

Senate Bill 408

Sponsored by Senators BROWN, KRUSE, Representatives KRIEGER, SCHAUFLEER

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**.

Prohibits Department of Human Services from filing petition to terminate parental rights for sole reason that child or ward has been in substitute care for 15 of last 22 months unless court previously determined permanency plan for child should be adoption.

A BILL FOR AN ACT

1
2 Relating to termination of parental rights; amending ORS 419B.476 and 419B.498.

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

4 **SECTION 1.** ORS 419B.498 is amended to read:

5 419B.498. (1) Except as provided in [*subsection (2)*] **subsections (2) and (3)** of this section, the
6 Department of Human Services shall simultaneously file a petition to terminate the parental rights
7 of a child or ward's parents and identify, recruit, process and approve a qualified family for adoption
8 if the child or ward is in the custody of the department and:

9 (a) The child or ward has been in substitute care under the responsibility of the department for
10 15 months of the most recent 22 months;

11 (b) A parent has been convicted of murder of another child of the parent, voluntary
12 manslaughter of another child of the parent, aiding, abetting, attempting, conspiring or soliciting to
13 commit murder or voluntary manslaughter of the child or ward or of another child of the parent or
14 felony assault that has resulted in serious physical injury to the child or ward or to another child
15 of the parent; or

16 (c) A court of competent jurisdiction has determined that the child or ward is an abandoned
17 child.

18 **(2) The department shall file a petition to terminate the parental rights of a parent in**
19 **the circumstances described in subsection (1)(a) of this section only if the court has previ-**
20 **ously determined that the permanency plan for the child or ward should be adoption.**

21 [(2)] **(3)** The department shall file a petition to terminate the parental rights of a parent in the
22 circumstances described in subsection (1)(b) or (c) of this section unless:

23 (a) The child or ward is being cared for by a relative and that placement is intended to be
24 permanent;

25 (b) There is a compelling reason, which is documented in the case plan, for determining that
26 filing such a petition would not be in the best interests of the child or ward. Such compelling rea-
27 sons include, but are not limited to:

28 (A) The parent is successfully participating in services that will make it possible for the child
29 or ward to safely return home within a reasonable time as provided in ORS 419B.476 (5)(c);

30 (B) Another permanent plan is better suited to meet the health and safety needs of the child or
31 ward; or

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 (C) The court or local citizen review board in a prior hearing or review determined that while
2 the case plan was to reunify the family the department did not make reasonable efforts or, if the
3 Indian Child Welfare Act applies, active efforts to make it possible for the child or ward to safely
4 return home; or

5 (c) The department has not provided to the family of the child or ward, consistent with the time
6 period in the case plan, such services as the department deems necessary for the child or ward to
7 safely return home, if reasonable efforts to make it possible for the child or ward to safely return
8 home are required to be made with respect to the child or ward.

9 **SECTION 2.** ORS 419B.476 is amended to read:

10 419B.476. (1) A permanency hearing shall be conducted in the manner provided in ORS 418.312,
11 419B.310, 419B.812 to 419B.839 and 419B.908, except that the court may receive testimony and re-
12 ports as provided in ORS 419B.325.

13 (2) At a permanency hearing the court shall:

14 (a) If the case plan at the time of the hearing is to reunify the family, determine whether the
15 Department of Human Services has made reasonable efforts or, if the Indian Child Welfare Act ap-
16 plies, active efforts to make it possible for the ward to safely return home and whether the parent
17 has made sufficient progress to make it possible for the ward to safely return home. In making its
18 determination, the court shall consider the ward's health and safety the paramount concerns.

19 (b) If the case plan at the time of the hearing is something other than to reunify the family,
20 determine whether the department has made reasonable efforts to place the ward in a timely manner
21 in accordance with the plan and to complete the steps necessary to finalize the permanent place-
22 ment.

23 (3)(a) In the circumstances described in paragraph (b) of this subsection, in addition to making
24 the determination required by subsection (2)(a) or (b) of this section, at a permanency hearing the
25 court shall review the comprehensive plan for the ward's transition to independent living and de-
26 termine and make findings as to:

27 (A) Whether the plan is adequate to ensure the ward's successful transition to independent liv-
28 ing;

29 (B) Whether the department has offered appropriate services pursuant to the plan; and

30 (C) Whether the department has involved the ward in the development of the plan.

