

House Bill 3220

Sponsored by COMMITTEE ON JUDICIARY (at the request of Oregon Law Commission)

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 **as introduced**.

Establishes standards and procedures for determining fitness of youth to proceed on delinquency petition.

Requires Department of Human Services to develop guidelines for conduct of evaluation of fitness of youth to proceed and to administer program to provide restorative services to youths who are determined unfit to proceed and who present substantial probability of gaining or regaining fitness to proceed.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to fitness of youth to proceed on delinquency petition; and declaring an emergency.

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

4 **SECTION 1. (1) A court may find that a youth is unfit to proceed in a proceeding initiated**
5 **by a petition alleging jurisdiction under ORS 419C.005 if, as a result of mental disease or de-**
6 **fect 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 find that a youth is unfit to proceed in a proceeding solely because:**

11 (a) **Of the age of the youth;**

12 (b) **Of the current inability of the youth to remember the acts alleged in the petition; or**

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

15 (3) **The issue of fitness to proceed must be raised by written motion filed by a party to**
16 **the proceeding or by the court on its own motion. The motion may be made at any time after**
17 **the filing of the petition. The court shall stay the proceedings on the petition after the mo-**
18 **tion is made and may order the youth to participate in an evaluation under section 2 of this**
19 **2009 Act to determine the youth's fitness to proceed if the court determines that:**

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

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

23 (4) **The fact that the youth is unfit to proceed does not preclude any objection through**
24 **counsel and without the personal participation of the youth on the grounds that the petition**
25 **is insufficient, that the statute of limitations has run, that double jeopardy principles apply**
26 **or upon any other ground at the discretion of the court that the court deems susceptible of**
27 **fair determination prior to trial.**

28 **SECTION 2. (1) An evaluation ordered under section 1 of this 2009 Act must be conducted**

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 by a psychiatrist, a licensed psychologist or a licensed clinical social worker. If an evaluation
 2 is requested, the party at whose request the evaluation was ordered shall notify the court
 3 and other parties of the date, time and location of the evaluation and the name of the eval-
 4 uator chosen by the party. A party or the court may submit written information to the
 5 evaluator for consideration. When written information that has not been provided to the
 6 court or an opposing party is submitted to the evaluator, the party submitting the written
 7 information to the evaluator shall provide the written information to the court and the op-
 8 posing party.

9 (2)(a) Upon motion of the youth, or upon the court's own motion, a court shall determine
 10 whether the youth is financially eligible under the policies, procedures, standards and
 11 guidelines of the Public Defense Services Commission.

12 (b) If a county court or justice court determines that the youth is financially eligible, the
 13 court shall order the county to pay the fees and costs described in subsection (3) of this
 14 section from funds available for that purpose.

15 (c) If a circuit court determines that the youth is financially eligible, the court shall or-
 16 der the public defense services executive director to pay the fees and costs described in
 17 subsection (3) of this section from funds available for that purpose.

18 (3) If a court determines that a youth is financially eligible under subsection (2) of this
 19 section, the court shall order that:

20 (a) A reasonable fee be paid to a psychiatrist, licensed psychologist or licensed clinical
 21 social worker in private practice who conducts the evaluation; and

22 (b) All costs, including transportation of the youth, be paid if the evaluation is conducted
 23 by a psychiatrist, licensed psychologist or licensed clinical social worker employed by the
 24 Department of Human Services or is conducted by a community mental health and develop-
 25 mental disabilities program established under ORS 430.610 to 430.695.

26 (4) If an evaluation is ordered under section 1 of this 2009 Act at the request of or with
 27 the acquiescence of a youth, and the youth is determined not to be financially eligible under
 28 subsection (2) of this section, the evaluation shall be performed at the youth's expense.

29 (5) If an evaluation is ordered under section 1 of this 2009 Act at the request of the dis-
 30 trict attorney or juvenile department, the county shall pay for the expense of the evaluation.

31 (6) After a motion is made by the court or the youth under section 1 (3) of this 2009 Act,
 32 the state shall have the right to seek an independent evaluation at its own expense.

33 **SECTION 3.** (1) The Department of Human Services shall:

34 (a) Develop training standards for psychiatrists, licensed psychologists and licensed clin-
 35 ical social workers conducting evaluations under section 2 of this 2009 Act;

36 (b) Develop guidelines for the conduct of evaluations; and

37 (c) Provide courts with a current list of qualified evaluators from which an evaluator
 38 may be selected. Neither the parties nor the court is required to choose an evaluator from
 39 the list provided by the department, provided that the evaluator chosen is otherwise quali-
 40 fied.

41 (2) The department shall adopt rules necessary to implement this section.

