

Senate Bill 202

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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**.

Modifies juvenile court's authority to amend, set aside or dismiss delinquency petitions and to modify or set aside judgments and orders in delinquency proceedings.

A BILL FOR AN ACT

1
2 Relating to juvenile delinquency procedure; creating new provisions; and amending ORS 419C.411,
3 419C.610 and 419C.615.

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

5 **SECTION 1. Section 2 of this 2005 Act is added to and made a part of ORS chapter 419C.**

6 **SECTION 2. (1) Notwithstanding ORS 419C.261, when a petition filed under ORS 419C.005**
7 **alleges that a youth has committed an act that would constitute a felony sex crime, as de-**
8 **defined in ORS 181.594, if committed by an adult, the court may not amend or dismiss the pe-**
9 **tion prior to finding the youth within the court's jurisdiction under ORS 419C.005 except:**

10 (a) **Upon motion of the district attorney;**

11 (b) **When required by ORS 419A.190 or the Oregon or United States Constitutions; or**

12 (c) **When the allegations in the petition, if proven, would not support a finding of juris-**
13 **isdiction under ORS 419C.005.**

14 (2) **Notwithstanding ORS 419C.261, the court may not set aside or dismiss a petition filed**
15 **under ORS 419C.005 after a youth has been found to be within the court's jurisdiction under**
16 **ORS 419C.005 unless:**

17 (a) **The order adjudicating the petition has been set aside under ORS 419C.610; or**

18 (b) **Dismissal is required by ORS 419A.190 or the Oregon or United States Constitutions.**

19 (3) **Notwithstanding ORS 419C.261, the court may not amend a petition filed under ORS**
20 **419C.005 after a youth has been found to be within the court's jurisdiction under ORS**
21 **419C.005 except on the motion of the district attorney.**

22 **SECTION 3. ORS 419C.610 is amended to read:**

23 419C.610. (1) Except as provided in ORS 419C.613[*419C.615*] and 419C.616 **and upon such no-**
24 **tice and with such hearing as the court may direct,** the court may:

25 (a) **Modify any order or judgment made by it; or**

26 (b) **Set aside any order made by it [*upon such notice and with such hearing as the court may***
27 ***direct*] other than a judgment finding the youth to be within the court's jurisdiction under**
28 **ORS 419C.005.**

29 (2) **When the court modifies [*or sets aside an order*] a judgment of jurisdiction based on a pe-**
30 **tion alleging that a youth offender has committed an act that would constitute a sex crime, as**

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 defined in ORS 181.594, if committed by an adult, the court shall make written findings stating the
2 reason for modifying [*or setting aside the order*] **the judgment.**

3 **SECTION 4.** ORS 419C.615 is amended to read:

4 419C.615. (1) [*In addition to any other grounds upon which a person may petition a court under*
5 *ORS 419C.610,*] A person may petition the court on the following grounds to set aside [*an order*] a
6 **judgment** finding the person to be within the jurisdiction of the court under ORS 419C.005:

7 (a) A substantial denial in the proceedings resulting in the person's adjudication, or in the ap-
8 pellate review of the adjudication, of the person's rights under the United States Constitution or the
9 Oregon Constitution, or both, and the denial rendered the adjudication void; [*or*]

10 (b) Unconstitutionality of the statute making criminal, if the person were an adult, the acts for
11 which the person was adjudicated;

12 (c) **Reasons related to the merits of the adjudication; or**

13 (d) **Violation of ORS 419A.190.**

14 (2) When a person petitions the court on one of the grounds listed in subsection (1) of this sec-
15 tion:

16 (a) A copy of the petition shall be served on the district attorney, who shall represent the state
17 in the matter.

18 (b) The court shall decide the issues raised. The court may receive proof by affidavits, deposi-
19 tions and other competent evidence. Oral testimony may be taken by telephone or other means ap-
20 proved by the court. The petitioner has the burden of proving by a preponderance of the evidence
21 the facts alleged in the petition.

22 (c) The court shall set aside the [*order*] **judgment** finding the petitioner to be within the juris-
23 diction of the court if the petitioner establishes one of the grounds set forth in subsection (1) of this
24 section. **The court may not set aside a judgment finding the petitioner to be within the ju-**
25 **risdiction of the court unless:**

26 (A) **The petitioner establishes one of the grounds set forth in subsection (1) of this sec-**
27 **tion; or**

28 (B) **The court is ordered to do so by an appellate court.**

29 (3) Either the petitioner or the state may appeal from the court's order granting or denying a
30 petition for relief under this section. The manner of taking the appeal and the scope of review are
31 the same as provided under ORS 419A.200.

32 (4) Nothing in this section may be construed to limit the original jurisdiction of the Supreme
33 Court in habeas corpus as provided by the Oregon Constitution.

34 (5) **When the court sets aside a judgment finding a person to be within the jurisdiction**
35 **of the court based on a petition alleging that a youth offender has committed an act that**
36 **would constitute a sex crime, as defined in ORS 181.594, if committed by an adult, the court**
37 **shall make written findings stating the reason for setting aside the judgment.**

38 **SECTION 5.** ORS 419C.411 is amended to read:

39 419C.411. (1) At the termination of the hearing or hearings in the proceeding or after entry of
40 an order under ORS 419C.067, the court shall enter an appropriate order directing the disposition
41 to be made of the case.

42 (2) In determining the disposition of the case, the court shall consider each of the following:

43 (a) The gravity of the loss, damage or injury caused or attempted during, or as part of, the
44 conduct that is the basis for jurisdiction under ORS 419C.005;

45 (b) Whether the manner in which the youth offender engaged in the conduct was aggressive,

1 violent, premeditated or willful;

2 (c) Whether the youth offender was held in detention under ORS 419C.145 and, if so, the reasons
3 for the detention;

4 (d) The immediate and future protection required by the victim, the victim's family and the
5 community; and

6 (e) The youth offender's juvenile court record and response to the requirements and conditions
7 imposed by previous juvenile court orders.

8 (3) In addition to the factors listed in subsection (2) of this section, the court may consider the
9 following:

10 (a) Whether the youth offender has made any efforts toward reform or rehabilitation or making
11 restitution;

12 (b) The youth offender's educational status and school attendance record;

13 (c) The youth offender's past and present employment;

14 (d) The disposition proposed by the youth offender;

15 (e) The recommendations of the district attorney and the juvenile court counselor and the
16 statements of the victim and the victim's family;

17 (f) The youth offender's mental, emotional and physical health and the results of the mental
18 health or substance abuse treatment; and

19 (g) Any other relevant factors or circumstances raised by the parties.

20 (4) The court's consideration of matters under this section may be addressed on appeal only if
21 raised by a party at a dispositional hearing or by a motion to modify or set aside under ORS
22 419C.610 or a petition to set aside under ORS 419C.615.

23 **SECTION 6. Section 2 of this 2005 Act and the amendments to ORS 419C.610 and 419C.615**
24 **by sections 3 and 4 of this 2005 Act apply to petitions filed on or after the effective date of**
25 **this 2005 Act.**

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