



Oregon

Office of Public Defense Services

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March 30, 2017

Representative Jeff Barker, Chair
Representative Andy Olson, Vice-Chair
Representative Jennifer Williamson, Vice-Chair
House Committee on Judiciary
Oregon State Legislature

Re: -2 amendment to HB 2616

Dear Members of the Committee,

The -2 amendment to HB 2616 was developed in collaboration with the following stakeholders: Juvenile Department Director's Association, Oregon Judicial Department, Oregon Criminal Defense Lawyers Association, Office of Public Defense Services, and Youth, Rights and Justice Attorneys at Law. The -2 amendment does the following:

1. Requires the court to appoint counsel for a financially eligible youth who is the subject of a juvenile delinquency petition in any of the following circumstances:
 - a. The youth is alleged to have committed an offense which is classified as a crime;
 - b. At a proceeding concerning an order of probation;
 - c. In any case in which the youth would be entitled to court appointed counsel if the youth were an adult charged with the same offense.
2. Limits waiver of counsel unless:
 - a. The youth is age 12 or older;
 - b. The youth has consulted with counsel regarding their right to counsel;
 - c. A written waiver is filed with the court; and
 - d. A hearing is held where the youth appears with their attorney and the court finds the waiver to be knowingly, voluntarily, and intelligently made.
3. Establishes a process for waiver of counsel in out-of-court diversion cases, also known as Formal Accountability Agreements, which requires the youth be informed in writing of their right to counsel and the waiver of counsel is in writing, signed by the youth, and presented to the youth's juvenile department counselor.

The purpose of this memorandum is to provide further information regarding the -2 amendment to HB 2616 as it relates to ORS 419C.200, the statute which governs court-appointed counsel for youth in juvenile delinquency proceedings.

The -2 amendment is intended to clarify the statute to make clear to the court and practitioners when counsel *must* be appointed and when appointment is discretionary.

First, the amendment preserves the existing statutory scheme regarding financial eligibility for appointment of counsel at state expense—that the court is the appointing entity and must make a determination that the youth is financially eligible for court-appointed counsel at state expense. The right to court appointed counsel at state expense requires a court determination of financial eligibility.

Second, the amendment preserves the existing statutory scheme regarding entitlement for court-appointed counsel at state expense—that, provided the youth is financially eligible, the youth is entitled to court-appointed counsel at state expense in all juvenile cases in which the youth would be entitled to appointed counsel if the youth were an adult charged with the same offense. Additionally, the court may appoint counsel for the youth in any other case filed in juvenile court provided the youth is financially eligible.

Last, the amendment clarifies that counsel shall be appointed at probation violation proceedings and in any instances where the offense alleged is classified as a crime even if the crime could not be committed by an adult (for example, unlawful possession of a firearm by a minor ORS 166.250(1)(c)).

Thank you for your consideration of this important issue.

Sincerely,

Amy S. Miller
Deputy General Counsel
Office of Public Defense Services