

# 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)

## 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**.

Prohibits removal of youth from current placement for purpose of receiving fitness to proceed evaluation.

Requires that court order for restorative services to gain or regain fitness to proceed specify where youth is to be placed upon conclusion of restorative services if youth is removed from current placement.

Prohibits removal of youth from current placement for provision of restorative services unless community mental health program director or director's designee has determined that there is medical necessity for youth to receive inpatient mental health services.

## A BILL FOR AN ACT

1  
2 Relating to juvenile fitness to proceed proceedings; creating new provisions; amending ORS  
3 419C.380, 419C.392 and 419C.398; and repealing ORS 419C.384.

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

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

6 419C.380. (1) An evaluation ordered under ORS 419C.378 must be conducted by a psychiatrist,  
7 a licensed psychologist or a regulated social worker. If an evaluation is requested, the party at  
8 whose request the evaluation was ordered shall notify the court and other parties of the date, time  
9 and location of the evaluation and the name of the evaluator chosen by the party. A party or the  
10 court may submit written information to the evaluator for consideration. When written information  
11 that has not been provided to the court or an opposing party is submitted to the evaluator, the party  
12 submitting the written information to the evaluator shall provide the written information to the  
13 court and the opposing party.

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

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

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

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

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

27 (b) All costs, including transportation of the youth, be paid if the evaluation is conducted by a

**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 psychiatrist, licensed psychologist or regulated social worker employed by the Department of Human  
 2 Services or is conducted by a community mental health program or community developmental disa-  
 3 bilities program established under ORS 430.610 to 430.695.

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

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

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

11 **(7) A youth may not be removed from the youth's current placement for the purpose of**  
 12 **an evaluation performed under this section.**

13 **SECTION 2. ORS 419C.384 is repealed.**

14 **SECTION 3.** ORS 419C.392 is amended to read:

15 419C.392. (1) If the court finds that the youth is fit to proceed, the court shall vacate the stay  
 16 under ORS 419C.378.

17 (2) If the court finds that the youth is unfit to proceed and that there is not a substantial  
 18 probability that the youth will gain or regain fitness to proceed in the foreseeable future if provided  
 19 restorative services under ORS 419C.396, the court shall:

20 (a) Immediately enter a judgment that dismisses the petition alleging jurisdiction under ORS  
 21 419C.005 without prejudice; or

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

24 (3)(a) If the court finds that the youth is unfit to proceed and that there is a substantial proba-  
 25 bility that the youth will gain or regain fitness to proceed in the foreseeable future if provided  
 26 restorative services under ORS 419C.396, the court shall continue the order under ORS 419C.378  
 27 staying the proceedings and order that the youth receive restorative services under ORS 419C.396.

28 **Unless ORS 419C.398 (2) applies, the order for restorative services made under this sub-**  
 29 **section must specify where the youth will be placed upon conclusion of the restorative ser-**  
 30 **vices if the youth has been removed from the youth's current placement.**

31 (b) The court shall forward the order for restorative services to the Oregon Health Authority.

32 **SECTION 4.** ORS 419C.398 is amended to read:

33 419C.398. (1) A youth may not be removed from the youth's current placement solely for the  
 34 purpose of receiving restorative services pursuant to a court order under ORS 419C.392 unless the  
 35 court finds:

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

37 (b) That removal is in the best interest of the youth; *[and]*

38 **(c) That a community mental health program director or the director's designee has de-**  
 39 **termined that there is medical necessity for the youth to receive inpatient mental health**  
 40 **services; and**

41 *[(c)]* **(d)** If the Department of Human Services has custody of the youth, that:

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

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

1 (2) If a youth is removed for the purpose of receiving restorative services, the youth shall be  
2 returned to the youth's current placement immediately upon conclusion of the provision of the  
3 restorative services.

4 **SECTION 5. The amendments to ORS 419C.380, 419C.392 and 419C.398 by sections 1, 3 and**  
5 **4 of this 2017 Act and the repeal of ORS 419C.384 by section 2 of this 2017 Act apply to court**  
6 **orders for fitness to proceed evaluations and restorative services made on or after the ef-**  
7 **fective date of this 2017 Act.**

8

---