

Mental Health Law in Oregon: A Guide for Consumers and Families Civil Commitment

CIVIL COMMITMENT

WHAT IS CIVIL COMMITMENT?

Civil commitment is a process in which a judge decides whether a person who is alleged to be mentally ill should be required to go to a psychiatric hospital or accept other mental health treatment. A person in the process of a commitment sometimes is called an Allegedly Mentally Ill Person (AMIP). A civil commitment is not a criminal conviction and will not go on a criminal record. However, the civil commitment may affect a person's legal rights. (See page 9)

When a civil commitment petition has been filed, an investigator from the community mental health program (CMHP) will investigate the need for the commitment. Depending on the investigator's decision, the case may be dismissed without a hearing, the person may go into a diversion program or a hearing may be held. If a hearing is held, the person has an attorney and may have witnesses testify. The judge then makes a decision whether the person should be committed. If the person is committed, the person may be hospitalized or may be required to undergo treatment in some other setting.

WHO CAN BE COMMITTED

A person can be committed if after hearing from witnesses a judge finds by clear and convincing evidence that the person has a mental disorder and, because of that mental disorder, is:

- Dangerous to self or others, or
- Unable to provide for basic personal needs like health and safety, or
- Meets the following expanded criteria:
 1. Diagnosed as having a major mental disability such as chronic schizophrenia, a chronic major affective disorder, a chronic paranoid disorder or another chronic psychotic disorder, and
 2. Has been committed and hospitalized twice in the last three years, and
 3. Is showing symptoms or behavior substantially similar to those that preceded and led to a prior hospitalization, and
 4. Unless treated, will continue, to a reasonable medical probability, to deteriorate to become a danger to self or others or unable to provide for basic needs.

ORS 426.005; ORS 426.130

HOW THE CIVIL COMMITMENT PROCESS BEGINS

- A county health officer, a judge, or any two persons filing papers in court may start the commitment process. Or, the process may be started by a doctor or community mental health program director ordering a person to be held involuntarily in a hospital. ORS 426.070; ORS 426.228 through ORS 426.234.
- When the papers are filed, the CMHP program must send out a mental health investigator to interview the person and others who know about the person. This investigator advises a judge whether or not to hold a court hearing. ORS 426.070; ORS 426.074.

WHERE THE PERSON STAYS BEFORE THE HEARING

A person against whom a civil commitment petition is filed may stay in the community unless the judge orders the person to be taken into custody or a doctor or CMHP director directs the person to be in custody. The person can be in custody only if he or she is considered to be mentally ill and a danger to self or others. A person with a mental disability and unable to provide for basic needs cannot be held in custody unless the person's inability to provide for basic needs is so extreme that the person is a danger to self. A person held before a hearing is on a precommitment hold or in precommitment detention. ORS 426.070; ORS 426.228; ORS 426.231; ORS 426.232; ORS 426.233.

If a person is held in custody on a precommitment hold, he or she cannot be held in jail unless he or she is charged with a crime or is a serious danger to hospital staff or property. ORS 426.140. The person may be held in a hospital or a non-hospital facility. A non-hospital facility is a facility approved by the Mental Health and Developmental Disability Services Division (MHDDSD) to provide adequate security, psychiatric, nursing and other services. ORS 426.005(e).

A person on a precommitment hold has the right to be held in a mental health facility providing care, custody and treatment required for mental and physical health and safety. In other words, the person can only be held in a place with staff trained to provide mental health treatment. ORS 426.072(2)(a); ORS 426.228.

LENGTH OF TIME A PERSON CAN BE HELD BEFORE A HEARING

A person cannot be held in custody on a precommitment hold longer than five working days without a court hearing. If five working days pass and there is no court hearing, a person is free to leave the hospital unless he or she has asked to postpone the hearing or has agreed to be hospitalized voluntarily under a diversion program. In other words, a person cannot be held longer than five working days unless a judge says so. ORS 426.095.

