

Senate Bill 325

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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**.

Requires personal appearance by parties in juvenile proceedings. Exempts child from requirement of personal appearance.

A BILL FOR AN ACT

1
2 Relating to personal appearance in juvenile proceedings; creating new provisions; and amending
3 ORS 419B.815, 419B.816, 419B.818, 419B.819, 419B.820, 419B.822 and 419B.918.

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

5 **SECTION 1. Section 2 of this 2007 Act is added to and made a part of ORS chapter 419B.**

6 **SECTION 2. (1) When a parent or guardian is required to appear at a hearing related to**
7 **a petition to establish jurisdiction or a petition to establish permanent guardianship or ter-**
8 **minate parental rights, if the parent or guardian fails to appear at the hearing without rea-**
9 **sonable explanation, the attorney for the parent or guardian may move to withdraw from**
10 **representing the parent or guardian.**

11 **(2) The attorney shall explain to the court the basis for a motion to withdraw under this**
12 **section.**

13 **(3) The court may grant a motion to withdraw as counsel under this section.**

14 **SECTION 3. ORS 419B.815 is amended to read:**

15 419B.815. (1) A court may make an order establishing jurisdiction under ORS 419B.100 only after
16 service of summons and a true copy of the petition as provided in ORS 419B.812, 419B.823, 419B.824,
17 419B.827, 419B.830, 419B.833 and 419B.839.

18 (2) A summons under this section must require one of the following:

19 (a) That the person appear personally before the court at the time and place specified in the
20 summons for a hearing on the allegations of the petition;

21 (b) That the person appear personally before the court at the time and place specified in the
22 summons to admit or deny the allegations of the petition; or

23 (c) That the person file a written answer to the petition within 30 days from the date on which
24 the person is served with the summons.

25 (3) If the court does not direct the type of response to be required by the summons under sub-
26 section (2) of this section, the summons shall require the person being summoned to respond in the
27 manner authorized by subsection (2)(c) of this section.

28 (4) A summons under this section must contain:

29 (a) A statement that the petition seeks to establish jurisdiction under ORS 419B.100 and that,
30 if the person fails to appear at the time and place specified in the summons or an order under ORS

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 419B.816 or, if the summons requires the filing of a written answer, fails to file the answer within
 2 the time provided, the court may establish jurisdiction without further notice either on the date
 3 specified in the summons or order or on a future date, and may take any other action that is au-
 4 thorized by law including, but not limited to, making the child a ward of the court and removing the
 5 child from the legal and physical custody of the parent or other person having legal or physical
 6 custody of the child.

7 (b) A notice that the person has the right to be represented by an attorney. The notice must
 8 be in substantially the following form:

9 _____

10
 11 You have a right to be represented by an attorney. If you wish to be represented by an at-
 12 torney, please retain one as soon as possible to represent you in this proceeding. If you are
 13 the child or the parent or legal guardian of the child and you cannot afford to hire an at-
 14 torney and you meet the state’s financial guidelines, you are entitled to have an attorney
 15 appointed for you at state expense. To request appointment of an attorney to represent you
 16 at state expense, you must contact the juvenile court immediately. Phone _____ for
 17 further information.

18 _____

19
 20 (c) A statement that, **if the person is represented by an attorney**, the person has the re-
 21 sponsibility to maintain contact with the person’s attorney and to keep the attorney advised of the
 22 person’s whereabouts.

23 (d) **A statement that, if the person is represented by an attorney, the person must appear**
 24 **personally at any hearing where the person is required to appear, unless the person is the**
 25 **child at issue in the proceeding who must be served with summons in accordance with ORS**
 26 **419B.839 (1)(f). The statement must explain that to “appear personally” does not include ap-**
 27 **pearance through the person’s attorney.**

28 (e) **A statement that, if the court has granted the person an exception in advance under**
 29 **ORS 419B.918, the person may appear in any manner permitted by the court under ORS**
 30 **419B.918.**

31 [(d)] (f) A statement that no later than 30 days after the petition is filed each party about whom
 32 allegations have been made must admit or deny the allegations and that, unless the court specifies
 33 otherwise, the admission or denial may be made orally at the hearing or filed with the court in
 34 writing.

35 [(e)] (g) A statement that if the petition alleges that the child has been physically or sexually
 36 abused, the court, at the hearing, may enter an order restraining the alleged perpetrator of the
 37 abuse from having contact with the child or attempting to contact the child and requiring the al-
 38 leged perpetrator to move from the household in which the child resides.