42 **SECTION 4.** (1) A youth may not be removed from the youth's current placement for the
 43 purpose of an evaluation under section 2 of this 2009 Act unless the court finds:

44 (a) That removal is necessary for the evaluation;

45 (b) That removal is in the best interest of the youth; and

1 (c) If the Department of Human Services has custody of the youth, that:

2 (A) The department made reasonable efforts to prevent or eliminate the need for removal
3 and make it possible for the youth to safely return to the youth's current placement; or

4 (B) Reasonable efforts have not been made by the department but reasonable efforts
5 would not have eliminated the need for removal under paragraphs (a) and (b) of this sub-
6 section.

7 (2) A youth may not be removed from the youth's current placement to a hospital or
8 residential facility solely for the purpose of an evaluation.

9 (3) If the court finds that the youth must be removed from the youth's current place-
10 ment for the purpose of an evaluation under section 2 of this 2009 Act, the court must make
11 written findings that the requirements of this section have been met. The court shall include
12 in the written findings a brief description of the department's preventive and reunification
13 efforts.

14 (4) Unless ordered by the court upon a finding of good cause, a removal under this sec-
15 tion may not exceed 10 days.

16 **SECTION 5.** (1)(a) A person conducting an evaluation under section 2 of this 2009 Act
17 must file with the clerk of the court the original report on the evaluation and two copies of
18 the report. The clerk of the court shall cause the copies to be delivered to the district at-
19 torney and to counsel for the youth.

20 (b) The report must be filed with the clerk of the court within 30 days after the order for
21 evaluation is issued, unless the deadline is extended by written court order for good cause.
22 An extension under this paragraph may not exceed 30 days.

23 (2) A report filed under this section must include:

24 (a) A description of the evaluation;

25 (b) A list of information that the evaluator reviewed as part of the evaluation;

26 (c) The evaluator's opinion as to whether the youth is unfit to proceed as described in
27 section 1 of this 2009 Act, including the evaluator's opinion as to whether the youth suffers
28 from a mental disease or defect or another condition; and

29 (d) If the evaluator is of the opinion that the youth is unfit to proceed, the evaluator's
30 opinion regarding whether there is a substantial probability that the youth will gain or regain
31 fitness to proceed and, if there is a substantial probability that the youth will gain or regain
32 fitness to proceed, the specific restorative services under section 10 of this 2009 Act that are
33 needed and the anticipated duration of those services.

34 (3) A report filed under this section may not include statements made by the youth about
35 the acts alleged in the petition alleging jurisdiction under ORS 419C.005.

36 (4) Statements made to an evaluator by a youth during an evaluation, or made to persons
37 involved in the evaluation, about the acts alleged in the petition are not admissible against
38 the youth in any proceeding relating to the petition.

39 (5) Notwithstanding ORS 419A.255, the clerk of the court shall provide the Department
40 of Human Services with copies of the petition and the report on the evaluation upon request
41 of the department.

42 **SECTION 6.** (1) Any party to a proceeding initiated by a petition alleging jurisdiction
43 under ORS 419C.005 may file written objection to an evaluation report filed under section 5
44 of this 2009 Act within 14 days after the report is received by the party. The objection must
45 state whether the party seeks another evaluation. If a party files an objection, the court

1 shall hold a hearing within 21 days after the objection is filed with the court.

2 (2) If a written objection is not filed under this section, and the court does not adopt the
 3 evaluator's opinion that the youth is fit to proceed, the court shall hold a hearing within 21
 4 days after the report is filed with the court. The court may postpone the hearing for good
 5 cause shown.

6 (3) The court shall decide whether a youth is unfit to proceed by a preponderance of the
 7 competent evidence introduced at a hearing under this section. The order must set forth
 8 findings on the youth's fitness to proceed.

9 **SECTION 7.** (1) If a written objection is not filed under section 6 of this 2009 Act and the
 10 court adopts the evaluator's opinion that the youth is fit to proceed, the court shall issue a
 11 written order within 10 days after the report is filed with the court. The order must set forth
 12 the findings on the youth's fitness to proceed.

13 (2) If a written objection is filed under section 6 of this 2009 Act, the court shall make
 14 a decision and issue a written order within 10 days after the hearing. The order must set
 15 forth the findings on the youth's fitness to proceed.

16 **SECTION 8.** (1) If the court finds that the youth is fit to proceed, the court shall vacate
 17 the stay under section 1 of this 2009 Act.

18 (2) If the court finds that the youth is unfit to proceed and that there is not a substantial
 19 probability that the youth will gain or regain fitness to proceed in the foreseeable future if
 20 provided restorative services under section 10 of this 2009 Act, the court shall:

21 (a) Immediately enter a judgment that dismisses the petition alleging jurisdiction under
 22 ORS 419C.005 without prejudice; or

23 (b) If necessary for planning or instituting an alternative proceeding, then not more than
 24 five days after the findings are made enter a judgment that dismisses the petition without
 25 prejudice.

