

**A-Engrossed**  
**Senate Bill 49**

Ordered by the Senate April 26  
Including Senate Amendments dated April 26

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.

Prohibits removal of youth from current placement for purpose of receiving fitness to proceed evaluation **unless youth is placed in detention facility or youth correction facility.**

*[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.]*

**Permits Oregon Health Authority, in coordination with Department of Human Services, local juvenile department and youth's family, to place youth in facility authorized to provide most appropriate necessary services and care. Requires authority to continue to provide restorative services wherever youth is placed.**

**A BILL FOR AN ACT**

1  
2 Relating to juvenile fitness to proceed proceedings; creating new provisions; amending ORS  
3 419C.380, 419C.396 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

**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 this section from funds available for that purpose.

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

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

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

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

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

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

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

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

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

22 419C.398. (1) A youth may not be removed from the youth's current placement solely for the  
23 purpose of receiving restorative services pursuant to a court order under ORS 419C.392 unless the  
24 court finds:

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

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

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

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

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

32 (2) If a youth is removed for the purpose of receiving restorative services, the youth shall be  
33 returned to the youth's current placement immediately upon conclusion of the provision of the  
34 restorative services **unless the youth has been placed in a detention facility as defined in ORS**  
35 **419A.004 or a youth correction facility as defined in ORS 420.005.**

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

37 419C.396. (1) The Oregon Health Authority shall arrange for the provision of or begin providing  
38 restorative services within 30 days after receiving a court order under ORS 419C.392 (3). The au-  
39 thority shall send a report to the court, with copies to the parties to the proceeding initiated by a  
40 petition alleging jurisdiction under ORS 419C.005, no later than 90 days after receipt of the order.  
41 The report must describe the nature and duration of restorative services provided, indicate whether  
42 the youth is fit to proceed or presents a substantial probability of gaining or regaining fitness to  
43 proceed and recommend whether restorative services should be continued and, if so, the type and  
44 duration of the services.

45 (2) Within 14 days after receiving a report under subsection (1) of this section, the court shall

1 determine the youth's fitness to proceed.

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

6 (4) If the court finds that a youth is fit to proceed, the court shall vacate the stay under ORS  
7 419C.378.

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

11 (a) Immediately enter a judgment that dismisses the petition alleging jurisdiction under ORS  
12 419C.005 without prejudice; or

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

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

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

26 (a) Three years; or

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

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

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

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

38 **SECTION 5. The amendments to ORS 419C.380, 419C.396 and 419C.398 by sections 1, 3 and**  
39 **4 of this 2017 Act and the repeal of ORS 419C.384 by section 2 of this 2017 Act apply to court**  
40 **orders for fitness to proceed evaluations and restorative services made on or after the ef-**  
41 **fective date of this 2017 Act.**