COMMITMENT UNDER ORS CHAPTER 427

OAR 411-320-0040(9)

"Civil commitment services must be provided in accordance with ORS 427.215 to 427.306."

Need for commitment
ORS 427.215

"A person with an intellectual disability is in need of commitment for residential care, treatment and training if the person is either:

1. Dangerous to self or others; or
2. Unable to provide for the person's basic personal needs and not receiving care as is necessary for the health, safety or habilitation of the person."

Notice to court of need for commitment ORS 427.235

- Any two persons may notify the court that a person within the county has an intellectual disability and is in need of commitment for residential care, treatment and training.
- Such notice shall be in writing and sworn to before an officer qualified to administer an oath and shall set forth the facts sufficient to show the need for investigation.

Notice to court of need for commitment ORS 427.235

- The circuit court shall forward notice to the [CDDP] director in the county if it finds the notice sufficient to show the need for investigation.
- The director or the designee of the director shall immediately investigate to determine whether the person has an intellectual disability and is in need of commitment for residential care, treatment and training.

CDDP investigation
ORS 427.235

- Any investigation conducted by the [CDDP or designee] . . . Shall . . .
  - *Interview or examination of the person alleged to have an intellectual disability;*
  - *Include a diagnostic evaluation;*
  - *Determine if any alternatives to commitment are available;*
  - *Recommend to the court whether the person is incapacitated and in need of a guardian or conservator.*

CDDP investigation
ORS 427.235

- The investigation report shall be submitted to the court within 30 days of receipt of notice from the court.
  - *A copy of the investigation report and diagnostic evaluation, if any, shall also be made available to the [DHS] and to the person alleged to have an intellectual disability and, if the person is a minor or incapacitated, to the parents or guardian of the person as soon as possible after its completion but in any case prior to a hearing held under ORS 427.245.*
- Investigator or psychologist cannot be held civilly liable for conducting the investigation or performing the diagnostic evaluation.

CDDP investigation
ORS 427.235

- During an investigation, the investigator may obtain information from a treating physician with a release of information on file or by a court order, on a person suspected of having an intellectual disability

Notice to individual
ORS 427.265

- **Notice**. The court shall advise the person of the reason for being brought before the court, the nature of the proceedings and the possible results of the proceedings. The court shall also advise the person of the right to subpoena witnesses and to suitable legal counsel possessing skills and experience commensurate with the nature of the allegations and complexity of the case during the proceedings

Legal representative -- hearing and rights
ORS 427.265

- **Counsel**. If the person does not have funds with which to retain suitable legal counsel, the court shall appoint such legal counsel to represent the person. If the person does not request legal counsel, the legal guardian, relative or friend may request the assistance of legal counsel on behalf of the person. If no request for legal counsel is made, the court shall appoint suitable legal counsel.
- **Payment for counsel**. If the person is unable to afford legal counsel, the court, if the matter is before a county or justice court, or the public defense services executive director, if the matter is before the circuit court, shall determine and allow, as provided in ORS 135.055, the reasonable expenses of the person and compensation for legal counsel. The expenses and compensation so allowed by a county court shall be paid by the county of residence of the person. The expenses and compensation determined by the public defense services executive director shall be paid by the public defense services executive director from funds available for the purpose. In all cases legal counsel shall be present at the hearing and may examine all witnesses offering testimony, and otherwise represent the person.

Detention prior to hearing
ORS 427.255

- If the court finds that there is probable cause to believe that the failure to take into custody pending an investigation or hearing a person alleged to have an intellectual disability and be in need of commitment for residential care, treatment and training would pose an imminent and serious danger to the person or to others, the court may issue a warrant of detention to either the community developmental disabilities program director or the sheriff of the county directing that the director, the sheriff or the designee of the director or sheriff take the person into custody and produce the person at the time and place stated in the warrant.
- At the time the person is taken into custody, the custodian shall advise the person or, if the person is incapacitated or a minor, the parents or guardian of the person of the person's right to counsel, to have legal counsel appointed if the person is unable to afford legal counsel, and, if requested, to have legal counsel appointed immediately.

