
MEMORANDUM

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To: Public Safety Subcommittee of the Joint Committee on Ways and Means

From: Kim To, Legislative Fiscal Office, 503-986-1830

Date: June 26, 2013

Subject: HB 2836 Relating to fitness of youth to proceed on delinquency petition
Work Session Recommendation

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.

The measure previously had hearings in the House Committee on Judiciary on 4/9/2013, and 4/11/2013. A public hearing was held for the bill in this Subcommittee on 5/14/2013.

The staff measure summary, the - 1 amendment, and fiscal impact statement are attached to this memo, and available on the Oregon Legislative Information System (OLIS).

Fiscal impact

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 oversee a program to provide restorative services.

The amendment

The - 2 amendment adds a General Fund appropriation in the amount of \$869,386 for the 2013-15 biennium for the Oregon Health Authority to carry out the provisions of this bill.

Recommendation

LFO recommends moving the - 2 amendment into the bill.

Motion

**Motion: Senator/Representative _____:
I move the dash 2 amendment into HB 2836.**

Recommendation

LFO recommends the measure, as amended, be moved to the Full Committee.

Motion

**Motion: Senator/Representative _____:
I move HB 2836 with the dash 2 amendment to the Full
Committee with a "do pass" recommendation as amended.**

Assignment of Carriers

Full: _____

Senate: _____

House: _____

**PROPOSED AMENDMENTS TO
HOUSE BILL 2836**

1 On page 1 of the printed bill, line 3, after the semicolon insert “appro-
2 priating money;”.

3 On page 7, after line 1, insert:

4 **“SECTION 14. In addition to and not in lieu of any other appropri-
5 ation, there is appropriated to the Oregon Health Authority, for the
6 biennium beginning July 1, 2013, out of the General Fund, the amount
7 of \$869,386 for the purpose of carrying out the duties of the authority
8 under this 2013 Act.”.**

9 In line 2, delete “14” and insert “15”.

10

FISCAL IMPACT OF PROPOSED LEGISLATION

Measure: HB 2836 - 2

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

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

Prepared by: Kim To
Reviewed by: Linda Ames, Steve Bender, Monica Brown, Linda Gilbert
Date: 6/26/2013

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 [5] 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.

The – 2 amendment includes a General Fund appropriation in the amount of \$869,386 for the 2013-15 biennium for the Oregon Health Authority to carry out the provisions of this bill.

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

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

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.