

# Enrolled Senate Bill 277

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CHAPTER .....

AN ACT

Relating to juveniles; amending ORS 419A.109, 419B.365, 419B.366, 419B.367, 419B.368 and 419B.369.

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

**SECTION 1.** ORS 419B.365 is amended to read:

419B.365. (1) At any time following establishment of jurisdiction and wardship under ORS 419B.100, but prior to filing of a petition under ORS 419B.500, or after dismissal of a petition filed under ORS 419B.500 if it fails to result in termination of the parent's rights, a party, or person granted rights of limited participation for the purpose of filing a guardianship petition, may file, and the court may hear, a petition for permanent guardianship. If the Department of Human Services chooses not to participate in a proceeding initiated by an intervenor under ORS 419B.875, the state is not foreclosed from filing a subsequent action should the intervenor's petition be denied.

(2) The grounds for granting a permanent guardianship are the same as those for termination of parental rights.

(3) The court shall grant a permanent guardianship if it finds by clear and convincing evidence that:

(a) The grounds cited in the petition are true; and

(b) It is in the best interest of the ward that the parent never have physical custody of the ward but that other parental rights and duties should not be terminated.

(4) If an Indian child is involved, the permanent guardianship must be in compliance with the Indian Child Welfare Act. Notwithstanding subsection (3) of this section, the facts supporting any finding made to establish a permanent guardianship for an Indian child, including the finding that continued custody by the parents or Indian custodian would result in serious emotional or physical harm to the **Indian** child, must be established beyond a reasonable doubt.

(5) Unless vacated under ORS 419B.368, a guardianship established under this section continues as long as the ward is subject to the court's jurisdiction as provided in ORS 419B.328.

**SECTION 2.** ORS 419B.366 is amended to read:

419B.366. (1) A party, or a person granted rights of limited participation for the purpose of filing a guardianship motion, may file a motion to establish a guardianship. The motion must be in writing and state with particularity the factual and legal grounds for the motion.

(2) Except as otherwise provided in subsection (3) of this section, the facts supporting any finding made or relief granted under this section must be established by a preponderance of evidence.

(3) If an Indian child is involved, the guardianship must be in compliance with the Indian Child Welfare Act. The facts supporting any finding made to establish a guardianship for an Indian child, including the finding that continued custody by the parents or Indian custodian would result in serious emotional or physical harm to the **Indian** child, must be established by clear and convincing evidence.

(4) In a proceeding under this section, the court may receive testimony and reports as provided in ORS 419B.325.

(5) If the court has approved a plan of guardianship under ORS 419B.476, the court may grant the motion for guardianship if the court determines, after a hearing, that:

- (a) The [child] **ward** cannot safely return to a parent within a reasonable time;
- (b) Adoption is not an appropriate plan for the [child] **ward**;
- (c) The proposed guardian is suitable to meet the needs of the [child] **ward** and is willing to accept the duties and authority of a guardian; and

(d) Guardianship is in the [child's] **ward's** best interests. In determining whether guardianship is in the [child's] **ward's** best interests, the court shall consider the [child's] **ward's** wishes.

(6) Unless vacated pursuant to ORS 419B.368, a guardianship established under this section continues as long as the [child] **ward** is subject to the court's jurisdiction as provided in ORS 419B.328.

**SECTION 3.** ORS 419B.367 is amended to read:

419B.367. (1) Upon granting a motion for guardianship under ORS 419B.366 or upon granting a petition for guardianship under ORS 419B.365, the court shall issue letters of guardianship to the guardian. As provided in ORS 419A.255, a guardian may disclose letters of guardianship when necessary to fulfill the duties of a guardian. Letters of guardianship must be in substantially the following form:

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State of Oregon,    )  
  ) LETTERS OF  
County of \_\_\_\_\_ ) GUARDIANSHIP

BY THESE LETTERS OF GUARDIANSHIP be informed:

That on \_\_\_\_\_ (month) \_\_\_\_\_ (day), 2\_\_\_\_, the \_\_\_\_\_ Court, \_\_\_\_\_ County, State of Oregon, appointed \_\_\_\_\_ (name of guardian) guardian for \_\_\_\_\_ (name of [child] **ward**) and that the named guardian has qualified and has the authority and duties of guardian for the named [child] **ward** including legal custody of the [child] **ward**, except as provided below.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed the seal of the court at my office on \_\_\_\_\_ (month) \_\_\_\_\_ (day), 2\_\_\_\_.