Detention prior to hearing
ORS 427.255

- A person taken into custody . . . shall be provided all care, custody, evaluation and treatment required for the mental and physical health and safety of the person and the director of the facility retaining custody shall report any care, custody, evaluation or treatment provided the person to the court as required by ORS 427.280. Any diagnostic evaluation performed on such person shall be consistent with Department of Human Services rules and ORS 427.105.
- Any prescription or administration of drugs shall be the sole responsibility of the treating physician. The person shall have the right to the least hazardous treatment procedures while in custody, and the treating physician shall be notified immediately of the use of any mechanical restraints on the person. A note of each use of mechanical restraint and the reasons therefor shall be made a part of the person’s clinical record over the signature of the treating physician.

427 commitment requires a diagnosis of intellectual disability

- Intellectual is defined in 427.005.
- "Intellectual disability" means significantly sub average general intellectual functioning, defined as intelligence quotients under 70 as measured by a qualified professional and existing concurrently with significant impairment in adaptive behavior, that is manifested before the individual is 18 years of age.
    - An individual with intelligence quotients of 70 through 75 may be considered to have an intellectual disability if there is also significant impairment in adaptive behavior, as diagnosed and measured by a qualified professional.
    - The impairment in adaptive behavior must be directly related to the intellectual disability.
    - Intellectual disability is synonymous with mental retardation.
- "Intellectual functioning" means functioning as assessed by one or more of the individually administered general intelligence tests developed for the purpose.

Diagnostic evaluation
ORS 427.105

"Pursuant to rules of the Department of Human Services, a diagnostic evaluation conducted to determine eligibility for developmental disability services may include, but is not limited to, the following:

a) A social history;

b) A psychological evaluation, including an appropriate individual test of intellectual capacity, an academic achievement test, a social development assessment and an adaptive behavior assessment; and

c) A medical evaluation including, if practicable, prenatal, natal, early postnatal and other past and family history."

"The diagnostic evaluation shall also attempt to determine the existence of a developmental disability, such as an intellectual disability, epilepsy, cerebral palsy or autism, and specific learning disorders and to outline the most appropriate services for the treatment and training of the person, whether those services are immediately available or not."

Report of diagnostic evaluation ORS 427.270

- The evaluation shall be:
  - *Submitted in writing to the court*
  - *Performed within the previous year*
  - *Evaluation results introduced in court in lieu of repetition of those components by the examining facility.*
  - *If ID exists and the person is in need of commitment for residential care, treatment and training, the report shall include a recommendation as to the type of treatment or training facility most suitable for the person*
  - *Include if the person would:*
    - cooperate with voluntary treatment or training and
    - whether the person would benefit either from voluntary treatment or training or
    - from appointment of a legal guardian or conservator.
- The individual, their guardian or council, can ask for another evaluator to be appointed but the court may not appoint more than one additional physician or psychologist to complete an examination.

Fees of persons appointed by court to perform diagnostic evaluations
ORS 427.275

- *Costs of an evaluation – paid by CDDP (using Admin Exam/729 Prior Auth)*
- Witnesses subpoenaed to give testimony shall receive the same fees as are paid in criminal cases and are subject to compulsory attendance in the same manner as provided in ORS 136.567 to 136.603. The attendance of out-of-state witnesses may be secured in the same manner as provided in ORS 136.623 to 136.637.
- The party who subpoenas the witness or requests the court to subpoena the witness is responsible for payment of the cost of the subpoena and payment for the attendance of the witness at a hearing.
- When the witness has been subpoenaed on behalf of a person who is represented by appointed counsel, the fees and costs allowed for that witness shall be paid pursuant to ORS 135.055 (Compensation and expenses of appointed counsel.

