

## FISCAL IMPACT OF PROPOSED LEGISLATION

Measure: HB 2836

Seventy-Seventh Oregon Legislative Assembly – 2013 Regular Session  
Legislative Fiscal Office

*Only Impacts on Original or Engrossed  
Versions are Considered Official*

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Date: 4/2/2013

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### **Measure Description:**

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

### **Government Unit(s) Affected:**

Oregon Health Authority (OHA), Oregon Judicial Department (OJD), Department of Justice (DOJ), Oregon Youth Authority (OYA), Public Defense Services Commission

### **Local Government Mandate:**

This bill does not affect local governments' service levels or shared revenues sufficient to trigger Section 15, Article XI of the Oregon Constitution.

### **Analysis:**

House Bill 2836 codifies the conditions, standards and procedures for determining if individuals under 18 years of age in a delinquency petition are fit to proceed (able to aid and assist in their defense). The bill [1] outlines procedures for filing in raising the issue of fitness and fitness evaluations; [2] modifies procedures for written objections; [3] specifies that the Oregon Health Authority will consult with the Department of Human Services in the placement of youths undergoing court-ordered placement for restorative services; [4] defines the conditions and procedures for removing a youth from current placement for the purposes of a fitness to proceed evaluation and restorative services; and [4] clarifies conditions for extending the detention of youths undergoing fitness to proceed evaluations and restorative services. Certain sections of the bill become operative on January 1, 2014. The bill declares an emergency and is effective on passage.

Currently, Oregon law has no uniform procedure for determining fitness in juvenile proceedings and does not specify options for the court when a youth is found unfit to proceed. This bill outlines a definition of unfit, and provides the statutory structure and timelines for raising the issue of fitness, obtaining fitness evaluations, challenging evaluations and administering restorative services in cases involving a person who is under 18 years in a delinquency petition. The bill also specifies qualifications for evaluators and reporting requirements for evaluations.

This bill has an expenditure impact on the Oregon Health Authority. The fiscal impact of this bill on the Public Defense Services Commission, Department of Justice, District Attorneys and counties is indeterminate dependent on whether or not this bill would result in an increase in requests for fitness evaluations and/or challenges to fitness evaluations including appeals.

### Oregon Health Authority (OHA)

OHA estimates the total expenditure impact of this bill to be approximately \$869,386 General Fund and 0.75 FTE for the 2013-15 biennium and \$913,139 General Fund and 1.00 FTE for the 2015-17 biennium. This amount includes personal services and contract costs to provide restorative services as detailed below:

The bill requires OHA to:

1. Formalize and administer the fitness to proceed evaluation process including (a) developing training standards for psychiatrists, licensed psychologists and licensed clinical social workers conducting fitness evaluations; (b) developing guidelines for conducting evaluations; and (c) providing courts with a list of qualified evaluators.
2. Oversee a program to provide restorative services to youths who have been determined unfit to proceed and have been determined by the courts to have the potential to gain or regain fitness to proceed in the foreseeable future. OHA is directed to provide or arrange for the provision of restorative services within 30 days after receiving a court order. OHA is required to develop qualifications and standards for persons providing restorative services.

To carry out these provisions, OHA anticipates establishing one Operations Policy Analyst 2 position [0.75 FTE and \$143,352 General Fund for the 18 months of the 2013-15 biennium, and 1.00 FTE and \$178,160 General Fund for the 2015-17 biennium] to coordinate both the evaluation and the restorative services components of this bill.

Restorative services typically consist of educational type services to teach youths about the nature of the alleged offense and the juvenile process. In some instances, restorative services could include medication or other treatment to address a mental health issues. OHA estimates contract cost of the restorative services program to be approximately \$706,250 General Fund for the 2013-15 biennium and \$720,875 for the 2015-17 biennium. This amount is based on the following assumptions: Using the Juvenile Code Revision Work Group review of profiles of youth who passed through the Oregon system in the last two years and statistics from comparable states including Michigan, Connecticut and Virginia, OHA speculates that approximately 40 to 45 youths would require restorative services each year. Again, based on expenditures from comparable states, OHA infers the cost of restorative services to be \$7,500 per year per youth served for contracted time and materials. OHA reports that restorative services are not eligible for federal matching funds because they are not considered treatment services but psycho-educational services for the court process. In current practice, restorative services are not available to youths. Because restorative services are limited to helping a youth regain fitness to proceed in court proceedings, they are not considered mental health treatment medically driven by a diagnosis. Therefore they are not covered under the Oregon Health Plan or Healthy Kids.