RIGHTS OF A PERSON IN CUSTODY ON A PRECOMMITMENT HOLD

- A person shall not undergo electroshock therapy or unduly hazardous treatment. ORS 426.072(2)(c).
- A person shall receive treatment that is up to community standards. ORS 426.072(2)(c).
- A person can be given medication only if the person agrees (informed consent) or if necessary to protect life or safety. OAR 309-114-000 -- OAR 309-114-0025
- The treating doctor must approve any use of restraints. ORS 426.072(2)(d).
- A person must be given an oral and written warning that whatever he or she

does or says in the hospital may be used as evidence in his or her court commitment hearing. The civil commitment court does not recognize doctor/patient confidentiality for a person being held for a civil commitment hearing. In other words, anything a person says to staff or the doctors can be told to the judge at the hearing. ORS 426.072(3)

- A person has a right to have an attorney. An attorney will be appointed or a person can contact his or her own attorney. ORS 426.100(3).
- A person and his or her attorney have the right to ask for a postponement of the hearing. If the judge finds good cause, the judge may order postponement of the hearing for no more than five working days. The judge may order the person to remain in custody. ORS 426.095(2)(c).
- The attorney representing the state and/ or the person's guardian also may ask for a postponement for five working days. In this case, if the judge finds good cause, the judge can postpone the hearing but cannot continue to hold the person in custody. ORS 426.095(2)(c).
- If the CMHP director, the attorney and individual agree, a person may be certified for a 14-day diversion program. In this case, the hearing is postponed and may never occur. ORS 426.237.

WHAT HAPPENS WHEN A CIVIL COMMITMENT PETITION HAS BEEN FILED?

After the petition for civil commitment has been filed, the following may happen: (1) the petition may be dismissed without a hearing; (2) if the person is being held on a precommitment hold and the petition is dismissed, the person must be released; (3) the person may be found eligible for a 14 day diversion program; and/ or (4) the person may have a civil commitment hearing.

14-DAY DIVERSION PROGRAM

A person on a precommitment hold may be certified for a 14-day period of intensive treatment. This 14-day period commonly is called "diversion". The word "diversion" is not used in the statute, but it is used in the Oregon Administrative Rules.

If the CMHP director believes a person is mentally ill and if there is a placement that can give the person necessary and sufficient treatment, the director can certify the person for the 14 day treatment period. The certification includes a statement of the treatment the person will receive. The director must make this certification no later than three days after the person was put on the hold. As soon as the court receives this certification, the court must appoint an attorney or notify the person's attorney if he or she already has one.

The attorney must review the certification with the person within 24 hours of when the certificate was delivered to the court. A person can be held for the 14-day treatment program only if the person and the attorney agree.

If a person initially agrees to the 14-day program and later changes his or her mind, then the person can ask for a hearing. A hearing will be held within five working days. If a person refuses treatment, the CMHP director can ask for a hearing and it will be held within five working days.

During the 14 days, a person may be transferred from a hospital to a non-hospital facility or transferred from a non-hospital facility to a hospital. A person may not be given electroshock therapy or unduly hazardous treatment.

A person may be discharged at any time during the 14 days. A person may agree to voluntary treatment and have the case dismissed. If a person is still being held

involuntarily after 14 days, a hearing must be held. ORS 426.237(1)(b); ORS 426.237(2).

THE CIVIL COMMITMENT HEARING

If a hearing is held, it can take place in the courthouse or the place where the person is being held. If the hearing is at the courthouse, the person will be taken to the courthouse for the hearing. Usually a police or sheriff's officer drives the person to court.

A judge will preside over the hearing. The person who is alleged to be mentally ill, his or her attorney, the attorney representing the state and the mental health examiners will also be present. Mental health examiners are doctors or other persons certified by the state to make examinations at commitment proceedings. The judge will appoint a mental health examiner for the hearing. If requested, the judge will appoint a second examiner also. ORS 426.110.

Additionally, the investigator and witnesses may be at the hearing. A civil commitment is an open proceeding, so family, friends and others can attend the hearing. Witnesses may be asked to wait outside the courtroom while others are testifying so they will not be affected by what others have said.

