

House Bill 2048

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor Kate Brown for Oregon State Police)

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 **as introduced**.

Requires juvenile court to ensure that person who waives right to hearing on issue of reporting as sex offender, or who fails to appear at hearing, completes form documenting person's obligation to report. Requires court to send form to Department of State Police.

A BILL FOR AN ACT

1
2 Relating to sex offenders adjudicated in juvenile court; amending ORS 163A.030.

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

4 **SECTION 1.** ORS 163A.030 is amended to read:

5 163A.030. (1)(a) Except as provided in subsection (6) of this section, the juvenile court shall hold
6 a hearing on the issue of reporting as a sex offender by a person who has been found to be within
7 the jurisdiction of the juvenile court under ORS 419C.005, or found by the juvenile court to be re-
8 sponsible except for insanity under ORS 419C.411, for having committed an act that if committed
9 by an adult would constitute a felony sex crime if:

10 (A) The person was adjudicated on or after August 12, 2015; or

11 (B) The person was adjudicated before August 12, 2015, and was still under the jurisdiction of
12 the juvenile court or the Psychiatric Security Review Board on April 4, 2016.

13 (b) Unless the court continues the hearing described in this section for good cause, the hearing
14 must be held:

15 (A) During the six-month period before the termination of juvenile court jurisdiction over the
16 person; or

17 (B) During the six-month period after the court receives the notice described in subsection (2)
18 of this section from the Psychiatric Security Review Board, if the person was placed under the ju-
19 risdiction of the board.

20 (c) The court shall notify the person of the person's right to a hearing under this section upon
21 finding the person within the jurisdiction of the juvenile court under ORS 419C.005.

22 (2)(a) The county or state agency responsible for supervising the person shall notify the person
23 and the juvenile court when the agency determines that termination of jurisdiction is likely to occur
24 within six months.

25 (b) If the Psychiatric Security Review Board discharges a person prior to the end of the board's
26 jurisdiction over the person, the board shall notify the juvenile court within three business days
27 after the discharge date.

28 (3) Upon receipt of the notice described in subsection (2) of this section, the court shall:

29 (a) Appoint an attorney for the person as described in subsection (4) of this section;

30 (b) Set an initial hearing date; and

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 (c) Notify the parties and the juvenile department or the Psychiatric Security Review Board, if
 2 the department or board is supervising or has jurisdiction over the person, of the hearing at least
 3 60 days before the hearing date.

4 (4)(a) A person who is the subject of a hearing under this section has the right to be represented
 5 by a suitable attorney possessing skills and experience commensurate with the nature and com-
 6 plexity of the case, to consult with the attorney prior to the hearing and, if financially eligible, to
 7 have a suitable attorney appointed at state expense.

8 (b) In order to comply with the right to counsel under paragraph (a) of this subsection, the court
 9 may:

10 (A) Continue the appointment of the attorney appointed under ORS 419C.200 at the time of dis-
 11 position;

12 (B) Set a date prior to the hearing under this section in order to reappoint the attorney ap-
 13 pointed under ORS 419C.200; or

14 (C) Appoint or reappoint an attorney at any time in response to a request by the person who
 15 is the subject of a hearing under this section.

16 (5)(a) The district attorney shall notify the victim prior to the hearing of the right to appear and
 17 the right to be heard under ORS 419C.273.

18 (b) If the person is under the jurisdiction of the Psychiatric Security Review Board, the board
 19 shall notify the following of the hearing:

20 (A) The mental health agency providing services to the person, if any;

21 (B) The person's board defense attorney; and

22 (C) The assistant attorney general representing the state at board hearings.

23 (6)(a) A person may waive the right to the hearing described in this section after consultation
 24 with the person's attorney. If the court finds that the person has knowingly waived the right to a
 25 hearing, the court shall enter an order requiring the person to report as a sex offender under ORS
 26 163A.025.

27 (b) If a person fails to appear at a hearing described in this section, the court may enter an
 28 order requiring the person to report as a sex offender under ORS 163A.025.

29 (7) At the hearing described in subsection (1) of this section:

30 (a) The district attorney, the victim, the person and the juvenile department or a representative
 31 of the Oregon Youth Authority shall have an opportunity to be heard.