31 (b) The requirements of paragraph (a) of this subsection apply when:

32 (A) The ward is 16 years of age or older; or

33 (B) The ward is 14 years of age or older and there is a comprehensive plan for the ward's
34 transition to independent living.

35 (4) At a permanency hearing the court may:

36 (a) If the case plan changed during the period since the last review by a local citizen review
37 board or court hearing and a plan to reunify the family was in effect for any part of that period,
38 determine whether the department has made reasonable efforts or, if the Indian Child Welfare Act
39 applies, active efforts to make it possible for the ward to safely return home. In making its deter-
40 mination, the court shall consider the ward's health and safety the paramount concerns;

41 (b) If the case plan changed during the period since the last review by a local citizen review
42 board or court hearing and a plan other than to reunify the family was in effect for any part of that
43 period, determine whether the department has made reasonable efforts to place the ward in a timely
44 manner in accordance with the plan and to complete the steps necessary to finalize the permanent
45 placement;

1 (c) If the court determines that further efforts will make it possible for the ward to safely return
2 home within a reasonable time, order that the parents participate in specific services for a specific
3 period of time and make specific progress within that period of time;

4 (d) Determine the adequacy and compliance with the case plan and the case progress report;

5 (e) Review the efforts made by the department to develop the concurrent permanent plan, in-
6 cluding but not limited to, identification and selection of a suitable adoptive placement for the ward;

7 (f) Order the department to develop or expand the case plan or concurrent permanent plan and
8 provide a case progress report to the court and other parties within 10 days after the permanency
9 hearing;

10 (g) Order the department or agency to modify the care, placement and supervision of the ward;

11 (h) Order the local citizen review board to review the status of the ward prior to the next court
12 hearing; or

13 (i) Set another court hearing at a later date.

14 (5) The court shall enter an order within 20 days after the permanency hearing. In addition to
15 any determinations or orders the court may make under subsection (4) of this section, the order
16 shall include:

17 (a) The court's determination required under subsections (2) and (3) of this section, including a
18 brief description of the efforts the department has made with regard to the case plan in effect at the
19 time of the permanency hearing;

20 (b) The court's determination of the permanency plan for the ward that includes whether and,
21 if applicable, when:

22 (A) The ward will be returned to the parent;

23 (B) The ward will be placed for adoption, and a petition for termination of parental rights will
24 be filed;

25 (C) The ward will be referred for establishment of legal guardianship; or

26 (D) The ward will be placed in another planned permanent living arrangement;

27 (c) If the court determines that the permanency plan for the ward should be to return home
28 because further efforts will make it possible for the ward to safely return home within a reasonable
29 time, the court's determination of the services in which the parents are required to participate, the
30 progress the parents are required to make and the period of time within which the specified progress
31 must be made;

32 (d) If the court determines that the permanency plan for the ward should be adoption, the
33 court's determination of whether one of the circumstances in ORS 419B.498 [(2)] (3) is applicable;

34 (e) If the court determines that the permanency plan for the ward should be establishment of a
35 legal guardianship or placement with a fit and willing relative, the court's determination of why
36 neither placement with parents nor adoption is appropriate;

37 (f) If the court determines that the permanency plan for the ward should be a planned permanent
38 living arrangement, the court's determination of a compelling reason, that must be documented by
39 the department, why it would not be in the best interests of the ward to be returned home, placed
40 for adoption, placed with a legal guardian or placed with a fit and willing relative;

41 (g) If the current placement is not expected to be permanent, the court's projected timetable for
42 return home or for placement in another planned permanent living arrangement. If the timetable set
43 forth by the court is not met, the department shall promptly notify the court and parties; and

44 (h) If an Indian child is involved, the tribal affiliation of the ward.

45 (6) If an Indian child is involved, the court shall follow the placement preference established by

1 the Indian Child Welfare Act.

2 (7) Any final decision of the court made pursuant to the permanency hearing is appealable under
3 ORS 419A.200. On appeal of a final decision of the court under this subsection, the court's finding,
4 if any, under ORS 419B.340 (5) that the department is not required to make reasonable efforts to
5 make it possible for the ward to safely return home is an interlocutory order to which a party may
6 assign error.

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