Section 10 (8) of the bill states that if the court orders placement for restorative services, the court may specify the type of care, supervision, security or services to be provided by the authority to any youth placed in the custody of the Department of Human Services or to the parents/guardians of the youth. The authority, in consultation with DHS, may place the youth in any facility authorized to accept the youth and provide the necessary services and care. Passage of this bill could result in either a decrease or increase in placement of youths in the secure children/adolescent residential program as mandatory clients. According to OHA, this is the most restrictive and costly level of care with an average monthly rate of \$15,318 per client. Although at this time, the number of youths diverted from this program, or entering this program as a mandatory client, as a result of this bill is indeterminate, note that one additional youth would have a fiscal impact of about \$367,632 (37% General Fund / 63% Federal Funds) per biennium on the OHA budget.

In addition, costs for the actual fitness to proceed evaluations are not included in the OHA portion of the fiscal because in current practice these costs are typically incurred by the Public Defense Services Commission or counties, and the bill specifies that these costs continue to be the responsibility of the Public Defense Services Commission or counties. See analysis below.

#### District Attorneys and Counties

House Bill 2836 has an indeterminate impact on District Attorneys and counties. The bill specifies that if a county court determines that a youth is financially eligible, the county is required to pay all fees and costs associated with the court ordered fitness evaluation. Counties anticipate minimal fiscal impact based on the assumption that county involvement in delinquency petitions as outlined in the bill would be rare. However, the bill also states the county is required to pay all fees and costs associated with the court ordered fitness evaluation if an evaluation is ordered at the request of a district attorney or juvenile

department. In addition, the bill stipulates that after an evaluation is conducted at the request of the youth, the state shall have the right to seek an independent evaluation at its own expense. It is not known whether this bill would result in an increase in requests for fitness evaluations and/or challenges to fitness evaluations.

The bill clarifies conditions for extending the detention of youths undergoing fitness to proceed evaluations and restorative services. If the length of stay in a juvenile detention facility is extended under the amendments to ORS 419C.150 made by section 12 of this bill, the costs of the extended stay will be the responsibility of the county. At this time, the fiscal impact of this provision is indeterminate depending on the number of cases and the amount of time the length of stay is extended in each case, if any. Note that juvenile detention is a very expensive resource, and most counties must contract with another county to obtain them. In rare instances, a bed may not be available at all or only in a distant location, adding transportation and other related costs.

#### Oregon Judicial Department (OJD)

House Bill 2836 has an indeterminate, but anticipated to be absorbable, fiscal impact on the Oregon Judicial Department. This bill requires the circuit court to determine financial eligibility to pay the fees and costs of fitness to proceed evaluations, enter orders for payment if a youth is found financially eligible, and carry out the appeals process. The bill also requires the court to make written findings if a youth must be removed from the youth's current placement for the purpose of an evaluation. These requirements will require modifications of forms and processes, as well as additional training, and may increase workload for staff and judges.

#### Public Defense Services Commission (PDSC)

House Bill 2836 has an indeterminate fiscal impact on PDSC. The bill stipulates that if a circuit court determines that a youth is financially eligible, the public defense services executive director is required to pay all fees and costs associated with the court ordered fitness evaluation. Under current practice, attorneys may request that PDSC approve the expenditure of funds for a fitness to proceed examination (also known as Aid and Assist hearings) as being reasonable and necessary for adequate representation of a youth in a delinquency proceeding. PDSC reports that the Commission is currently expending funds for fitness to proceed examinations in delinquency matters. PDSC estimates the cost for a fitness to proceed evaluation at about \$1,500 per examination. PDSC cannot estimate the number of additional fitness to proceed evaluations, if any, that might result from the enactment of this bill, but the agency anticipates the fiscal impact to be minimal.

#### Department of Justice (DOJ)

House Bill 2836 has a minimal impact on the Department of Justice. DOJ does not expect passage of this bill to result in additional workload. The department anticipates that with passage of this bill, DOJ would provide routine legal advice for OHA in development of rules and contracts necessary to carry out the authority's obligations.

#### Oregon Youth Authority (OYA)

House Bill 2836 has no fiscal impact on the Oregon Youth Authority. The bill specifies that OHA, PDSC and counties have the financial responsibility for fitness to proceed evaluations and restorative services.

