

## SENATE AMENDMENTS TO SENATE BILL 277

By COMMITTEE ON JUDICIARY

May 4

1 In line 2 of the printed bill, delete "419B.555" and insert "419A.109, 419B.365, 419B.366,  
2 419B.367, 419B.368 and 419B.369".

3 Delete lines 4 through 22 and insert:

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

5 "419B.365. (1) At any time following establishment of jurisdiction and wardship under ORS  
6 419B.100, but prior to filing of a petition under ORS 419B.500, or after dismissal of a petition filed  
7 under ORS 419B.500 if it fails to result in termination of the parent's rights, a party, or person  
8 granted rights of limited participation for the purpose of filing a guardianship petition, may file, and  
9 the court may hear, a petition for permanent guardianship. If the Department of Human Services  
10 chooses not to participate in a proceeding initiated by an intervenor under ORS 419B.875, the state  
11 is not foreclosed from filing a subsequent action should the intervenor's petition be denied.

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

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

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

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

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

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

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

27 "419B.366. (1) A party, or a person granted rights of limited participation for the purpose of  
28 filing a guardianship motion, may file a motion to establish a guardianship. The motion must be in  
29 writing and state with particularity the factual and legal grounds for the motion.

30 "(2) Except as otherwise provided in subsection (3) of this section, the facts supporting any  
31 finding made or relief granted under this section must be established by a preponderance of evi-  
32 dence.

33 "(3) If an Indian child is involved, the guardianship must be in compliance with the Indian Child  
34 Welfare Act. The facts supporting any finding made to establish a guardianship for an Indian child,  
35 including the finding that continued custody by the parents or Indian custodian would result in se-

1 rious emotional or physical harm to the **Indian** child, must be established by clear and convincing  
2 evidence.

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

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

7 “(a) The [*child*] **ward** cannot safely return to a parent within a reasonable time;

8 “(b) Adoption is not an appropriate plan for the [*child*] **ward**;

9 “(c) The proposed guardian is suitable to meet the needs of the [*child*] **ward** and is willing to  
10 accept the duties and authority of a guardian; and

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

13 “(6) Unless vacated pursuant to ORS 419B.368, a guardianship established under this section  
14 continues as long as the [*child*] **ward** is subject to the court's jurisdiction as provided in ORS  
15 419B.328.

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

17 “419B.367. (1) Upon granting a motion for guardianship under ORS 419B.366 or upon granting  
18 a petition for guardianship under ORS 419B.365, the court shall issue letters of guardianship to the  
19 guardian. As provided in ORS 419A.255, a guardian may disclose letters of guardianship when nec-  
20 essary to fulfill the duties of a guardian. Letters of guardianship must be in substantially the fol-  
21 lowing form:

22 “ \_\_\_\_\_

23  
24 State of Oregon, )  
25 ) LETTERS OF  
26 County of \_\_\_\_\_ ) GUARDIANSHIP

27  
28 BY THESE LETTERS OF GUARDIANSHIP be informed:

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

33  
34 IN TESTIMONY WHEREOF, I have subscribed my name and affixed the seal of the court at  
35 my office on \_\_\_\_\_ (month) \_\_\_\_\_ (day), 2\_\_\_\_.

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

39 “ \_\_\_\_\_

40  
41 “(2) In the order appointing the guardian, the court shall require the guardian to file with the  
42 court a verified written report within 30 days after each anniversary of appointment and may:

43 “(a) Specify the frequency and nature of visitation or contact between relatives, including sib-  
44 lings, and the [*child*] **ward**, if the court determines that visitation or contact is in the [*child's*]  
45 **ward's** best interests;

1 “(b) Enter an order for child support pursuant to ORS 419B.400 that complies with ORS 25.275;  
2 and  
3 “(c) Make any other order to provide for the [child’s] **ward’s** continuing safety and well-being.  
4 “(3)(a) Upon timely receipt of a report under subsection (2) of this section, the court shall review  
5 the report and cause the report to become part of the juvenile court file and may:  
6 “(A) Direct the local citizen review board to conduct a review;  
7 “(B) Subject to the availability of funds, appoint a court visitor and require the visitor to file  
8 a report with the court; or  
9 “(C) Conduct a court review.  
10 “(b) If the court does not receive a report under subsection (2) of this section in a timely man-  
11 ner, the court shall:  
12 “(A) Direct the local citizen review board to conduct a review;  
13 “(B) Subject to the availability of funds, appoint a court visitor and require the visitor to file  
14 a report with the court; or  
15 “(C) Conduct a court review.  
16 “(4) Except as otherwise limited by the court, a person appointed guardian has legal custody  
17 of the [child] **ward** and the duties and authority of legal custodian and guardian under ORS 419B.373  
18 and 419B.376. A guardian is not liable to third persons for acts of the [child] **ward** solely by reason  
19 of being appointed guardian.  
20 “**SECTION 4.** ORS 419B.368 is amended to read:  
21 “419B.368. (1) The court, on its own motion or upon the motion of a party and after such hearing  
22 as the court may direct, may review, modify or vacate a guardianship order.  
23 “(2) The court may modify a guardianship order if the court determines to do so would be in the  
24 [child’s] **ward’s** best interests.  
25 “(3) The court may vacate a guardianship order, return the [child] **ward** to the custody of a  
26 parent and make any other order the court is authorized to make under this chapter if the court  
27 determines that:  
28 “(a) It is in the [child’s] **ward’s** best interests to vacate the guardianship;  
29 “(b) The conditions and circumstances giving rise to the establishment of the guardianship have  
30 been ameliorated; and  
31 “(c) The parent is presently able and willing to adequately care for the [child] **ward**.  
32 “(4) The court may vacate a guardianship order after determining that the guardian is no longer  
33 willing or able to fulfill the duties of a guardian. Upon vacating a guardianship order under this  
34 subsection, the court shall conduct a hearing:  
35 “(a) Within 14 days, make written findings required in ORS 419B.185 (1)(a) to (d) and make any  
36 order directing disposition of the [child] **ward** that the court is authorized to make under this  
37 chapter; and  
38 “(b) Pursuant to ORS 419B.476 within 90 days.  
39 “(5) In determining whether it is in the [child’s] **ward’s** best interests to modify or vacate a  
40 guardianship, the court shall consider, but is not limited to considering:  
41 “(a) The [child’s] **ward’s** emotional and developmental needs;  
42 “(b) The [child’s] **ward’s** need to maintain existing attachments and relationships and to form  
43 attachments and relationships, including those with the birth family;  
44 “(c) The [child’s] **ward’s** health and safety; and  
45 “(d) The [child’s] **ward’s** wishes.

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

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

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

6 “419B.369. (1) When a [*child*] **ward** is in the legal custody of the Department of Human Services,  
7 the department shall conduct a guardianship study of the proposed guardian’s home and provide a  
8 report to the court regarding the suitability of the proposed guardian and whether guardianship is  
9 in the [*child’s*] **ward’s** best interests. The department shall adopt rules necessary to carry out the  
10 duties imposed by this subsection.

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

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

16 “419A.109. (1) Subject to the availability of funds and upon request of a court under ORS  
17 419B.367, a local citizen review board shall review the case of a [*child*] **ward** for whom a guardian  
18 has been appointed under ORS 419B.365 or 419B.366. In the request for review, the court shall notify  
19 the local citizen review board of the names and addresses of the parties.

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

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

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

27 “(a) The time, content and manner in which the guardian must provide reports to the local cit-  
28 izen review board; and

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

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