39 [(f)] (h) A statement that the parent or other person legally obligated to support the child may
 40 be required to pay at some future date for all or a portion of the support of the child, including the
 41 cost of out-of-home placement, depending upon the ability of the parent or other person to pay sup-
 42 port.

43 (5) If the summons requires the person to appear before the court to admit or deny the
 44 allegations of the petition or requires the person to file a written answer to the petition, the sum-
 45 mons must advise the person that, if the person contests the petition, the court:

1 (a) Will schedule a hearing on the allegations of the petition and order the person to appear
 2 personally; and

3 (b) May schedule other hearings related to the petition and order the person to appear per-
 4 sonally.

5 (6) At a hearing, when the person is required to appear personally, or in the person’s written
 6 answer to the petition, the person shall inform the court and the petitioner of the person’s current
 7 residence address, mailing address and telephone number.

8 (7) If a person fails to appear for any hearing related to the petition, or fails to file a written
 9 answer, as directed by summons or court order under this section or ORS 419B.816, the court may
 10 establish jurisdiction without further notice, either on the date specified in the summons or order
 11 or on a future date, and may take any other action that is authorized by law including, but not
 12 limited to, making the child a ward of the court and removing the child from the legal and physical
 13 custody of the parent or other person having legal or physical custody of the child.

14 **(8) If the summons requires the person to appear personally before the court, or if a**
 15 **court orders the person to appear personally at a hearing in the manner provided in ORS**
 16 **419B.816, the person may not appear through the person’s attorney, unless the person is the**
 17 **child at issue in the proceeding who has been served with summons in accordance with ORS**
 18 **419B.839 (1)(f).**

19 **SECTION 4.** ORS 419B.816 is amended to read:

20 419B.816. If the person appears in the manner provided in ORS 419B.815 (2)(b) or (c) and the
 21 person contests the petition, the court, by written order provided to the person in person or mailed
 22 to the person at the address provided by the person, or by oral order made on the record, shall:

23 (1) Inform the person of the time, place and purpose of the next hearing or hearings related to
 24 the petition;

25 (2) Require the person to appear personally at the next hearing or hearings related to the peti-
 26 tion; *[and]*

27 **(3) Inform the person that, if the person is represented by an attorney, the person’s at-**
 28 **torney may not attend the hearing in place of the person, unless the person is the child at**
 29 **issue in the proceeding who has been served with summons in accordance with ORS 419B.839**
 30 **(1)(f);**

31 **(4) Inform the person that, if the court has granted the person an exception in advance**
 32 **under ORS 419B.918, the person may appear in any manner permitted by the court under**
 33 **ORS 419B.918; and**

34 *[(3)]* **(5) Inform the person that, if the person fails to appear as ordered for any hearing related**
 35 **to the petition, the court may establish jurisdiction without further notice, either on the date spec-**
 36 **ified in the summons or order or on a future date, and may take any other action that is authorized**
 37 **by law including, but not limited to, making the child a ward of the court and removing the child**
 38 **from the legal and physical custody of the parent or other person having legal or physical custody**
 39 **of the child.**

40 **SECTION 5.** ORS 419B.818 is amended to read:

41 419B.818. The summons for appearance in a proceeding to establish jurisdiction under ORS
 42 419B.100 must be in substantially the following form:

43
 44
 45 IN THE CIRCUIT COURT

OF THE STATE OF OREGON

FOR _____ COUNTY

In the Matter of)
) No.
) Petition No.
)
 A Child.) SUMMONS

TO: Name and address

IN THE NAME OF THE STATE OF OREGON:

You are directed:

_____ To appear **in person** before this Court at _____ (address), Courtroom #_____, _____, Oregon, on: the _____ day of _____, 2_____, at _____ o'clock ____m. for a hearing on the allegations of the petition and at any subsequent court-ordered hearing. **You must appear personally in the courtroom on the date and at the time listed above. An attorney may not attend the hearing in your place. However, if you are the child at issue in this proceeding and you have an attorney, you may rely upon your attorney to appear at the hearing on your behalf.**

_____ To appear **in person** before this Court at _____ (address), Courtroom #_____, _____, Oregon, on the _____ day of _____, 2_____, at _____ o'clock ____m. to admit or deny the allegations of the petition and at any subsequent court-ordered hearing. **You must appear personally in the courtroom on the date and at the time listed above. An attorney may not attend the hearing in your place. However, if you are the child at issue in this proceeding and you have an attorney, you may rely upon your attorney to appear at the hearing on your behalf.**

_____ To file a written answer to the petition no later than 30 days after the date you were served with this summons and to appear at any court-ordered hearing. **An attorney may not attend any court-ordered hearing in your place. However, if you are the child at issue in this proceeding and you have an attorney, you may rely upon your attorney to file and to appear at the hearing on your behalf.**

NOTICE:

READ THESE PAPERS CAREFULLY!

