

A-Engrossed
Senate Bill 133

Ordered by the Senate April 22
Including Senate Amendments dated April 22

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 Youth 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.

Places limits on admissibility of facilitated dialogue and responsibility letter bank programs for youth offenders and persons temporarily assigned to youth correction facilities.

Authorizes Oregon Youth Authority to disclose certain information to victim **at victim's request or** when youth authority seeks information from victim **to inform case plan or** about potential impact of authorizing parole of youth offender.

Authorizes [*juvenile court or*] district attorney to provide victim, **pursuant to protective order**, with copy of written waiver findings and determination.

A BILL FOR AN ACT

1
2 Relating to victims in juvenile cases; creating new provisions; and amending ORS 419C.349,
3 419C.352, 420.005 and 420A.115.

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

5
6 **RESTORATIVE JUSTICE PROGRAM**

7
8 **SECTION 1. The Legislative Assembly finds and declares that:**

9 **(1) Restorative justice programs, including facilitated dialogues and responsibility letter**
10 **banks, can promote justice and healing for crime victims and survivors and can aid persons**
11 **temporarily assigned to a youth correction facility under ORS 137.124 or 420.011 and youth**
12 **offenders in the process of rehabilitation;**

13 **(2) A facilitated dialogue or responsibility letter bank program is most successful when**
14 **the participants are able to communicate openly and honestly about the crime or act that,**
15 **if committed by an adult, would constitute a crime and about the impact of that crime or**
16 **act knowing that the participants' communication will not be disclosed to other people or**
17 **used against them later; and**

18 **(3) It is the policy and purpose of sections 1 to 4 of this 2021 Act that Oregon Youth**
19 **Authority facilitated dialogue and responsibility letter bank program communications are**
20 **confidential and should not be admissible in any administrative, judicial or arbitration pro-**
21 **ceeding, except pursuant to limited exceptions established by the Oregon Youth Authority**
22 **by rule.**

23 **SECTION 2. As used in sections 1 to 4 of this 2021 Act, "facilitated dialogue and respon-**
24 **sibility letter bank program communications" means all communications by a victim, survi-**

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 vor, person temporarily assigned to a youth correction facility under ORS 137.124 or 420.011
2 or youth offender, or by a program facilitator, advisory committee member, volunteer, con-
3 tractor or staff person, that are made in the course of or in connection with a facilitated
4 dialogue or responsibility letter bank program conducted pursuant to Oregon Youth Au-
5 thority rules. The communications include but are not limited to:

6 (1) All memoranda, assessment and evaluation forms, documents and other materials,
7 including letters that are prepared for or submitted in connection with a facilitated dialogue;

8 (2) All communications, whether oral, written or recorded, made during the intake of a
9 case, during preparations for a facilitated dialogue, during any joint in-person meetings or
10 telephone calls and during any post-dialogue meetings or conversations; and

11 (3) All materials or recordings submitted in connection with a responsibility letter bank
12 program by a victim, survivor, person temporarily assigned to a youth correction facility
13 under ORS 137.124 or 420.011 or youth offender or by another person on behalf of a victim,
14 survivor or person temporarily assigned to a youth correction facility under ORS 137.124 or
15 420.011 or youth offender.

16 **SECTION 3.** (1) Facilitated dialogue and responsibility letter bank program facilitators,
17 advisory committee members, volunteers, contractors and staff persons shall not be com-
18 pelled to testify or produce evidence in any judicial or administrative proceeding with respect
19 to any facilitated dialogue or responsibility letter bank program communication, except as
20 required under rules established pursuant to section 4 of this 2021 Act.

21 (2) Facilitated dialogue and responsibility letter bank program facilitators, advisory
22 committee members, volunteers, contractors and staff persons are not civilly liable for any
23 act or omission done or made while engaged in efforts to assist a victim, survivor, person
24 temporarily assigned to a youth correction facility under ORS 137.124 or 420.011 or youth
25 offender in the course of or in connection with a facilitated dialogue or responsibility letter
26 bank program conducted pursuant to rules adopted by the Oregon Youth Authority, unless
27 the facilitator, member, volunteer, contractor or staff person acted or made an omission in
28 bad faith, with malicious intent or in a manner that exhibited a willful or wanton disregard
29 of the rights, safety or property of another person.

