

SB 49 A STAFF MEASURE SUMMARY

Senate Committee On Judiciary

Action Date: 04/18/17

Action: Do pass with amendments and requesting referral to Ways and Means. (Printed A-Engrossed.)

Vote: 5-0-0-0

Yeas: 5 - Dembrow, Linthicum, Manning Jr, Prozanski, Thatcher

Fiscal: Fiscal impact issued

Revenue: No revenue impact

Prepared By: Josh Nasbe, Counsel

WHAT THE MEASURE DOES:

Prohibits removing youth from current placement for evaluation for fitness to proceed in a juvenile delinquency proceeding, unless youth placed in detention or correctional facility. Requires Oregon Health Authority to coordinate with Department of Human Services, local juvenile department and youth's family in determining appropriate placement for restorative services. Requires youth to be returned to previous placement following restorative services, unless previously placed in detention or correctional facility.

ISSUES DISCUSSED:

- Youths residing in treatment homes, foster homes and other facilities
- Secure adolescent inpatient program at Children's Farm Home
- Oregon Health Authority statewide restorative services program

EFFECT OF AMENDMENT:

Excludes detention and correctional facilities from placements youth may not be removed from for purposes of an evaluation or to which youth is required to be immediately returned following treatment. Directs Oregon Health Authority to coordinate with Department of Human Services, juvenile department and youth's family, in placing youth in appropriate facility for restorative services.

BACKGROUND:

The due process clause of the United States Constitution prohibits the criminal prosecution of an incompetent defendant; a "defendant may not be put to trial unless he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding...and a rational as well as factual understanding of the proceedings against him." *Cooper v. Oklahoma*, 517 U.S. 348, 354 (1996). In Oregon, the process for determining a defendant's fitness for criminal prosecution, commonly called the ability to "aid and assist," is described in ORS 161.360 to 161.370.

In 2013, the Legislative Assembly adopted "aid and assist" statutes for juvenile delinquency proceedings. Like their adult counterparts, ORS 419C.378 to 419C.398 envision a two-step process. First, a youth before the juvenile court is evaluated by a psychiatrist, psychologist or social worker. Second, if after receiving the results of this evaluation, the juvenile court determines that the youth is not able to aid and assist in his or her defense, the court must suspend the proceedings and order that the youth receive restorative treatment.

Senate Bill 49-A addresses the physical placement of the youth at both stages of this process. The bill prohibits the court from ordering the removal of a youth from the youth's current placement for purposes of an evaluation, unless the youth is detained in a detention facility or a youth correctional facility. When the court orders restorative treatment, the bill requires the Oregon Health Authority to coordinate with the Department of Human Services, the

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local juvenile department and the youth's family, in determining the appropriate placement for the treatment. Upon conclusion of the treatment, Senate Bill 49-A requires that the youth be immediately returned to their prior placement, unless the prior placement was in a detention facility or a youth receive restorative treatment.