

# House Bill 2860

Sponsored by Representatives CLEM, ESQUIVEL (at the request of Mike Mathisen)

## 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 Department of Human Services to file petition to terminate parental rights when court has placed child in substitute care on three or more previous occasions. Creates conclusive presumption of parental unfitness for purposes of termination of parental rights proceeding when court has placed child in substitute care on three or more previous occasions. Exempts department from reasonable efforts to return ward to home if court has placed child in substitute care on three or more previous occasions.

## A BILL FOR AN ACT

1  
2 Relating to termination of parental rights; creating new provisions; and amending ORS 419B.340,  
3 419B.470, 419B.476, 419B.498 and 419B.504.

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

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

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

10 (a) The child or ward has been in substitute care under the responsibility of the department for  
11 15 months of the most recent 22 months;

12 **(b) The court has placed the child or ward in substitute care with the department under**  
13 **ORS 419B.337 on three or more previous occasions;**

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

19 [(c)] (d) A court of competent jurisdiction has determined that the child or ward is an abandoned  
20 child.

21 (2) The department shall file a petition to terminate the parental rights of a parent in the cir-  
22 cumstances described in subsection (1) 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);

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

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

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

11 (3) No petition to terminate the parental rights of a child or ward’s parents pursuant to sub-  
 12 section (1) of this section or pursuant to ORS 419B.500, 419B.502, 419B.504, 419B.506 or 419B.508  
 13 may be filed until the court has determined that the permanency plan for the child or ward should  
 14 be adoption after a permanency hearing pursuant to ORS 419B.476.

15 **SECTION 2.** ORS 419B.504 is amended to read:

16 419B.504. (1) The rights of the parent or parents may be terminated as provided in ORS 419B.500  
 17 if the court finds that the parent or parents are unfit by reason of conduct or condition seriously  
 18 detrimental to the child or ward and integration of the child or ward into the home of the parent  
 19 or parents is improbable within a reasonable time due to conduct or conditions not likely to change.  
 20 In determining such conduct and conditions, the court shall consider but is not limited to the fol-  
 21 lowing:

22 [(1)] (a) Emotional illness, mental illness or mental retardation of the parent of such nature and  
 23 duration as to render the parent incapable of providing proper care for the child or ward for ex-  
 24 tended periods of time.

25 [(2)] (b) Conduct toward any child of an abusive, cruel or sexual nature.

26 [(3)] (c) Addictive or habitual use of intoxicating liquors or controlled substances to the extent  
 27 that parental ability has been substantially impaired.

28 [(4)] (d) Physical neglect of the child or ward.

29 [(5)] (e) Lack of effort of the parent to adjust the circumstances of the parent, conduct, or con-  
 30 ditions to make it possible for the child or ward to safely return home within a reasonable time or  
 31 failure of the parent to effect a lasting adjustment after reasonable efforts by available social  
 32 agencies for such extended duration of time that it appears reasonable that no lasting adjustment  
 33 can be effected.

34 [(6)] (f) Criminal conduct that impairs the parent’s ability to provide adequate care for the child  
 35 or ward.

36 **(2) There is a conclusive presumption that a parent is unfit by reason of conduct or**  
 37 **condition seriously detrimental to the child or ward and that integration of the child or ward**  
 38 **into the home of the parent is improbable within a reasonable time if the court has placed**  
 39 **the child or ward in substitute care with the Department of Human Services under ORS**  
 40 **419B.337 on three or more previous occasions.**

41 **SECTION 3.** ORS 419B.340 is amended to read:

42 419B.340. (1) If the court awards custody to the Department of Human Services, the court shall  
 43 include in the disposition order a determination whether the department has made reasonable efforts  
 44 or, if the Indian Child Welfare Act applies, active efforts to prevent or eliminate the need for re-  
 45 moval of the ward from the home. If the ward has been removed prior to the entry of the order, the

1 order shall also include a determination whether the department has made reasonable or active ef-  
 2 forts to make it possible for the ward to safely return home. In making the determination under this  
 3 subsection, the court shall consider the ward’s health and safety the paramount concerns.

4 (2) In support of its determination whether reasonable or active efforts have been made by the  
 5 department, the court shall enter a brief description of what preventive and reunification efforts  
 6 were made and why further efforts could or could not have prevented or shortened the separation  
 7 of the family.

8 (3) When the first contact with the family has occurred during an emergency in which the ward  
 9 could not remain without jeopardy at home even with reasonable services being provided, the de-  
 10 partment shall be considered to have made reasonable or active efforts to prevent or eliminate the  
 11 need for removal.

12 (4) When the court finds that preventive or reunification efforts have not been reasonable or  
 13 active, but further preventive or reunification efforts could not permit the ward to remain without  
 14 jeopardy at home, the court may authorize or continue the removal of the ward.

15 (5) If a court determines that one of the following circumstances exist, the juvenile court may  
 16 make a finding that the department is not required to make reasonable efforts to make it possible  
 17 for the ward to safely return home:

18 (a) Aggravated circumstances including, but not limited to, the following:

19 (A) The parent by abuse or neglect has caused the death of any child;

20 (B) The parent has attempted, solicited or conspired, as described in ORS 161.405, 161.435 or  
 21 161.450 or under comparable laws of any jurisdiction, to cause the death of any child;

22 (C) The parent by abuse or neglect has caused serious physical injury to any child;

23 (D) The parent has subjected any child to rape, sodomy or sexual abuse;

24 (E) The parent has subjected any child to intentional starvation or torture;

25 (F) The parent has abandoned the ward as described in ORS 419B.100 (1)(e); or

26 (G) The parent has unlawfully caused the death of the other parent of the ward;

27 (b) The parent has been convicted in any jurisdiction of one of the following crimes:

28 (A) Murder of another child of the parent, which murder would have been an offense under 18  
 29 U.S.C. 1111(a);

30 (B) Manslaughter in any degree of another child of the parent, which manslaughter would have  
 31 been an offense under 18 U.S.C. 1112(a);

32 (C) Aiding, abetting, attempting, conspiring or soliciting to commit an offense described in sub-  
 33 paragraph (A) or (B) of this paragraph; or

34 (D) Felony assault that results in serious physical injury to the ward or another child of the  
 35 parent; or

36 (c) The parent’s rights to another child have been terminated involuntarily.