30 (3) Facilitated dialogue and responsibility letter bank program communications are con-
31 fidential and may not be disclosed to any other person, except as permitted under rules es-
32 tablished pursuant to section 4 of this 2021 Act.

33 (4) Facilitated dialogue and responsibility letter bank program communications are not
34 admissible as evidence in any subsequent administrative, judicial or arbitration proceeding,
35 except as permitted under rules established pursuant to section 4 of this 2021 Act.

36 **SECTION 4.** The Oregon Youth Authority shall adopt rules to carry out the provisions
37 of sections 1 to 4 of this 2021 Act.

38 **SECTION 5.** ORS 420.005 is amended to read:

39 420.005. As used in sections 1 to 4 of this 2021 Act and ORS 420.005 to 420.048, 420.060 to
40 420.275, 420.810 to 420.840 and 420.905 to 420.915, unless the context requires otherwise:

41 (1) "Design capacity" means the number of youth offenders or other persons a youth correction
42 facility is able to hold based on applicable safety codes and standards.

43 (2) "Director" means the Director of the Oregon Youth Authority.

44 (3) "Youth authority" means the Oregon Youth Authority.

45 (4) "Youth correction facility" means a facility used for the confinement of youth offenders and

1 other persons placed in the legal or physical custody of the youth authority and includes secure
2 regional youth facilities, regional **youth** accountability camps, **regional** residential academies and
3 satellites, camps and branches of those facilities.

4 (5) "Youth offender" has the meaning given that term in ORS 419A.004.

5
6 **PAROLE**
7

8 **SECTION 6.** ORS 420A.115 is amended to read:

9 420A.115. (1) The Director of the Oregon Youth Authority may authorize any youth offender to
10 go on parole, subject to conditions of supervision and custody established by the Director of the
11 Oregon Youth Authority and subject to being taken into custody and detained under written order
12 of the Director of the Oregon Youth Authority or as provided in ORS 420A.120.

13 **(2)(a) Notwithstanding ORS 419A.257, the youth authority may disclose the information**
14 **described in paragraph (b) of this subsection to a victim, as defined by the youth authority**
15 **by rule:**

16 **(A) When the youth authority seeks information from the victim regarding the impact**
17 **of the crime to inform the youth offender's case plan;**

18 **(B) When the youth authority seeks information from the victim regarding the potential**
19 **impact of authorizing the youth offender to go on parole; or**

20 **(C) At the request of the victim.**

21 **(b) When making a disclosure permitted under paragraph (a) of this subsection, the**
22 **youth authority may disclose:**

23 **(A) The information described in ORS 420A.122 (2); and**

24 **(B) The progress, on a prescribed metrics scale developed by the youth authority by rule,**
25 **that the youth offender has made while in a youth correction facility in the following areas:**

26 **(i) Completion of assigned services and reformation goals;**

27 **(ii) Overall level of engagement in services and reformation goals;**

28 **(iii) Recognition of the impact of the youth offender's actions on the victim;**

29 **(iv) Recognition of the impact of the youth offender's actions on the community; and**

30 **(v) Completion of a transition plan for parole.**

31 **[(2)] (3) The Director of the Oregon Youth Authority shall determine whether violations of**
32 **conditions of parole have occurred.**

33
34 **WAIVER DECISIONS**
35

36 **SECTION 7.** ORS 419C.349 is amended to read:

37 419C.349. (1) Except as otherwise provided in ORS 419C.364 or 419C.370, the juvenile court shall
38 conduct a waiver hearing when:

39 (a) The state files a motion requesting a waiver hearing in a case in which a petition has been
40 filed alleging that a youth has committed an act when the youth was 15, 16 or 17 years of age that,
41 if committed by an adult, would constitute aggravated murder or an offense listed in ORS 137.707;
42 or

43 (b) The state files a motion requesting a waiver hearing in a case in which a petition has been
44 filed alleging that a youth has committed an act when the youth was 15, 16 or 17 years of age that,
45 if committed by an adult, would constitute:

