

House Bill 2904

Sponsored by COMMITTEE ON JUDICIARY

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**.

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

1
2 Relating to detention of youth before adjudication on the merits; creating new provisions; and
3 amending ORS 419C.109 and 419C.145.

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

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

6 419C.145. (1) A youth may be held or placed in detention before adjudication on the merits if
7 one or more of the following circumstances exists:

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

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

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

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

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

16 **(D) Stalking as defined in ORS 163.732;**

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

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

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

21 **(c) The youth has had a referral to juvenile court within the previous 12 months;**

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

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

27 *[(e)]* **(f) The youth is subject to conditions of release pending or following adjudication of a pe-
28 tition alleging that the youth is within the jurisdiction of the court pursuant to ORS 419C.005 and
29 there is probable cause to believe the youth has violated a condition of release;**

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

31 *[(g)]* **(h) The youth is required to be held or placed in detention for the reasonable protection**

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 of the victim.

2 (2) **A court may order that** a youth detained under subsection (1) of this section [*must be re-*
 3 *leased to the custody of a parent or other responsible person, released upon the youth's own recogni-*
 4 *zance or placed in shelter care unless the court or its authorized representative makes written findings*
 5 *that there is probable cause to believe that the youth may be detained under subsection (1) of this sec-*
 6 *tion, that describe why it is in the best interests of the youth to be placed in detention and that*] **remain**
 7 **in detention pending adjudication on the merits when** one or more of the following circum-
 8 stances are present:

9 (a) [*No means less restrictive of the youth's liberty gives reasonable assurance that the youth will*
 10 *attend the adjudicative hearing; or*] **Detention is in the best interests of the youth for purposes**
 11 **of the youth's rehabilitation;**

12 (b) The youth's behavior endangers the physical welfare of the youth, the victim or another
 13 person, or endangers the community;

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

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

18 (3) When a youth is ordered held or placed in detention **under this section**, the court or its
 19 authorized representative shall state in writing the basis for its detention decision and a finding
 20 describing why it is in the best interests of the youth to be placed in detention. The youth shall have
 21 the opportunity to rebut evidence received by the court and to present evidence at the hearing.

22 [(4) *In determining whether release is appropriate under subsection (2) of this section, the court or*
 23 *its authorized representative shall consider the following:]*

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

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

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

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

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

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

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

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

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

34 [(j) *Any other facts relevant to the likelihood of the youth's appearance in court or likelihood that*
 35 *the youth will comply with the law and other conditions of release.]*

36 [(5)] (4) [*Notwithstanding subsection (2) of this section,*] The court may not release a youth **from**
 37 **detention** when:

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

40 (b) There is clear and convincing evidence that the youth poses a danger of serious physical
 41 injury to or sexual victimization of the victim or members of the public while the youth is on re-
 42 lease.

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

44 419C.109. (1) Except as otherwise provided in subsection (3) of this section, the court may des-
 45 ignate a person to effect disposition of a youth taken into custody or brought before the court under

1 ORS 419C.097, 419C.100, 419C.103 and 419C.106. If the requirements of ORS 419C.145 (3) are met, the
 2 person may do any of the following when the person has taken custody of a youth or has authority
 3 to effect disposition of a youth taken into custody:

4 (a) Release the youth to the custody of a parent, guardian or other responsible person.

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

6 (c) Upon a finding that release of the youth on the youth's own recognizance is unwarranted,
 7 or upon order of the court [*or if probable cause exists to believe*] **that** the youth [*may*] be detained
 8 under ORS 419C.145, 419C.150, 419C.153, 419C.156, 419C.159 or 419C.453, place the youth on condi-
 9 tional release.

10 (d) Subject to ORS 419A.059, 419A.061, 419C.130 and 419C.133, place the youth in shelter care
 11 or detention. The youth shall be placed in shelter care rather than detention, unless the person has
 12 probable cause to believe that the court will [*be able to*] detain the youth under ORS 419C.145,
 13 419C.150, 419C.153, 419C.156, 419C.159 or 419C.453.

14 (e) Pursuant to order of the court made subsequent to the filing of a petition, hold, retain or
 15 place the youth in detention or shelter care subject to further order.

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

17 (2) If the youth is released under subsection (1) of this section, the person releasing the youth
 18 may issue a summons to the youth requiring the youth to appear before the court. The summons
 19 must include the date, time and location for the youth to appear before the court. The person re-
 20 leasing the youth shall inform the juvenile court, which may review the release as provided in ORS
 21 419C.153. If the youth fails to appear on the date and time required by the summons, the court may
 22 issue a warrant for the arrest of the youth.

23 (3)(a) When a youth is retained in custody under ORS 419C.100 (3) and 419C.103 (2) and a peti-
 24 tion is filed under ORS 419C.005 alleging that the youth, while in or on a public building or court
 25 facility within the last 120 days, possessed a firearm or destructive device in violation of ORS
 26 166.250, 166.370 or 166.382, the court shall determine the youth's initial disposition at a hearing
 27 conducted pursuant to ORS 419C.145. The parties to the hearing are the youth, the juvenile de-
 28 partment and the state, represented by the district attorney.

29 (b) The court shall inform the youth:

30 (A) Of the youth's rights, including the right to be represented by counsel and the right to re-
 31 main silent; and

32 (B) Of the allegations against the youth.

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

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

39 (B) There is probable cause to believe that the youth, while in or on a public building or court
 40 facility within the last 120 days, possessed a firearm or destructive device in violation of ORS
 41 166.250, 166.370 or 166.382.

42 (d) If the court orders that the hearing be continued and that the youth remain in detention
 43 under paragraph (c) of this subsection, in addition to and not in lieu of any other order the court
 44 may make, the court may order a mental health assessment or screening of the youth.

45 (e) If the court determines that the youth should not be detained pending adjudication on the

1 merits, the court may order any other preadjudication disposition authorized.

2 **SECTION 3. The amendments to ORS 419C.145 and 419C.109 by sections 1 and 2 of this**
3 **2015 Act apply to youth held or placed in detention before adjudication on the merits on or**
4 **after the effective date of this 2015 Act.**

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