

Enrolled
Senate Bill 414

Sponsored by Senators BROWN, KRUSE, Representatives KRIEGER, SCHAUFLE

CHAPTER

AN ACT

Relating to the placement of children; amending ORS 418.070, 419A.004, 419B.090, 419B.185, 419B.192, 419B.337, 419B.349, 419B.368, 419B.443, 419B.449, 419B.470, 419B.476 and 419B.498.

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

SECTION 1. ORS 419A.004 is amended to read:

419A.004. As used in this chapter and ORS chapters 419B and 419C, unless the context requires otherwise:

- (1) "CASA Volunteer Program" means a program approved or sanctioned by the juvenile court to recruit, train and supervise volunteer persons to serve as court appointed special advocates.
- (2) "Child care center" means a residential facility for wards or youth offenders that is licensed under the provisions of ORS 418.240.
- (3) "Community service" has the meaning given that term in ORS 137.126.
- (4) "Conflict of interest" means a person appointed to a local citizen review board who has a personal or pecuniary interest in a case being reviewed by that board.
- (5) "Counselor" means a juvenile department counselor or a county juvenile probation officer.
- (6) "Court" means the juvenile court.
- (7) "Court appointed special advocate" or "CASA" means a person appointed by the court pursuant to a CASA Volunteer Program to act as special advocate pursuant to ORS 419A.170.
- (8) "Court facility" has the meaning given that term in ORS 166.360.
- (9) "Department" means the Department of Human Services.
- (10) "Detention" or "detention facility" means a facility established under ORS 419A.010 to 419A.020 and 419A.050 to 419A.063 for the detention of children, wards, youths or youth offenders pursuant to a judicial commitment or order.
- (11) "Director" means the director of a juvenile department established under ORS 419A.010 to 419A.020 and 419A.050 to 419A.063.
- (12) "Guardian" means guardian of the person and not guardian of the estate.
- (13) "Indian child" means any unmarried person less than 18 years of age who is:
 - (a) A member of an Indian tribe; or
 - (b) Eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.
- (14) "Juvenile court" means the court having jurisdiction of juvenile matters in the several counties of this state.
- (15) "Local citizen review board" means the board specified by ORS 419A.090 and 419A.092.
- (16) "Parent" means the biological or adoptive mother and the legal father of the child, ward, youth or youth offender. As used in this subsection, "legal father" means:

(a) A man who has adopted the child, ward, youth or youth offender or whose paternity has been established or declared under ORS 109.070 or 416.400 to 416.465 or by a juvenile court; and

(b) In cases in which the Indian Child Welfare Act applies, a man who is a father under applicable tribal law.

(17) "Permanent foster care" means an out-of-home placement in which there is a long-term contractual foster care agreement between the foster parents and the department that is approved by the juvenile court and in which the foster parents commit to raise a ward in substitute care or youth offender until the age of majority.

(18) "Planned permanent living arrangement" means an out-of-home placement other than by adoption, placement with a relative or placement with a legal guardian that is consistent with the case plan and in the best interests of the ward.

(19) "Public building" has the meaning given that term in ORS 166.360.

(20) "Reasonable time" means a period of time that is reasonable given a child or ward's emotional and developmental needs and ability to form and maintain lasting attachments.

(21) "Records" means any information in written form, pictures, photographs, charts, graphs, recordings or documents pertaining to a case.

(22) "Resides" or "residence," when used in reference to the residence of a child, ward, youth or youth offender, means the place where the child, ward, youth or youth offender is actually living or the jurisdiction in which wardship or jurisdiction has been established.

(23) "Restitution" has the meaning given that term in ORS 137.103.

(24) "Serious physical injury" means:

(a) A serious physical injury as defined in ORS 161.015; or

(b) A physical injury that:

(A) Has a permanent or protracted significant effect on a child's daily activities;

(B) Results in substantial and recurring pain; or

(C) In the case of a child under 10 years of age, is a broken bone.

(25) "Shelter care" means a home or other facility suitable for the safekeeping of a child, ward, youth or youth offender who is taken into temporary custody pending investigation and disposition.

(26) "Short-term detention facility" means a facility established under ORS 419A.050 (3) for holding children, youths and youth offenders pending further placement.

