

D R A F T

SUMMARY

Expands circumstances under which court may order youth held or placed in detention. Changes factors court must consider when determining whether release of youth in detention is appropriate.

A BILL FOR AN ACT

Relating to detention of youth before adjudication on the merits; creating new provisions; and amending ORS 419C.109 and 419C.145.

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

SECTION 1. ORS 419C.145 is amended to read:

419C.145. (1) A youth may be held or placed in detention before adjudication on the merits if one or more of the following circumstances exists:

(a) The youth is a fugitive from another jurisdiction;

(b) The youth is alleged to be within the jurisdiction of the court under ORS 419C.005, by having committed or attempted to commit an offense which, if committed by an adult, would be chargeable as:

(A) A crime involving infliction of physical injury to another person;

(B) A misdemeanor under ORS 166.023; [*or*]

(C) A person Class A misdemeanor as defined in the rules of the Oregon Criminal Justice Commission;

(D) Stalking as defined in ORS 163.732;

(E) A violation of a court's stalking protective order under ORS 163.750;

(F) Any offense involving a weapon, as defined in ORS 166.360, or the threatened use of a weapon; or

1 [(C)] **(G)** Any felony crime;

2 **(c) The youth has had a referral to juvenile court within the pre-**
3 **vious 12 months;**

4 [(c)] **(d)** The youth has willfully failed to appear at one or more juvenile
5 court proceedings by having disobeyed a proper summons, citation or
6 subpoena;

7 [(d)] **(e)** The youth is currently on probation imposed as a consequence
8 of the youth previously having been found to be within the jurisdiction of
9 the court under ORS 419C.005, and there is probable cause to believe the
10 youth has violated one or more of the conditions of that probation;

11 [(e)] **(f)** The youth is subject to conditions of release pending or following
12 adjudication of a petition alleging that the youth is within the jurisdiction
13 of the court pursuant to ORS 419C.005 and there is probable cause to believe
14 the youth has violated a condition of release;

15 [(f)] **(g)** The youth is alleged to be in possession of a firearm in violation
16 of ORS 166.250; or

17 [(g)] **(h)** The youth is required to be held or placed in detention for the
18 reasonable protection of the victim.

19 **(2) A court may order that** a youth detained under subsection (1) of this
20 section [*must be released to the custody of a parent or other responsible person,*
21 *released upon the youth's own recognizance or placed in shelter care unless the*
22 *court or its authorized representative makes written findings that there is*
23 *probable cause to believe that the youth may be detained under subsection (1)*
24 *of this section, that describe why it is in the best interests of the youth to be*
25 *placed in detention and that] **remain in detention pending adjudication***

26 **on the merits when** one or more of the following circumstances are present:

27 (a) [*No means less restrictive of the youth's liberty gives reasonable assur-*
28 *ance that the youth will attend the adjudicative hearing; or] **Detention is in**
29 **the best interests of the youth for purposes of the youth's rehabili-**
30 **tation;***

31 (b) The youth's behavior endangers the physical welfare of the youth, the

1 victim or another person, or endangers the community;

2 **(c) The youth is unlikely to attend a juvenile court proceeding**
3 **pending adjudication on the merits; or**

4 **(d) The youth presents a risk of committing a new offense that**
5 **would cause the youth to be alleged to be within the jurisdiction of the**
6 **court under ORS 419C.005.**

7 (3) When a youth is ordered held or placed in detention **under this sec-**
8 **tion**, the court or its authorized representative shall state in writing the
9 basis for its detention decision and a finding describing why it is in the best
10 interests of the youth to be placed in detention. The youth shall have the
11 opportunity to rebut evidence received by the court and to present evidence
12 at the hearing.

13 *[(4) In determining whether release is appropriate under subsection (2) of*
14 *this section, the court or its authorized representative shall consider the fol-*
15 *lowing:]*

16 *[(a) The nature and extent of the youth's family relationships and the*
17 *youth's relationships with other responsible adults in the community;]*

18 *[(b) The youth's previous record of referrals to juvenile court and recent*
19 *demonstrable conduct;]*

20 *[(c) The youth's past and present residence;]*

21 *[(d) The youth's education status and school attendance record;]*

22 *[(e) The youth's past and present employment;]*

23 *[(f) The youth's previous record regarding appearance in court;]*

24 *[(g) The nature of the charges against the youth and any mitigating or*
25 *aggravating factors;]*

26 *[(h) The youth's mental health;]*

27 *[(i) The reasonable protection of the victim; and]*

28 *[(j) Any other facts relevant to the likelihood of the youth's appearance in*
29 *court or likelihood that the youth will comply with the law and other condi-*
30 *tions of release.]*

31 *[(5)] (4) [Notwithstanding subsection (2) of this section,] The court may not*

1 release a youth **from detention** when:

2 (a) There is probable cause to believe the youth committed an offense
3 that, if committed by an adult, would constitute a violent felony; and

4 (b) There is clear and convincing evidence that the youth poses a danger
5 of serious physical injury to or sexual victimization of the victim or members
6 of the public while the youth is on release.