A petition has been filed to establish jurisdiction under ORS 419B.100. A copy of the petition is attached.

No later than 30 days from the date the petition is filed, each person about whom allegations have been made in the petition must admit or deny the allegations. Unless directed otherwise above, the admission or denial may be made orally at the hearing or filed with the court in writing.

If you do not appear or file a written answer as directed above, or do not appear at any subsequent

1 court-ordered hearing, the Court may proceed without further notice and take jurisdiction of the
 2 child(ren) either on the date specified in this summons or on a future date, and make such orders
 3 and take such action as authorized by law including, but not limited to, establishing wardship over
 4 the child, ordering the removal of the child(ren) from the legal and physical custody of the parent(s)
 5 or guardian(s) and, if the petition alleges that the child(ren) has (have) been physically or sexually
 6 abused, restraining you from having contact with, or attempting to contact, the child(ren) and re-
 7 quiring you to move from the household in which the child(ren) resides (reside).

8
 9
 10 **RIGHTS AND OBLIGATIONS**

11
 12 You have a right to be represented by an attorney. If you wish to be represented by an attorney,
 13 please retain one as soon as possible to represent you in this proceeding. If you are the child or the
 14 parent or legal guardian of the child and you cannot afford to hire an attorney and you meet the
 15 state’s financial guidelines, you are entitled to have an attorney appointed for you at state expense.
 16 To request appointment of an attorney to represent you at state expense, you must contact the ju-
 17 venile court immediately. Phone _____ for further information. **If you are represented by an**
 18 **attorney**, it is your responsibility to maintain contact with your attorney and to keep your attorney
 19 advised of your whereabouts.

20
 21 If you are a parent or other person legally obligated to support the child(ren), you have the obli-
 22 gation to support the child(ren). You may be required to pay for compensation and reasonable ex-
 23 penses for the child(ren)’s attorney. You may be required to pay support for the child(ren) while the
 24 child(ren) is (are) in state financed or state supported custody. You may be required to provide
 25 health insurance coverage for the child(ren) while the child(ren) is (are) in state financed or state
 26 supported custody. You may be required to pay other costs that arise from the child(ren) being in
 27 the jurisdiction of the Court. If you are ordered to pay for the child(ren)’s support or there is an
 28 existing order of support from a divorce or other proceeding, that support order may be assigned
 29 to the state to apply to the costs of the child(ren)’s care.

30
 31 If this summons requires you to appear before the court to admit or deny the allegations of the pe-
 32 tition or requires you to file a written answer to the petition and you contest the petition, the court
 33 will schedule a hearing on the allegations of the petition and order you to appear personally and
 34 may schedule other hearings related to the petition and order you to appear personally. **If you are**
 35 **ordered to appear, you must appear personally in the courtroom, unless the court has**
 36 **granted you an exception in advance under ORS 419B.918 to appear by other means including,**
 37 **but not limited to, telephonic or other electronic means. If you are the child at issue in this**
 38 **proceeding and you have an attorney, your attorney may appear in your place.**

39 By: (Name and Title)

40 Date Issued: _____

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 42
 43 **SECTION 6.** ORS 419B.819 is amended to read:

44 419B.819. (1) A court may make an order establishing permanent guardianship under ORS
 45 419B.365 or terminating parental rights under ORS 419B.500, 419B.502, 419B.504, 419B.506 or

1 419B.508 only after service of summons and a true copy of the petition on the parent, as provided
 2 in ORS 419B.812, 419B.823, 419B.824, 419B.827, 419B.830 and 419B.833. A putative father who satis-
 3 fies the criteria set out in ORS 419B.839 (1)(d) or 419B.875 (1)(a)(C) also must be served with sum-
 4 mons and a true copy of the petition, unless a court of competent jurisdiction has found him not to
 5 be the child or ward’s legal father or he has filed a petition for filiation that was dismissed and no
 6 appeal of the judgment or order is pending.

