

Senate Bill 499

Sponsored by Senators GELSER, COURTNEY (Presession 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**.

Adds to rights of persons with mental illness committed to Oregon Health Authority, right to reasonable privacy and security in resting, sleeping, dressing, bathing, personal hygiene and toileting.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to personal privacy of persons with mental illness; amending ORS 426.385; and declaring
3 an emergency.

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

5 **SECTION 1.** ORS 426.385 is amended to read:

6 426.385. (1) Every person with mental illness committed to the Oregon Health Authority shall
7 have the right to:

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

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

11 (c) Wear the clothing of the person;

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

13 (e) Religious freedom;

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

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

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

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

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

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

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

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

25 **(n) Reasonable privacy and security in resting, sleeping, dressing, bathing, personal hy-**
26 **giene and toileting;**

27 [(n)] (o) Such other rights as may be specified by rule; and

28 [(o)] (p) Exercise all civil rights in the same manner and with the same effect as one not ad-
29 mitted to the facility, including, but not limited to, the right to dispose of real property, execute
30 instruments, make purchases, enter contractual relationships, and vote, unless the person has been

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 adjudicated incompetent and has not been restored to legal capacity. Disposal of personal property
 2 in possession of the person in a state institution described in ORS 426.010 is subject to limitation
 3 for security reasons.

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

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

6 (B) Regarding the disposal of personal property under subsection [(1)(o)] (1)(p) of this section;
 7 and

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

10 (b) Any limitation under this subsection and the reasons for the limitation must be stated in the
 11 person’s written treatment plan.

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

14 (3) A person with mental illness committed to the authority shall have the right to be free from
 15 potentially unusual or hazardous treatment procedures, including convulsive therapy, unless the
 16 person has given express and informed consent or authorized the treatment pursuant to ORS 127.700
 17 to 127.737. This right may be denied to a person for good cause as defined in administrative rule
 18 only by the director of the facility in which the person is confined, but only after consultation with
 19 and approval of an independent examining physician. Any denial shall be entered into the person’s
 20 treatment record and shall include the reasons for the denial. A person with mental illness may not
 21 be subjected to psychosurgery, as defined in ORS 677.190 (21)(b).

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

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

29 (6) As used in this section:

30 (a) “Contraband” has the meaning given that term in ORS 162.135.

31 (b) “Security reasons” means the protection of the person with mental illness from serious and
 32 immediate harm and the protection of others from threats or harassment as defined by rule of the
 33 authority.

34 **SECTION 2. This 2019 Act being necessary for the immediate preservation of the public**
 35 **peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect**
 36 **on its passage.**

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