7 **SECTION 2.** ORS 419C.109 is amended to read:

8 419C.109. (1) Except as otherwise provided in subsection (3) of this sec-
9 tion, the court may designate a person to effect disposition of a youth taken
10 into custody or brought before the court under ORS 419C.097, 419C.100,
11 419C.103 and 419C.106. If the requirements of ORS 419C.145 (3) are met, the
12 person may do any of the following when the person has taken custody of a
13 youth or has authority to effect disposition of a youth taken into custody:

14 (a) Release the youth to the custody of a parent, guardian or other re-
15 sponsible person.

16 (b) Release the youth on the youth's own recognizance when appropriate.

17 (c) Upon a finding that release of the youth on the youth's own recogni-
18 zance is unwarranted, or upon order of the court [*or if probable cause exists*
19 *to believe*] **that** the youth [*may*] be detained under ORS 419C.145, 419C.150,
20 419C.153, 419C.156, 419C.159 or 419C.453, place the youth on conditional re-
21 lease.

22 (d) Subject to ORS 419A.059, 419A.061, 419C.130 and 419C.133, place the
23 youth in shelter care or detention. The youth shall be placed in shelter care
24 rather than detention, unless the person has probable cause to believe that
25 the court will [*be able to*] detain the youth under ORS 419C.145, 419C.150,
26 419C.153, 419C.156, 419C.159 or 419C.453.

27 (e) Pursuant to order of the court made subsequent to the filing of a pe-
28 tition, hold, retain or place the youth in detention or shelter care subject to
29 further order.

30 (f) Exercise authority to detain the youth as provided in ORS 419C.136.

31 (2) If the youth is released under subsection (1) of this section, the person

1 releasing the youth may issue a summons to the youth requiring the youth
2 to appear before the court. The summons must include the date, time and
3 location for the youth to appear before the court. The person releasing the
4 youth shall inform the juvenile court, which may review the release as pro-
5 vided in ORS 419C.153. If the youth fails to appear on the date and time re-
6 quired by the summons, the court may issue a warrant for the arrest of the
7 youth.

8 (3)(a) When a youth is retained in custody under ORS 419C.100 (3) and
9 419C.103 (2) and a petition is filed under ORS 419C.005 alleging that the
10 youth, while in or on a public building or court facility within the last 120
11 days, possessed a firearm or destructive device in violation of ORS 166.250,
12 166.370 or 166.382, the court shall determine the youth's initial disposition
13 at a hearing conducted pursuant to ORS 419C.145. The parties to the hearing
14 are the youth, the juvenile department and the state, represented by the
15 district attorney.

16 (b) The court shall inform the youth:

17 (A) Of the youth's rights, including the right to be represented by counsel
18 and the right to remain silent; and

19 (B) Of the allegations against the youth.

20 (c) The court shall make a determination under ORS 419C.145 whether the
21 youth should remain in detention pending adjudication on the merits. The
22 court may order that the hearing be continued and that the youth remain in
23 detention for a reasonable period of time not to exceed seven days if the
24 court finds:

25 (A) That additional information concerning the youth is necessary to aid
26 the court in making the determination under ORS 419C.145; and

27 (B) There is probable cause to believe that the youth, while in or on a
28 public building or court facility within the last 120 days, possessed a firearm
29 or destructive device in violation of ORS 166.250, 166.370 or 166.382.

30 (d) If the court orders that the hearing be continued and that the youth
31 remain in detention under paragraph (c) of this subsection, in addition to

1 and not in lieu of any other order the court may make, the court may order
2 a mental health assessment or screening of the youth.

3 (e) If the court determines that the youth should not be detained pending
4 adjudication on the merits, the court may order any other preadjudication
5 disposition authorized.

6 **SECTION 3. The amendments to ORS 419C.145 and 419C.109 by**
7 **sections 1 and 2 of this 2015 Act apply to youth held or placed in de-**
8 **tention before adjudication on the merits on or after the effective date**
9 **of this 2015 Act.**

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