7 (2) A summons under this section must require one of the following:

8 (a) That the parent appear personally before the court at the time and place specified in the
 9 summons for a hearing on the allegations of the petition;

10 (b) That the parent appear personally before the court at the time and place specified in the
 11 summons to admit or deny the allegations of the petition; or

12 (c) That the parent file a written answer to the petition within 30 days from the date on which
 13 the parent is served with the summons.

14 (3) If the court does not direct the type of response to be required by the summons under sub-
 15 section (2) of this section, the summons shall require the parent to respond in the manner authorized
 16 by subsection (2)(c) of this section.

17 (4) A summons under this section must contain:

18 (a) A statement that the rights of the parent are proposed to be terminated or, if the petition
 19 seeks to establish a permanent guardianship, that a permanent guardianship is proposed to be es-
 20 tablished.

21 (b) A statement that, if the parent fails to appear at the time and place specified in the summons
 22 or in an order under ORS 419B.820 or, if the summons requires the filing of a written answer, fails
 23 to file the answer within the time provided, the court may, without further notice and in the parent’s
 24 absence, terminate the parent’s rights or grant the guardianship petition, either on the date specified
 25 in the summons or order or on a future date, and may take any other action that is authorized by
 26 law.

27 (c) A notice that the parent has the right to be represented by an attorney. The notice must be
 28 in substantially the following form:

29 _____

30
 31 You have a right to be represented by an attorney. If you wish to be represented by an attorney,
 32 please retain one as soon as possible to represent you in this proceeding. If you cannot afford to
 33 hire an attorney and you meet the state’s financial guidelines, you are entitled to have an attorney
 34 appointed for you at state expense. To request appointment of an attorney to represent you at state
 35 expense, you must contact the juvenile court immediately. Phone _____ for further infor-
 36 mation.

37 _____

38
 39 (d) A statement that, **if the parent is represented by an attorney**, the parent has the re-
 40 sponsibility to maintain contact with the parent’s attorney and to keep the attorney advised of the
 41 parent’s whereabouts.

42 (e) **A statement that, if the parent is represented by an attorney, the parent must appear**
 43 **personally at any hearing where the parent is required to appear. If the court has granted**
 44 **the parent an exception in advance under ORS 419B.918, the parent may appear in any**
 45 **manner permitted by the court under ORS 419B.918.**

1 (5) If the summons requires the parent to appear before the court to admit or deny the
 2 allegations of the petition or requires the parent to file a written answer to the petition, the sum-
 3 mons must advise the parent that, if the parent contests the petition, the court:

4 (a) Will schedule a hearing on the allegations of the petition and order the parent to appear
 5 personally; and

6 (b) May schedule other hearings related to the petition and order the parent to appear per-
 7 sonally.

8 (6) At a hearing, when the parent is required to appear personally, or in the parent’s written
 9 answer to the petition, the parent shall inform the court and the petitioner of the parent’s current
 10 residence address, mailing address and telephone number.

11 (7) If a parent fails to appear for any hearing related to the petition, or fails to file a written
 12 answer, as directed by summons or court order under this section or ORS 419B.820, the court,
 13 without further notice and in the parent’s absence, may:

14 (a) Terminate the parent’s rights or, if the petition seeks to establish a permanent guardianship,
 15 grant the guardianship petition either on the date specified in the summons or order or on a future
 16 date; and

17 (b) Take any other action that is authorized by law.

18 **(8) If the summons requires the parent to appear personally before the court, or if a**
 19 **court orders the parent to appear personally at a hearing in the manner provided in ORS**
 20 **419B.820, the parent may not appear through the parent’s attorney.**

21 [(8)] (9) If a guardian ad litem has been appointed for a parent under ORS 419B.231, a copy of
 22 the summons served on the parent under this section must be provided to the guardian ad litem.

23 **SECTION 7.** ORS 419B.820 is amended to read:

24 419B.820. If the parent appears in the manner provided in ORS 419B.819 (2)(b) or (c) and the
 25 parent contests the petition, the court, by written order provided to the parent in person or mailed
 26 to the parent at the address provided by the parent or by oral order made on the record, shall:

27 (1) Inform the parent of the time, place and purpose of the next hearing or hearings related to
 28 the petition;

29 (2) Require the parent to appear personally at the next hearing or hearings related to the peti-
 30 tion; [and]

31 **(3) Inform the parent that, if the parent is represented by an attorney, the parent’s at-**
 32 **torney may not attend the hearing in place of the parent;**

33 **(4) Inform the parent that, if the court has granted the parent an exception in advance**
 34 **under ORS 419B.918, the parent may appear in any manner permitted by the court under**
 35 **ORS 419B.918; and**

36 [(3)] (5) Inform the parent that, if the parent fails to appear as ordered for any hearing related
 37 to the petition, the court, without further notice and in the parent’s absence, may:

38 (a) Terminate the parent’s rights or, if the petition seeks to establish a permanent guardianship,
 39 grant the guardianship petition either on the date specified in the order or on a future date; and

40 (b) Take any other action that is authorized by law.

