provided in subsection (2) of this section, cause the person to
29 be brought before it at such time and place as it may direct for a hearing to determine whether the
30 person has an intellectual disability and is in need of commitment for residential care, treatment
31 and training. The person shall be given the opportunity to appear at the hearing. If the person is
32 detained pursuant to ORS 427.255, the court shall hold the hearing within seven judicial days.

33 (2) Upon a determination under subsection (1) of this section that probable cause exists to be-
34 lieve that the person has an intellectual disability and is in need of commitment for residential care,
35 treatment and training, the court shall cause a citation to issue to the person or, if the person is
36 [*a minor or*] incapacitated, to the [*parent or*] legal guardian of the person. The citation shall state
37 the specific reasons the person is believed to be in need of commitment for residential care, treat-
38 ment and training. The citation shall also contain a notice of the time and place of the commitment
39 hearing, the right to legal counsel, the right to have legal counsel appointed if the person is unable
40 to afford legal counsel, the right to have legal counsel appointed immediately if so requested, the
41 right to subpoena witnesses in behalf of the person to testify at the hearing, the right to cross-
42 examine all witnesses and such other information as the court may direct. The citation shall be
43 served on the person by the community developmental disabilities program director or the designee
44 of the director delivering a duly certified copy of the original to the person prior to the hearing.
45 The person[, *the parents of the person*] or the legal guardian of the person shall have the opportunity

1 to consult with legal counsel prior to being brought before the court. The community developmental
2 disabilities program director or the designee of the director shall advise the person of the purpose
3 of the citation and the possible consequences of the proceeding.

4 **SECTION 6.** ORS 427.255 is amended to read:

5 427.255. (1) If the court finds that there is probable cause to believe that the failure to take into
6 custody pending an investigation or hearing a person alleged to have an intellectual disability and
7 be in need of commitment for residential care, treatment and training would pose an imminent and
8 serious danger to the person or to others, the court may issue a warrant of detention to either the
9 community developmental disabilities program director or the sheriff of the county directing that the
10 director, the sheriff or the designee of the director or sheriff take the person into custody and
11 produce the person at the time and place stated in the warrant. At the time the person is taken into
12 custody, the custodian shall advise the person or, if the person is incapacitated [*or a minor*], the
13 [*parents or*] guardian of the person of the person's right to counsel, to have legal counsel appointed
14 if the person is unable to afford legal counsel, and, if requested, to have legal counsel appointed
15 immediately.

16 (2) A person taken into custody under subsection (1) of this section shall be provided all care,
17 custody, evaluation and treatment required for the mental and physical health and safety of the
18 person and the director of the facility retaining custody shall report any care, custody, evaluation
19 or treatment provided the person to the court as required by ORS 427.280. Any diagnostic evaluation
20 performed on such person shall be consistent with Department of Human Services rules and ORS
21 427.105. Any prescription or administration of drugs shall be the sole responsibility of the treating
22 physician or naturopathic physician. The person shall have the right to the least hazardous treat-
23 ment procedures while in custody, and the treating physician or naturopathic physician shall be
24 notified immediately of the use of any mechanical restraints on the person. A note of each use of
25 mechanical restraint and the reasons therefor shall be made a part of the person's clinical record
26 over the signature of the treating physician or naturopathic physician.

27 **SECTION 7.** ORS 427.265 is amended to read:

28 427.265. (1) At the time that a person who is alleged to have an intellectual disability and to
29 be in need of commitment for residential care, treatment and training is brought before the court,
30 the court shall advise the person of the reason for being brought before the court, the nature of the
31 proceedings and the possible results of the proceedings. The court shall also advise the person of
32 the right to subpoena witnesses and to suitable legal counsel possessing skills and experience
33 commensurate with the nature of the allegations and complexity of the case during the proceedings,
34 and that if the person does not have funds with which to retain suitable legal counsel, the court
35 shall appoint such legal counsel to represent the person. If the person does not request legal coun-
36 sel, the legal guardian, relative or friend may request the assistance of legal counsel on behalf of
37 the person.

