

Enrolled
House Bill 2616

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Judiciary)

CHAPTER

AN ACT

Relating to right to counsel in juvenile delinquency proceedings; amending ORS 419C.200 and 419C.245.

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

SECTION 1. ORS 419C.200 is amended to read:

419C.200. *[(1) If the youth, the parent or guardian requests counsel for the youth but is without sufficient financial means to employ suitable counsel possessing skills and experience commensurate with the nature of the petition and the complexity of the case, the court may appoint suitable counsel to represent the youth at state expense if the youth is determined to be financially eligible under the policies, procedures, standards and guidelines of the Public Defense Services Commission. Whenever requested to do so, The court shall appoint counsel to represent the youth in every case filed pursuant to ORS 419C.005 in which the youth would be entitled to appointed counsel if the youth were an adult charged with the same offense.]*

(1)(a) When a petition is filed under ORS 419C.005, the court:

(A) Shall appoint counsel to represent the youth at all stages of the proceeding if the offense alleged in the petition is classified as a crime.

(B) Shall appoint counsel for the youth at any proceeding concerning an order of probation.

(C) Notwithstanding subparagraph (A) or (B) of this paragraph, shall appoint counsel for the youth in any case in which the youth would be entitled to appointed counsel if the youth were an adult charged with the same offense.

(D) May appoint counsel for the youth in any other proceeding under ORS 419C.005.

(b) Appointment of counsel under this subsection requires the court's determination that the youth or the youth's parents or guardians are without sufficient financial means to employ suitable counsel possessing the skills and experience commensurate with the nature of the petition and the complexity of the case under the policies, procedures, standards and guidelines of the Public Defense Services Commission.

(c) The court may not substitute one appointed counsel for another except pursuant to the policies, procedures, standards and guidelines of the Public Defense Services Commission.

(2)(a) A court may not accept a waiver of counsel by a youth except under the following circumstances:

(A) The youth is at least 16 years of age;

(B) The youth has met with and been advised regarding the right to counsel by counsel who has been appointed by the court or retained on behalf of the youth;

(C) A written waiver, signed by both the youth and the youth's counsel, is filed with the court; and

(D) A hearing is held on the record where the youth's counsel appears and the court, after consulting with the youth, finds the waiver was knowingly, intelligently and voluntarily made and not unduly influenced by the interests of others, including the interests of the youth's parents or guardians.

(b) This subsection does not apply to a youth entering into a formal accountability agreement under ORS 419C.230.

[2)] (3) Upon presentation of the order of appointment under this section by the [attorney] counsel for the youth, any agency, hospital, school organization, division or department of the state, doctor, nurse or other health care provider, psychologist, psychiatrist, police department or mental health clinic shall permit the [attorney] counsel to inspect and copy any records of the youth or youths involved in the case, without the consent of the youth or youths or parents. This subsection does not apply to records of a police agency relating to an ongoing investigation prior to charging.

SECTION 2. ORS 419C.245 is amended to read:

419C.245. (1) The juvenile department counselor shall inform, **in writing**, a youth and the youth's parents or [guardian] **guardians** of the youth's right to counsel and to appointed counsel at state expense, if the youth is determined to be financially eligible under the policies, procedures, standards and guidelines of the Public Defense Services Commission. The right to counsel shall attach prior to the youth's entering into a formal accountability agreement.

(2) **The youth may waive the right to counsel prior to the youth's entering into a formal accountability agreement, provided that:**

(a) **The youth's juvenile department counselor has advised the youth of the youth's right to counsel, in writing; and**

(b) **The waiver is in writing, signed by the youth and presented to the youth's juvenile department counselor.**

Passed by House April 5, 2017

Received by Governor:

Repassed by House June 6, 2017

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Approved:

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Timothy G. Sekerak, Chief Clerk of House

.....M.,....., 2017

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Tina Kotek, Speaker of House

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Kate Brown, Governor

Passed by Senate June 1, 2017

Filed in Office of Secretary of State:

.....M.,....., 2017

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Peter Courtney, President of Senate

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Dennis Richardson, Secretary of State