

House Bill 2190

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor Theodore R. Kulongoski for Department of Human Services)

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**.

Permits juvenile court to order Department of Human Services to receive temporary custody of child or ward. Permits juvenile court to direct ward under protective supervision or family of ward under protective supervision to participate in counseling or other services to correct circumstance giving rise to need for protective supervision.

A BILL FOR AN ACT

1 Relating to custody of children; amending ORS 419B.185, 419B.331, 419B.368, 419B.373 and 419B.875.

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

3 **SECTION 1.** ORS 419B.185 is amended to read:

4 419B.185. (1) When a child or ward is taken, or is about to be taken, into protective custody
5 pursuant to ORS 419B.150, 419B.160, 419B.165, 419B.168 and 419B.171 and placed in detention or
6 shelter care, a parent, child or ward shall be given the opportunity to present evidence to the court
7 at the hearings specified in ORS 419B.183, and at any subsequent review hearing, that the child or
8 ward can be returned home without further danger of suffering physical injury or emotional harm,
9 endangering or harming others, or not remaining within the reach of the court process prior to ad-
10 judication. At *[the]* a hearing **held pursuant to ORS 419B.183:**

11 (a) **The court may order that the child or ward be placed or continued in the temporary**
12 **custody of the Department of Human Services for placement in shelter care or that the child**
13 **or ward remain in or be returned to the custody of a parent or other reasonable person**
14 **pending investigation or disposition.**

15 *[(a)]* (b) **If the court orders that the child or ward be placed or continued in the temporary**
16 **custody of the department for placement in shelter care,** the court shall make written findings
17 as to whether the department *[of Human Services]* has made reasonable efforts or, if the Indian Child
18 Welfare Act applies, active efforts to prevent or eliminate the need for removal of the child or ward
19 from the home and to make it possible for the child or ward to safely return home. When the court
20 finds that no services were provided but that reasonable services would not have eliminated the
21 need for protective custody, the court shall consider the department to have made reasonable efforts
22 or, if the Indian Child Welfare Act applies, active efforts to prevent or eliminate the need for pro-
23 tective custody. The court shall include in the written findings a brief description of what preventive
24 and reunification efforts were made by the department.

25 *[(b)]* (c) In determining whether a child or ward shall be *[removed]* **placed** or continued *[out of*
26 *home]* **in the temporary custody of the department for placement in shelter care,** the court
27 shall consider whether the provision of reasonable services can prevent or eliminate the need to
28 separate the family.

29 *[(c)]* (d) In determining whether the department has made reasonable efforts or, if the Indian

30 **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 Child Welfare Act applies, active efforts to prevent or eliminate the need for removal of the child
 2 or ward from the home and to make it possible for the child or ward to safely return home, the court
 3 shall consider the child or ward’s health and safety the paramount concerns.

4 [(d)] (e) The court shall make a written finding in every order of removal that describes why it
 5 is in the best interests of the child or ward that the child or ward be removed from the home or
 6 continued in care.

7 [(e)] (f) The court shall determine whether the child or ward is an Indian child as defined in
 8 ORS 419A.004 or in the applicable State-Tribal Indian Child Welfare Agreement.

9 [(f)] (g) The court may receive testimony, reports and other evidence without regard to whether
 10 the evidence is admissible under ORS 40.010 to 40.210 and 40.310 to 40.585 if the evidence is relevant
 11 to the determinations and findings required under this section. As used in this paragraph, “relevant
 12 evidence” has the meaning given that term in ORS 40.150.

13 (2) To aid the court in making the written findings required by subsection (1)[(a) and (d)] of this
 14 section, the department shall present written documentation to the court outlining the reasonable
 15 or active efforts made to prevent taking the child or ward into protective custody and to provide
 16 services to make it possible for the child or ward to safely return home and why protective custody
 17 is in the best interests of the child or ward.