38 (2) If no request for legal counsel is made, the court shall appoint suitable legal counsel.

39 (3) If the person is unable to afford legal counsel, the court, if the matter is before a county or
40 justice court, or the public defense services executive director, if the matter is before the circuit
41 court, shall determine and allow, as provided in ORS 135.055, the reasonable expenses of the person
42 and compensation for legal counsel. The expenses and compensation so allowed by a county court
43 shall be paid by the county of residence of the person. The expenses and compensation determined
44 by the public defense services executive director shall be paid by the public defense services exec-
45 utive director from funds available for the purpose. In all cases legal counsel shall be present at the

1 hearing and may examine all witnesses offering testimony, and otherwise represent the person.

2 (4) The court may, for good cause, postpone the hearing for not more than 72 hours to allow
 3 preparation for the hearing and order the continuation of detention authorized under ORS 427.255
 4 during a postponement, if requested by the person, the legal counsel, [*parent or*] guardian of the
 5 person, an examiner or on the court's own motion.

6 **SECTION 8.** ORS 427.270 is amended to read:

7 427.270. (1) The examining facility conducting the diagnostic evaluation shall make its report in
 8 writing to the court. Where components of the diagnostic evaluation have been performed within the
 9 previous year according to Department of Human Services rules and ORS 427.105, and the records
 10 of the evaluation are available to the examining facility pursuant to ORS 179.505 and department
 11 rules, the results of such evaluation may be introduced in court in lieu of repetition of those com-
 12 ponents by the examining facility. If the facility finds, and shows by its report, that the person ex-
 13 amined has an intellectual disability and is in need of commitment for residential care, treatment
 14 and training, the report shall include a recommendation as to the type of treatment or training fa-
 15 cility most suitable for the person. The report shall also advise the court whether in the opinion of
 16 the examining facility the person and, if the person is [*a minor or*] incapacitated, the [*parents or*]
 17 legal guardian of the person would cooperate with voluntary treatment or training and whether the
 18 person would benefit either from voluntary treatment or training or from appointment of a legal
 19 guardian or conservator.

20 (2) Upon request by the person or the [*parent,*] legal guardian or legal counsel of the person, the
 21 court shall appoint an additional physician, naturopathic physician or psychologist, or both, to ex-
 22 amine the person and make separate reports in writing to the court. However, the court shall not
 23 appoint more than one additional physician or naturopathic physician and one additional psychol-
 24 ogist to examine the person.

25 **SECTION 9.** ORS 427.290 is amended to read:

26 427.290. After hearing all of the evidence, and reviewing the findings of the investigation and
 27 other examiners, the court shall determine whether the person has an intellectual disability and
 28 [*because of the intellectual disability is either dangerous to self or others or is unable to provide for*
 29 *the personal needs of the person and is not receiving care as is necessary for the health, safety or ha-*
 30 *ilitation of the person*] **is in need of commitment for residential care, treatment and training.**
 31 If in the opinion of the court the person is not in need of commitment for residential care, treatment
 32 and training, the person shall be discharged. If in the opinion of the court the person has, by clear
 33 and convincing evidence, an intellectual disability and is in need of commitment for residential care,
 34 treatment and training, the court may order as follows:

35 (1) If the person can give informed consent and is willing and able to participate in treatment
 36 and training on a voluntary basis, and the court finds that the person will do so, the court shall
 37 order release of the person and dismiss the case.

38 (2) If a relative, a friend or legal guardian of the person requests that the relative, friend or
 39 legal guardian be allowed to care for the person for a period of one year in a place satisfactory to
 40 the court and shows that the relative, friend or legal guardian is able to care for the person and that
 41 there are adequate financial resources available for the care of the person, the court may commit
 42 the person and order that the person be conditionally released and placed in the care and custody
 43 of the relative, friend or legal guardian. The order may be revoked and the person committed to the
 44 Department of Human Services for the balance of the year whenever, in the opinion of the court,
 45 it is in the best interest of the person.

