

Juvenile Delinquency Fitness to Proceed Process and Court Forms Implementation of House Bill 2836 (2013) effective 8/1/13

Summary

House Bill 2836 (2013), now codified in ORS 419C.378 to 419C.398, creates a statutory framework for handling fitness to proceed issues in juvenile delinquency matters. The new legislation defines fitness, provides timelines for evaluations, objections and fitness determinations, and provides a process for administering restorative services.

Juvenile Court Programs has developed reference materials and optional court forms designed to explain and comply with the provisions of HB 2836. The new statutory framework requires the court to make certain findings when ordering a youth to participate in an evaluation, when determining the issue of fitness, and when considering whether to order restorative services. These findings are set forth in more detail in the reference materials posted on our website.

Qualified Evaluators

The fitness evaluation must be conducted by a psychiatrist, a licensed psychologist or a regulated social worker. ORS 419C.380(1). The Oregon Health Authority (OHA) is required to develop training standards and guidelines for the conduct of evaluations, as well as provide courts with a current list of qualified evaluators. ORS 419C.382(1). The existing rules for Forensic Mental Health Evaluations ([OAR 309-090-000 through 309-090-050](#)) are in the process of being amended to address this. In the meantime, the OHA has approved evaluators to conduct juvenile fitness evaluations. Those evaluators can be found on the OHA website at: <http://www.oregon.gov/oha/amh/forensic-eval/Pages/index.aspx> Please be aware the court is not required to use an evaluator from this list as long as the evaluator is qualified as described above. ORS 419C.382(1)(c).

Orders for Restorative Services

The OHA has the statutory responsibility for arranging for restorative services within 30 days of receipt of a court order referring a youth to restorative services. See ORS 419C.396(1). The OHA is in the process of contracting with restorative service providers around the state. A handout explaining in more detail the services provided by the OHA has been posted on our website.

Once the court has ordered restorative services, the court is required to forward the order to the Oregon Health Authority. ORS 419C.392(3)(b). OHA has requested that these orders be routed to: Alex Palm, alex.j.palm@state.or.us, 500 Summer St., Salem, OR 97301. In addition, the OHA has requested that a copy of the delinquency petition and the evaluation be forwarded with the court order on a routine basis. The OHA is entitled to these documents under ORS 419C.386(5).

The OHA arranges for the services to be provided in the youth's current setting, whether that is at home or in some other type of care. If providing services in the current setting becomes too difficult and the youth's placement needs to be adjusted, the service provider may recommend a higher level of care.

Placement Issues

HB 2836 provides that a youth may not be removed from his or her placement solely for the purpose of an evaluation or to receive restorative services. However, if the court finds that a placement change is necessary and in the best interest of the youth, a temporary placement change may be ordered. There is a specific prohibition against removing the youth to a hospital or a residential facility solely for purposes of the evaluation. ORS 419C.384(2).

For youth in DHS custody, the court must also find that DHS made reasonable efforts to prevent or eliminate the need for removal, or that no reasonable efforts would've prevented the removal. Also, the court may not direct that the youth be placed in a specific placement for purposes of receiving restorative services, although the court may specify the type of care or supervision the youth is to receive (foster care with a relative, regular foster care, residential care, group care). See ORS 419C.396(8) and ORS 419B.349.