WHAT HAPPENS AT THE HEARING

- Witnesses testify. The attorney for the allegedly mentally ill person, the attorney for the state, the mental health examiner and the judge may ask them questions. The attorney for the state will call witnesses to testify about why the person is mentally ill, dangerous to self or others or unable to provide for basic needs. A person alleged to be mentally ill also has the right to call witnesses to testify. ORS 426.095(3); ORS 426.100(1)(d).
- The mental health examiners usually ask questions of the person alleged to be mentally ill and they will give the judge written opinions about the person's mental condition. ORS 426.120.
- The person alleged to be mentally ill or his or her attorney may cross-examine the witnesses, the mental health examiners and the investigators. ORS 426.095(3)(c).
- The person alleged to be mentally ill can testify and can have witnesses testify for him or her. The attorney for the state can cross-examine any of these witnesses.
- The attorneys should make statements to the judge about why the person should or should not be committed.
- After hearing all the evidence and reading the conclusions of the mental health examiners, the judge must make a decision whether the person should be committed.
- A postponement may be requested by the person alleged to be mentally ill, as described on page 4, under "Rights Of A Person In Custody On A Precommitment Hold".

WHAT THE JUDGE CAN DO

The judge decides whether the person is mentally ill. In civil commitment, mentally ill means having a mental disorder and being dangerous to self or others or unable to care for basic needs or meeting the expanded criteria regarding prior hospitalization.

If the judge finds the person is not mentally ill, the judge must release the person

and dismiss the case. ORS 426.130(1)(a).

If the judge finds by clear and convincing evidence that the person is mentally ill (having a mental disorder and dangerous to self or others or unable to care for basic needs), then the judge can do one of the following actions listed below. The standard of “clear and convincing evidence” means that the truth of the facts asserted must be “highly probable”.

- ◆ Release the person if the judge finds the person is willing and able to participate in treatment on a voluntary basis and the judge finds the person probably will do so. ORS 426.130(1)(b)(A).
- ◆ Conditionally release the person to the custody of a friend or relative. ORS 426.130(1)(B); ORS 426.125.
- ◆ Order the person committed to the Mental Health and Developmental Disability Services Division (MHDDSD) for treatment for no more than 180 days. ORS 426.130(1)(b)(C); ORS 426.130(2). MHDDSD may place the person in a hospital or other facility. MHDDSD also may place the person on “outpatient commitment”, meaning the person will be treated outside of a hospital setting. ORS 426.130(1)(b)(C)(ii).

WHAT HAPPENS TO THE PERSON AFTER THE HEARING

If the court discharges a person, the person is free to leave and do whatever he or she wants to do.

If the person is conditionally released, the person is released to the custody of a friend or relative with certain conditions the judge says the person has to follow. These conditions may include seeing a mental health worker or taking medication. The friend or relative is supposed to tell the court if the person does not follow these conditions. The conditions stay in effect for the period the judge says, but no longer than 180 days. ORS 426.125.

If a person is committed on an outpatient basis, the person will be released under the supervision of the Community Mental Health Program (CMHP). The CMHP will place conditions on the release. If the person does not follow these conditions, the CMHP may tell the court. The conditions stay in effect for the period the judge says, but no longer than 180 days. ORS 426.127.

WHAT HAPPENS IF A PERSON DOES NOT FOLLOW THE CONDITIONS OF THE RELEASE OR OUTPATIENT COMMITMENT

If a person is released on conditional release or on outpatient commitment and the judge is told that the person has broken a condition, the judge may have a hearing to see if the person has broken the conditions. The person has the right to an attorney and the other rights granted a person at the civil commitment hearing. The person can be held in custody before the hearing. If the person is held in custody, the hearing must be within five working days of when the person went into custody. ORS 426.275.

If the judge finds that the person has broken a condition, the judge can: continue the placement with the same or different conditions, or order the person to be returned to the custody of MHDDSD for involuntary care and treatment.

LENGTH OF A CIVIL COMMITMENT

A commitment can last no longer than 180 days. A person can be released from the hospital at any time before 180 days passes if the treating doctor or director of the facility believes the person no longer is mentally ill. ORS 426.292. The hospital cannot keep a person for longer than 180 days unless the person agrees to stay or is recommitted in another process. ORS 426.292.

TRIAL VISITS

If a person is committed and goes to a hospital or other facility, MHDDSD can agree with the CMHP director to release a person on a trial visit. On a trial visit, a person is released to the community with certain conditions. Often the conditions include requirements that the person take certain medications or attend specific therapy sessions.

