

Enrolled
House Bill 2309

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Joint Interim Committee on Judiciary for Advisory Committee on Privacy of Medical Records and Information)

CHAPTER

AN ACT

Relating to health information; amending ORS 125.150, 427.235, 676.260 and 676.280; and declaring an emergency.

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

SECTION 1. ORS 125.150 is amended to read:

125.150. (1) The court shall appoint a visitor upon the filing of a petition in a protective proceeding that seeks the appointment of a guardian for an adult respondent or temporary fiduciary who will exercise the powers of a guardian for an adult respondent. The court may appoint a visitor in any other protective proceeding.

(2) A visitor may be an officer, employee or special appointee of the court. The person appointed may not have any personal interest in the proceedings. The person appointed must have training or expertise adequate to allow the person to appropriately evaluate the functional capacity and needs of a respondent or protected person. The court shall provide a copy of the petition and other filings in the proceedings that may be of assistance to the visitor.

(3) A visitor appointed by the court under this section shall interview a person nominated or appointed as fiduciary and the respondent or protected person at the place where the respondent or protected person is located.

(4) Subject to any law relating to confidentiality, the visitor may interview any physician or psychologist who has examined the respondent or protected person, the person or officer of the institution having the care, custody or control of the respondent or protected person and any other person who may have relevant information.

(5) If requested by a visitor under subsection (4) of this section, a physician or psychologist who has examined the respondent or protected person may, with patient authorization or in response to a court order in accordance with ORCP 44 or a subpoena under ORCP 55, provide any relevant information the physician or psychologist has regarding the respondent or protected person.

SECTION 2. ORS 676.260 is amended to read:

676.260. (1) If a health care provider who is providing medical care in a health care facility immediately after a motor vehicle accident to a person reasonably believed to be the operator of a motor vehicle involved in the accident, becomes aware, as a result of any blood test performed in the course of that treatment, that the person's blood alcohol level meets or exceeds the percent specified in ORS 813.010, the health care provider [may] **must** notify, [as soon as is reasonably possible,] **within five calendar days**, any law enforcement officer or agency.

(2) The notice shall consist of the name of the person being treated, the blood alcohol level disclosed by the test and the date and time of the administration of the test.

(3) Nothing contained in ORS 40.225 to 40.295 affects the *[authority to report]* **requirement to provide notice** imposed by this section, and the health care provider shall not be considered to have breached any duty under ORS 40.225 to 40.295 owed to the person about whom the *[report]* **notice** is made. *[Reporting or failing to report is not a violation of any ethical or moral duty.]*

SECTION 3. ORS 676.280 is amended to read:

676.280. No action or administrative proceeding shall be brought against anyone participating in good faith in *[the making of a report]* **providing notice** pursuant to ORS 676.260 and any person participating in *[making the report]* **providing notice** shall have immunity from any liability, civil or criminal, and from any professional disciplinary action, that might otherwise be incurred or imposed with respect to *[making of the report]* **the notification or the content of the notice**. Any such participant shall have the same immunity with respect to participating in any judicial proceeding resulting from the *[report]* **notice**.

SECTION 4. ORS 427.235 is amended to read:

427.235. (1) Any two persons may notify the judge of the court having probate jurisdiction for the county or the circuit court, if it is not the probate court but its jurisdiction has been extended to include commitment of the mentally retarded under ORS 3.275, that a person within the county is a mentally retarded person 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. The circuit court shall forward notice to the community mental health and developmental disabilities program 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 is in fact a mentally retarded person. However, if the petition for commitment is from a state training center, the duties of the community mental health and developmental disabilities program director under ORS 427.235 to 427.270, 427.280 and 427.285 shall be the responsibility of the superintendent of the state training center or the designee of the superintendent.

(2) Any person who acts in good faith shall not be held civilly liable for making of the notification under subsection (1) of this section.

(3) Any investigation conducted by the community mental health and developmental disabilities program director or the designee of the director under subsection (1) of this section shall commence with an interview or examination of the allegedly mentally retarded person, where possible, in the home of the allegedly mentally retarded person or other place familiar to the allegedly mentally retarded person. Further investigation if warranted shall include a diagnostic evaluation as defined in ORS 427.105 and may also include interviews with the allegedly mentally retarded person's relatives, neighbors, teachers and physician. The investigation shall also determine if any alternatives to commitment are available. The investigator shall also determine and recommend to the court whether the person is incapacitated and in need of a guardian or conservator.

(4) 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 Developmental Disability Diagnosis and Evaluation Service and to the allegedly mentally retarded person and, where the allegedly mentally retarded person is a minor or incapacitated, to the parents of the allegedly mentally retarded person or guardian as soon as possible after its completion but in any case prior to a hearing held under ORS 427.245.

(5) Any person conducting an evaluation or investigation under this section shall in no way be held civilly liable for conducting the investigation or performing the diagnostic evaluation.

(6) If requested by a person conducting an investigation under this section, a physician who has examined the allegedly mentally retarded person may, with patient authorization or in response to a court order, provide any relevant information the physician has regarding the allegedly mentally retarded person.

SECTION 5. This 2003 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2003 Act takes effect on its passage.

Passed by House March 17, 2003

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Chief Clerk of House

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Speaker of House

Passed by Senate April 16, 2003

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President of Senate

Received by Governor:

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Approved:

.....M,....., 2003

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Governor

Filed in Office of Secretary of State:

.....M,....., 2003

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Secretary of State