

A-Engrossed
Senate Bill 320

Ordered by the Senate April 5
Including Senate Amendments dated April 5

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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.

Establishes standards and procedures for determining whether youth against whom delinquency petition is filed is unfit to proceed.

A BILL FOR AN ACT

1
2 Relating to fitness of youth to proceed on delinquency petition.

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

4 **SECTION 1. (1) A youth may be found unfit to proceed in a proceeding initiated by a**
5 **petition alleging jurisdiction under ORS 419C.005 if, as a result of mental disease or defect**
6 **or another condition, the youth is unable:**

7 (a) **To understand the nature of the proceedings against the youth;**

8 (b) **To assist and cooperate with the counsel for the youth; or**

9 (c) **To participate in the defense of the youth.**

10 (2) **A court may not base a finding of unfitness to proceed solely on any of the following**
11 **factors:**

12 (a) **The current inability of the youth to remember the acts alleged in the petition;**

13 (b) **Evidence that the youth committed the acts alleged in the petition while the youth**
14 **was under the influence of intoxicants or medication; or**

15 (c) **The age of the youth.**

16 **SECTION 2. (1) The issue of fitness to proceed under section 1 of this 2007 Act shall be**
17 **raised by written motion filed by a party, or by motion of the court, and may be raised at**
18 **any time after the filing of the petition. When the issue of fitness has been raised, the court**
19 **shall stay the proceedings on the petition and order the youth to participate in an evaluation**
20 **to determine the youth's fitness to proceed if:**

21 (a) **There is reason to doubt the youth's fitness to proceed; and**

22 (b) **There is probable cause to believe that the factual allegations contained in the peti-**
23 **tion are true.**

24 (2)(a) **An evaluation under this section must be conducted by a psychiatrist, a licensed**
25 **psychologist or a licensed clinical social worker. The moving party shall notify the court and**
26 **other parties of the date, time and location of the evaluation and the name of the evaluator.**
27 **A party or the court may submit written information to the evaluator for consideration.**

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 When written information is submitted to the evaluator that has not been provided to the
2 court or opposing party, the party submitting the written information to the evaluator shall
3 provide the written information to the court and opposing party.

4 (b) Upon motion of the court or upon a motion filed by the youth if the youth is deter-
5 mined by the court to be financially eligible under the policies, procedures, standards and
6 guidelines of the Public Defense Services Commission, a county or justice court shall order
7 the county to pay, and a circuit court shall order the public defense services executive di-
8 rector to pay from funds available for the purpose:

9 (A) A reasonable fee if the evaluation of the youth is conducted by a psychiatrist, psy-
10 chologist or clinical social worker in private practice; and

11 (B) All costs, including transportation of the youth, if the evaluation is conducted by a
12 psychiatrist, psychologist or clinical social worker in the employ of the Department of Hu-
13 man Services or a community mental health and developmental disabilities program estab-
14 lished under ORS 430.610 to 430.670.

15 (c) When an evaluation is ordered at the request of or with the acquiescence of a youth
16 who is determined not to be financially eligible under the policies, procedures, standards and
17 guidelines of the Public Defense Services Commission, the evaluation shall be performed at
18 the youth's expense.

19 (d) When an evaluation is ordered at the request of the prosecution, the county shall pay
20 for the expense of the evaluation.

21 (e) The youth may not be removed from the youth's current placement for an evaluation
22 unless:

23 (A) Reasonable efforts are made to conduct the evaluation at the youth's current place-
24 ment;

25 (B) The court finds the removal necessary for the evaluation; and

26 (C) The court finds the removal is in the best interests of the youth.

27 (f) If the court concludes that the youth must be removed from the youth's current
28 placement, the court must make written findings that the department has made reasonable
29 efforts or, if the Indian Child Welfare Act applies, active efforts to prevent the need for re-
30 moval of the youth from the youth's current placement and to make it possible for the youth
31 to safely return to the youth's current placement upon completion of the evaluation. If the
32 court finds that the department has not provided services, but that reasonable services
33 would not have eliminated the need for removal, the court shall find that the department
34 has made reasonable efforts or, if the Indian Child Welfare Act applies, active efforts to
35 prevent the need for removal. The court shall include in the written findings a brief de-
36 scription of what preventive and reunification efforts were made by the department.

