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D R A F T

SUMMARY

Digest: The Act changes when people in custody have to get treatment without their consent. (Flesch Readability Score: 65.7).

Provides that local correctional facilities may initiate a process for a court order for the involuntary administration of medication.

Requires the state mental hospital to provide certain information to a local correctional facility when a defendant is discharged from the hospital to the facility. Directs local correctional facilities to maintain a supply of prescription medication.

Specifies a process for local correctional facilities and the Oregon State Hospital for the involuntary administration of significant procedures for good cause.

A BILL FOR AN ACT

Relating to medical treatment for persons in custody; creating new provisions; and amending ORS 161.372.

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

SECTION 1. ORS 161.372 is amended to read:

161.372. (1)**(a)** If, at any point while the defendant is in the custody of the superintendent of the state mental hospital after commitment under ORS 161.370, the superintendent determines that medication is the recommended treatment in order to allow the defendant to gain or regain fitness to proceed, the defendant is refusing to take the recommended medication and the defendant cannot be involuntarily medicated without a court order, the superintendent shall submit a report of the determination to the court. **The superintendent may not submit a report under this paragraph for the purposes of maintaining the defendant's fitness to proceed.**

(b) If, at any point while the defendant is in the custody of a local correctional facility after gaining or regaining fitness to proceed following a commitment under

ORS 161.370, the sheriff or other person overseeing the local correctional facility determines that medication is the recommended treatment in order to allow the defendant to maintain fitness to proceed, the defendant is refusing to take the recommended medication and the defendant cannot be involuntarily medicated without a court order, the sheriff or other person overseeing the local correctional facility shall submit a report of the determination to the court.

(2) The report described in subsection (1) of this section shall include:

(a) Information regarding the benefits and side effects of each recommended medication;

(b) Information concerning the defendant's refusal to take the recommended medication; and

(c)**(A)** The likelihood that the medication will allow the defendant to gain or regain fitness to proceed **in the state mental hospital; or**

(B) The likelihood that the medication will allow the defendant to maintain fitness to proceed in the local correctional facility.

(3)(a) Based upon the report described in subsection (1) of this section, the prosecuting attorney may file a motion requesting that the court authorize the involuntary administration of medication to the defendant. The prosecuting attorney shall provide a copy of the motion to the defendant.

(b) The court shall hold a hearing on the motion if either the prosecuting attorney or the defendant requests a hearing. At the hearing, the court shall determine whether to issue an order authorizing the involuntary administration of medication to the defendant.

(c) In order to enter an order authorizing the involuntary administration of medication to the defendant, the court must find that:

(A) Involuntary medication of the defendant is not otherwise authorized by law;

(B) There are important state interests at stake in the prosecution of the defendant;

(C) The recommended medication will significantly further the important state interests because:

(i) It is substantially likely that the medication will render the defendant fit to proceed; and

(ii) It is substantially unlikely that the medication will cause side effects that will impair the fairness of the criminal proceeding;

(D) Involuntary administration of medication is necessary to further the important state interests because there are no alternative, less intrusive treatments that would produce the same result as the medication; and

(E) Administration of the medication is medically appropriate because it is in the defendant's best medical interest in light of the defendant's medical condition.

(d) A court order authorizing the involuntary administration of medication to a defendant under this section must specify:

(A) The specific medication or type of medications permitted to be administered to the defendant;

(B) The maximum dosage that may be administered; [*and*]

[*(C) The duration of time that the state mental hospital may involuntarily medicate the defendant before reporting back to the court on the defendant's mental condition and progress toward gaining or regaining fitness to proceed. The duration of time shall not exceed the maximum period of the defendant's commitment to the state mental hospital, or 180 calendar days, whichever is shorter.*]

(C) That the court order expires 180 calendar days after the date of the order, when the defendant is discharged from custody or when the court terminates the order, whichever occurs first; and

(D) That a local correctional facility shall comply with an unexpired court order issued under this section notwithstanding the fact that the superintendent of the state mental hospital filed the report described in subsection (1)(a) or (4)(b)(A) of this section.

