

House Bill 2050

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor John A. Kitzhaber for Department of Human Services)

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**.

Removes "permanent foster care" as option for out-of-home placement of ward in substitute care of Department of Human Services.

Clarifies "another planned permanent living arrangement" as permanency plan option for ward in substitute care.

A BILL FOR AN ACT

1
2 Relating to permanency plans for wards in substitute care; creating new provisions; and amending
3 ORS 419A.004, 419B.395, 419B.470 and 419B.476.

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

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

6 419A.004. As used in this chapter and ORS chapters 419B and 419C, unless the context requires
7 otherwise:

8 (1) **"Another planned permanent living arrangement" means a permanency plan for a**
9 **stable, secure living arrangement for a child or ward that includes building relationships with**
10 **significant people in the child's or ward's life that may continue after substitute care has**
11 **ended.**

12 [(1)] (2) "CASA Volunteer Program" means a program approved or sanctioned by the juvenile
13 court to recruit, train and supervise volunteer persons to serve as court appointed special advo-
14 cates.

15 [(2)] (3) "Child care center" means a residential facility for wards or youth offenders that is li-
16 censed under the provisions of ORS 418.240.

17 [(3)] (4) "Community service" has the meaning given that term in ORS 137.126.

18 [(4)] (5) "Conflict of interest" means a person appointed to a local citizen review board who has
19 a personal or pecuniary interest in a case being reviewed by that board.

20 [(5)] (6) "Counselor" means a juvenile department counselor or a county juvenile probation of-
21 ficer.

22 [(6)] (7) "Court" means the juvenile court.

23 [(7)] (8) "Court appointed special advocate" or "CASA" means a person appointed by the court
24 pursuant to a CASA Volunteer Program to act as special advocate pursuant to ORS 419A.170.

25 [(8)] (9) "Court facility" has the meaning given that term in ORS 166.360.

26 [(9)] (10) "Department" means the Department of Human Services.

27 [(10)] (11) "Detention" or "detention facility" means a facility established under ORS 419A.010
28 to 419A.020 and 419A.050 to 419A.063 for the detention of children, wards, youths or youth offenders
29 pursuant to a judicial commitment or order.

30 [(11)] (12) "Director" means the director of a juvenile department established 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 419A.010 to 419A.020 and 419A.050 to 419A.063.

2 [(12)] (13) “Guardian” means guardian of the person and not guardian of the estate.

3 [(13)] (14) “Indian child” means any unmarried person less than 18 years of age who is:

4 (a) A member of an Indian tribe; or

5 (b) Eligible for membership in an Indian tribe and is the biological child of a member of an In-
6 dian tribe.

7 [(14)] (15) “Juvenile court” means the court having jurisdiction of juvenile matters in the several
8 counties of this state.

9 [(15)] (16) “Local citizen review board” means the board specified by ORS 419A.090 and
10 419A.092.

11 [(16)] (17) “Parent” means the biological or adoptive mother and the legal father of the child,
12 ward, youth or youth offender. As used in this subsection, “legal father” means:

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

15 (b) In cases in which the Indian Child Welfare Act applies, a man who is a father under appli-
16 cable tribal law.

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

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

24 [(19)] (18) “Public building” has the meaning given that term in ORS 166.360.

25 [(20)] (19) “Reasonable time” means a period of time that is reasonable given a child or ward’s
26 emotional and developmental needs and ability to form and maintain lasting attachments.

27 [(21)] (20) “Records” means any information in written form, pictures, photographs, charts,
28 graphs, recordings or documents pertaining to a case.

29 [(22)] (21) “Resides” or “residence,” when used in reference to the residence of a child, ward,
30 youth or youth offender, means the place where the child, ward, youth or youth offender is actually
31 living or the jurisdiction in which wardship or jurisdiction has been established.

32 [(23)] (22) “Restitution” has the meaning given that term in ORS 137.103.

33 [(24)] (23) “Serious physical injury” means:

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

35 (b) A physical injury that:

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

37 (B) Results in substantial and recurring pain; or

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

39 [(25)] (24) “Shelter care” means a home or other facility suitable for the safekeeping of a child,
40 ward, youth or youth offender who is taken into temporary custody pending investigation and dis-
41 position.

42 [(26)] (25) “Short-term detention facility” means a facility established under ORS 419A.050 (3) for
43 holding children, youths and youth offenders pending further placement.

44 [(27)] (26) “Sibling” means one of two or more children or wards related:

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

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

2 [(28)] (27) “Substitute care” means an out-of-home placement directly supervised by the depart-
 3 ment or other agency, including placement in a foster family home, group home or other child caring
 4 institution or facility. “Substitute care” does not include care in:

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

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

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

10 [(29)] (28) “Surrogate” means a person appointed by the court to protect the right of the child,
 11 ward, youth or youth offender to receive procedural safeguards with respect to the provision of free
 12 appropriate public education.

13 [(30)] (29) “Tribal court” means a court with jurisdiction over child custody proceedings and
 14 that is either a Court of Indian Offenses, a court established and operated under the code of custom
 15 of an Indian tribe or any other administrative body of a tribe that is vested with authority over child
 16 custody proceedings.