Hearing
ORS 427.245

- *If appropriate, the court will deem a hearing is necessary and an individual will be able to appear in court. If they are detained, (warrant of detention) a hearing will occur within seven judicial days.*
- If found a reasonable belief of ID exists a citation will be issued (e.g.: States specific reason for need for commitment and rights of the individual)
- Certified copy of citation provided to individual/legal guardian by CDDP prior to hearing, advise of purpose and possible consequences of hearing
- Person/legal guardian provided an opportunity to consult with counsel

Witnesses required at hearing ORS 427.285

- Evaluator submits report in writing to the court, following DHS rules and ORS 427.105
  - *Shall include opinion on if person would voluntarily cooperate with treatment, training, or benefit from it*
- Upon request, the court shall appoint one additional examination to be submitted in writing to the court; no more than one physician and one psychologist exam may occur

Determination by court of need for commitment ORS 427.290

If in the opinion of the court the person has, by clear and convincing evidence, an intellectual disability and is in need of commitment for residential care, treatment and training, the court may order as follows:

1. Dismissal if person is consenting, willing and able to voluntarily participate in training/treatment
2. If a relative, a friend or legal guardian of the person requests that the relative, friend or legal guardian be allowed to care for the person for a period of one year in a place satisfactory to the court and shows that the relative, friend or legal guardian is able to care for the person and that there are adequate financial resources available for the care of the person, the court may commit the person and order that the person be conditionally released and placed in the care and custody of the relative, friend or legal guardian. The order may be revoked and the person committed to the Department of Human Services for the balance of the year whenever, in the opinion of the court, it is in the best interest of the person.
3. If in the opinion of the court voluntary treatment and training or conditional release is not in the best interest of the person, the court may order the commitment of the person to the department for care, treatment or training. The commitment shall be for a period not to exceed one year with provisions for continuing commitment pursuant to ORS 427.235 to 427.290.
4. If in the opinion of the court the person may be incapacitated, the court may appoint a legal guardian or conservator pursuant to ORS chapter 125. The appointment of a guardian or conservator shall be a separate order from the order of commitment.

Disclosure of record of proceeding
ORS 427.293

- Commitment information has protection under statute
- While commitment information may be available the details are protected
- Refer to county council, statute and your agency policy on releasing any information about commitment, or information used during the process

Appeal of commitment order ORS 427.295

- An individual may appeal and have counsel appointed if they are financially eligible, with payments determined and paid by public defense if appeal is in appellate court

Assignment to appropriate facility ORS 427.300

- **DHS authority**. DHS may, at its discretion, direct any person with an intellectual disability who has been committed under ORS 427.290 to the facility best able to treat and train the person. The authority of the department on such matters shall be final.
- **DHS may delegate**. The department, pursuant to its rules, may delegate to a CDDP director the responsibility for assignment of persons with intellectual disabilities to suitable facilities or transfer between such facilities under conditions that the department may define.

Assignment to appropriate facility ORS 427.300

- **Transfer**. At any time, for good cause and in the best interest of the person, the department may decide to transfer the person from one facility to another or discharge the person as no longer in need of residential care, treatment or training. *See specific statute as need arises and consult with county counsel.*

Confinement of committed persons with intellectual disabilities in least restrictive setting. ORS 427.306

- *An individual who is alleged to have an intellectual disability and in need of commitment, who is not incarcerated on criminal charges may not be held in a facility where those charged with crimes are incarcerated. (*A person, not incarcerated upon a criminal charge, who has been alleged or adjudged to have an intellectual disability and to be in need of commitment for residential care, treatment and training, may not be confined in any prison, jail or other enclosure where those charged with a crime or a violation of a municipal ordinance are incarcerated.)
- *An individual undergoing the 427 civil commitment process, who is not incarcerated on criminal charges, may not be confined without an attendant in charge (maybe not needed? This is pretty clear…*A person alleged or adjudged to have an intellectual disability and to be in need of commitment for residential care, treatment and training, who is not incarcerated on a criminal charge, may not be confined without an attendant in charge of the person.)
- *(don't need simple language?)* If the person is not confined in a hospital or a facility, the CDDP Director or sheriff having the person in custody shall select

Case Scenarios

- Fire starter
- Perpetrator
- Victims of abuse, neglect or self-neglect
  - *Self-Neglect: 70 # adult w/ID and anorexia, living w/meth use, multiple police interactions/raids, ER visits & hospitalization due to low weight, unable to care for self & at risk of dying due to inability to make choices for life, health and safety due to ID*

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