

D R A F T

SUMMARY

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
3 provisions; amending 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**
6 **in a proceeding initiated by a petition alleging jurisdiction under ORS**
7 **419C.005 if, as a result of mental disease or defect or another condition,**
8 **the youth is unable:**

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

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

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

12 (2) **A court may not find that a youth is unfit to proceed in a pro-**
13 **ceeding solely because:**

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

15 (b) **Of the current inability of the youth to remember the acts al-**
16 **leged in the petition; or**

17 (c) **Evidence exists that the youth committed the acts alleged in the**

1 petition while the youth was under the influence of intoxicants or
2 medication.

3 (3) The issue of fitness to proceed must be raised by written motion
4 filed by a party to the proceeding or by the court on its own motion.
5 The motion may be made at any time after the filing of the petition.
6 The court shall stay the proceedings on the petition after the motion
7 is made and may order the youth to participate in an evaluation under
8 section 2 of this 2013 Act to determine the youth's fitness to proceed
9 if the court determines that:

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

11 (b) There is probable cause to believe that the factual allegations
12 contained in the petition are true.

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

19 SECTION 2. (1) An evaluation ordered under section 1 of this 2013
20 Act must be conducted by a psychiatrist, a licensed psychologist or a
21 regulated social worker. If an evaluation is requested, the party at
22 whose request the evaluation was ordered shall notify the court and
23 other parties of the date, time and location of the evaluation and the
24 name of the evaluator chosen by the party. A party or the court may
25 submit written information to the evaluator for consideration. When
26 written information that has not been provided to the court or an
27 opposing party is submitted to the evaluator, the party submitting the
28 written information to the evaluator shall provide the written infor-
29 mation to the court and the opposing party.

30 (2)(a) Upon motion of the youth, or upon the court's own motion,
31 a court shall determine whether the youth is financially eligible under

1 the policies, procedures, standards and guidelines of the Public De-
2 fense Services Commission.

3 (b) If a county court or justice court determines that the youth is
4 financially eligible, the court shall order the county to pay the fees
5 and costs described in subsection (3) of this section from funds avail-
6 able for that purpose.

7 (c) If a circuit court determines that the youth is financially eligi-
8 ble, the court shall order the public defense services executive director
9 to pay the fees and costs described in subsection (3) of this section
10 from funds available for that purpose.

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

13 (a) A reasonable fee be paid to a psychiatrist, licensed psychologist
14 or regulated social worker in private practice who conducts the eval-
15 uation; and

16 (b) All costs, including transportation of the youth, be paid if the
17 evaluation is conducted by a psychiatrist, licensed psychologist or
18 regulated social worker employed by the Department of Human Ser-
19 vices or is conducted by a community mental health program or
20 community developmental disabilities program established under ORS
21 430.610 to 430.695.

22 (4) If an evaluation is ordered under section 1 of this 2013 Act at the
23 request of or with the acquiescence of a youth, and the youth is de-
24 termined not to be financially eligible under subsection (2) of this
25 section, the evaluation shall be performed at the youth's expense.

26 (5) If an evaluation is ordered under section 1 of this 2013 Act at the
27 request of the district attorney or juvenile department, the county
28 shall pay for the expense of the evaluation.

29 (6) After a motion is made by the court or the youth under section
30 1 (3) of this 2013 Act, the state shall have the right to seek an inde-
31 pendent evaluation at its own expense.

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

2 **(a) Develop training standards for psychiatrists, licensed psychol-**
3 **ogists and regulated social workers conducting evaluations under sec-**
4 **tion 2 of this 2013 Act;**

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

6 **(c) Provide courts with a current list of qualified evaluators from**
7 **which an evaluator may be selected. Neither the parties nor the court**
8 **is required to choose an evaluator from the list provided by the au-**
9 **thority, provided that the evaluator chosen is otherwise qualified.**

10 **(2) The authority shall adopt rules necessary to implement this**
11 **section.**

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

15 **(a) That removal is necessary for the evaluation;**

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

17 **(c) If the Department of Human Services has custody of the youth,**
18 **that:**

19 **(A) The department made reasonable efforts to prevent or eliminate**
20 **the need for removal and make it possible for the youth to safely re-**
21 **turn to the youth's current placement; or**

