

Senate Bill 297

Sponsored by Senator HANSELL (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**.

Modifies provisions for emergency commitment of individuals in Indian country.

A BILL FOR AN ACT

1
2 Relating to individuals with mental illness in Indian country; amending ORS 426.060, 426.070 and
3 426.180.

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

5 **SECTION 1.** ORS 426.060 is amended to read:

6 426.060. (1) Commitments to the Oregon Health Authority shall be made only by the judge of a
7 circuit court in a county of this state **or by a judge of a court of a federally recognized Indian**
8 **tribe located in this state.**

9 (2) The following is a nonexclusive list of powers the authority may exercise concerning the
10 placement of persons committed or persons receiving emergency care and treatment under ORS
11 426.070, 426.228 to 426.235 or 426.237:

12 (a) In its discretion and for reasons which are satisfactory to the authority, the authority may
13 direct any court-committed person to the facility best able to treat the person. The decision of the
14 authority on such matters shall be final.

15 (b) At any time, for good cause and in the best interest of the person with mental illness, the
16 authority may transfer a committed person from one facility to another. When transferring a person
17 under this paragraph, the authority shall make the transfer:

18 (A) If the transfer is from a facility in one class to a facility of the same class, as provided by
19 rule of the authority;

20 (B) If the transfer is from a facility in one class to a facility in a less restrictive class, by fol-
21 lowing the procedures for trial visits under ORS 426.273; and

22 (C) If the transfer is from a facility in one class to a facility in a more restrictive class, by fol-
23 lowing the procedures under ORS 426.275.

24 (c) At any time, for good cause and in the best interest of the person with mental illness, the
25 authority may transfer a person receiving emergency care and treatment under ORS 426.070 or
26 426.228 to 426.235, or intensive treatment under ORS 426.237, between hospitals and nonhospital fa-
27 cilities approved by the authority to provide emergency care or treatment as defined by rule of the
28 authority.

29 (d) Pursuant to its rules, the authority may delegate to a community mental health program di-
30 rector the responsibility for assignment of persons with mental illness to suitable facilities or
31 transfer between such facilities under conditions which the authority may define.

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

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.

1 426.070. (1) Any of the following may initiate commitment procedures under this section by giving the notice described under subsection (2) of this section:

2 (a) Two persons;

3 (b) The local health officer; or

4 (c) Any magistrate **or judge of a court of a federally recognized Indian tribe located in this**
5 **state.**

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

7 (a) It must be in writing under oath;

8 (b) It must be given to the community mental health program director or a designee of the director in the county where the person alleged to have a mental illness resides;

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

10 (d) If the commitment proceeding is initiated by two persons under subsection (1)(a) of this section, it may include a request that the court notify the two persons:

11 (A) Of the issuance or nonissuance of a warrant under this section; or

12 (B) Of the court's determination under ORS 426.130 (1); and

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

14 (3) Upon receipt of a notice under subsections (1) and (2) of this section or when notified by a circuit court that the court received notice under ORS 426.234, the community mental health program director, or designee of the director, shall:

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

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

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

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

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

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

21 (b)(A) If the court finds that there is probable cause to believe that failure to take the person into custody pending the investigation or hearing would pose serious harm or danger to the person

1 or to others, the court may issue a warrant of detention to the community mental health program
2 director or designee or the sheriff of the county or designee directing the director, sheriff or a
3 designee to take the person alleged to have a mental illness into custody and produce the person
4 at the time and place stated in the warrant.

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

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

9 (ii) The warning under ORS 426.123; and

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

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

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

20 **SECTION 3.** ORS 426.180 is amended to read:

21 426.180. (1) ORS 426.180 to 426.210 apply to the commitment of an individual in Indian country
22 if [*the state does not have jurisdiction over the individual*] **a federally recognized Indian tribe that**
23 **has Indian country located within this state chooses to exercise the tribe's authority over**
24 **the commitment.**

25 (2) As used in this section and ORS 426.200 and 426.210, "hospital" means a hospital that is li-
26 censed under ORS chapter 441, other than an institution listed in ORS 426.010.

27 (3) If the court of a tribe having jurisdiction over an individual issues an order finding that the
28 individual is dangerous to self or to any other person and is in need of immediate care, custody or
29 treatment for mental illness, a person may request that the individual be taken by a tribal police
30 officer or other peace officer to a hospital or nonhospital facility by submitting to the officer a
31 certified copy of the order and an affidavit that includes:

32 (a) The name and address of the nearest relative or legal guardian of the individual; and

33 (b) A medical history completed by one of the following, who may not be related to the indi-
34 vidual by blood or marriage:

35 (A) The tribe's mental health authority, if the tribe has entered into an agreement with the state
36 pursuant to ORS 430.630 (9)(a)(B);

37 (B) A qualified mental health professional; or

38 (C) A licensed independent practitioner.

39 (4) Upon receipt of the order and affidavit described in subsection (3) of this section, the tribal
40 police officer or other peace officer shall immediately transport the individual to a hospital or a
41 nonhospital facility and present the individual to the hospital or nonhospital facility accompanied
42 by the court order and affidavit.

43 (5) The director of the hospital or nonhospital facility may refuse to admit the individual if a
44 licensed independent practitioner, after reviewing the documents accompanying the individual, is not
45 satisfied that an emergency exists or that the individual is dangerous to self or others and in need

1 of immediate care, custody or treatment for mental illness.

2 (6) If the hospital or nonhospital facility admits the individual, the director or a licensed inde-
3 pendent practitioner shall notify the community mental health program director for the area and the
4 circuit court with jurisdiction in the area where the facility is located. Upon receipt of the notice,
5 the community mental health program director shall initiate commitment proceedings in accordance
6 with ORS 426.070.

7 (7) If an individual is admitted to a hospital or nonhospital facility under this section, any li-
8 censed independent practitioner who is treating the individual shall give the individual the warning
9 under ORS 426.123.

10 (8) This section may be applied as provided by agreement with the governing body of the res-
11 ervation. Payment of costs for a commitment made under this section shall be as provided under
12 ORS 426.250.

13 (9) The director of the hospital or nonhospital facility or licensed independent practitioner shall
14 notify the appropriate tribe regarding all actions taken under ORS 426.180 to 426.210 no later than
15 24 hours after the action is taken, except for information protected from disclosure by state or fed-
16 eral law.

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