(4)(a) An order authorizing the involuntary administration of medication issued under this section may be renewed as described in this subsection.

(b)(A) At least 30 days before a court order issued under this section expires, if the superintendent of the state mental hospital determines that medication continues to be the recommended treatment in order to allow the defendant to gain or regain fitness to proceed, the defendant is continuing to refuse to take the recommended medication and the defendant cannot be involuntarily medicated without a court order, the superintendent shall submit a report of the determination to the court; or

(B) At least 30 days before a court order issued under this order expires, if the sheriff or other person overseeing the local correctional facility determines that medication continues to be the recommended treatment in order to allow the defendant to maintain fitness to proceed, the defendant is continuing to refuse to take the recommended medication and the defendant cannot be involuntarily medicated without a court order, the sheriff or other person overseeing the local correctional facility shall submit a report of the determination to the court.

(c) The reports described in paragraph (b) of this subsection must contain the information described in subsection (2) of this section.

(d) Based on the report described in paragraph (b) of this subsection, the prosecuting attorney may file a motion requesting the court to renew the order. The court shall follow the procedures described in subsection (3) of this section when determining whether to renew the order.

[*(4)(a)*] **(5)(a)** Reports, motions and orders concerning the involuntary medication of a defendant under this section are confidential and may be made available only:

(A) To the court, prosecuting attorney, defense attorney, agent of the prosecuting or defense attorney, defendant, community mental health program director or designee, state mental hospital and any facility in which the defendant is housed**, including a local correctional facility**; or

(B) As ordered by a court.

(b) Any facility in which a defendant is housed may not use a report or document described in paragraph (a) of this subsection to support a disciplinary action against the defendant.

(c) Nothing in this subsection prohibits the prosecuting attorney, defense attorney or agent of the prosecuting or defense attorney from discussing the contents of a report or document described in paragraph (a) of this subsection with witnesses or victims as otherwise permitted by law.

(6) The facility that has custody of the defendant is responsible for costs associated with providing the defendant's treatment, administering medications and providing clinical oversight.

SECTION 2. (1) When a criminal defendant is discharged from the state mental

hospital to a local correctional facility, the state mental hospital shall provide the local correctional facility with the following:

(a) Information about the defendant's diagnosis;

(b) Information about the specific medication or type of medications and dosages prescribed to the defendant;

(c) Information about the defendant's willingness to take the medication;

(d) A copy of any orders issued under ORS 161.372 or section 3 of this 2027 Act or any administrative orders authorizing involuntary medication or other medical treatment that are valid at the time of discharge;

(e) A copy of the state mental hospital's discharge plan; and

(f) A two-week supply of the defendant's medications.

(2) A local correctional facility shall maintain a supply of prescription medication to allow for the maintenance of treatment of defendants upon discharge from the state mental hospital to the facility.

(3) A local correctional facility shall comply with any current court order issued pursuant to ORS 161.372 authorizing the involuntary administration of medication. If there is no current court order, or the current order is imminently expiring, the sheriff or other person overseeing the facility shall consider filing a report under ORS 161.372 or initiating the process for an administrative order to involuntarily administer a significant procedure to the defendant for good cause under section 3 of this 2027 Act.

(4) Except for the two-week supply of the defendant's medications provided by the state mental hospital upon discharge, the local correctional facility is responsible for costs associated with providing the defendant's treatment, administering medications and providing clinical oversight.

(5) As used in this section, "local correctional facility" has the meaning given that term in ORS 169.005.

SECTION 3. (1) As used in this section:

(a) "Facility" means a local correctional facility as defined in ORS 169.005 or the Oregon State Hospital.

(b) "Impartial decision maker" means a licensed physician or nurse practitioner

who is not currently involved in the individual's care, or an administrative law judge.