22 **(B) Reasonable efforts have not been made by the department but**
23 **reasonable efforts would not have eliminated the need for removal**
24 **under paragraphs (a) and (b) of this subsection.**

25 **(2) A youth may not be removed from the youth's current place-**
26 **ment to a hospital or residential facility solely for the purpose of an**
27 **evaluation.**

28 **(3) If the court finds that the youth must be removed from the**
29 **youth's current placement for the purpose of an evaluation under**
30 **section 2 of this 2013 Act, the court must make written findings that**
31 **the requirements of this section have been met.**

1 (4) Unless ordered by the court upon a finding of good cause, a re-
2 moval under this section may not exceed 10 days.

3 (5) If a youth is removed for the purpose of an evaluation under
4 section 2 of this 2013 Act, the youth shall be returned to the youth's
5 current placement immediately upon conclusion of the evaluation.

6 **SECTION 5. (1)(a)** If a party to a proceeding under section 1 of this
7 2013 Act raises the issue of fitness to proceed, the party shall file the
8 original report on the evaluation conducted under section 2 of this 2013
9 Act with the clerk of the court and deliver copies of the report to all
10 parties to the proceeding.

11 (b) If the court raises the issue of fitness to proceed under section
12 1 of this 2013 Act, the person conducting the evaluation under section
13 2 of this 2013 Act shall file with the clerk of the court the original re-
14 port on the evaluation and two copies of the report. The clerk of the
15 court shall deliver the copies to the district attorney and to counsel
16 for the youth.

17 (c) The report must be filed with the clerk of the court within 30
18 days after the order for evaluation is issued, unless the deadline is
19 extended by written court order for good cause. An extension under
20 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
24 evaluation;

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

29 (d) If the evaluator is of the opinion that the youth is unfit to
30 proceed, the evaluator's opinion regarding whether there is a sub-
31 stantial probability that the youth will gain or regain fitness to pro-

1 **ceed and, if there is a substantial probability that the youth will gain**
2 **or regain fitness to proceed, the specific restorative services under**
3 **section 10 of this 2013 Act that are needed and the anticipated duration**
4 **of those services.**

5 **(3) A report filed under this section may not include statements**
6 **made by the youth about the acts alleged in the petition alleging ju-**
7 **risdiction under ORS 419C.005.**

8 **(4) Statements made to an evaluator by a youth during an evalu-**
9 **ation, or made to persons involved in the evaluation, about the acts**
10 **alleged in the petition are not admissible against the youth in any**
11 **proceeding relating to the petition.**

12 **(5) Notwithstanding ORS 419A.255, the clerk of the court shall pro-**
13 **vide the Oregon Health Authority with copies of the petition and the**
14 **report on the evaluation upon request of the authority.**

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

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

27 **(3) The court shall decide whether a youth is unfit to proceed by a**
28 **preponderance of the competent evidence introduced at a hearing un-**
29 **der this section. The order must set forth findings on the youth's fit-**
30 **ness to proceed.**

31 **SECTION 7. (1) If a written objection is not filed under section 6**

1 of this 2013 Act and the court adopts the evaluator's opinion regarding
2 the youth's fitness to proceed, the court shall issue a written order
3 within 24 days after the report is filed with the court. The order must
4 set forth the findings on the youth's fitness to proceed.

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

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

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

15 (a) Immediately enter a judgment that dismisses the petition al-
16 leging jurisdiction under ORS 419C.005 without prejudice; or

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

20 (3)(a) If the court finds that the youth is unfit to proceed and that
21 there is a substantial probability that the youth will gain or regain
22 fitness to proceed in the foreseeable future if provided restorative
23 services under section 10 of this 2013 Act, the court shall continue the
24 order under section 1 of this 2013 Act staying the proceedings and or-
25 der that the youth receive restorative services under section 10 of this
26 2013 Act.

27 (b) The court shall forward the order for restorative services to the
28 Oregon Health Authority.