32 (b) The person who is the subject of the hearing has the burden of proving by clear and con-
 33 vincing evidence that the person is rehabilitated and does not pose a threat to the safety of the
 34 public. If the court finds that the person has not met the burden of proof, the court shall enter an
 35 order requiring the person to report as a sex offender under ORS 163A.025.

36 (8) In determining whether the person has met the burden of proof, the juvenile court may
 37 consider but need not be limited to considering:

38 (a) The extent and impact of any physical or emotional injury to the victim;

39 (b) The nature of the act that subjected the person to the duty of reporting as a sex offender;

40 (c) Whether the person used or threatened to use force in committing the act;

41 (d) Whether the act was premeditated;

42 (e) Whether the person took advantage of a position of authority or trust in committing the act;

43 (f) The age of any victim at the time of the act, the age difference between any victim and the
 44 person and the number of victims;

45 (g) The vulnerability of the victim;

1 (h) Other acts committed by the person that would be crimes if committed by an adult and
2 criminal activities engaged in by the person before and after the adjudication;

3 (i) Statements, documents and recommendations by or on behalf of the victim or the parents of
4 the victim;

5 (j) The person's willingness to accept personal responsibility for the act and personal account-
6 ability for the consequences of the act;

7 (k) The person's ability and efforts to pay the victim's expenses for counseling and other
8 trauma-related expenses or other efforts to mitigate the effects of the act;

9 (L) Whether the person has participated in and satisfactorily completed a sex offender treatment
10 program or any other intervention, and if so the juvenile court may also consider:

11 (A) The availability, duration and extent of the treatment activities;

12 (B) Reports and recommendations from the providers of the treatment;

13 (C) The person's compliance with court, board or supervision requirements regarding treatment;
14 and

15 (D) The quality and thoroughness of the treatment program;

16 (m) The person's academic and employment history;

17 (n) The person's use of drugs or alcohol before and after the adjudication;

18 (o) The person's history of public or private indecency;

19 (p) The person's compliance with and success in completing the terms of supervision;

20 (q) The results of psychological examinations of the person;

21 (r) The protection afforded the public by records of sex offender registration; and

22 (s) Any other relevant factors.

23 (9) In a hearing under this section, the juvenile court may receive testimony, reports and other
24 evidence, without regard to whether the evidence is admissible under ORS 40.010 to 40.210 and
25 40.310 to 40.585, if the evidence is relevant evidence related to the determination and findings re-
26 quired under this section. As used in this subsection, "relevant evidence" has the meaning given
27 that term in ORS 40.150.

28 (10)(a) In a hearing under this section, the Oregon Youth Authority or the juvenile department,
29 if either agency is supervising the person, or the Psychiatric Security Review Board, if the board
30 has jurisdiction over the person, shall file with the juvenile court the following records and mate-
31 rials in the possession of the agency or board at least 45 days prior to the hearing unless good cause
32 is shown:

33 (A) Evaluations and treatment records concerning the person conducted by a clinician or pro-
34 gram operating under the standards of practice for the evaluation and treatment of juvenile sex
35 offenders adopted by the Sex Offender Treatment Board under ORS 675.400, and recommendations
36 contained therein regarding the need for the person to register in order to protect the public from
37 future sex crimes;

38 (B) All examination preparation material and examination records from polygraph examinations
39 conducted by or for the treatment provider, juvenile department or Oregon Youth Authority; and

40 (C) The Psychiatric Security Review Board exhibit file.

41 (b) Any records and materials filed with the court under this subsection shall be made available
42 to the parties in accordance with ORS 419A.255.

43 (11) When the juvenile court enters an order described in subsection (6) or (7)(b) of this section,
44 the court shall ensure that the person completes a form that documents the person's obligation to
45 report under ORS 163A.025. No later than three business days after the person completes the form

1 required by this subsection, the court shall ensure that the form is sent to the Department of State
2 Police.

3 (12) Notwithstanding ORS 419C.005 (4)(c), (d) and (e), the juvenile court retains jurisdiction over
4 a person for purposes of this section.

5 (13) As used in this section, "parties" means the person, the state as represented by the district
6 attorney or the juvenile department, and the Oregon Youth Authority or other child care agency,
7 if the person is temporarily committed to the authority or agency.

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