**REVENUE:** No revenue impact

**FISCAL:** Fiscal statement issued

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<b>Action:</b>	Do Pass and Be Referred to the Committee on Ways and Means by Prior Reference
<b>Vote:</b>	9 - 0 - 0
<b>Yeas:</b>	Barton, Cameron, Garrett, Hicks, Krieger, Olson, Tomei, Williamson, Barker
<b>Nays:</b>	0
<b>Exc.:</b>	0
<b>Prepared By:</b>	Bill Taylor, Counsel
<b>Meeting Dates:</b>	4/9

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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 court from basing finding of unfitness to proceed solely on: (a) current inability of the youth to remember the acts alleged in the petition; (b) evidence the youth committed acts alleged in the petition while under the influence of intoxicants or medication; or, (c) age of the youth. Requires youth be evaluated by a psychiatrist, psychologist, or clinical social worker if 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 report on the youth's fitness to contain evaluator's opinion of youth's fitness to proceed and, if youth is not fit to proceed, whether there is a substantial probability that youth will regain fitness. Requires court to dismiss juvenile proceedings if court finds youth is unfit to proceed and unable to benefit from restorative services. Requires court to order Department of Human Services (DHS) to provide services intended to restore the youth's mental health if court finds youth will benefit from services. Prohibits youth from being committed for a period longer than: (1) three years; or (2) period of time equal to the maximum commitment the court could have imposed if petition had been adjudicated. Requires DHS to administer restorative services program. Requires court to find that DHS has made reasonable efforts if providing services would not have eliminated need for removal of youth from his or her current placement. Requires court to make written findings that DHS has made reasonable efforts to prevent the need for removal. Allows pre-trial detention for additional 28 days under certain limited circumstances. Clarifies Oregon Health Authority must consult with DHS before placing a youth in a mental health treatment facility. Clarifies party to the proceeding who raises the issue of fitness to proceed shall file evaluation report with court. Sets forth under what circumstances a youth may be removed from the youth's current placement and given restorative services. Allows pre-trial detention for an additional 28 days under certain limited circumstances.

**ISSUES DISCUSSED:**

- Constitutional right to aid and assist in own defense
- Cannot be adjudicated delinquent if a juvenile cannot aid and assist in his or her own defense

**EFFECT OF COMMITTEE AMENDMENT:** No amendment.

**BACKGROUND:** A criminal defendant must be competent to stand trial. *Dusky v. The United States*, 362 U.S. 402 (1960). Competence 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.

# House Bill 2836

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 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  
2 Relating to fitness of youth to proceed on delinquency petition; creating new provisions; amending  
3 ORS 419C.150; and declaring an emergency.

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

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

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

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

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

11 (2) **A court may not find that a youth is unfit to proceed in a proceeding solely because:**

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

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

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

16 (3) **The issue of fitness to proceed must be raised by written motion filed by a party to**  
17 **the proceeding or by the court on its own motion. The motion may be made at any time after**  
18 **the filing of the petition. The court shall stay the proceedings on the petition after the mo-**  
19 **tion is made and may order the youth to participate in an evaluation under section 2 of this**  
20 **2013 Act to determine the youth's fitness to proceed if the court determines that:**

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

**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       **SECTION 2.** (1) An evaluation ordered under section 1 of this 2013 Act must be conducted  
 2 by a psychiatrist, a licensed psychologist or a regulated social worker. If an evaluation is  
 3 requested, the party at whose request the evaluation was ordered shall notify the court and  
 4 other parties of the date, time and location of the evaluation and the name of the evaluator  
 5 chosen by the party. A party or the court may submit written information to the evaluator  
 6 for consideration. When written information that has not been provided to the court or an  
 7 opposing party is submitted to the evaluator, the party submitting the written information  
 8 to the evaluator shall provide the written information to the court and the opposing 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 regulated social  
 21 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 regulated social worker employed by the Depart-  
 24 ment of Human Services or is conducted by a community mental health program or com-  
 25 munity developmental disabilities program established under ORS 430.610 to 430.695.

26       (4) If an evaluation is ordered under section 1 of this 2013 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 2013 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 2013 Act,  
 32 the state shall have the right to seek an independent evaluation at its own expense.

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

34       (a) Develop training standards for psychiatrists, licensed psychologists and regulated so-  
 35 cial workers conducting evaluations under section 2 of this 2013 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 authority, provided that the evaluator chosen is otherwise qualified.

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

41       **SECTION 4.** (1) A youth may not be removed from the youth's current placement for the  
 42 purpose of an evaluation under section 2 of this 2013 Act unless the court finds:

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

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

45       (c) 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 paragraphs (a) and (b) of this sub-  
 5 section.