(Seal)  
\_\_\_\_\_, Clerk of the Court  
By \_\_\_\_\_, Deputy

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(2) In the order appointing the guardian, the court shall require the guardian to file with the court a verified written report within 30 days after each anniversary of appointment and may:

- (a) Specify the frequency and nature of visitation or contact between relatives, including siblings, and the [child] **ward**, if the court determines that visitation or contact is in the [child's] **ward's** best interests;
- (b) Enter an order for child support pursuant to ORS 419B.400 that complies with ORS 25.275; and
- (c) Make any other order to provide for the [child's] **ward's** continuing safety and well-being.

(3)(a) Upon timely receipt of a report under subsection (2) of this section, the court shall review the report and cause the report to become part of the juvenile court file and may:

(A) Direct the local citizen review board to conduct a review;

(B) Subject to the availability of funds, appoint a court visitor and require the visitor to file a report with the court; or

(C) Conduct a court review.

(b) If the court does not receive a report under subsection (2) of this section in a timely manner, the court shall:

(A) Direct the local citizen review board to conduct a review;

(B) Subject to the availability of funds, appoint a court visitor and require the visitor to file a report with the court; or

(C) Conduct a court review.

(4) Except as otherwise limited by the court, a person appointed guardian has legal custody of the [child] **ward** and the duties and authority of legal custodian and guardian under ORS 419B.373 and 419B.376. A guardian is not liable to third persons for acts of the [child] **ward** solely by reason of being appointed guardian.

**SECTION 4.** ORS 419B.368 is amended to read:

419B.368. (1) The court, on its own motion or upon the motion of a party and after such hearing as the court may direct, may review, modify or vacate a guardianship order.

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

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

(a) It is in the [child's] **ward's** best interests to vacate the guardianship;

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

(c) The parent is presently able and willing to adequately care for the [child] **ward**.

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

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

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

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

(a) The [child's] **ward's** emotional and developmental needs;

(b) The [child's] **ward's** need to maintain existing attachments and relationships and to form attachments and relationships, including those with the birth family;

(c) The [child's] **ward's** health and safety; and

(d) The [child's] **ward's** wishes.

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

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

**SECTION 5.** ORS 419B.369 is amended to read:

419B.369. (1) When a [child] **ward** is in the legal custody of the Department of Human Services, the department shall conduct a guardianship study of the proposed guardian's home and provide a report to the court regarding the suitability of the proposed guardian and whether guardianship is in the [child's] **ward's** best interests. The department shall adopt rules necessary to carry out the duties imposed by this subsection.

(2) When a [child] **ward** is not in the legal custody of the department, the court may order the proposed guardian to obtain, at the proposed guardian's expense, a guardianship study of the proposed guardian's home and provide a report to the court regarding the suitability of the proposed guardian and whether guardianship is in the [child's] **ward's** best interests.

**SECTION 6.** ORS 419A.109 is amended to read:

419A.109. (1) Subject to the availability of funds and upon request of a court under ORS 419B.367, a local citizen review board shall review the case of a [child] **ward** for whom a guardian has been appointed under ORS 419B.365 or 419B.366. In the request for review, the court shall notify the local citizen review board of the names and addresses of the parties.

(2) The review shall take place within 45 days, or as soon as is practicable given the schedule of the local citizen review board, after the local citizen review board receives the request for review by the court.

(3) The local citizen review board shall send notice of the review to all parties.

(4) The Chief Justice of the Supreme Court, in consultation with the Supreme Court, shall adopt rules under ORS 1.002 that may include any procedures for the administration of the local citizen review board program regarding:

(a) The time, content and manner in which the guardian must provide reports to the local citizen review board; and

(b) The process to be followed in conducting the reviews.

(5) The local citizen review board shall forward findings and recommendations generated at a review under subsection (1) of this section to the court and all parties. The court shall cause the findings and recommendations to become part of the juvenile court file for consideration by the juvenile court judge. The court shall give the local citizen review board written notice if the court modifies, alters or takes action on a case as a result of the recommendations of the local citizen review board.

**Passed by Senate May 8, 2007**

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Secretary of Senate

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President of Senate

**Passed by House May 25, 2007**

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Speaker of House

**Received by Governor:**

.....M.,....., 2007

**Approved:**

.....M.,....., 2007

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Governor

**Filed in Office of Secretary of State:**

.....M.,....., 2007

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Secretary of State