(27) "Sibling" means one of two or more children or wards related:

(a) By blood or adoption through a common legal parent; or

(b) Through the marriage of the children's or wards' legal or biological parents.

[27] **(28)** "Substitute care" means an out-of-home placement directly supervised by the department or other agency, including placement in a foster family home, group home or other child caring institution or facility. "Substitute care" does not include care in:

(a) A detention facility, forestry camp or youth correction facility;

(b) A family home that the court has approved as a ward's permanent placement, when a private child caring agency has been appointed guardian of the ward and when the ward's care is entirely privately financed; or

(c) In-home placement subject to conditions or limitations.

[28] **(29)** "Surrogate" means a person appointed by the court to protect the right of the child, ward, youth or youth offender to receive procedural safeguards with respect to the provision of free appropriate public education.

[29] **(30)** "Tribal court" means a court with jurisdiction over child custody proceedings and that is either a Court of Indian Offenses, a court established and operated under the code of custom of an Indian tribe or any other administrative body of a tribe that is vested with authority over child custody proceedings.

[30] **(31)** "Ward" means a person within the jurisdiction of the juvenile court under ORS 419B.100.

[31] (32) “Youth” means a person under 18 years of age who is alleged to have committed an act that is a violation, or, if done by an adult would constitute a violation, of a law or ordinance of the United States or a state, county or city.

[32] (33) “Youth care center” has the meaning given that term in ORS 420.855.

[33] (34) “Youth offender” means a person who has been found to be within the jurisdiction of the juvenile court under ORS 419C.005 for an act committed when the person was under 18 years of age.

SECTION 2. ORS 419A.004, as amended by section 1, chapter 843, Oregon Laws 2005, is amended to read:

419A.004. As used in this chapter and ORS chapters 419B and 419C, unless the context requires otherwise:

(1) “CASA Volunteer Program” means a program approved or sanctioned by the juvenile court to recruit, train and supervise volunteer persons to serve as court appointed special advocates.

(2) “Child care center” means a residential facility for wards or youth offenders that is licensed under the provisions of ORS 418.240.

(3) “Community service” has the meaning given that term in ORS 137.126.

(4) “Conflict of interest” means a person appointed to a local citizen review board who has a personal or pecuniary interest in a case being reviewed by that board.

(5) “Counselor” means a juvenile department counselor or a county juvenile probation officer.

(6) “Court” means the juvenile court.

(7) “Court appointed special advocate” or “CASA” means a person appointed by the court pursuant to a CASA Volunteer Program to act as special advocate pursuant to ORS 419A.170.

(8) “Court facility” has the meaning given that term in ORS 166.360.

(9) “Department” means the Department of Human Services.

(10) “Detention” or “detention facility” means a facility established under ORS 419A.010 to 419A.020 and 419A.050 to 419A.063 for the detention of children, wards, youths or youth offenders pursuant to a judicial commitment or order.

(11) “Director” means the director of a juvenile department established under ORS 419A.010 to 419A.020 and 419A.050 to 419A.063.

(12) “Guardian” means guardian of the person and not guardian of the estate.

(13) “Indian child” means any unmarried person less than 18 years of age who is:

(a) A member of an Indian tribe; or

(b) Eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

(14) “Juvenile court” means the court having jurisdiction of juvenile matters in the several counties of this state.

(15) “Local citizen review board” means the board specified by ORS 419A.090 and 419A.092.

(16) “Parent” means the biological or adoptive mother and the legal father of the child, ward, youth or youth offender. As used in this subsection, “legal father” means:

(a) A man who has adopted the child, ward, youth or youth offender or whose paternity has been established or declared under ORS 109.070 or 416.400 to 416.465 or by a juvenile court; and

(b) In cases in which the Indian Child Welfare Act applies, a man who is a father under applicable tribal law.

(17) “Permanent foster care” means an out-of-home placement in which there is a long-term contractual foster care agreement between the foster parents and the department that is approved by the juvenile court and in which the foster parents commit to raise a ward in substitute care or youth offender until the age of majority.

(18) “Planned permanent living arrangement” means an out-of-home placement other than by adoption, placement with a relative or placement with a legal guardian that is consistent with the case plan and in the best interests of the ward.

