

Enrolled
Senate Bill 49

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor Kate Brown for Oregon Healthy Authority)

CHAPTER

AN ACT

Relating to juvenile fitness to proceed proceedings; creating new provisions; amending ORS 419C.380, 419C.396 and 419C.398; and repealing ORS 419C.384.

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

SECTION 1. ORS 419C.380 is amended to read:

419C.380. (1) An evaluation ordered under ORS 419C.378 must be conducted by a psychiatrist, a licensed psychologist or a regulated social worker. If an evaluation is requested, the party at whose request the evaluation was ordered shall notify the court and other parties of the date, time and location of the evaluation and the name of the evaluator chosen by the party. A party or the court may submit written information to the evaluator for consideration. When written information that has not been provided to the court or an opposing party is submitted to the evaluator, the party submitting the written information to the evaluator shall provide the written information to the court and the opposing party.

(2)(a) Upon motion of the youth, or upon the court's own motion, a court shall determine whether the youth is financially eligible under the policies, procedures, standards and guidelines of the Public Defense Services Commission.

(b) If a county court or justice court determines that the youth is financially eligible, the court shall order the county to pay the fees and costs described in subsection (3) of this section from funds available for that purpose.

(c) If a circuit court determines that the youth is financially eligible, the court shall order the public defense services executive director to pay the fees and costs described in subsection (3) of this section from funds available for that purpose.

(3) If a court determines that a youth is financially eligible under subsection (2) of this section, the court shall order that:

(a) A reasonable fee be paid to a psychiatrist, licensed psychologist or regulated social worker in private practice who conducts the evaluation; and

(b) All costs, including transportation of the youth, be paid if the evaluation is conducted by a psychiatrist, licensed psychologist or regulated social worker employed by the Department of Human Services or is conducted by a community mental health program or community developmental disabilities program established under ORS 430.610 to 430.695.

(4) If an evaluation is ordered under ORS 419C.378 at the request of or with the acquiescence of a youth, and the youth is determined not to be financially eligible under subsection (2) of this section, the evaluation shall be performed at the youth's expense.

(5) If an evaluation is ordered under ORS 419C.378 at the request of the district attorney or juvenile department, the county shall pay for the expense of the evaluation.

(6) After a motion is made by the court or the youth under ORS 419C.378 (3), the state shall have the right to seek an independent evaluation at its own expense.

(7) A youth may not be removed from the youth's current placement for the purpose of an evaluation performed under this section unless the youth has been placed in a detention facility as defined in ORS 419A.004 or a youth correction facility as defined in ORS 420.005.

SECTION 2. ORS 419C.384 is repealed.

SECTION 3. ORS 419C.398 is amended to read:

419C.398. (1) A youth may not be removed from the youth's current placement solely for the purpose of receiving restorative services pursuant to a court order under ORS 419C.392 unless the court finds:

(a) That removal is necessary to provide restorative services under ORS 419C.396;

(b) That removal is in the best interest of the youth; and

(c) If the Department of Human Services has custody of the youth, that:

(A) The department made reasonable efforts to prevent or eliminate the need for removal and make it possible for the youth to safely return to the youth's current placement; or

(B) Reasonable efforts have not been made by the department but reasonable efforts would not have eliminated the need for removal under paragraphs (a) and (b) of this subsection.

(2) If a youth is removed for the purpose of receiving restorative services, the youth shall be returned to the youth's current placement immediately upon conclusion of the provision of the restorative services **unless the youth has been placed in a detention facility as defined in ORS 419A.004 or a youth correction facility as defined in ORS 420.005.**

SECTION 4. ORS 419C.396 is amended to read:

419C.396. (1) The Oregon Health Authority shall arrange for the provision of or begin providing restorative services within 30 days after receiving a court order under ORS 419C.392 (3). The authority shall send a report to the court, with copies to the parties to the proceeding initiated by a petition alleging jurisdiction under ORS 419C.005, no later than 90 days after receipt of the order. The report must describe the nature and duration of restorative services provided, indicate whether the youth is fit to proceed or presents a substantial probability of gaining or regaining fitness to proceed and recommend whether restorative services should be continued and, if so, the type and duration of the services.

(2) Within 14 days after receiving a report under subsection (1) of this section, the court shall determine the youth's fitness to proceed.

(3) Upon the recommendation of the authority, the request of a party or the court's own motion, the court may hold a review hearing concerning the evaluation of the youth's fitness to proceed at any time during which restorative services are provided pursuant to an order under ORS 419C.392 (3). After a review hearing, the court shall determine the youth's fitness to proceed.

(4) If the court finds that a youth is fit to proceed, the court shall vacate the stay under ORS 419C.378.

(5) If the court finds that the youth remains unfit to proceed and that there is not a substantial probability that the youth will gain or regain fitness to proceed in the foreseeable future, the court shall:

(a) Immediately enter a judgment that dismisses the petition alleging jurisdiction under ORS 419C.005 without prejudice; or

(b) If necessary for planning or instituting an alternative proceeding, then not more than five days after the findings are made enter a judgment that dismisses the petition without prejudice.

(6) If the court finds under subsection (2) or (3) of this section that the youth remains unfit to proceed, but that the youth presents a substantial probability of gaining or regaining fitness to proceed, the court shall order that restorative services be continued. The court shall order the authority to send a report to the court, with copies to the parties, within a specified time, not to exceed 90 days from the time the order is filed.

(7) If the court finds under subsection (2) or (3) of this section that a youth remains unfit to proceed, the youth shall be discharged within a period of time that is reasonable for making a determination whether the youth presents a substantial probability of gaining or regaining fitness to proceed. Regardless of the number of acts the petition alleging jurisdiction under ORS 419C.005 alleges that the youth committed, the youth may not be continued in restorative services for longer than whichever of the following, measured from the date the petition is filed, is shorter:

(a) Three years; or

(b) The period of time that is equal to the maximum commitment the court could have imposed if the petition had been adjudicated.

(8)(a) If the court orders placement for restorative services, the court may specify the type of care, supervision, security or services to be provided by the authority to any youth placed in the custody of the Department of Human Services and to the parents or guardians of the youth.

(b) The authority, in *[consultation with the department]* **coordination with the Department of Human Services, the local juvenile department and the youth’s family**, may place the youth in any facility authorized to accept the youth and provide the necessary services and care **that are most appropriate for the youth.**

(c) **The authority shall continue to provide restorative services wherever the youth is placed.**

SECTION 5. The amendments to ORS 419C.380, 419C.396 and 419C.398 by sections 1, 3 and 4 of this 2017 Act and the repeal of ORS 419C.384 by section 2 of this 2017 Act apply to court orders for fitness to proceed evaluations and restorative services made on or after the effective date of this 2017 Act.

Passed by Senate June 19, 2017

.....
Lori L. Brocker, Secretary of Senate

.....
Peter Courtney, President of Senate

Passed by House June 26, 2017

.....
Tina Kotek, Speaker of House

Received by Governor:

.....M.,....., 2017

Approved:

.....M.,....., 2017

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2017

.....
Dennis Richardson, Secretary of State