

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.