(19) “Public building” has the meaning given that term in ORS 166.360.

(20) "Reasonable time" means a period of time that is reasonable given a child or ward's emotional and developmental needs and ability to form and maintain lasting attachments.

(21) "Records" means any information in written form, pictures, photographs, charts, graphs, recordings or documents pertaining to a case.

(22) "Resides" or "residence," when used in reference to the residence of a child, ward, youth or youth offender, means the place where the child, ward, youth or youth offender is actually living or the jurisdiction in which wardship or jurisdiction has been established.

(23) "Restitution" has the meaning given that term in ORS 137.103.

(24) "Serious physical injury" means:

(a) A serious physical injury as defined in ORS 161.015; or

(b) A physical injury that:

(A) Has a permanent or protracted significant effect on a child's daily activities;

(B) Results in substantial and recurring pain; or

(C) In the case of a child under 10 years of age, is a broken bone.

(25) "Shelter care" means a home or other facility suitable for the safekeeping of a child, ward, youth or youth offender who is taken into temporary custody pending investigation and disposition.

(26) "Short-term detention facility" means a facility established under ORS 419A.050 (3) for holding children, youths and youth offenders pending further placement.

(27) "Sibling" means one of two or more children or wards related:

(a) By blood or adoption through a common legal parent; or

(b) Through the marriage of the children's or wards' legal or biological parents.

[(27)] **(28)** "Substitute care" means an out-of-home placement directly supervised by the department or other agency, including placement in a foster family home, group home or other child caring institution or facility. "Substitute care" does not include care in:

(a) A detention facility, forestry camp or youth correction facility;

(b) A family home that the court has approved as a ward's permanent placement, when a private child caring agency has been appointed guardian of the ward and when the ward's care is entirely privately financed; or

(c) In-home placement subject to conditions or limitations.

[(28)] **(29)** "Surrogate" means a person appointed by the court to protect the right of the child, ward, youth or youth offender to receive procedural safeguards with respect to the provision of free appropriate public education.

[(29)] **(30)** "Tribal court" means a court with jurisdiction over child custody proceedings and that is either a Court of Indian Offenses, a court established and operated under the code of custom of an Indian tribe or any other administrative body of a tribe that is vested with authority over child custody proceedings.

[(30)] **(31)** "Ward" means a person within the jurisdiction of the juvenile court under ORS 419B.100.

[(31)] **(32)** "Young person" means a person who has been found responsible except for insanity under ORS 419C.411 and placed under the jurisdiction of the Psychiatric Security Review Board.

[(32)] **(33)** "Youth" means a person under 18 years of age who is alleged to have committed an act that is a violation, or, if done by an adult would constitute a violation, of a law or ordinance of the United States or a state, county or city.

[(33)] **(34)** "Youth care center" has the meaning given that term in ORS 420.855.

[(34)] **(35)** "Youth offender" means a person who has been found to be within the jurisdiction of the juvenile court under ORS 419C.005 for an act committed when the person was under 18 years of age.

SECTION 3. ORS 419B.090 is amended to read:

419B.090. (1) The juvenile court is a court of record and exercises jurisdiction as a court of general and equitable jurisdiction and not as a court of limited or inferior jurisdiction. The juvenile court is called "The _____ Court of _____ County, Juvenile Department."

(2)(a) It is the policy of the State of Oregon to recognize that children are individuals who have legal rights. Among those rights are the right to:

- (A) Permanency with a safe family;
- (B) Freedom from physical, sexual or emotional abuse or exploitation; and
- (C) Freedom from substantial neglect of basic needs.

(b) Parents and guardians have a duty to afford their children the rights listed in paragraph (a) of this subsection. Parents and guardians have a duty to remove any impediment to their ability to perform parental duties that afford these rights to their children. When a parent or guardian fails to fulfill these duties, the juvenile court may determine that it is in the best interests of the child to remove the child from the parent or guardian either temporarily or permanently.

(c) The provisions of this chapter shall be liberally construed to the end that a child coming within the jurisdiction of the court may receive such care, guidance, treatment and control as will lead to the child's welfare and the protection of the community.

