

House Bill 2360

Sponsored by Representative LEVY B; Representatives SMITH G, WRIGHT, YUNKER, Senator WEBER (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**. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: The Act sets out standards for when a person with a substance use problem may be treated without the person's consent. (Flesch Readability Score: 68.6).

Authorizes the involuntary civil commitment of a person with a substance use disorder who meets the criteria for involuntary civil commitment of a person with a mental disorder.

A BILL FOR AN ACT

1
2 Relating to substance use disorders; amending ORS 426.005, 426.133, 426.241 and 426.495.

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

4 **SECTION 1.** ORS 426.005 is amended to read:

5 426.005. (1) As used in ORS 426.005 to 426.390, unless the context requires otherwise:

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

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

11 (c) "Facility" means a state mental hospital, community hospital, residential facility,
12 detoxification center, day treatment facility or such other facility as the authority determines suit-
13 able that provides diagnosis and evaluation, medical care, detoxification, social services or rehabil-
14 itation to persons who are in custody during a prehearing period of detention or who have been
15 committed to the Oregon Health Authority under ORS 426.130.

16 (d) "Licensed independent practitioner" means:

17 (A) A physician, as defined in ORS 677.010;

18 (B) A nurse practitioner licensed under ORS 678.375 and authorized to write prescriptions under
19 ORS 678.390; or

20 (C) A naturopathic physician licensed under ORS chapter 685.

21 (e) "Nonhospital facility" means any facility, other than a hospital, that is approved by the au-
22 thority to provide adequate security, psychiatric, nursing and other services to persons under ORS
23 426.232 or 426.233.

24 (f) "Person with mental illness" means a person who, because of a mental **or substance use**
25 disorder, is one or more of the following:

26 (A) Dangerous to self or others.

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

29 (C) A person:

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

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

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

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

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

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

15 **SECTION 2.** ORS 426.133 is amended to read:

16 426.133. (1) As used in ORS 426.005 to 426.390, "assisted outpatient treatment" may not be con-
17 strued to be a commitment under ORS 426.130 and does not include taking a person into custody
18 or the forced medication of a person.

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

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

22 (B) Has a mental **or substance use** disorder;

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

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

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

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

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

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

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

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

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

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

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

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

37 (g) The person's history of mental health **or substance abuse** treatment in the community.

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

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

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

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

44 (5) As part of the order under subsection (2) of this section, the court may prohibit the person
45 from purchasing or possessing a firearm during the period of assisted outpatient treatment if, in the

1 opinion of the court, there is a reasonable likelihood the person would constitute a danger to self
 2 or others or to the community at large as a result of the person's mental or psychological state, as
 3 demonstrated by past behavior or participation in incidents involving unlawful violence or threats
 4 of unlawful violence, or by reason of a single incident of extreme, violent, unlawful conduct. When
 5 a court adds a firearm prohibition to an order under subsection (2) of this section, the court shall
 6 cause a copy of the order to be delivered to the sheriff of the county, who shall enter the informa-
 7 tion into the Law Enforcement Data System.

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

11 (7) This section does not:

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

13 (b) Require a community mental health program to provide treatment or services to, or super-
 14 vision of, the person:

15 (A) If the county lacks sufficient funds for such purposes; or

16 (B) In the case of a county that has declined to operate or contract for a community mental
 17 health program, if the public agency or private corporation that contracts with the Oregon Health
 18 Authority to provide the program, as described in ORS 430.640, lacks sufficient funds for such pur-
 19 poses.

20 **SECTION 3.** ORS 426.241 is amended to read:

21 426.241. (1) The cost of emergency [*psychiatric*] care, custody and treatment related to or re-
 22 sulting from [*such psychiatric*] **the condition of a person alleged to have a mental illness**, provided
 23 by a hospital or other facility approved by the Oregon Health Authority and the community mental
 24 health program director of the county in which the facility is located, except a state hospital, for
 25 [a] **the person alleged to have a mental illness** who is admitted or detained under ORS 426.070,
 26 426.140, 426.228, 426.232 or 426.233, or for a person with mental illness who is admitted or detained
 27 under ORS 426.150, 426.223, 426.273, 426.275 or 426.292, shall be paid by the community mental
 28 health program in the county of which the person is a resident from state funds provided to the
 29 community mental health program for this purpose. The community mental health program is re-
 30 sponsible for the cost when state funds provided to the community mental health program are ex-
 31 hausted. The hospital or other facility shall charge to and collect from the person, third party payers
 32 or other legally or financially responsible individuals or entities the costs of the emergency care,
 33 custody and treatment, as it would for any other patient, and any funds received shall be applied
 34 as an offset to the cost of the services provided under this section.

35 (2) If any person is admitted to or detained in a state hospital under ORS 426.070, 426.140,
 36 426.180 to 426.210, 426.228, 426.232 or 426.233 for emergency care, custody or treatment, the au-
 37 thority shall charge to and collect from the person, third party payers or other legally or financially
 38 responsible individuals or entities the costs as it would for other patients of the state hospitals un-
 39 der the provisions of ORS 179.610 to 179.770.

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

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

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

11 (b) The authority may require the following to provide the authority with any information that
 12 the authority determines is necessary to review a request for denial of payment made under this
 13 subsection or to conduct a review of emergency [*psychiatric*] services for the purpose of planning
 14 or defining authority rules:

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

16 (B) A physician or a person providing emergency [*psychiatric*] services under ORS 426.228 to
 17 426.235 or 426.237.

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

19 **SECTION 4.** ORS 426.495 is amended to read:

20 426.495. (1) As used in ORS 426.490 to 426.500, unless the context requires otherwise:

21 (a) “Case manager” means a person who works on a continuing basis with a person with a
 22 chronic mental illness and is responsible for assuring the continuity of the various services called
 23 for in the discharge plan of the person with a chronic mental illness including services for basic
 24 personal maintenance, mental and personal treatment, and appropriate education and employment.

25 (b) “Discharge plan” means a written plan prepared jointly with the person with a chronic
 26 mental illness, mental health staff and case manager prior to discharge, prescribing for the basic
 27 and special needs of the person upon release from the hospital.

28 (c) “Person with a chronic mental illness” means an individual who is:

29 (A) Eighteen years of age or older; and

30 (B) Diagnosed by a psychiatrist, a licensed clinical psychologist, a licensed independent practi-
 31 tioner as defined in ORS 426.005 or a nonmedical examiner certified by the Oregon Health Authority
 32 or the Department of Human Services as having chronic schizophrenia, a chronic major affective
 33 disorder, a chronic paranoid disorder or another chronic psychotic mental disorder [*other than*] **in-**
 34 **cluding** those caused by substance abuse.

35 (2) For purposes of providing services in the community, the authority may adopt rules consist-
 36 ent with accepted professional practices in the fields of psychology and psychiatry to specify other
 37 criteria for determining who is a person with a chronic mental illness.