18 **SECTION 2.** ORS 419B.331 is amended to read:

19 419B.331. When the court determines it would be in the best interest and welfare of a ward, the
 20 court may place the ward under protective supervision. The court may direct **as conditions of**
 21 **protective supervision:**

22 (1)(a) That the ward remain in **or return to** the legal custody of the ward’s parents [*or other*
 23 *person with whom the ward is living, or the court may direct that the ward be placed in the legal*
 24 *custody of some relative or some*]; **or**

25 **(b) That the ward remain in or be placed in the legal custody of:**

26 **(A) A relative;**

27 **(B) A person maintaining a foster home approved by the court[, or in];**

28 **(C) A child care center or a youth care center authorized to accept the ward[.]; or**

29 **(D) Another person.**

30 (2) [*The court may specify*] **That** particular requirements [*to*] be observed during the protective
 31 supervision **period** consistent with recognized juvenile court practice, including but not limited to:

32 **(a) Requirements that the ward’s parents participate in evaluation, assessment, treat-**
 33 **ment, training or other services to correct the circumstances that resulted in wardship or**
 34 **to prepare the parent to resume the care of the ward;**

35 **(b) Requirements that the ward participate in evaluation, assessment, treatment, train-**
 36 **ing or other services if participation is in the ward’s best interests;**

37 **(c) Restrictions on visitation by the ward’s parents[.];**

38 **(d) Restrictions on the ward’s associates, occupation and activities[.];**

39 **(e) Restrictions on and requirements to be observed by the person having the ward’s legal cus-**
 40 **tody, [and] including requirements that the ward’s legal custodian cooperate or assist in the**
 41 **provision of services required under paragraph (b) of this subsection; and**

42 **(f) Requirements for visitation by and consultation with a juvenile counselor or other suitable**
 43 **counselor.**

44 **SECTION 3.** ORS 419B.368 is amended to read:

45 419B.368. (1) The court, on its own motion or upon the motion of a party and after such hearing

1 as the court may direct, may review, modify or vacate a guardianship order.

2 (2) The court may modify a guardianship order if the court determines to do so would be in the
3 child's best interests.

4 (3) The court may vacate a guardianship order, return the child to the custody of a parent and
5 make any other order the court is authorized to make under this chapter if the court determines
6 that:

7 (a) It is in the child's best interests to vacate the guardianship;

8 (b) The conditions and circumstances giving rise to the establishment of the guardianship have
9 been ameliorated; and

10 (c) The parent is presently able and willing to adequately care for the child.

11 (4) The court may vacate a guardianship order after determining that the guardian is no longer
12 willing or able to fulfill the duties of a guardian. Upon vacating a guardianship order under this
13 subsection, the court shall conduct a hearing:

14 (a) Within 14 days, make written findings required in ORS 419B.185 (1)[(a) to (d)] and make any
15 order directing disposition of the child that the court is authorized to make under this chapter; and

16 (b) Pursuant to ORS 419B.476 within 90 days.

17 (5) In determining whether it is in the child's best interests to modify or vacate a guardianship,
18 the court shall consider, but is not limited to considering:

19 (a) The child's emotional and developmental needs;

20 (b) The child's need to maintain existing attachments and relationships and to form attachments
21 and relationships, including those with the birth family;

22 (c) The child's health and safety; and

23 (d) The child's wishes.

24 (6) In addition to service required under ORS 419B.851, a party filing a motion to vacate a
25 guardianship shall serve the motion upon the Department of Human Services.

26 (7) Notwithstanding subsection (1) of this section, a parent may not move the court to vacate
27 a guardianship once a guardianship is granted under ORS 419B.365.

28 **SECTION 4.** ORS 419B.373 is amended to read:

29 419B.373. A person, agency or institution having **temporary custody of a child or ward under**
30 **ORS 419B.185** or legal custody of a ward **under ORS 419B.331 or 419B.337** has the following duties
31 and authority:

32 (1) To have physical custody and control of the **child or** ward.

33 (2) To supply the **child or** ward with food, clothing, shelter and incidental necessities.

34 (3) To provide the **child or** ward with care, education and discipline.

35 (4) To authorize ordinary medical, dental, psychiatric, psychological, hygienic or other remedial
36 care and treatment for the **child or** ward[,] and, in an emergency where the **child or** ward's safety
37 appears urgently to require it, to authorize surgery or other extraordinary care.

38 (5) To make such reports and to supply such information to the court as the court may from time
39 to time require.

40 (6) To apply for any Social Security benefits or public assistance to which the **child or** ward is
41 otherwise entitled and to use the benefits or assistance to pay for the care of the **child or** ward.