41 **SECTION 8.** ORS 419B.822 is amended to read:

42 419B.822. The summons for appearance in a proceeding to establish permanent guardianship
 43 under ORS 419B.365 or to terminate parental rights under ORS 419B.500, 419B.502, 419B.504,
 44 419B.506 or 419B.508 must be in substantially the following form:

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IN THE CIRCUIT COURT
OF THE STATE OF OREGON

FOR _____ COUNTY

In the Matter of)
) No.
) Petition No.
)
 A Child.) SUMMONS

TO: Name and address

IN THE NAME OF THE STATE OF OREGON:

You are directed:

_____ To appear **in person** before this Court at _____ (address), Courtroom #_____, _____, Oregon, on: the _____ day of _____, 2_____, at _____ o'clock ____m. for a hearing on the allegations of the petition and at any subsequent court-ordered hearing. **You must appear personally in the courtroom on the date and at the time listed above. An attorney may not attend the hearing in your place.**

_____ To appear **in person** before this Court at _____ (address), Courtroom #_____, _____, Oregon, on: the _____ day of _____, 2_____, at _____ o'clock ____m. to admit or deny the allegations of the petition and at any subsequent court-ordered hearing. **You must appear personally in the courtroom on the date and at the time listed above. An attorney may not attend the hearing in your place.**

_____ To file a written answer to the petition no later than 30 days after the date you were served with this summons and to appear at any court-ordered hearing. **An attorney may not attend any court-ordered hearing in your place.**

NOTICE:
READ THESE PAPERS CAREFULLY!

A petition has been filed to:

_____ Establish a permanent guardianship under ORS 419B.365.

_____ Terminate your parental rights under ORS 419B.500, 419B.502, 419B.504, 419B.506 or 419B.508.

A copy of the petition is attached.

If you do not appear or file a written answer as directed above, or do not appear at any subsequent court-ordered hearing, the Court may proceed without further notice and (establish a permanent guardianship) (terminate your parental rights) either on the date specified in this summons or on a future date, and make such orders and take such action as authorized by law.

RIGHTS AND OBLIGATIONS

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You have a right to be represented by an attorney. If you wish to be represented by an attorney, please retain one as soon as possible to represent you in this proceeding. If you cannot afford to hire an attorney and you meet the state’s financial guidelines, you are entitled to have an attorney appointed for you at state expense. To request appointment of an attorney to represent you at state expense, you must contact the juvenile court immediately. Phone _____ for further information. **If you are represented by an attorney**, it is your responsibility to maintain contact with your attorney and to keep your attorney advised of your whereabouts.

If this summons requires you to appear before the court to admit or deny the allegations of the petition or requires you to file a written answer to the petition and you contest the petition, the court will schedule a hearing on the allegations of the petition and order you to appear personally and may schedule other hearings related to the petition and order you to appear personally. **If you are ordered to appear, you must appear personally in the courtroom, unless the court has granted you an exception in advance under ORS 419B.918 to appear by other means including, but not limited to, telephonic or other electronic means.**

By: (Name and Title)

Date Issued: _____

SECTION 9. ORS 419B.918 is amended to read:

419B.918. (1) Notwithstanding ORS 419B.815, **419B.816**, 419B.819 and 419B.820, on timely **written** motion of a person showing good cause, a court may permit the person, instead of appearing personally, to participate in any hearing related to a petition alleging jurisdiction under ORS 419B.100, a petition to establish a permanent guardianship under ORS 419B.365 or a petition seeking termination of parental rights under ORS 419B.500, 419B.502, 419B.504, 419B.506 or 419B.508 in any manner that complies with the requirements of due process including, but not limited to, telephonic or other electronic means.

(2) If a person who is summoned or ordered to appear under ORS 419B.815, 419B.816, 419B.819 or 419B.820 seeks to reschedule any hearing at which the person is required to appear, the person must:

- (a) Appear personally at the time specified in the summons or order to request the change; or
- (b) Include in the person’s written motion requesting the change the person’s current mailing address, to which the court may send notice of the new date for the hearing if the motion is granted.
