

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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