

Enrolled
House Bill 2836

Sponsored by COMMITTEE ON JUDICIARY (at the request of Oregon Law Commission)

CHAPTER

AN ACT

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

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

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

- (a) To understand the nature of the proceedings against the youth;**
- (b) To assist and cooperate with the counsel for the youth; or**
- (c) To participate in the defense of the youth.**

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

- (a) Of the age of the youth;**
- (b) Of the current inability of the youth to remember the acts alleged in the petition; or**
- (c) Evidence exists that the youth committed the acts alleged in the petition while the youth was under the influence of intoxicants or medication.**

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

- (a) There is reason to doubt the youth's fitness to proceed; and**
- (b) There is probable cause to believe that the factual allegations contained in the petition are true.**

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

SECTION 2. (1) An evaluation ordered under section 1 of this 2013 Act must be conducted by a psychiatrist, a licensed psychologist or a regulated social worker. If an evaluation is requested, the party at whose request the evaluation was ordered shall notify the court and other parties of the date, time and location of the evaluation and the name of the evaluator chosen by the party. A party or the court may submit written information to the evaluator for consideration. When written information that has not been provided to the court or an

opposing party is submitted to the evaluator, the party submitting the written information to the evaluator shall provide the written information to the court and the opposing party.

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

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

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

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

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

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

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

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

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

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

(a) Develop training standards for psychiatrists, licensed psychologists and regulated social workers conducting evaluations under section 2 of this 2013 Act;

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

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

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

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

(a) That removal is necessary for the evaluation;

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

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

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

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

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

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

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

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

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

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

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

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

(a) A description of the evaluation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) If the court finds under subsection (2) or (3) of this section that the youth remains unfit to proceed, but that the youth presents a substantial probability of gaining or regaining

fitness to proceed, the court shall order that restorative services be continued. The court shall order the authority to send a report to the court, with copies to the parties, within a specified time, not to exceed 90 days from the time the order is filed.

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

(a) Three years; or

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

(8) 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 and to the parents or guardians of the youth. The authority, in consultation with the department, may place the youth in any facility authorized to accept the youth and provide the necessary services and care.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 14. In addition to and not in lieu of any other appropriation, there is appropriated to the Oregon Health Authority, for the biennium beginning July 1, 2013, out of the General Fund, the amount of \$869,386 for the purpose of carrying out the duties of the authority under this 2013 Act.

SECTION 15. This 2013 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect on its passage.

Passed by House July 1, 2013

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Ramona J. Line, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate July 6, 2013

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Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2013

Approved:

.....M.,....., 2013

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M.,....., 2013

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Kate Brown, Secretary of State