

REVENUE: No revenue impact

FISCAL: Fiscal statement issued

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<b>Action:</b>	Do Pass as Amended and Be Printed Engrossed and Be Referred to the Committee on Ways and Means
<b>Vote:</b>	5 - 0 - 0
<b>Yeas:</b>	Bonamici, Dingfelder, Kruse, Whitsett, Prozanski
<b>Nays:</b>	0
<b>Exc.:</b>	0
<b>Prepared By:</b>	Bill Taylor, Counsel
<b>Meeting Dates:</b>	2/23, 3/23, 3/28

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**WHAT THE MEASURE DOES:** Establishes the standards and procedures for determining if a youth in a delinquency matter is unfit to proceed as a result of a mental disease or defect and consequently is unable to: (1) Understand the nature of the proceedings against the youth; (2) Assist and cooperate with counsel; or, (3) Participate in his or her own defense. Prohibits a court from basing a finding of unfitness to proceed solely on: (a) The current inability of the youth to remember the acts alleged in the petition; (b) Evidence that the youth committed the acts alleged in the petition while the youth was under the influence of intoxicants or medication; or, (c) The age of the youth. Requires that the youth be evaluated by a psychiatrist, psychologist or clinical social worker if the court has reason to doubt the youth's fitness to proceed and there is probable cause to believe the factual allegations concerning the delinquency matters are true. Requires the report on the youth's fitness to proceed to contain the evaluator's opinion of the youth's fitness to proceed and, if the youth is not fit to proceed, whether there is a substantial probability that the youth will be fit to proceed. Requires the court to dismiss the juvenile proceedings if the court finds the youth is unfit to proceed and unable to benefit from restorative services. Requires the court to order the Department of Human Services (DHS) to provide services intended to restore the youth's mental health if the court finds that the youth will benefit from these services. Prohibits the youth from being committed for a period longer than: (1) Three years; or (2) A period of time equal to the maximum commitment the court could have imposed if the petition had been adjudicated. Requires DHS to administer the restorative services program. Requires a court to find that DHS has made reasonable efforts if the providing services would not have eliminated the need for removal of the youth from his or her current placement. Requires a court to make written findings that DHS has made reasonable efforts to prevent the need for removal. Allows a pre-trial detention for an additional 28 days under certain limited circumstances.

**ISSUES DISCUSSED:**

- Constitutional right to assert aid-and-assist defense
- Courts are requiring services for juveniles based on the adult aid-and-assist statutes
- No juvenile statutory system

**EFFECT OF COMMITTEE AMENDMENT:** Clarifies that the Oregon Health Authority must consult with DHS before placing a youth in a mental health treatment facility. Clarifies that the party to the proceeding who raises the issue of fitness to proceed shall file the evaluation report with the court. Sets forth under what circumstances a youth may be removed from the youth's current placement and given restorative services. Allows a pre-trial detention for an additional 28 days under certain limited circumstances.

**BACKGROUND:** A criminal defendant must be competent to stand trial. *Dusky v. The United States*, 362 U.S. 402 (1960). This includes being able to aid and assist in one's own defense. A juvenile charged with what would otherwise be a crime, if the youth were an adult, is adjudicated before a juvenile court. As with an adult, the juvenile also faces the possibility of incarceration and loss of liberty. However, unlike an adult, Oregon law has no process or procedure for determining if a juvenile is competent and, if not, how the matter is handled.