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

1 (a) Are determined unfit to proceed as described in section 1 of this
2 2013 Act; and

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

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

8 SECTION 10. (1) The Oregon Health Authority shall arrange for the
9 provision of or begin providing restorative services within 30 days after
10 receiving a court order under section 8 (3) of this 2013 Act. The au-
11 thority shall send a report to the court, with copies to the parties to
12 the proceeding initiated by a petition alleging jurisdiction under ORS
13 419C.005, no later than 90 days after receipt of the order. The report
14 must describe the nature and duration of restorative services provided,
15 indicate whether the youth is fit to proceed or presents a substantial
16 probability of gaining or regaining fitness to proceed and recommend
17 whether restorative services should be continued and, if so, the type
18 and duration of the services.

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

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

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

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

1 (a) Immediately enter a judgment that dismisses the petition al-
2 leging jurisdiction under ORS 419C.005 without prejudice; or

3 (b) If necessary for planning or instituting an alternative proceed-
4 ing, then not more than five days after the findings are made enter a
5 judgment that dismisses the petition without prejudice.

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

13 (7) If the court finds under subsection (2) or (3) of this section that
14 a youth remains unfit to proceed, the youth shall be discharged within
15 a period of time that is reasonable for making a determination
16 whether the youth presents a substantial probability of gaining or re-
17 gaining fitness to proceed. Regardless of the number of acts the peti-
18 tion alleging jurisdiction under ORS 419C.005 alleges that the youth
19 committed, the youth may not be continued in restorative services for
20 longer than whichever of the following, measured from the date the
21 petition is filed, is shorter:

22 (a) Three years; or

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

25 (8) If the court orders placement for restorative services, the court
26 may specify the type of care, supervision, security or services to be
27 provided by the authority to any youth placed in the custody of the
28 Department of Human Services and to the parents or guardians of the
29 youth. The authority, in consultation with the department, may place
30 the youth in any facility authorized to accept the youth and provide
31 the necessary services and care.

1 **SECTION 11.** (1) A youth may not be removed from the youth's
2 current placement solely for the purpose of receiving restorative ser-
3 vices pursuant to a court order under section 8 of this 2013 Act unless
4 the court finds:

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

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

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

10 (A) The department made reasonable efforts to prevent or eliminate
11 the need for removal and make it possible for the youth to safely re-
12 turn to the youth's current placement; or

13 (B) Reasonable efforts have not been made by the department but
14 reasonable efforts would not have eliminated the need for removal
15 under paragraphs (a) and (b) of this subsection.

16 (2) If a youth is removed for the purpose of receiving restorative
17 services, the youth shall be returned to the youth's current placement
18 immediately upon conclusion of the provision of the restorative ser-
19 vices.

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

21 419C.150. (1) **Except as provided in subsection (3) of this section,** a
22 youth may be held in detention under this section and ORS 419C.145,
23 419C.153 and 419C.156 for a maximum of 28 days except for good cause shown
24 prior to the expiration of the 28-day period. If good cause for continued de-
25 tention is shown, the period of detention may be extended for no more than
26 an additional 28 days unless the adjudication is continued with the express
27 consent of the youth.

28 (2) Subsection (1) of this section does not apply to a youth alleged to be
29 within the jurisdiction of the juvenile court for having committed an act that
30 would be murder, attempted murder, conspiracy to commit murder or treason
31 if committed by an adult and if proof of the act is evident or the presumption

1 strong that the youth committed the act. The juvenile court may conduct
2 such hearing as the court considers necessary to determine whether the proof
3 is evident or the presumption strong.

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

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

8 **(B) The court has not entered an order determining the youth's
9 fitness to proceed pursuant to a motion made under section 1 of this
10 2013 Act or the motion has not otherwise been resolved; and**

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

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

22 **(B) The detention of the youth may be extended for more than 28
23 days under this paragraph if expressly agreed to by the youth, and if
24 the court holds the review hearings required by ORS 419C.153 and de-
25 termines that detention of the youth under ORS 419C.145 should con-
26 tinue.**

27 **SECTION 13. Sections 1, 2, 4 to 8, 10 and 11 of this 2013 Act and the
28 amendments to ORS 419C.150 by section 12 of this 2013 Act become
29 operative on January 1, 2014.**

30 **SECTION 14. This 2013 Act being necessary for the immediate
31 preservation of the public peace, health and safety, an emergency is**

1 **declared to exist, and this 2013 Act takes effect on its passage.**

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