37 (g) Unless ordered by the court upon a finding of good cause, a removal under this sub-
38 section may not exceed 10 judicial days.

39 (3)(a) A report on the youth's fitness to proceed shall be filed with the court in triplicate
40 with the clerk of the court. The clerk of the court shall cause copies to be delivered to the
41 district attorney and to counsel for the youth. The report shall include:

42 (A) A description of the nature of the evaluation.

43 (B) A list of information that the evaluator has reviewed as part of the evaluation.

44 (C) The evaluator's opinion as to the youth's fitness to proceed as described in section 1
45 of this 2007 Act, including whether the youth suffers from a mental disease or defect or

1 **other condition.**

2 **(D) If the evaluator is of the opinion that the youth is unfit to proceed, the evaluator's**
3 **opinion regarding whether there is a substantial probability that the youth is able to gain**
4 **or regain fitness to proceed and, if able to gain or regain fitness to proceed, the specific**
5 **restorative services that are needed and the anticipated duration of those services.**

6 **(b) The report may not include statements made by the youth about the facts alleged in**
7 **the petition.**

8 **(c) Statements by the youth made during the evaluation to the evaluator or to persons**
9 **involved in the evaluation about the facts alleged in the petition are not admissible against**
10 **the youth in any proceeding relating to the petition.**

11 **(d) The report shall be filed with the court within 30 days of the request for the evalu-**
12 **ation unless extended by written court order for good cause for no more than an additional**
13 **30 days.**

14 **(e) Notwithstanding ORS 419A.255, the department shall be provided copies of the evalu-**
15 **ation and petition upon request.**

16 **(4)(a) A party objecting to any part of the report filed under subsection (3) of this section**
17 **shall file written objection within 14 days of receipt of the report. The objection must state**
18 **whether the party seeks another evaluation. If a party files an objection, the court shall hold**
19 **a hearing within 21 days of the filing of the objection. The court may postpone the hearing**
20 **for good cause shown.**

21 **(b) If no objection is filed and the court adopts the findings and recommendations of the**
22 **report, the court shall issue a written order within 10 days after the expiration of the period**
23 **described in paragraph (a) of this subsection.**

24 **(c) If no objection is filed and the court does not adopt the findings or recommendations**
25 **of the report, the court shall hold a hearing within 21 days after the period described in**
26 **paragraph (a) of this subsection. The court may postpone the hearing for good cause shown.**

27 **(d) When a hearing is held under this subsection, the moving party must establish that**
28 **the youth is unfit to proceed by a preponderance of competent evidence. The court shall**
29 **make a determination and issue a written order within 10 days after the hearing. The order**
30 **must set forth the findings on the youth's fitness to proceed.**

31 **(5)(a) If the court finds that the youth is fit to proceed, the court shall vacate the stay.**

32 **(b) If the court finds that the youth is unfit to proceed and unable to benefit from**
33 **restorative services, the court shall enter the findings and shall:**

34 **(A) Immediately dismiss the petition without prejudice; or**

35 **(B) If necessary for planning or instituting an alternative proceeding, dismiss the petition**
36 **effective within five days.**

37 **(c)(A) If the court finds the youth is unfit to proceed and the youth is able to benefit**
38 **from restorative services, the court shall continue the order staying the proceedings. The**
39 **court shall forward the order to the department. The department shall implement restorative**
40 **services within 30 days of receipt of the order. The department shall send a report to the**
41 **court, with copies to the parties, no later than 90 days after receipt of the order. The report**
42 **shall describe the nature and duration of services provided, shall indicate whether the youth**
43 **has been restored or is capable of restoration and shall recommend whether services should**
44 **be continued and, if so, the type and duration of the services.**

45 **(B) Upon recommendation of the department or the request of a party or on motion of**

1 the court, the court may hold a review hearing at any time. After a hearing, or if no hearing
2 is requested or recommended, within 14 days of the receipt of the initial report required by
3 this paragraph, or of any subsequent report under this paragraph, the court shall determine
4 whether the youth is fit to proceed.