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

8 (3) If the court finds that the youth must be removed from the youth's current place-  
 9 ment for the purpose of an evaluation under section 2 of this 2013 Act, the court must make  
 10 written findings that the requirements of this section have been met.

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

13 (5) If a youth is removed for the purpose of an evaluation under section 2 of this 2013  
 14 Act, the youth shall be returned to the youth's current placement immediately upon con-  
 15 clusion of the evaluation.

16 **SECTION 5.** (1)(a) If a party to a proceeding under section 1 of this 2013 Act raises the  
 17 issue of fitness to proceed, the party shall file the original report on the evaluation con-  
 18 ducted under section 2 of this 2013 Act with the clerk of the court and deliver copies of the  
 19 report to all parties to the proceeding.

20 (b) If the court raises the issue of fitness to proceed under section 1 of this 2013 Act, the  
 21 person conducting the evaluation under section 2 of this 2013 Act shall file with the clerk  
 22 of the court the original report on the evaluation and two copies of the report. The clerk of  
 23 the court shall deliver the copies to the district attorney and to counsel for the youth.

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

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

28 (a) A description of the evaluation;

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

30 (c) The evaluator's opinion as to whether the youth is unfit to proceed as described in  
 31 section 1 of this 2013 Act, including the evaluator's opinion as to whether the youth suffers  
 32 from a mental disease or defect or another condition; and

33 (d) If the evaluator is of the opinion that the youth is unfit to proceed, the evaluator's  
 34 opinion regarding whether there is a substantial probability that the youth will gain or regain  
 35 fitness to proceed and, if there is a substantial probability that the youth will gain or regain  
 36 fitness to proceed, the specific restorative services under section 10 of this 2013 Act that are  
 37 needed and the anticipated duration of those services.

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

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

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

1       **SECTION 6.** (1) Any party to a proceeding initiated by a petition alleging jurisdiction  
2 under ORS 419C.005 may file written objection to an evaluation report filed under section 5  
3 of this 2013 Act within 14 days after the report is received by the party. The objection must  
4 state whether the party seeks another evaluation. If a party files an objection, the court  
5 shall hold a hearing within 21 days after the objection is filed with the court.

6       (2) If a written objection is not filed under this section, and the court does not adopt the  
7 evaluator's opinion regarding the youth's fitness to proceed, the court shall hold a hearing  
8 within 21 days after the report is filed with the court. The court may postpone the hearing  
9 for good cause shown.

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

13       **SECTION 7.** (1) If a written objection is not filed under section 6 of this 2013 Act and the  
14 court adopts the evaluator's opinion regarding the youth's fitness to proceed, the court shall  
15 issue a written order within 24 days after the report is filed with the court. The order must  
16 set forth the findings on the youth's fitness to proceed.

17       (2) If a hearing is held under section 6 of this 2013 Act, the court shall make a decision  
18 and issue a written order within 10 days after the hearing. The order must set forth the  
19 findings on the youth's fitness to proceed.

20       **SECTION 8.** (1) If the court finds that the youth is fit to proceed, the court shall vacate  
21 the stay under section 1 of this 2013 Act.

22       (2) If the court finds that the youth is unfit to proceed and that there is not a substantial  
23 probability that the youth will gain or regain fitness to proceed in the foreseeable future if  
24 provided restorative services under section 10 of this 2013 Act, the court shall:

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

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

30       (3)(a) If the court finds that the youth is unfit to proceed and that there is a substantial  
31 probability that the youth will gain or regain fitness to proceed in the foreseeable future if  
32 provided restorative services under section 10 of this 2013 Act, the court shall continue the  
33 order under section 1 of this 2013 Act staying the proceedings and order that the youth re-  
34 ceive restorative services under section 10 of this 2013 Act.

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

37       **SECTION 9.** (1) The Oregon Health Authority shall administer a program to provide  
38 restorative services under section 10 of this 2013 Act to youths who:

39       (a) Are determined unfit to proceed as described in section 1 of this 2013 Act; and

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

42       (2) The authority shall develop qualifications and standards for persons who provide  
43 restorative services under section 10 of this 2013 Act and shall solicit qualified applicants to  
44 provide those services.