1 (3) If in the opinion of the court voluntary treatment and training or conditional release is not
 2 in the best interest of the person, the court may order the commitment of the person to the de-
 3 partment for care, treatment or training. The commitment shall be for a period not to exceed one
 4 year with provisions for continuing commitment pursuant to ORS 427.235 to 427.290. **A new diag-
 5 nostic evaluation under ORS 427.270 is not required for proceedings to determine continued
 6 commitment.**

7 (4) If in the opinion of the court the person may be incapacitated, the court may appoint a legal
 8 guardian or conservator pursuant to ORS chapter 125. The appointment of a guardian or
 9 conservator shall be a separate order from the order of commitment.

10 **SECTION 10.** ORS 427.300 is amended to read:

11 427.300. (1) The Department of Human Services may, at its discretion, direct any person with
 12 an intellectual disability who has been committed under ORS 427.290 to the facility best able to
 13 treat and train the person. The authority of the department on such matters shall be final.

14 (2)(a) At any time, for good cause and in the best interest of the person, the department may
 15 decide to transfer the person from one facility to another or discharge the person as no longer in
 16 need of residential care, treatment or training.

17 (b) At least 30 days prior to the transfer or discharge, the department shall notify, by regular
 18 mail, the person and the [*parent,*] guardian or other individual entitled to custody of the person of
 19 the decision to transfer or discharge. The notice must inform the person of the right to appeal the
 20 department's decision to transfer or discharge. In the case of a medical emergency, the department
 21 is not required to give 30 days' notice but shall give the notice as soon as possible under the cir-
 22 cumstances. The department shall define "medical emergency" by rule, including but not limited to
 23 an increase in the level of needed care or the person engaging in a behavior that poses an imminent
 24 danger to self or others.

25 (c) Except in a medical emergency, the person has the right to an administrative hearing prior
 26 to an involuntary transfer or discharge. ORS 441.605 (4) and the department's rules governing
 27 transfer notices and hearings for residents of long term care facilities apply to a transfer or dis-
 28 charge under this section. If the person is being transferred or discharged for a medical emergency,
 29 the hearing must be held no later than seven days after the transfer or discharge. The department
 30 shall maintain a space in the facility for the person pending the administrative order.

31 (3) The department, pursuant to its rules, may delegate to a community developmental disabili-
 32 ties program director **or a support services brokerage** the responsibility for assignment of persons
 33 with intellectual disabilities to suitable facilities or transfer between such facilities under conditions
 34 that the department may define.

35 **SECTION 11.** ORS 427.101 is amended to read:

36 427.101. As used in this section and ORS 427.115, 427.121, 427.154, **427.215**, 430.662 and 430.664:

37 (1) "Community living setting" means:

- 38 (a) A residential setting;
- 39 (b) An individual's home or the home of the individual's family; or
- 40 (c) Other nonresidential setting.

41 (2) "Developmental disability services" means the following services as provided for individuals
 42 with intellectual or developmental disabilities:

43 (a) Services designed to develop or maintain the individual's skills in the following areas:

- 44 (A) Eating, bathing, dressing, personal hygiene, mobility and other personal needs;
- 45 (B) Self-awareness and self-control, social responsiveness, social amenities, interpersonal skills,

1 interpersonal relationships and social connections;

2 (C) Community participation, recreation and the ability to use available community services,
3 facilities or businesses;

4 (D) Expressive and receptive skills in verbal and nonverbal language, the functional application
5 of acquired reading and writing skills and other communication needs; and

6 (E) Planning and preparing meals, budgeting, laundering, housecleaning and other personal en-
7 vironmental needs;

8 (b) Case management;

9 (c) Services described in ORS 430.215;

10 (d) Employment services;

11 (e) Environmental accessibility adaptations;

12 (f) Specialized supports; and

13 (g) Specialized medical equipment and supplies.

14 (3) "Employment services" means services provided to develop or maintain the skills necessary
15 for an individual to obtain and retain employment, including job assessment, job exploration, job
16 development, job training, job coaching, work skills, and ongoing supports.