17 [(31)] (30) “Victim” means any person determined by the district attorney, the juvenile depart-
 18 ment or the court to have suffered direct financial, psychological or physical harm as a result of the
 19 act that has brought the youth or youth offender before the juvenile court. When the victim is a
 20 minor, “victim” includes the legal guardian of the minor. The youth or youth offender may not be
 21 considered the victim. When the victim of the crime cannot be determined, the people of Oregon,
 22 as represented by the district attorney, are considered the victims.

23 [(32)] (31) “Violent felony” means any offense that, if committed by an adult, would constitute
 24 a felony and:

25 (a) Involves actual or threatened serious physical injury to a victim; or

26 (b) Is a sexual offense. As used in this paragraph, “sexual offense” has the meaning given the
 27 term “sex crime” in ORS 181.594.

28 [(33)] (32) “Ward” means a person within the jurisdiction of the juvenile court under ORS
 29 419B.100.

30 [(34)] (33) “Young person” means a person who has been found responsible except for insanity
 31 under ORS 419C.411 and placed under the jurisdiction of the Psychiatric Security Review Board.

32 [(35)] (34) “Youth” means a person under 18 years of age who is alleged to have committed an
 33 act that is a violation, or, if done by an adult would constitute a violation, of a law or ordinance
 34 of the United States or a state, county or city.

35 [(36)] (35) “Youth care center” has the meaning given that term in ORS 420.855.

36 [(37)] (36) “Youth offender” means a person who has been found to be within the jurisdiction
 37 of the juvenile court under ORS 419C.005 for an act committed when the person was under 18 years
 38 of age.

39 **SECTION 2.** ORS 419B.470 is amended to read:

40 419B.470. (1) The court shall conduct a permanency hearing within 30 days after a judicial
 41 finding is made under ORS 419B.340 (5) if, based upon that judicial finding, the Department of Hu-
 42 man Services determines that it will not make reasonable efforts to reunify the family.

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

1 whichever is the earlier.

2 (3) If a ward is removed from [*court sanctioned permanent foster care*] **another planned per-**
3 **manent living arrangement that has been approved by the court**, the department shall request
4 and the court shall conduct a permanency hearing within three months after the date of the change
5 in placement.

6 (4) If a ward has been surrendered for adoption or the parents' rights have been terminated and
7 the department has not physically placed the ward for adoption or initiated adoption proceedings
8 within six months after the surrender or entry of an order terminating parental rights, the court
9 shall conduct a permanency hearing within 30 days after receipt of the report required by ORS
10 419B.440 (2)(b).

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

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

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

23 (8) If a child returns to substitute care after a court's previously established jurisdiction over
24 the child has been dismissed or terminated, a permanency hearing shall be conducted no later than
25 12 months after the child is found within the jurisdiction of the court on a newly filed petition or
26 14 months after the child's most recent placement in substitute care, whichever is the earlier.

27 **SECTION 3.** ORS 419B.476 is amended to read:

28 419B.476. (1) A permanency hearing shall be conducted in the manner provided in ORS 418.312,
29 419B.310, 419B.812 to 419B.839 and 419B.908, except that the court may receive testimony and re-
30 ports as provided in ORS 419B.325.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 (b) The court's determination of the permanency plan for the ward that includes whether and,

1 if applicable, when:

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

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

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

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

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

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

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

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

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

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

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

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

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

34 **SECTION 4.** ORS 419B.395 is amended to read:

35 419B.395. (1) If in any proceeding under ORS 419B.100 or 419B.500 the juvenile court determines
36 that the child or ward has no legal father or that paternity is disputed as allowed in ORS 109.070,
37 the court may enter a judgment of paternity or a judgment of nonpaternity in compliance with the
38 provisions of ORS 109.070, 109.124 to 109.230, 109.250 to 109.262 and 109.326.

39 (2) Before entering a judgment under subsection (1) of this section, the court must find that
40 adequate notice and an opportunity to be heard was provided to:

41 (a) The parties to the proceeding;

42 (b) The man alleged or claiming to be the child or ward's father; and

43 (c) The Administrator of the Division of Child Support of the Department of Justice or the
44 branch office providing support services to the county in which the court is located.

45 (3) When appropriate, the court shall inform a man before the court claiming to be the father

1 of a child or ward that paternity establishment services may be available through the administrator
2 if the child or ward:

- 3 (a) Is a child born out of wedlock;
- 4 (b) Has not been placed for adoption; and
- 5 (c) Has no legal father.
- 6 (4) As used in this section:

- 7 (a) "Administrator" has the meaning given that term in ORS 25.010.
- 8 (b) "Child born out of wedlock" has the meaning given that term in ORS 109.124.
- 9 (c) "Legal father" has the meaning given that term in ORS 419A.004 [(16)] (17).

10 **SECTION 5. The amendments to ORS 419A.004, 419B.470 and 419B.476 by sections 1 to 3**
11 **of this 2011 Act apply to permanency plans for wards in substitute care ordered by the court**
12 **on or after the effective date of this 2011 Act.**

13