37 **(6) The court shall make a finding that the department is not required to make reason-**  
 38 **able efforts to make it possible for the ward to safely return home if the court has placed**  
 39 **the child or ward in substitute care with the department under ORS 419B.337 on three or**  
 40 **more previous occasions.**

41 [(6)] (7) If, pursuant to [*a determination under*] subsection (5) **or (6)** of this section, the juvenile  
 42 court makes a finding that the department is not required to make reasonable efforts [*to prevent or*  
 43 *eliminate the need for removal of the ward from the home or*] to make it possible for the ward to  
 44 safely return home, and the department determines that it will not make such efforts, the court shall  
 45 conduct a permanency hearing as provided in ORS 419B.470 no later than 30 days after the judicial

1 finding under subsection (5) **or** (6) of this section.

2 [(7)] (8) When an Indian child is involved, the department must satisfy the court that active ef-  
 3 forts have been made to provide remedial services and rehabilitative programs designed to prevent  
 4 the breakup of the Indian family and that these efforts have proven unsuccessful. Foster care  
 5 placement may not be ordered in a proceeding in the absence of a determination, supported by clear  
 6 and convincing evidence, including the testimony of expert witnesses, that the continued custody  
 7 of the Indian child by the parent or Indian custodian is likely to result in serious emotional or  
 8 physical injury to the Indian child.

9 **SECTION 4.** ORS 419B.470 is amended to read:

10 419B.470. (1) The court shall conduct a permanency hearing within 30 days after a judicial  
 11 finding is made under ORS 419B.340 (5) **or** (6) if, based upon that judicial finding, the Department  
 12 of Human Services determines that it will not make reasonable efforts to reunify the family.

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

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

20 (4) If a ward has been surrendered for adoption or the parents' rights have been terminated and  
 21 the department has not physically placed the ward for adoption or initiated adoption proceedings  
 22 within six months after the surrender or entry of an order terminating parental rights, the court  
 23 shall conduct a permanency hearing within 30 days after receipt of the report required by ORS  
 24 419B.440 (2)(b).

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

30 (6) After the initial permanency hearing conducted under subsection (1) or (2) of this section or  
 31 any permanency hearing conducted under subsection (3) to (5) of this section, the court shall con-  
 32 duct subsequent permanency hearings not less frequently than once every 12 months for as long as  
 33 the child or ward remains in substitute care.

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

37 (8) If a child returns to substitute care after a court's previously established jurisdiction over  
 38 the child has been dismissed or terminated, a permanency hearing shall be conducted no later than  
 39 12 months after the child is found within the jurisdiction of the court on a newly filed petition or  
 40 14 months after the child's most recent placement in substitute care, whichever is the earlier.

41 **SECTION 5.** ORS 419B.476 is amended to read:

42 419B.476. (1) A permanency hearing shall be conducted in the manner provided in ORS 418.312,  
 43 419B.310, 419B.812 to 419B.839 and 419B.908, except that the court may receive testimony and re-  
 44 ports as provided in ORS 419B.325.

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

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

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

10 (c) If the case plan at the time of the hearing is something other than to reunify the family,  
 11 determine whether the department has considered permanent placement options for the ward, in-  
 12 cluding, if appropriate, whether the department has considered both permanent in-state placement  
 13 options and permanent interstate placement options for the ward.

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

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

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

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

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

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

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

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

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

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

33 (b) If the case plan changed during the period since the last review by a local citizen review  
 34 board or court hearing and a plan other than to reunify the family was in effect for any part of that  
 35 period, determine whether the department has made reasonable efforts to place the ward in a timely  
 36 manner in accordance with the plan, including, if appropriate, placement of the ward through an  
 37 interstate placement, and to complete the steps necessary to finalize the permanent placement;

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

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

42 (e) Review the efforts made by the department to develop the concurrent permanent plan, in-  
 43 cluding but not limited to identification of appropriate permanent in-state placement options and  
 44 appropriate permanent interstate placement options and, if adoption is the concurrent case plan,  
 45 identification and selection of a suitable adoptive placement for the ward;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (h) If an Indian child is involved, the tribal affiliation of the ward; and

39 (i) If the ward has been placed in an interstate placement, the court's determination of whether  
 40 the interstate placement continues to be appropriate and in the best interests of the ward.

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

43 (7) Any final decision of the court made pursuant to the permanency hearing is appealable under  
 44 ORS 419A.200. On appeal of a final decision of the court under this subsection, the court's finding,  
 45 if any, under ORS 419B.340 (5) **or** (6) that the department is not required to make reasonable efforts

1 to make it possible for the ward to safely return home is an interlocutory order to which a party  
2 may assign error.

3 **SECTION 6. The amendments to ORS 419B.340, 419B.470, 419B.476, 419B.498 and 419B.504**  
4 **by sections 1 to 5 of this 2009 Act apply to proceedings commenced on or after the effective**  
5 **date of this 2009 Act.**

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