If a person on a trial visit breaks the conditions of the trial visit, he or she may be brought before the judge for a hearing. The judge may send the person back to the hospital or other facility or may continue the trial visit, as is or with additional conditions. The person has the same rights as the person who is charged with violating the conditions of an outpatient commitment or conditional release. ORS 426.273.

RECOMMITMENTS

If a person stays in the hospital or facility for the 180 days and the state still thinks the person needs to be there, the state can try to recommit the person. Before the 180 day commitment runs out, the hospital will give the person papers asking if he or she agrees to stay. If the person wants to leave the hospital, he or she must protest recommitment by signing a protest form or telling the hospital staff. The person has 14 days from when he or she gets the papers to do this. If the person does not protest, he or she may be recommitted automatically for up to 180 days.

If the person protests recommitment, the hospital may not keep him or her unless at the hearing the judge decides he or she needs to stay. For purposes of the court hearing, the person has a right to:

- Be represented by an attorney or have an attorney appointed if the person cannot afford one.
- Have the hearing postponed to prepare for the hearing or to find an attorney.
- Have a doctor or other qualified person who is not on the staff of the hospital examine the person's mental condition and report the results to the judge.

ORS 426.095; ORS 426.303; ORS 426.307.

APPEALS OF CIVIL COMMITMENTS

A person has the right to appeal the judge's decision. An appeal is a legal way to challenge the judge's decision. Appeals usually take longer than 180 days to complete. If the commitment is reversed, the person probably will not get out of the hospital sooner but other rights may be preserved.

A person should contact his or her commitment hearing attorney about appealing. Appeal papers must be filed within 30 days of the judge's decision. If

a person cannot afford to hire an attorney to handle the appeal, one will be appointed. ORS 426.135.

HOW LEGAL RIGHTS ARE AFFECTED BY COMMITMENT

In general, most legal rights are not affected by civil commitment. A person who is committed

retains all legal and civil rights, including the right to vote and make contracts unless a court has found the person incompetent. ORS 426.385.

Some specific rights can be limited as a result of civil commitment:

- **Firearms** - Persons who have been committed are forbidden from owning, buying, or possessing firearms. ORS 426.130(1)(d); ORS 166.250. (If a person, who has been committed, wants to be able to own, buy or possess a firearm, then that person may attempt to have this restriction waived by following the required court procedures. These procedures are stated in ORS 166.274. The person needs to show by clear and convincing evidence that the person does not pose a threat to the safety of the public or the person.)
- **Future commitments** - If a person is committed twice within the past three years, he or she can be committed more easily in the future. ORS 426.495.
- **Driving** - Commitment can affect a person's ability to get or keep a driver's license. If a person has a mental disability or disease that prevents the person from exercising reasonable and ordinary control over a motor vehicle, the person cannot be licensed. ORS 807.090; ORS 807.700; ORS 809.410(16).

OTHER INFORMATION ABOUT CIVIL COMMITMENTS

Who pays for it? The cost of hospitalization commitment may be billed to the individual. This bill will be sent to the person's insurer if he or she has insurance. If a person does not have insurance or enough money to pay, the government will pay the bill.

Can a person sue if someone falsely accuses him or her of being mentally ill?

Anyone can file a lawsuit, but a person cannot win a suit against someone for accusing him or her of being mentally ill or for taking part in the commitment if that person acted in good faith, on probable cause and without malice. ORS 426.280(1).

Can a guardian, friend or relative be sued for actions of the person while released to the custody of the guardian, friend or relative? As long as the guardian, friend or relative acts in good faith and without malice, he or she cannot be held liable for another person's actions. ORS 426.280(7).

Copies of the commitment record. A person can request a transcript of what the witnesses said in court, but there is a fee for this.

Confidentiality. All treatment records are confidential. A person who is held in custody either pending a commitment proceeding or while committed or recommitted may consent to disclosure of information that would otherwise be confidential. If a person authorizes disclosure and a family member or any other person designated by the person requests information, then the facility where the person is being held must provide the family member or designee information according to House Bill 2398 (2001). The required information includes: the

person's diagnosis; the person's prognosis; the prescribed medications as well as side effects; the person's progress; information about the civil commitment process; where and when the person maybe visited. The fact that a person was committed is not confidential but is usually only revealed in special circumstances such as when police check to see if a person is prohibited from purchasing a firearm.

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