

# House Bill 2108

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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 **as introduced**.

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

Requires Oregon Health Authority 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 Relating to fitness of youth to proceed on delinquency petition; and declaring an emergency.

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

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

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 2011 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 2011 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 regulated social worker. If an evaluation is  
 2 requested, the party at whose request the evaluation was ordered shall notify the court and  
 3 other parties of the date, time and location of the evaluation and the name of the evaluator  
 4 chosen by the party. A party or the court may submit written information to the evaluator  
 5 for consideration. When written information that has not been provided to the court or an  
 6 opposing party is submitted to the evaluator, the party submitting the written information  
 7 to the evaluator shall provide the written information to the court and the opposing party.

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

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

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

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

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

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

25 (4) If an evaluation is ordered under section 1 of this 2011 Act at the request of or with  
 26 the acquiescence of a youth, and the youth is determined not to be financially eligible under  
 27 subsection (2) of this section, the evaluation shall be performed at the youth's expense.

28 (5) If an evaluation is ordered under section 1 of this 2011 Act at the request of the dis-  
 29 trict attorney or juvenile department, the county shall pay for the expense of the evaluation.

30 (6) After a motion is made by the court or the youth under section 1 (3) of this 2011 Act,  
 31 the state shall have the right to seek an independent evaluation at its own expense.

32 **SECTION 3. (1) The Oregon Health Authority shall:**

33 (a) Develop training standards for psychiatrists, licensed psychologists and regulated so-  
 34 cial workers conducting evaluations under section 2 of this 2011 Act;

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

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

39 (2) The authority shall adopt rules necessary to implement this section.

40 **SECTION 4. (1) A youth may not be removed from the youth's current placement for the**  
 41 **purpose of an evaluation under section 2 of this 2011 Act unless the court finds:**

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

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

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

45 (A) The department made reasonable efforts to prevent or eliminate the need for removal

1 and make it possible for the youth to safely return to the youth's current placement; or

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

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

7 (3) If the court finds that the youth must be removed from the youth's current place-  
 8 ment for the purpose of an evaluation under section 2 of this 2011 Act, the court must make  
 9 written findings that the requirements of this section have been met. The court shall include  
 10 in the written findings a brief description of the department's preventive and reunification  
 11 efforts.

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

14 **SECTION 5.** (1)(a) A person conducting an evaluation under section 2 of this 2011 Act  
 15 must file with the clerk of the court the original report on the evaluation and two copies of  
 16 the report. The clerk of the court shall cause the copies to be delivered to the district at-  
 17 torney and to counsel for the youth.

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

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

22 (a) A description of the evaluation;

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

24 (c) The evaluator's opinion as to whether the youth is unfit to proceed as described in  
 25 section 1 of this 2011 Act, including the evaluator's opinion as to whether the youth suffers  
 26 from a mental disease or defect or another condition; and

27 (d) If the evaluator is of the opinion that the youth is unfit to proceed, the evaluator's  
 28 opinion regarding whether there is a substantial probability that the youth will gain or regain  
 29 fitness to proceed and, if there is a substantial probability that the youth will gain or regain  
 30 fitness to proceed, the specific restorative services under section 10 of this 2011 Act that are  
 31 needed and the anticipated duration of those services.

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

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

37 (5) Notwithstanding ORS 419A.255, the clerk of the court shall provide the Oregon Health  
 38 Authority with copies of the petition and the report on the evaluation upon request of the  
 39 authority.

40 **SECTION 6.** (1) Any party to a proceeding initiated by a petition alleging jurisdiction  
 41 under ORS 419C.005 may file written objection to an evaluation report filed under section 5  
 42 of this 2011 Act within 14 days after the report is received by the party. The objection must  
 43 state whether the party seeks another evaluation. If a party files an objection, the court  
 44 shall hold a hearing within 21 days after the objection is filed with the court.

45 (2) If a written objection is not filed under this section, and the court does not adopt the

1 evaluator's opinion that the youth is fit to proceed, the court shall hold a hearing within 21  
 2 days after the report is filed with the court. The court may postpone the hearing for good  
 3 cause shown.

