

SB 49 -1 STAFF MEASURE SUMMARY

Senate Committee On Judiciary

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Meeting Dates: 3/27

WHAT THE MEASURE DOES:

Prohibits removing youth from current placement for an evaluation for fitness to proceed in a juvenile delinquency proceeding. Requires community mental health director to determine that inpatient treatment is medically necessary before youth may be removed from current placement for restorative services.

REVENUE: May have revenue impact, but no statement yet issued

FISCAL: May have fiscal impact, but no statement yet issued

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

-1 Authorizes removal of youth for purposes of evaluation only if youth detained in detention facility. Requires that youth be returned to original placement following completion of restorative services, unless youth originally placed in detention facility. Directs Oregon Health Authority to coordinate with Department of Human Services, juvenile department and youth's family, in placing youth in appropriate facility for restorative services.

BACKGROUND:

The due process clause of the United States Constitution prohibits the criminal prosecution of an incompetent defendant; a "defendant may not be put to trial unless he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding...and a rational as well as factual understanding of the proceedings against him." *Cooper v. Oklahoma*, 517 U.S. 348, 354 (1996). In Oregon, the process for determining a defendant's fitness for criminal prosecution, commonly called the ability to "aid and assist," is described in ORS 161.360 to 161.370.

In 2013, the Legislative Assembly adopted "aid and assist" statutes for juvenile delinquency proceedings. Like their adult counterparts, ORS 419C.378 to 419C.398 envision a two-step process. First, a youth before the juvenile court is evaluated by a psychiatrist, psychologist or social worker. Second, if after receiving the results of this evaluation, the juvenile court determines that the youth is not able to aid and assist in his or her defense, the court must suspend the proceedings and order that the youth receive restorative treatment. Senate Bill 49 addresses the physical placement of the youth at both stages of this process.