

D R A F T

SUMMARY

Authorizes district attorney to provide information regarding youth to victim of act alleged to have been committed by youth as district attorney determines necessary for victim to make decision regarding exercise of victim's rights.

Modifies factors court shall consider when making decision regarding waiver of youth to adult court.

A BILL FOR AN ACT

Relating to juveniles; creating new provisions; and amending ORS 147.508, 419C.273 and 419C.349.

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

SECTION 1. ORS 419C.273 is amended to read:

419C.273. (1)(a) The victim of any act alleged in a petition filed under this chapter may be present at and, upon request, must be informed in advance of critical stages of the proceedings held in open court when the youth or youth offender will be present.

(b) The victim must be informed of any constitutional rights of the victim. Except as provided in ORS 147.417, the district attorney or juvenile department must ensure that victims are informed of their constitutional rights.

(2)(a) The victim has the right, upon request, to be notified in advance of or to be heard at:

(A) A detention or shelter hearing;

(B) A hearing to review the placement of the youth or youth offender; or

(C) A dispositional hearing.

(b) For a release hearing, the victim has the right:

1 (A) Upon request, to be notified in advance of the hearing;

2 (B) To appear personally at the hearing; and

3 (C) If present, to reasonably express any views relevant to the issues be-
4 fore the court.

5 (3) If the victim is not present at a critical stage of the proceeding, the
6 court shall ask the district attorney or juvenile department whether the
7 victim requested to be notified of critical stages of the proceedings. If the
8 victim requested to be notified, the court shall ask the district attorney or
9 juvenile department whether the victim was notified of the date, time and
10 place of the hearing.

11 **(4) Nothing in this section creates a cause of action for compen-**
12 **sation or damages. This section may not be used to invalidate an**
13 **accusatory instrument or adjudication or otherwise terminate any**
14 **proceeding at any point after the case is commenced or on appeal.**

15 **(5) Notwithstanding any other provision of law regarding the**
16 **confidentiality or privilege of juvenile records, the district attorney**
17 **may provide the victim with information that is in the district**
18 **attorney's possession and control regarding the alleged offense or the**
19 **youth if the district attorney determines the information is necessary**
20 **to assist the victim in exercising or determining whether to exercise**
21 **the victim's statutory or constitutional rights. Nothing in this sub-**
22 **section is intended to grant the victim a right to obtain copies of re-**
23 **cords containing the information disclosed under this subsection.**

24 [(4)] **(6)** As used in this section:

25 (a) "Critical stage of the proceeding" means a hearing that:

26 (A) Affects the legal interests of the youth or youth offender;

27 (B) Is held in open court; and

28 (C) Is conducted in the presence of the youth or youth offender.

29 (b) "Critical stage of the proceeding" includes, but is not limited to:

30 (A) Detention and shelter hearings;

31 (B) Hearings to review placements;

(C) Hearings to set or change conditions of release;

(D) Hearings to transfer proceedings or to transfer parts of proceedings;

(E) Waiver hearings;

(F) Adjudication and plea hearings;

(G) Dispositional hearings, including but not limited to restitution hearings;

(H) Review or dispositional review hearings;

(I) Hearings on motions to amend, dismiss or set aside petitions, orders or judgments;

(J) Probation violation hearings, including probation revocation hearings, when the basis for the alleged violation directly implicates a victim's rights;

(K) Hearings for relief from the duty to report under ORS 163A.130; and

(L) Expunction hearings.

[(5) Nothing in this section creates a cause of action for compensation or damages. This section may not be used to invalidate an accusatory instrument or adjudication or otherwise terminate any proceeding at any point after the case is commenced or on appeal.]

SECTION 2. ORS 419C.349 is amended to read:

419C.349. (1) Except as otherwise provided in ORS 419C.364 or 419C.370, the juvenile court shall conduct a waiver hearing when:

(a) The state files a motion requesting a waiver hearing in a case in which a petition has been filed alleging that a youth has committed an act when the youth was 15, 16 or 17 years of age that, if committed by an adult, would constitute aggravated murder or an offense listed in ORS 137.707; or

(b) The state files a motion requesting a waiver hearing in a case in which a petition has been filed alleging that a youth has committed an act when the youth was 15, 16 or 17 years of age that, if committed by an adult, would constitute:

(A) A Class A or Class B felony;

(B) Any of the following Class C felonies:

(i) Escape in the second degree under ORS 162.155;

(ii) Assault in the third degree under ORS 163.165;

(iii) Coercion under ORS 163.275 (1)(a);

(iv) Arson in the second degree under ORS 164.315; or

(v) Robbery in the third degree under ORS 164.395;

(C) Any Class C felony in which the youth used or threatened to use a firearm; or

(D) Any other crime that the state and the youth stipulate is subject to waiver.

(2) After the hearing, the juvenile court may waive the youth to a circuit, justice or municipal court of competent jurisdiction if:

(a) The youth at the time of the alleged offense [*was of sufficient sophistication and maturity to appreciate the nature and quality of the conduct involved*]:

(A) Possessed the capabilities of an average person who is 18 years of age, irrespective of whether the youth possessed every one of the many capabilities of a person who is 18 years of age or older, including the capacity to function autonomously, even if the person is not then living independently, but excluding traits that relate solely to personality or characterological issues; and

(B) Was aware of the wrongfulness of the conduct and that the conduct had consequences for the youth, victim or others; and

(b) The juvenile court, after considering the following criteria, determines by a preponderance of the evidence that retaining jurisdiction will not serve the best interests of the youth and of society and therefore is not justified:

(A) The amenability of the youth to treatment and rehabilitation given the techniques, facilities and personnel for rehabilitation available to the juvenile court and to the criminal court that would have jurisdiction after transfer;

(B) The protection required by the community, given the seriousness of the offense alleged, and whether the youth can be safely rehabilitated under the jurisdiction of the juvenile court;

(C) The aggressive, violent, premeditated or willful manner in which the offense was alleged to have been committed;

(D) The previous history of the youth, including:

(i) Prior treatment efforts and out-of-home placements; and

(ii) The physical, emotional and mental health of the youth;

(E) The youth's prior record of acts that would be crimes if committed by an adult;

(F) The gravity of the loss, damage or injury caused or attempted during the offense;

(G) The prosecutive merit of the case against the youth; and

(H) The desirability of disposing of all cases in one trial if there were adult co-offenders.

(3) The victim of the alleged offense has the right to appear at a hearing under this section and to provide the court with any information reasonably related to the court's determination.

(4) The right to counsel, and the appointment of counsel under ORS 419C.200, applies to a hearing under this section.

(5) The state has the right to have at least one psychiatrist or licensed psychologist of its selection examine the youth concerning the determination of whether to waive the youth under this section.

SECTION 3. ORS 147.508 is amended to read:

147.508. (1) At the request of a victim, the prosecuting attorney may request that the court schedule a hearing to reconsider a release decision if:

(a) The victim did not have notice of, or an opportunity to be heard at, a hearing in which the court released the defendant from custody or reduced the defendant's security amount; and

(b) The victim's request is made no later than 30 days after the victim knew or reasonably should have known of the release decision that is to be reconsidered.

(2) As used in this section, "release decision" includes:

(a) Decisions made at arraignment; and

1 (b) Decisions made at hearings described in ORS 419C.273 [(4)(b)(A)]
2 (6)(b)(A) to (C).

3 **SECTION 4. The amendments to ORS 419C.273 and 419C.349 by**
4 **sections 1 and 2 of this 2021 Act apply to motions to waive youths to**
5 **adult court filed on or after the effective date of this 2021 Act.**

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