5 (C) If the court concludes under subparagraph (B) of this paragraph that the youth is fit
6 to proceed, the court shall vacate the stay.

7 (D) If the court concludes under subparagraph (B) of this paragraph that the youth re-
8 mains unfit to proceed and the youth is unable to benefit from restorative services, the court
9 shall proceed as provided in paragraph (b) of this subsection.

10 (E) If the court concludes that the youth remains unfit to proceed, but that the youth
11 is able to benefit from restorative services, the court shall order that restorative services
12 be continued. The court shall order the department to send a report described in this para-
13 graph to the court, with copies to the parties, within a specified time, not to exceed 90 days.

14 (d) The youth may not be removed from the youth's current placement for restorative
15 services under this subsection unless the court makes written findings that:

16 (A) The department has made reasonable efforts to administer restorative services at the
17 youth's current placement;

18 (B) Removal is necessary for restorative services; and

19 (C) Removal is in the best interests of the youth.

20 (e) If the court concludes that the youth must be removed from the youth's current
21 placement, the court must make written findings that the department has made reasonable
22 efforts or, if the Indian Child Welfare Act applies, active efforts to prevent the need for re-
23 moval of the youth from the youth's current placement and to make it possible for the youth
24 to safely return to the youth's current placement upon completion of the restorative ser-
25 vices. If the court finds that the department has not provided services, but that reasonable
26 services would not have eliminated the need for removal, the court shall find that the de-
27 partment has made reasonable efforts or, if the Indian Child Welfare Act applies, active ef-
28 forts to prevent the need for removal. The court shall include in the written findings a brief
29 description of what preventive and reunification efforts were made by the department.

30 (f) If the court determines that a youth who has received restorative services remains
31 unfit to proceed, the youth shall be discharged within a period of time that is reasonable for
32 making a determination concerning whether the youth may gain or regain capacity. Re-
33 gardless of the number of acts in the petition that the youth is alleged to have committed,
34 in no event may the youth be continued in restorative services for longer than whichever
35 of the following, measured from the date the petition was filed, is shorter:

36 (A) Three years; or

37 (B) A period of time equal to the maximum commitment the court could have imposed
38 if the petition had been adjudicated.

39 (g) If the court orders placement for restorative services, the court may specify the type
40 of care, supervision, security or services to be provided by the department to any youth
41 placed in the department's custody and to the parents or guardians of the youth, but the
42 department has the responsibility for the actual planning and provision of the care, super-
43 vision, security or services of the youth. The department may place the youth in any facility
44 authorized to accept the youth and provide the necessary service or care.

45 (6) The department shall:

1 **(a) Develop training standards for persons providing evaluation services under this sec-**
2 **tion;**

3 **(b) Develop guidelines for conducting evaluations; and**

4 **(c) Provide courts with a current list of qualified evaluators from which an evaluator**
5 **may be selected. Neither the parties nor the court is required to choose an evaluator from**
6 **the list provided by the department.**

7 **(7) The department shall adopt rules necessary to carry out the provisions of subsection**
8 **(6) of this section.**

9 **SECTION 3.** **(1) The Department of Human Services shall administer a program to pro-**
10 **vide restorative services to youths who:**

11 **(a) Are determined unfit to proceed under section 2 of this 2007 Act; and**

12 **(b) Present a substantial probability of gaining or regaining fitness to proceed in the**
13 **foreseeable future.**

14 **(2) The department shall develop qualification standards for persons who provide**
15 **restorative services under this section. The department shall solicit qualified applicants to**
16 **provide restorative services under this section.**

17 **(3) If a court orders restorative services under section 2 of this 2007 Act, the department**
18 **shall arrange or provide for restorative services upon receipt of the order. The department**
19 **shall make a reasonable effort to provide restorative services to the youth as ordered by the**
20 **court.**

21 _____