(3) It is the policy of the State of Oregon to safeguard and promote each child's right to safety, stability and well-being. The State of Oregon recognizes the importance of a child's relationships with parents, siblings, grandparents and other relatives.

[(3)] (4) It is the policy of the State of Oregon to guard the liberty interest of parents protected by the Fourteenth Amendment to the United States Constitution and to protect the rights and interests of children, as provided in subsection (2) of this section. The provisions of this chapter shall be construed and applied in compliance with federal constitutional limitations on state action established by the United States Supreme Court with respect to interference with the rights of parents to direct the upbringing of their children, including, but not limited to:

- (a) Guide the secular and religious education of their children;
- (b) Make health care decisions for their children; and
- (c) Discipline their children.

[(4)] (5) It is the policy of the State of Oregon, in those cases not described as extreme conduct under ORS 419B.502, to offer appropriate reunification services to parents and guardians to allow them the opportunity to adjust their circumstances, conduct or conditions to make it possible for the child to safely return home within a reasonable time. Although there is a strong preference that children live in their own homes with their own families, the state recognizes that it is not always possible or in the best interests of the child or the public for children who have been abused or neglected to be reunited with their parents or guardians. In those cases, the State of Oregon has the obligation to create or provide an alternative, safe and permanent home for the child.

[(5)] (6) The State of Oregon recognizes the value of the Indian Child Welfare Act, 25 U.S.C. 1901 to 1923, and hereby incorporates the policies of that Act.

SECTION 4. ORS 419B.185 is amended to read:

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

(a) The court shall make written findings as to whether the Department of Human Services has made reasonable efforts or, if the Indian Child Welfare Act applies, active efforts to prevent or eliminate the need for removal of the child or ward from the home and to make it possible for the child or ward to safely return home. When the court finds that no services were provided but that reasonable services would not have eliminated the need for protective custody, the court shall consider the department to have made reasonable efforts or, if the Indian Child Welfare Act applies, active efforts to prevent or eliminate the need for protective custody. The court shall include in the written findings a brief description of [what] the preventive and reunification efforts [were] made by the department.

(b) In determining whether a child or ward shall be removed or continued out of home, the court shall consider whether the provision of reasonable services can prevent or eliminate the need to separate the family.

(c) In determining whether the department has made reasonable efforts or, if the Indian Child Welfare Act applies, active efforts to prevent or eliminate the need for removal of the child or ward from the home and to make it possible for the child or ward to safely return home, the court shall consider the child or ward's health and safety the paramount concerns.

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

(e) When the court determines that a child or ward shall be removed from the home or continued in care, the court shall make written findings whether the department made diligent efforts pursuant to ORS 419B.192. The court shall include in its written findings a brief description of the efforts made by the department.

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

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

(2) To aid the court in making the written findings required by subsection (1)(a), ~~and~~ (d) **and** (e) of this section, the department shall present written documentation to the court outlining:

(a) The ~~reasonable or active~~ efforts made to prevent taking the child or ward into protective custody and to provide services to make it possible for the child or ward to safely return home;

(b) The efforts the department made pursuant to ORS 419B.192; and

(c) Why protective custody is in the best interests of the child or ward.

SECTION 5. ORS 419B.192 is amended to read:

419B.192. (1) If the court finds that a child or ward is in need of placement or continuation in substitute care, there shall be a preference given to placement **of the child or ward** with relatives and persons who have a caregiver relationship with the child or ward as defined in ORS 419B.116. The Department of Human Services shall make ~~reasonable~~ **diligent** efforts to place the child or ward with such persons and shall report to the court ~~what~~ **the** efforts ~~were~~ **made by the department** to effectuate ~~such a~~ **that** placement.

(2) If a child or ward in need of placement or continuation in substitute care has a sibling also in need of placement or continuation in substitute care, the department shall make diligent efforts to place the siblings together and shall report to the court the efforts made by the department to carry out the placement, unless the court finds that placement of the siblings together is not in the best interests of the child or the ward or the child's or the ward's sibling.

