

House Bill 3441

Sponsored by COMMITTEE ON JUDICIARY

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 superintendent of state hospital or director of committing facility to notify court if defendant found unfit to proceed requires involuntary medication to gain or regain fitness to proceed. Requires court to consider specified factors when determining whether to order involuntary medication of defendant.

A BILL FOR AN ACT

1
2 Relating to involuntary medication of defendants; creating new provisions; and amending ORS
3 426.385.

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

5 **SECTION 1. Section 2 of this 2015 Act is added to and made a part of ORS 161.315 to**
6 **161.351.**

7 **SECTION 2. (1) The superintendent of a state hospital or director of a facility to which**
8 **a defendant is committed under ORS 161.370 shall immediately notify the committing court**
9 **in writing if:**

10 (a) **The defendant requires medication in order to gain or regain fitness to proceed;**

11 (b) **The defendant is refusing to take the medication; and**

12 (c) **There is no other basis for the hospital or facility to administer the medication**
13 **without the defendant's consent.**

14 (2) **Upon receipt of the written notice described in subsection (1) of this section, the court**
15 **shall:**

16 (a) **Provide a copy of the notice to the district attorney and counsel for the defendant.**

17 (b) **Order the superintendent or director to provide a written plan for medical treatment**
18 **necessary for the defendant to gain or regain fitness to proceed. The plan must contain:**

19 (A) **A description of the defendant's medical diagnosis and all medically appropriate**
20 **treatment for the diagnosis;**

21 (B) **The names of medications necessary for the defendant to gain or regain fitness to**
22 **proceed and their known side effects; and**

23 (C) **An explanation of whether treatment less intrusive than medication would produce**
24 **the same result as the medication.**

25 (3) **The district attorney and counsel for the defendant may inspect any plan for medical**
26 **treatment provided to the court pursuant to subsection (2) of this section.**

27 (4) **Except as provided in subsection (5) of this section, upon receipt of the plan for**
28 **medical treatment, the court shall hold a hearing. Other evidence on the issue of medicating**
29 **the defendant without the defendant's consent may be introduced by either party. The court**
30 **may order the medication of the defendant without the defendant's consent only if the court**

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 makes the following findings:

2 (a) Important state interests are at stake in prosecuting the defendant;

3 (b) Medication of the defendant will significantly further the important state interests
4 because:

5 (A) It is substantially likely that medication will cause the defendant to gain or regain
6 fitness to proceed; and

7 (B) It is substantially unlikely that medication will cause side effects that will impair the
8 fairness of the criminal proceedings;

9 (c) Medication is necessary to further the important state interests because there are
10 no less intrusive treatments that would produce the same result; and

11 (d) The administration of medication is medically appropriate because it is in the
12 defendant's best medical interest in light of the defendant's medical condition.

13 (5) The court may make the findings described in subsection (4) of this section without
14 holding a hearing if the defendant, directly or through defense counsel, affirmatively waives
15 the hearing.

16 **SECTION 3.** ORS 426.385 is amended to read:

17 426.385. (1) Every person with mental illness committed to the Oregon Health Authority shall
18 have the right to:

19 (a) Communicate freely in person and by reasonable access to telephones;

20 (b) Send and receive sealed mail, except that this right may be limited for security reasons in
21 state institutions as described in ORS 426.010;

22 (c) Wear the clothing of the person;

23 (d) Keep personal possessions, including toilet articles;

24 (e) Religious freedom;

25 (f) A private storage area with free access thereto;

26 (g) Be furnished with a reasonable supply of writing materials and stamps;

27 (h) A written treatment plan, kept current with the progress of the person;

28 (i) Be represented by counsel whenever the substantial rights of the person may be affected;

29 (j) Petition for a writ of habeas corpus;

30 (k) Not be required to perform routine labor tasks of the facility except those essential for
31 treatment;

32 (L) Be given reasonable compensation for all work performed other than personal housekeeping
33 duties;

34 (m) Daily access to fresh air and the outdoors, except that this right may be limited when it
35 would create significant risk of harm to the person or others;

36 (n) Such other rights as may be specified by rule; and

37 (o) Exercise all civil rights in the same manner and with the same effect as one not admitted
38 to the facility, including, but not limited to, the right to dispose of real property, execute instru-
39 ments, make purchases, enter contractual relationships, and vote, unless the person has been adju-
40 dicated incompetent and has not been restored to legal capacity. Disposal of personal property in
41 possession of the person in a state institution described in ORS 426.010 is subject to limitation for
42 security reasons.

43 (2)(a) A person must be immediately informed, orally and in writing, of any limitation:

44 (A) Of the right to send or receive sealed mail under subsection (1)(b) of this section;

45 (B) Regarding the disposal of personal property under subsection (1)(o) of this section; and

1 (C) Of the right to daily access to fresh air and the outdoors under subsection (1)(m) of this
2 section.

3 (b) Any limitation under this subsection and the reasons for the limitation must be stated in the
4 person's written treatment plan.

5 (c) The person has the right to challenge any limitation under this subsection pursuant to rules
6 adopted by the authority. The person must be informed, orally and in writing, of this right.

7 (3) A person with mental illness committed to the authority shall have the right to be free from
8 potentially unusual or hazardous treatment procedures, including convulsive therapy, unless the
9 person has given express and informed consent or authorized the treatment pursuant to ORS 127.700
10 to 127.737. This right may be denied to a person **under the circumstances described in section**
11 **2 of this 2015 Act, or may be denied to a person** for good cause as defined in administrative rule
12 [*only*] by the director of the facility in which the person is confined[, *but only*] after consultation
13 with and approval of an independent examining physician. Any denial shall be entered into the
14 person's treatment record and shall include the reasons for the denial. A person with mental illness
15 may not be subjected to psychosurgery, as defined in ORS 677.190 (21)(b).

16 (4) Mechanical restraints shall not be applied to a person admitted to a facility unless it is de-
17 termined by the chief medical officer of the facility or designee to be required by the medical needs
18 of the person. Every use of a mechanical restraint and the reasons for using a mechanical restraint
19 shall be made a part of the clinical record of the person over the signature of the chief medical of-
20 ficer of the facility or designee.

21 (5) Nothing in this section prevents the authority from acting to exclude contraband from its
22 facilities and to prevent possession or use of contraband in its facilities.

23 (6) As used in this section:

24 (a) "Contraband" has the meaning given that term in ORS 162.135.

25 (b) "Security reasons" means the protection of the person with mental illness from serious and
26 immediate harm and the protection of others from threats or harassment as defined by rule of the
27 authority.

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