- 1 (A) A Class A or Class B felony;
- 2 (B) Any of the following Class C felonies:
- 3 (i) Escape in the second degree under ORS 162.155;
- 4 (ii) Assault in the third degree under ORS 163.165;
- 5 (iii) Coercion under ORS 163.275 (1)(a);
- 6 (iv) Arson in the second degree under ORS 164.315; or
- 7 (v) Robbery in the third degree under ORS 164.395;
- 8 (C) Any Class C felony in which the youth used or threatened to use a firearm; or
- 9 (D) Any other crime that the state and the youth stipulate is subject to waiver.
- 10 (2) After the hearing, the juvenile court may waive the youth to a circuit, justice or municipal
- 11 court of competent jurisdiction if:
- 12 (a) The youth at the time of the alleged offense was of sufficient sophistication and maturity to
- 13 appreciate the nature and quality of the conduct involved; and
- 14 (b) The juvenile court, after considering the following criteria, determines by a preponderance
- 15 of the evidence that retaining jurisdiction will not serve the best interests of the youth and of so-
- 16 ciety and therefore is not justified:
- 17 (A) The amenability of the youth to treatment and rehabilitation given the techniques, facilities
- 18 and personnel for rehabilitation available to the juvenile court and to the criminal court that would
- 19 have jurisdiction after transfer;
- 20 (B) The protection required by the community, given the seriousness of the offense alleged, and
- 21 whether the youth can be safely rehabilitated under the jurisdiction of the juvenile court;
- 22 (C) The aggressive, violent, premeditated or willful manner in which the offense was alleged to
- 23 have been committed;
- 24 (D) The previous history of the youth, including:
- 25 (i) Prior treatment efforts and out-of-home placements; and
- 26 (ii) The physical, emotional and mental health of the youth;
- 27 (E) The youth's prior record of acts that would be crimes if committed by an adult;
- 28 (F) The gravity of the loss, damage or injury caused or attempted during the offense;
- 29 (G) The prosecutive merit of the case against the youth; and
- 30 (H) The desirability of disposing of all cases in one trial if there were adult co-offenders.
- 31 (3)(a) The victim of the alleged offense has the right to appear at a hearing under this section
- 32 and to provide the court with any information reasonably related to the court's determination.
- 33 **(b) Notwithstanding ORS 419A.255, the district attorney may provide to the victim, at the**
- 34 **request of the victim and pursuant to a protective order, a copy of the court's written waiver**
- 35 **findings and determination, if any, regardless of whether the victim appeared at the hearing**
- 36 **or presented information to the court.**
- 37 (4) The right to counsel, and the appointment of counsel under ORS 419C.200, applies to a
- 38 hearing under this section.
- 39 (5) The state has the right to have at least one psychiatrist or licensed psychologist of its se-
- 40 lection examine the youth concerning the determination of whether to waive the youth under this
- 41 section.
- 42 **SECTION 8.** ORS 419C.352 is amended to read:
- 43 419C.352. (1) The juvenile court, after a hearing, except as provided in ORS 419C.364 or
- 44 419C.370, may waive a youth under 15 years of age at the time the act was committed to circuit
- 45 court for prosecution as an adult if:

- 1 [(1)] (a) The youth is represented by counsel during the waiver proceedings;
2 [(2)] (b) The juvenile court makes the findings required under ORS 419C.349 (2); and
3 [(3)] (c) The youth is alleged to have committed an act or acts that if committed by an adult
4 would constitute one or more of the following crimes:
5 [(a)] (A) Murder or any aggravated form thereof under ORS 163.095, 163.107 or 163.115;
6 [(b)] (B) Rape in the first degree under ORS 163.375 (1)(a);
7 [(c)] (C) Sodomy in the first degree under ORS 163.405 (1)(a); or
8 [(d)] (D) Unlawful sexual penetration in the first degree under ORS 163.411 (1)(a).
9 (2) **Notwithstanding ORS 419A.255, the district attorney may provide to the victim, at the
10 request of the victim and pursuant to a protective order, a copy of the court's written waiver
11 findings and determination, if any, regardless of whether the victim appeared at the hearing
12 or presented information to the court.**

13
14 **UNIT CAPTIONS**

15
16 **SECTION 9. The unit captions used in this 2021 Act are provided only for the convenience
17 of the reader and do not become part of the statutory law of this state or express any leg-
18 islative intent in the enactment of this 2021 Act.**