17 (4) "Environmental accessibility adaptations" means physical modifications to an individual's
18 home that are necessary to ensure the health, welfare and safety of the individual in the home, or
19 that enable the individual to function with greater independence in the home.

20 (5) "Individualized service plan" means a plan described in ORS 427.107 (2)(i), (j) and (k) that
21 identifies the resources, services and purchases necessary for an individual with a developmental
22 disability to achieve identified personal goals and maximize self-determination.

23 (6) "Person-centered planning" means an informal or formal process for gathering and organizing
24 information that helps an individual to:

25 (a) Enhance self-determination by choosing personal goals and lifestyle preferences;

26 (b) Design strategies and networks of support to achieve personal goals and a preferred lifestyle
27 using individual strengths, relationships and resources; and

28 (c) Identify, use and strengthen naturally occurring opportunities for support in the home and
29 in the community.

30 (7) "Residential setting" means one of the following community living settings licensed or regu-
31 lated by the Department of Human Services:

32 (a) Residential facilities licensed under ORS 443.400 to 443.455;

33 (b) Licensed adult foster homes, as defined in ORS 443.705;

34 (c) Developmental disability child foster homes certified under ORS 443.835;

35 (d) Group homes; and

36 (e) Supported living programs.

37 (8) "Self-determination" means empowering individuals to:

38 (a) Make their own choices and decisions;

39 (b) Select and plan, together with freely chosen family members and friends, the developmental
40 disability services that are necessary for an individual to live, work and recreate in the setting that
41 the individual chooses and in the community;

42 (c) Control, or have input regarding, the manner in which resources are used to obtain needed
43 services and supports, with the help of a social support network if needed;

44 (d) Live an autonomous life in the community, rich in community affiliations, through formal or
45 informal arrangements of resources and personnel and contribute to their community in the ways

1 they choose;

2 (e) Have a valued role in the community through competitive employment, organizational affil-
3 iations, personal development and general caring for others in the community, and to be accountable
4 for spending public dollars in ways that are life-enhancing for the individual; and

5 (f) Speak or act on their own behalf or on behalf of others, including participating in policy-
6 making and legislative processes.

7 (9) "Service provider" means any person who is paid a service rate by the department to provide
8 one or more of the services identified in the individualized service plan of an individual with an
9 intellectual or developmental disability regardless of where the service is provided.

10 (10) "Service rate" means the amount of reimbursement paid to a service provider to care for
11 an individual with an intellectual or developmental disability.

12 (11)(a) "Specialized medical equipment and supplies" means:

13 (A) Devices, aids, controls, supplies or appliances that enable individuals:

14 (i) To increase their ability to perform activities of daily living; or

15 (ii) To perceive, control or communicate with the environment in which they live;

16 (B) Items necessary for life support, including ancillary supplies and equipment necessary to the
17 proper functioning of these items; and

18 (C) Medical equipment not available in the medical assistance program.

19 (b) "Specialized medical equipment and supplies" does not include items that have no direct
20 medical or remedial benefit to the individual.

21 (12) "Specialized supports" means treatment, training, consultation or other unique services that
22 are not available through the medical assistance program but are necessary to achieve the goals
23 identified in the individualized service plan, or other developmental disability services prescribed
24 by the department by rule.

25 (13) "Support service brokerage" means an entity that contracts with the department to provide
26 or to arrange for developmental disability services.

27 **SECTION 12. Section 2 of this 2023 Act and the amendments to ORS 427.101, 427.215,
28 427.235, 427.245, 427.255, 427.265, 427.270, 427.290 and 427.300 by sections 3 to 11 of this 2023
29 Act apply to commitment proceedings commenced on or after the effective date of this 2023
30 Act.**

31 **SECTION 13. This 2023 Act being necessary for the immediate preservation of the public
32 peace, health and safety, an emergency is declared to exist, and this 2023 Act takes effect
33 on its passage.**

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