~~[(2)]~~ (3) In attempting to place the child or ward pursuant to ~~subsection (1)]~~ **subsections (1) and (2)** of this section, the department shall consider, but not be limited to **considering**, the following:

(a) The ability of the person being considered to provide safety for the child or ward, including a willingness to cooperate with any restrictions placed on contact between the child or ward and others, and to prevent anyone from influencing the child or ward in regard to the allegations of the case;

(b) The ability of the person being considered to support the efforts of the department to implement the permanent plan for the child or ward;

(c) The ability of the person being considered to meet the child or ward's physical, emotional and educational needs, including the child or ward's need to continue in the same school or educational placement; ~~and~~

(d) Which person has the closest existing personal relationship with the child or ward if more than one person requests to have the child or ward placed with them pursuant to this section; **and**
(e) **The ability of the person being considered to provide a placement for the child's or ward's sibling who is also in need of placement or continuation in substitute care.**

[3] (4) Notwithstanding subsections (1) [and (2)] **to (3)** of this section, in cases where the Indian Child Welfare Act applies, the placement preferences of the Indian Child Welfare Act shall be followed.

SECTION 6. ORS 419B.337 is amended to read:

419B.337. (1) When the court determines it would be in the best interest and for the welfare of a ward, the court may place the ward in the legal custody of the Department of Human Services for care, placement and supervision. When the court enters an order removing a ward from the ward's home or an order continuing care, the court shall make a written finding as to whether:

(a) Removal of the ward from the ward's home or continuation of care is in the best interest and for the welfare of the ward; [and]

(b) Reasonable efforts, considering the circumstances of the ward and parent, have been made to prevent or eliminate the need for removal of the ward from the home or to make it possible for the ward to safely return home. In making this finding, the court shall consider the ward's health and safety the paramount concerns; **and**

(c) **Diligent efforts have been made to place the ward pursuant to ORS 419B.192.**

(2) The court may specify the particular type of care, supervision or services to be provided by the Department of Human Services to wards placed in the department's custody and to the parents or guardians of the wards, but the actual planning and provision of such care, supervision or services is the responsibility of the department. The department may place the ward in a child care center authorized to accept the ward.

(3) The court may make an order regarding visitation by the ward's parents or siblings. The Department of Human Services is responsible for developing and implementing a visitation plan consistent with the court's order.

[3] (4) Uniform commitment blanks, in a form approved by the Director of Human Services, shall be used by all courts for placing wards in the legal custody of the Department of Human Services.

[4] (5) If the ward has been placed in the custody of the Department of Human Services, the court shall make no commitment directly to any residential facility, but shall cause the ward to be delivered into the custody of the department at the time and place fixed by rules of the department. A ward so committed may not be placed in a Department of Corrections institution.

[5] (6) Commitment of a ward to the Department of Human Services continues until dismissed by the court or until the ward becomes 21 years of age.

[6] (7) A court may dismiss commitment of a ward to the Department of Human Services if:

(a)(A) Dismissal is appropriate because the ward has been safely reunited with a parent or because a safe alternative to reunification has been implemented for the ward; and

(B) The ward is at least 14 years of age but less than 21 years of age and the court finds that:

(i) The department has provided case planning pursuant to ORS 419B.343 that addresses the ward's needs and goals for a successful transition to independent living, including needs and goals relating to housing, physical and mental health, education, employment, community connections and supportive relationships;

(ii) The department has provided appropriate services pursuant to the case plan;

(iii) The department has involved the ward in the development of the case plan and in the provision of appropriate services; and

(iv) The ward has safe and stable housing and is unlikely to become homeless as a result of dismissal of commitment of the ward to the department; or

(b) The ward has been committed to the custody of the Oregon Youth Authority.

SECTION 7. 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 best interests.

(3) The court may vacate a guardianship order, return the child 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 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.