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

7 **SECTION 7.** (1) If a written objection is not filed under section 6 of this 2011 Act and the  
 8 court adopts the evaluator's opinion that the youth is fit to proceed, the court shall issue a  
 9 written order within 10 days after the report is filed with the court. The order must set forth  
 10 the findings on the youth's fitness to proceed.

11 (2) If a written objection is filed under section 6 of this 2011 Act, the court shall make  
 12 a decision and issue a written order within 10 days after the hearing. The order must set  
 13 forth the findings on the youth's fitness to proceed.

14 **SECTION 8.** (1) If the court finds that the youth is fit to proceed, the court shall vacate  
 15 the stay under section 1 of this 2011 Act.

16 (2) If the court finds that the youth is unfit to proceed and that there is not a substantial  
 17 probability that the youth will gain or regain fitness to proceed in the foreseeable future if  
 18 provided restorative services under section 10 of this 2011 Act, the court shall:

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

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

24 (3)(a) If the court finds that the youth is unfit to proceed and that there is a substantial  
 25 probability that the youth will gain or regain fitness to proceed in the foreseeable future if  
 26 provided restorative services under section 10 of this 2011 Act, the court shall continue the  
 27 order under section 1 of this 2011 Act staying the proceedings and order that the youth re-  
 28 ceive restorative services under section 10 of this 2011 Act.

29 (b) The court shall forward the order for restorative services to the Oregon Health Au-  
 30 thority.

31 **SECTION 9.** (1) The Oregon Health Authority shall administer a program to provide  
 32 restorative services under section 10 of this 2011 Act to youths who:

33 (a) Are determined unfit to proceed as described in section 1 of this 2011 Act; and

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

36 (2) The authority shall develop qualifications and standards for persons who provide  
 37 restorative services under section 10 of this 2011 Act and shall solicit qualified applicants to  
 38 provide those services.

39 **SECTION 10.** (1) The Oregon Health Authority shall arrange for the provision of or begin  
 40 providing restorative services within 30 days after receiving a court order under section 8  
 41 (3) of this 2011 Act. The authority shall send a report to the court, with copies to the parties  
 42 to the proceeding initiated by a petition alleging jurisdiction under ORS 419C.005, no later  
 43 than 90 days after receipt of the order. The report must describe the nature and duration  
 44 of restorative services provided, indicate whether the youth is fit to proceed or presents a  
 45 substantial probability of gaining or regaining fitness to proceed and recommend whether

1 restorative services should be continued and, if so, the type and duration of the services.

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

4 (3) Upon the recommendation of the authority, the request of a party or the court's own  
5 motion, the court may hold a review hearing concerning the evaluation of the youth's fitness  
6 to proceed at any time during which restorative services are provided pursuant to an order  
7 under section 8 (3) of this 2011 Act. After a review hearing, the court shall determine the  
8 youth's fitness to proceed.

9 (4) If the court finds that a youth is fit to proceed, the court shall vacate the stay under  
10 section 1 of this 2011 Act.

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

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

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

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

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

31 (a) Three years; or

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

34 (8) If the court orders placement for restorative services, the court may specify the type  
35 of care, supervision, security or services to be provided by the authority to any youth placed  
36 in the custody of the Department of Human Services and to the parents or guardians of the  
37 youth. The authority may place the youth in any facility authorized to accept the youth and  
38 provide the necessary services and care.

39 **SECTION 11.** A youth may not be removed from the youth's current placement solely for  
40 the purpose of receiving restorative services pursuant to a court order under section 8 of  
41 this 2011 Act unless the court finds:

42 (1) That removal is necessary to provide restorative services under section 10 of this 2011  
43 Act;

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

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

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

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

5       **SECTION 12.** **Sections 1, 2, 4 to 8, 10 and 11 of this 2011 Act become operative on January**  
6 **1, 2012.**

7       **SECTION 13.** **This 2011 Act being necessary for the immediate preservation of the public**  
8 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**  
9 **on its passage.**

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