(c) "Individual" means a person who:

(A) Is at least 18 years of age;

(B) Has been determined by a court to lack fitness to proceed under ORS 161.370 or found guilty except for insanity under ORS 161.325; and

(C) Does not have the capacity to consent to, refuse or withhold or withdraw consent to a significant procedure.

(d) "Routine medical procedure" means a procedure customarily administered by facility medical staff under circumstances involving little or no risk of causing injury to a patient.

(e) "Significant procedure" means a diagnostic or treatment modality, and all significant procedures of a similar class, that poses a material risk of substantial pain or harm to an individual, including but not limited to psychotropic medication and electro-convulsive therapy, and does not include routine medical procedures.

(f) "Significant procedures of a similar class" means a diagnostic or treatment modality that presents substantially similar material risks as a significant procedure recommended by an individual's treatment team and is generally considered in current clinical practice to be a substitute treatment, or to belong to the same class of medications, as the recommended significant procedure.

(2)(a) When the person in charge of a facility determines there is good cause to seek the involuntary administration of a significant procedure to an individual, the person shall follow the procedures set forth in this subsection in order to issue an administrative order authorizing the involuntary administration of the significant procedure.

(b) The person in charge of the facility shall first consult with and obtain approval to proceed with the order from an independent examining practitioner, who must be a licensed psychiatrist or licensed psychiatric nurse practitioner not currently involved in the individual's care. Upon receiving the approval, in order to proceed with issuing the order, the person shall issue a written notice to the individual indicating an intent to involuntarily administer a significant procedure.

(c) After the notice described in paragraph (b) of this subsection is served, the

practitioner involved in the individual's care and the independent examining practitioner must each make the following findings in writing to support the finding of good cause to involuntarily administer the significant procedure to the individual:

(A) The individual lacks the capacity to consent to, refuse or withhold or withdraw informed consent to the recommended significant procedure;

(B) The recommended significant procedure is likely to restore or prevent deterioration of the individual's mental or physical health, alleviate extreme suffering or save or extend the individual's life;

(C) The recommended significant procedure is the most appropriate treatment for the individual's condition according to current clinical practice, and less intrusive procedures have been considered;

(D) The facility has made a conscientious and documented effort to obtain informed consent from the individual; and

(E) For an individual who is detained pending trial:

(i) The significant procedure is not recommended solely for the purpose of restoring the individual's fitness to proceed; and

(ii) The significant procedure is recommended because of the individual's dangerousness or to treat the individual's grave disability.

(d) An administrative order issued under this section must:

(A) Identify the significant procedures authorized for involuntary administration; and

(B) Include the written findings supporting the determination of good cause.

(e) Upon receiving the written findings from both practitioners, the person in charge of the facility shall serve a copy of the findings to the individual. The person shall also serve upon the individual written notice of the individual's right to request a hearing before an impartial decision maker to review the issuance of the administrative order, with instructions for requesting the hearing.

(f) The individual may request a hearing before an impartial decision maker to review the issuance of an administrative order under this section. The hearing process must:

(A) Provide the individual with an opportunity to contest the findings supporting

the administrative order;

(B) Provide the individual with an opportunity to be represented by counsel;

(C) Permit the individual to present evidence and respond to evidence supporting the administrative order; and

(D) Require the impartial decision maker to issue written findings affirming, modifying or rescinding the administrative order.

(g) An administrative order issued under this section expires 180 days after the date of issuance, or when the individual is no longer in custody, whichever occurs first.

(h) Good cause for issuing an administrative order under this section may be further defined by Oregon Health Authority in administrative rule or by the local correctional facility in its policies.

(3) A facility shall maintain written records of all consultations, approvals, determinations and orders described in this section.

(4) When an individual is transferred between facilities and there is a valid administrative order described in this section from the originating facility, the receiving facility may continue treating the individual under that administrative order for no longer than seven days after the date of admission to the receiving facility. The receiving facility may then seek its own administrative order described in this section.