(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)] **(d) and (e)** and make any order directing disposition of the child 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 best interests to modify or vacate a guardianship, the court shall consider, but is not limited to considering:

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

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

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

(d) The child'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 8. ORS 419B.443 is amended to read:

419B.443. (1) [The] **An agency described in ORS 419B.440** shall file the reports required by ORS 419B.440 (2) and (3) at the end of the initial six-month period and no less frequently than each six months thereafter. The agency shall file reports more frequently if the court so orders. The reports shall include, but not be limited to:

(a) A description of the problems or offenses that necessitated the placement of the child or ward with the agency;

(b) A description of the type and an analysis of the effectiveness of the care, treatment and supervision that the agency has provided for the child or ward[, *together with*];

(c) A list of all placements made since the child or ward has been in the guardianship or legal custody of an agency and the length of time the child or ward has spent in each placement;

(d) For a child or ward in substitute care, a list of all schools the child or ward has attended since the child or ward has been in the guardianship or legal custody of the agency, the length of time the child or ward has spent in each school and, for a child or ward 14 years of age or older, the number of high school credits the child or ward has earned;

(e) A list of dates of face-to-face contacts the assigned case worker has had with the child or ward since the child or ward has been in the guardianship or legal custody of the agency and, for a child or ward in substitute care, the place of each contact;

(f) For a child or ward in substitute care, a list of the visits the child or ward has had with the child's or ward's parents or siblings since the child or ward has been in the guardianship or legal custody of the agency and the place and date of each visit;

[(c)] (g) A description of agency efforts to return the child or ward to the parental home or find permanent placement for the child or ward, including, when applicable, efforts to assist the parents in remedying factors which contributed to the removal of the child or ward from the home;

[(d)] (h) A proposed treatment plan or proposed continuation or modification of an existing treatment plan, including, *when applicable, terms of visitation to be allowed and expected of parents* a **proposed visitation plan or proposed continuation or modification of an existing visitation plan** and a description of efforts expected of the child or ward and the parents to remedy factors that have prevented the child or ward from safely returning home within a reasonable time; and

[(e)] (i) If continued substitute care is recommended, a proposed timetable for the [*child*] **child's** or ward's return home or other permanent placement or a justification of why extended substitute care is necessary.

(2) Notwithstanding the requirements of subsection (1) of this section, reports following the initial report need not contain information contained in prior reports.

SECTION 9. ORS 419B.449 is amended to read:

419B.449. (1) Upon receiving any report required by ORS 419B.440 [*and 419B.443*], the court may hold a hearing to review the child or ward's condition and circumstances and to determine if the court should continue jurisdiction and wardship or order modifications in the care, placement and supervision of the child or ward. The court shall hold a hearing:

(a) In all cases under ORS 419B.440 (3) when the parents' rights have been terminated; or

(b) If requested by the child or ward, the attorney for the child or ward, if any, the parents or the public or private agency having guardianship or legal custody of the child or ward within 30 days of receipt of the notice provided in ORS 419B.452.

(2) The court shall conduct a hearing provided in subsection (1) of this section in the manner provided in ORS 419B.310, except that the court may receive testimony and reports as provided in ORS 419B.325. At the conclusion of the hearing, the court shall enter findings of fact if the decision is to continue the child or ward in substitute care. Such findings shall specifically state:

(a)(A) Why continued care is necessary as opposed to returning the child or ward home or taking prompt action to secure another permanent placement; or

[(b)] (B) The expected timetable for return or other permanent placement.

(b) **Whether the agency having guardianship or legal custody of the child or ward has made diligent efforts to place the child or ward pursuant to ORS 419B.192.**

(c) **The number of placements made, schools attended, face-to-face contacts with the assigned case worker and visits had with parents or siblings since the child or ward has been in the guardianship or legal custody of the agency and whether the frequency of each of these is in the best interests of the child or ward.**

(d) **For a child or ward 14 years of age or older, whether the child or ward is progressing adequately toward graduation from high school and, if not, the efforts that have been made by the agency having custody or guardianship to assist the child or ward to graduate.**

(3) In making the findings under subsection (2) of this section, the court shall consider the efforts made to develop the concurrent case plan, including, but not limited to, identification and selection of a suitable adoptive placement for the child or ward when adoption is the concurrent case plan.

(4) In addition to findings of fact required by subsection (2) of this section, the court may order the Department of Human Services to consider additional information in developing the case plan or concurrent case plan.

(5) Any final decision of the court made pursuant to the hearing provided in subsection (1) of this section is appealable under ORS 419A.200.

SECTION 10. ORS 419B.470 is amended to read:

419B.470. (1) The court shall conduct a permanency hearing within 30 days after a judicial finding is made under ORS 419B.340 (5) if, based upon that judicial finding, the Department of Human Services determines that it will not make reasonable efforts to reunify the family.