45       **SECTION 10.** (1) The Oregon Health Authority shall arrange for the provision of or begin



1 providing restorative services within 30 days after receiving a court order under section 8  
2 (3) of this 2013 Act. The authority shall send a report to the court, with copies to the parties  
3 to the proceeding initiated by a petition alleging jurisdiction under ORS 419C.005, no later  
4 than 90 days after receipt of the order. The report must describe the nature and duration  
5 of restorative services provided, indicate whether the youth is fit to proceed or presents a  
6 substantial probability of gaining or regaining fitness to proceed and recommend whether  
7 restorative services should be continued and, if so, the type and duration of the services.

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

10 (3) Upon the recommendation of the authority, the request of a party or the court's own  
11 motion, the court may hold a review hearing concerning the evaluation of the youth's fitness  
12 to proceed at any time during which restorative services are provided pursuant to an order  
13 under section 8 (3) of this 2013 Act. After a review hearing, the court shall determine the  
14 youth's fitness to proceed.

15 (4) If the court finds that a youth is fit to proceed, the court shall vacate the stay under  
16 section 1 of this 2013 Act.

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

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

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

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

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

37 (a) Three years; or

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

40 (8) If the court orders placement for restorative services, the court may specify the type  
41 of care, supervision, security or services to be provided by the authority to any youth placed  
42 in the custody of the Department of Human Services and to the parents or guardians of the  
43 youth. The authority, in consultation with the department, may place the youth in any fa-  
44 cility authorized to accept the youth and provide the necessary services and care.

45 **SECTION 11.** (1) A youth may not be removed from the youth's current placement solely

1 for the purpose of receiving restorative services pursuant to a court order under section 8  
 2 of this 2013 Act unless the court finds:

3 (a) That removal is necessary to provide restorative services under section 10 of this 2013  
 4 Act;

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

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

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

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

12 (2) If a youth is removed for the purpose of receiving restorative services, the youth shall  
 13 be returned to the youth's current placement immediately upon conclusion of the provision  
 14 of the restorative services.

15 **SECTION 12.** ORS 419C.150 is amended to read:

16 419C.150. (1) **Except as provided in subsection (3) of this section,** a youth may be held in  
 17 detention under this section and ORS 419C.145, 419C.153 and 419C.156 for a maximum of 28 days  
 18 except for good cause shown prior to the expiration of the 28-day period. If good cause for continued  
 19 detention is shown, the period of detention may be extended for no more than an additional 28 days  
 20 unless the adjudication is continued with the express consent of the youth.

21 (2) Subsection (1) of this section does not apply to a youth alleged to be within the jurisdiction  
 22 of the juvenile court for having committed an act that would be murder, attempted murder, con-  
 23 spiracy to commit murder or treason if committed by an adult and if proof of the act is evident or  
 24 the presumption strong that the youth committed the act. The juvenile court may conduct such  
 25 hearing as the court considers necessary to determine whether the proof is evident or the  
 26 presumption strong.

27 (3)(a) **The time limits described in subsection (1) of this section do not apply if:**

28 (A) **The court has stayed the proceedings on the petition alleging jurisdiction under ORS**  
 29 **419C.005 pursuant to section 1 of this 2013 Act;**

30 (B) **The court has not entered an order determining the youth's fitness to proceed pur-**  
 31 **suant to a motion made under section 1 of this 2013 Act or the motion has not otherwise**  
 32 **been resolved; and**

33 (C) **The court holds the review hearings required by ORS 419C.153 and determines that**  
 34 **detention of the youth under ORS 419C.145 should continue.**

35 (b)(A) **Except as provided in subparagraph (B) of this paragraph, the detention of the**  
 36 **youth whose detention has been continued under subsection (3)(a) of this section may be**  
 37 **extended for no more than 28 days upon entry of an order determining the youth's fitness**  
 38 **to proceed pursuant to a motion made under section 1 of this 2013 Act or upon other resol-**  
 39 **ution of the motion, and if the court holds the review hearings required by ORS 419C.153 and**  
 40 **determines that detention of the youth under ORS 419C.145 should continue.**

41 (B) **The detention of the youth may be extended for more than 28 days under this para-**  
 42 **graph if expressly agreed to by the youth, and if the court holds the review hearings required**  
 43 **by ORS 419C.153 and determines that detention of the youth under ORS 419C.145 should**  
 44 **continue.**

45 **SECTION 13.** Sections 1, 2, 4 to 8, 10 and 11 of this 2013 Act and the amendments to ORS

1 419C.150 by section 12 of this 2013 Act become operative on January 1, 2014.

2 SECTION 14. This 2013 Act being necessary for the immediate preservation of the public  
3 peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect  
4 on its passage.

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