

**A-Engrossed**  
**Senate Bill 297**

Ordered by the Senate March 4  
Including Senate Amendments dated March 4

Sponsored by Senator HANSELL; Senator MANNING JR (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.

Modifies provisions for emergency commitment of individuals in Indian country.

**A BILL FOR AN ACT**

Relating to individuals with mental illness in Indian country; amending ORS 426.070 and 426.180.

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

**SECTION 1.** ORS 426.070 is amended to read:

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:

(a) Two persons;

(b) The local health officer; or

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

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

(a) It must be in writing under oath;

(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;

(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;

(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:

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

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

(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.

(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:

(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.

(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

**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 notice is received, the authority may verify, to the extent known by the authority, whether or not  
2 the person meets the criteria described in ORS 426.005 (1)(f)(C)(i) and (ii) and so inform the com-  
3 munity mental health program director or designee of the director.

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

6 (4) Upon completion, a recommendation based upon the investigation report under ORS 426.074  
7 shall be promptly submitted to the court. If the community mental health program director deter-  
8 mines that probable cause does not exist to believe that a person released from detention under ORS  
9 426.234 (2)(c) or (3)(b) is a person with mental illness, the community mental health program director  
10 may recommend assisted outpatient treatment in accordance with ORS 426.133.

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

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

19 (b)(A) If the court finds that there is probable cause to believe that failure to take the person  
20 into custody pending the investigation or hearing would pose serious harm or danger to the person  
21 or to others, the court may issue a warrant of detention to the community mental health program  
22 director or designee or the sheriff of the county or designee directing the director, sheriff or a  
23 designee to take the person alleged to have a mental illness into custody and produce the person  
24 at the time and place stated in the warrant.

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

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

29 (ii) The warning under ORS 426.123; and

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

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

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

40 **SECTION 2.** ORS 426.180 is amended to read:

41 426.180. (1) ORS 426.180 to 426.210 apply to the commitment of an individual in Indian country  
42 if [*the state does not have jurisdiction over the individual*] **a federally recognized Indian tribe that**  
43 **has Indian country located within this state chooses to exercise the tribe's authority over**  
44 **the commitment.**

45 (2) As used in this section and ORS 426.200 and 426.210, "hospital" means a hospital that is li-

1 censed under ORS chapter 441, other than an institution listed in ORS 426.010.

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

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

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

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

12 (B) A qualified mental health professional; or

13 (C) A licensed independent practitioner.

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

18 (5) The director of the hospital or nonhospital facility may refuse to admit the individual if a  
19 licensed independent practitioner, after reviewing the documents accompanying the individual, is not  
20 satisfied that an emergency exists or that the individual is dangerous to self or others and in need  
21 of immediate care, custody or treatment for mental illness.

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

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

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

33 (9) The director of the hospital or nonhospital facility or licensed independent practitioner shall  
34 notify the appropriate tribe regarding all actions taken under ORS 426.180 to 426.210 no later than  
35 24 hours after the action is taken, except for information protected from disclosure by state or fed-  
36 eral law.

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