42 **SECTION 5.** ORS 419B.875 is amended to read:

43 419B.875. (1)(a) Parties to proceedings in the juvenile court under ORS 419B.100 and 419B.500
44 are:

45 (A) The child or ward;

- 1 (B) The parents or guardian of the child or ward;
- 2 (C) A putative father of the child or ward who has demonstrated a direct and significant com-
- 3 mitment to the child or ward by assuming, or attempting to assume, responsibilities normally asso-
- 4 ciated with parenthood, including but not limited to:
- 5 (i) Residing with the child or ward;
- 6 (ii) Contributing to the financial support of the child or ward; or
- 7 (iii) Establishing psychological ties with the child or ward;
- 8 (D) The state;
- 9 (E) The juvenile department;
- 10 (F) A court appointed special advocate, if appointed;
- 11 (G) The Department of Human Services *[or other]* **if the department has filed a petition al-**
- 12 **leging that the child is within the jurisdiction of the court and the petition is pending before**
- 13 **the court or if the department has temporary or legal custody of the child or ward;**
- 14 (H) A child-caring agency if the agency has temporary custody of the child or ward; and
- 15 *[(H)]* (I) The tribe in cases subject to the Indian Child Welfare Act if the tribe has intervened
- 16 pursuant to the Indian Child Welfare Act.
- 17 (b) An intervenor who is granted intervention under ORS 419B.116 is a party to a proceeding
- 18 under ORS 419B.100. An intervenor under this paragraph is not a party to a proceeding under ORS
- 19 419B.500.
- 20 (2) The rights of the parties include, but are not limited to:
- 21 (a) The right to notice of the proceeding and copies of the petitions, answers, motions and other
- 22 papers;
- 23 (b) The right to appear with counsel and, except for intervenors under subsection (1)(b) of this
- 24 section, to have counsel appointed as otherwise provided by law;
- 25 (c) The right to call witnesses, cross-examine witnesses and participate in hearings;
- 26 (d) The right of appeal; and
- 27 (e) The right to request a hearing.
- 28 (3) A putative father who satisfies the criteria set out in subsection (1)(a)(C) of this section shall
- 29 be treated as a parent, as that term is used in this chapter and ORS chapters 419A and 419C, until
- 30 the court confirms his paternity or finds that he is not the legal father of the child or ward.
- 31 (4) If no appeal from the judgment or order is pending, a putative father whom a court of com-
- 32 petent jurisdiction has found not to be the child or ward's legal father or who has filed a petition
- 33 for filiation that was dismissed is not a party under subsection (1) of this section.
- 34 (5)(a) A person granted rights of limited participation under ORS 419B.116 is not a party to a
- 35 proceeding under ORS 419B.100 or 419B.500 but has only those rights specified in the order granting
- 36 rights of limited participation.
- 37 (b) Persons moving for or granted rights of limited participation are not entitled to appointed
- 38 counsel but may appear with retained counsel.
- 39 **(6) The department is not a party to a proceeding under ORS 419B.100 solely because the**
- 40 **department is providing evaluation, assessment, treatment, training or other services to the**
- 41 **parent or ward.**
- 42 *[(6)]* (7) If a foster parent, preadoptive parent or relative is currently providing care for a child
- 43 or ward, the department *[of Human Services]* shall give the foster parent, preadoptive parent or
- 44 relative notice of a hearing concerning the child or ward and the court shall give the person an
- 45 opportunity to be heard. Except when allowed to intervene, the foster parent, preadoptive parent

1 or relative providing care for the child or ward is not considered a party to the juvenile court
2 proceeding solely because of notice and an opportunity to be heard.

3 ~~[(7)]~~ **(8)** When a legal grandparent of a child or ward requests in writing and provides a mailing
4 address, the department [*of Human Services*] shall give the legal grandparent notice of a hearing
5 concerning the child or ward and the court shall give the legal grandparent an opportunity to be
6 heard. Except when allowed to intervene, a legal grandparent is not considered a party to the ju-
7 venile court proceeding solely because of notice and an opportunity to be heard.

8 ~~[(8)]~~ **(9)** Interpreters for parties and persons granted rights of limited participation shall be ap-
9 pointed in the manner specified by ORS 45.275 and 45.285.

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