(2) In all other cases when a child or ward is in substitute care, the court shall conduct a permanency hearing no later than 12 months after the ward was found within the jurisdiction of the court under ORS 419B.100 or 14 months after the child or ward was placed in substitute care, whichever is the earlier.

(3) If a ward is removed from court sanctioned permanent foster care, the department shall request and the court shall conduct a permanency hearing within three months after the date of the change in placement.

(4) If a ward has been surrendered for adoption or the parents' rights have been terminated and the department has not physically placed the ward for adoption or initiated adoption proceedings within six months after the surrender or entry of an order terminating parental rights, the court shall conduct a permanency hearing within 30 days after receipt of the report required by ORS 419B.440 (3).

[4] (5) Unless good cause otherwise is shown, the court shall also conduct a permanency hearing at any time upon the request of the department, an agency directly responsible for care or placement of the child or ward, parents whose parental rights have not been terminated, an attorney for the child or ward, a court appointed special advocate, a citizen review board, a tribal court or upon its own motion. The court shall schedule the hearing as soon as possible after receiving a request.

[5] (6) After the initial permanency hearing conducted under subsection (1) or (2) of this section or any permanency hearing conducted under subsection (3) [or (4)] **to (5)** of this section, the court shall conduct subsequent permanency hearings not less frequently than once every 12 months for as long as the child or ward remains in substitute care.

(7) After the permanency hearing conducted under subsection (4) of this section, the court shall conduct subsequent permanency hearings at least every six months for as long as the ward is not physically placed for adoption or adoption proceedings have not been initiated.

[6] (8) If a child returns to substitute care after a court's previously established jurisdiction over the child has been dismissed or terminated, a permanency hearing shall be conducted no later than 12 months after the child is found within the jurisdiction of the court on a newly filed petition or 14 months after the child's most recent placement in substitute care, whichever is the earlier.

SECTION 11. ORS 419B.476 is amended to read:

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

(2) At a permanency hearing the court shall:

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

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

(c) Make the findings of fact under ORS 419B.449 (2).

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

(A) Whether the plan is adequate to ensure the ward's successful transition to independent living;

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

- (C) Whether the department has involved the ward in the development of the plan.
- (b) The requirements of paragraph (a) of this subsection apply when:
 - (A) The ward is 16 years of age or older; or
 - (B) The ward is 14 years of age or older and there is a comprehensive plan for the ward's transition to independent living.
- (4) At a permanency hearing the court may:
 - (a) If the case plan changed during the period since the last review by a local citizen review board or court hearing and a plan to reunify the family was in effect for any part of that period, determine whether the department has made reasonable efforts or, if the Indian Child Welfare Act applies, active efforts to make it possible for the ward to safely return home. In making its determination, the court shall consider the ward's health and safety the paramount concerns;
 - (b) If the case plan changed during the period since the last review by a local citizen review board or court hearing and a plan other than to reunify the family was in effect for any part of that period, determine whether the department has made reasonable efforts to place the ward in a timely manner in accordance with the plan and to complete the steps necessary to finalize the permanent placement;
 - (c) If the court determines that further efforts will make it possible for the ward to safely return home within a reasonable time, order that the parents participate in specific services for a specific period of time and make specific progress within that period of time;
 - (d) Determine the adequacy and compliance with the case plan and the case progress report;
 - (e) Review the efforts made by the department to develop the concurrent permanent plan, including but not limited to, identification and selection of a suitable adoptive placement for the ward;
 - (f) Order the department to develop or expand the case plan or concurrent permanent plan and provide a case progress report to the court and other parties within 10 days after the permanency hearing;
 - (g) Order the department or agency to modify the care, placement and supervision of the ward;
 - (h) Order the local citizen review board to review the status of the ward prior to the next court hearing; or
 - (i) Set another court hearing at a later date.
- (5) The court shall enter an order within 20 days after the permanency hearing. In addition to any determinations or orders the court may make under subsection (4) of this section, the order shall include:
 - (a) The court's determination required under subsections (2) and (3) of this section, including a brief description of the efforts the department has made with regard to the case plan in effect at the time of the permanency hearing;
 - (b) The court's determination of the permanency plan for the ward that includes whether and, if applicable, when:
 - (A) The ward will be returned to the parent;
 - (B) The ward will be placed for adoption, and a petition for termination of parental rights will be filed;
 - (C) The ward will be referred for establishment of legal guardianship; or
 - (D) The ward will be placed in another planned permanent living arrangement;
 - (c) If the court determines that the permanency plan for the ward should be to return home because further efforts will make it possible for the ward to safely return home within a reasonable time, the court's determination of the services in which the parents are required to participate, the progress the parents are required to make and the period of time within which the specified progress must be made;
 - (d) If the court determines that the permanency plan for the ward should be adoption, the court's determination of whether one of the circumstances in ORS 419B.498 (2) is applicable;
 - (e) If the court determines that the permanency plan for the ward should be establishment of a legal guardianship or placement with a fit and willing relative, the court's determination of why neither placement with parents nor adoption is appropriate;

