

B-Engrossed
House Bill 2616

Ordered by the Senate May 30
Including House Amendments dated April 3 and Senate Amendments
dated May 30

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim 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.

Sets forth circumstances under which court shall appoint counsel for youth in juvenile delinquency proceedings. Prohibits court from accepting waiver of counsel by youth, with exceptions.

A BILL FOR AN ACT

1
2 Relating to right to counsel in juvenile delinquency proceedings; amending ORS 419C.200 and
3 419C.245.

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

5 **SECTION 1.** ORS 419C.200 is amended to read:

6 419C.200. *[(1) If the youth, the parent or guardian requests counsel for the youth but is without*
7 *sufficient financial means to employ suitable counsel possessing skills and experience commensurate*
8 *with the nature of the petition and the complexity of the case, the court may appoint suitable counsel*
9 *to represent the youth at state expense if the youth is determined to be financially eligible under the*
10 *policies, procedures, standards and guidelines of the Public Defense Services Commission. Whenever*
11 *requested to do so, The court shall appoint counsel to represent the youth in every case filed pursuant*
12 *to ORS 419C.005 in which the youth would be entitled to appointed counsel if the youth were an adult*
13 *charged with the same offense.]*

14 **(1)(a) When a petition is filed under ORS 419C.005, the court:**

15 **(A) Shall appoint counsel to represent the youth at all stages of the proceeding if the**
16 **offense alleged in the petition is classified as a crime.**

17 **(B) Shall appoint counsel for the youth at any proceeding concerning an order of pro-**
18 **bation.**

19 **(C) Notwithstanding subparagraph (A) or (B) of this paragraph, shall appoint counsel for**
20 **the youth in any case in which the youth would be entitled to appointed counsel if the youth**
21 **were an adult charged with the same offense.**

22 **(D) May appoint counsel for the youth in any other proceeding under ORS 419C.005.**

23 **(b) Appointment of counsel under this subsection requires the court's determination that**
24 **the youth or the youth's parents or guardians are without sufficient financial means to em-**
25 **ploy suitable counsel possessing the skills and experience commensurate with the nature of**
26 **the petition and the complexity of the case under the policies, procedures, standards and**
27 **guidelines of the Public Defense Services Commission.**

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 (c) The court may not substitute one appointed counsel for another except pursuant to the pol-
2 icies, procedures, standards and guidelines of the Public Defense Services Commission.

3 (2)(a) **A court may not accept a waiver of counsel by a youth except under the following**
4 **circumstances:**

5 (A) **The youth is at least 16 years of age;**

6 (B) **The youth has met with and been advised regarding the right to counsel by counsel**
7 **who has been appointed by the court or retained on behalf of the youth;**

8 (C) **A written waiver, signed by both the youth and the youth's counsel, is filed with the**
9 **court; and**

10 (D) **A hearing is held on the record where the youth's counsel appears and the court,**
11 **after consulting with the youth, finds the waiver was knowingly, intelligently and voluntarily**
12 **made and not unduly influenced by the interests of others, including the interests of the**
13 **youth's parents or guardians.**

14 (b) **This subsection does not apply to a youth entering into a formal accountability**
15 **agreement under ORS 419C.230.**

16 [(2)] (3) Upon presentation of the order of appointment under this section by the [attorney]
17 **counsel** for the youth, any agency, hospital, school organization, division or department of the state,
18 doctor, nurse or other health care provider, psychologist, psychiatrist, police department or mental
19 health clinic shall permit the [attorney] **counsel** to inspect and copy any records of the youth or
20 youths involved in the case, without the consent of the youth or youths or parents. This subsection
21 does not apply to records of a police agency relating to an ongoing investigation prior to charging.

22 **SECTION 2.** ORS 419C.245 is amended to read:

23 419C.245. (1) The juvenile department counselor shall inform, **in writing**, a youth and the
24 youth's parents or [guardian] **guardians** of the youth's right to counsel and to appointed counsel
25 at state expense, if the youth is determined to be financially eligible under the policies, procedures,
26 standards and guidelines of the Public Defense Services Commission. The right to counsel shall at-
27 tach prior to the youth's entering into a formal accountability agreement.

28 (2) **The youth may waive the right to counsel prior to the youth's entering into a formal**
29 **accountability agreement, provided that:**

30 (a) **The youth's juvenile department counselor has advised the youth of the youth's right**
31 **to counsel, in writing; and**

32 (b) **The waiver is in writing, signed by the youth and presented to the youth's juvenile**
33 **department counselor.**

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