26 (3)(a) If the court finds that the youth is unfit to proceed and that there is a substantial
 27 probability that the youth will gain or regain fitness to proceed in the foreseeable future if
 28 provided restorative services under section 10 of this 2009 Act, the court shall continue the
 29 order under section 1 of this 2009 Act staying the proceedings and order that the youth re-
 30 ceive restorative services under section 10 of this 2009 Act.

31 (b) The court shall forward the order for restorative services to the Department of Hu-
 32 man Services.

33 **SECTION 9.** (1) The Department of Human Services shall administer a program to pro-
 34 vide restorative services under section 10 of this 2009 Act to youths who:

35 (a) Are determined unfit to proceed as described in section 1 of this 2009 Act; and

36 (b) Present a substantial probability of gaining or regaining fitness to proceed in the
 37 foreseeable future.

38 (2) The department shall develop qualifications and standards for persons who provide
 39 restorative services under section 10 of this 2009 Act and shall solicit qualified applicants to
 40 provide those services.

41 **SECTION 10.** (1) The Department of Human Services shall arrange for the provision of
 42 or begin providing restorative services within 30 days after receiving a court order under
 43 section 8 (3) of this 2009 Act. The department shall send a report to the court, with copies
 44 to the parties to the proceeding initiated by a petition alleging jurisdiction under ORS
 45 419C.005, no later than 90 days after receipt of the order. The report must describe the na-

1 ture and duration of restorative services provided, indicate whether the youth is fit to pro-
 2 ceed or presents a substantial probability of gaining or regaining fitness to proceed and
 3 recommend whether restorative services should be continued and, if so, the type and dura-
 4 tion of the services.

5 (2) Within 14 days after receiving a report under subsection (1) of this section, the court
 6 shall determine the youth's fitness to proceed.

7 (3) Upon the recommendation of the department, the request of a party or the court's
 8 own motion, the court may hold a review hearing concerning the evaluation of the youth's
 9 fitness to proceed at any time during which restorative services are provided pursuant to
 10 an order under section 8 (3) of this 2009 Act. After a review hearing, the court shall deter-
 11 mine the youth's fitness to proceed.

12 (4) If the court finds that a youth is fit to proceed, the court shall vacate the stay under
 13 section 1 of this 2009 Act.

14 (5) If the court finds that the youth remains unfit to proceed and that there is not a
 15 substantial probability that the youth will gain or regain fitness to proceed in the foreseeable
 16 future, the court shall:

17 (a) Immediately enter a judgment that dismisses the petition alleging jurisdiction under
 18 ORS 419C.005 without prejudice; or

19 (b) If necessary for planning or instituting an alternative proceeding, then not more than
 20 five days after the findings are made enter a judgment that dismisses the petition without
 21 prejudice.

22 (6) If the court finds under subsection (2) or (3) of this section that the youth remains
 23 unfit to proceed, but that the youth presents a substantial probability of gaining or regaining
 24 fitness to proceed, the court shall order that restorative services be continued. The court
 25 shall order the department to send a report to the court, with copies to the parties, within
 26 a specified time, not to exceed 90 days from the time the order is filed.

27 (7) If the court finds under subsection (2) or (3) of this section that a youth remains unfit
 28 to proceed, the youth shall be discharged within a period of time that is reasonable for
 29 making a determination whether the youth presents a substantial probability of gaining or
 30 regaining fitness to proceed. Regardless of the number of acts the petition alleging jurisdic-
 31 tion under ORS 419C.005 alleges that the youth committed, the youth may not be continued
 32 in restorative services for longer than whichever of the following, measured from the date
 33 the petition is filed, is shorter:

34 (a) Three years; or

35 (b) The period of time that is equal to the maximum commitment the court could have
 36 imposed if the petition had been adjudicated.

37 (8) If the court orders placement for restorative services, the court may specify the type
 38 of care, supervision, security or services to be provided by the department to any youth
 39 placed in the department's custody and to the parents or guardians of the youth. The de-
 40 partment may place the youth in any facility authorized to accept the youth and provide the
 41 necessary services and care.

42 **SECTION 11.** A youth may not be removed from the youth's current placement solely for
 43 the purpose of receiving restorative services pursuant to a court order under section 8 of
 44 this 2009 Act unless the court finds:

45 (1) That removal is necessary to provide restorative services under section 10 of this 2009

1 **Act;**

2 **(2) That removal is in the best interest of the youth; and**

3 **(3) If the Department of Human Services has custody of the youth, that:**

4 **(a) The department made reasonable efforts to prevent or eliminate the need for removal**
5 **and make it possible for the youth to safely return to the youth's current placement; or**

6 **(b) Reasonable efforts have not been made by the department but reasonable efforts**
7 **would not have eliminated the need for removal under subsections (1) and (2) of this section.**

8 **SECTION 12. Sections 1, 2, 4 to 8, 10 and 11 of this 2009 Act become operative on January**
9 **1, 2010.**

10 **SECTION 13. This 2009 Act being necessary for the immediate preservation of the public**
11 **peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect**
12 **on its passage.**

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