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

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

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

(6) If an Indian child is involved, the court shall follow the placement preference established by the Indian Child Welfare Act.

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

SECTION 12. ORS 419B.498 is amended to read:

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

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

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

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

(2) The department shall file a petition to terminate the parental rights of a parent in the circumstances described in subsection (1) of this section unless:

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

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

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

(B) Another permanent plan is better suited to meet the health and safety needs of the child or ward, **including the need to preserve the child's or ward's sibling attachments and relationships**; or

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

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

SECTION 13. ORS 419B.349 is amended to read:

419B.349. Commitment of a child or ward to the Department of Human Services does not terminate the court's continuing jurisdiction to protect the rights of the child or ward or the child or

ward's parents or guardians. Notwithstanding ORS 419B.337 [(4)] (5), if upon review of a placement of a child or ward made by the department the court determines that the placement is not in the best interest of the child or ward, the court may direct the department to place the child or ward in foster care, residential care, group care or some other specific type of residential placement, but unless otherwise required by law, the court may not direct a specific placement. The actual planning and placement of the child or ward is the responsibility of the department. Nothing in this section affects any contractual right of a private agency to refuse or terminate a placement.

SECTION 14. ORS 418.070 is amended to read:

418.070. For the purposes of ORS 418.035 to 418.185, with respect to any period for which federal funds are made available to this state in aid of a state-administered program of aid to any child defined in and meeting the requirements of this section:

(1) "Aid" includes foster care in behalf of a child described in subsection (2)(b) of this section in the foster home of any individual or in a licensed [*nonprofit*] private child-caring agency.

(2) "Dependent child" includes:

(a) A needy child meeting the requirements of ORS 418.035 (2)(b)(A) or (B) who has been deprived of parental support or care by reason of the unemployment of a parent or parents and who is living with any of the relatives specified in ORS 418.035 (2) in a place of residence maintained by one or more of such relatives as the relative's or relatives' own home.

(b) A child:

(A) Who would meet the requirements of ORS 418.035 (2) or of paragraph (a) of this subsection except for removal from the home of a relative specified in ORS 418.035 (2) as a result of a judicial determination to the effect that continuation therein would be contrary to the welfare of such child;

(B) Who has been accepted for placement and care by the Department of Human Services;

(C) Who has been placed in a foster home or licensed [*nonprofit*] private child-caring agency as a result of such determination; and

(D) Who received aid in or for the month in which court proceedings leading to such determination were initiated, or would have received such aid in or for such month if application had been made therefor, or in the case of a child who had been living with a relative specified in ORS 418.035 (2) within six months prior to the month in which such proceedings were initiated, would have received such aid in or for such month if in such month the child had been living with and removed from the home of such a relative and application had been made therefor.

(3) "Foster home" means a foster home which is certified by this state or has been approved, by the agency of this state responsible for the certification of foster homes, as meeting the standards established for such certification.

(4) "Unemployment of parent" shall be defined by the department and such definition may take into account definitions used to establish the availability of federal funds for the program of temporary assistance for needy families.

Passed by Senate June 24, 2007

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Secretary of Senate

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President of Senate

Passed by House June 27, 2007

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Speaker of House

Received by Governor:

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

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

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Governor

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

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Secretary of State