

# House Bill 3102

Sponsored by Representatives THOMPSON, HUNT; Representatives GILLIAM, KOTEK, KRIEGER

## 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**.

Transfers authority over court appointed special advocates and CASA Volunteer Programs from State Commission on Children and Families to Judicial Department.

Becomes operative July 1, 2011.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to court appointed special advocates; creating new provisions; amending ORS 417.735 and  
3 419A.170; and declaring an emergency.

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

5 **SECTION 1.** ORS 419A.170 is amended to read:

6 419A.170. (1) In every case under ORS chapter 419B, the court shall appoint a court appointed  
7 special advocate. The court appointed special advocate is deemed a party in these proceedings, and  
8 in the furtherance thereof, may be represented by counsel, file pleadings and request hearings and  
9 may subpoena, examine and cross-examine witnesses. If the court appointed special advocate is re-  
10 presented by counsel, counsel shall be paid from funds available to the Court Appointed Special  
11 Advocate Volunteer Program. No funds from the Public Defense Services Account or Judicial De-  
12 partment operating funds may be used for this purpose.

13 (2) Subject to the direction of the court, the duties of the court appointed special advocate are  
14 to:

15 (a) Investigate all relevant information about the case;

16 (b) Advocate for the child or ward, ensuring that all relevant facts are brought before the court;

17 (c) Facilitate and negotiate to ensure that the court, Department of Human Services, if appli-  
18 cable, and the child or ward's attorney, if any, fulfill their obligations to the child or ward in a  
19 timely fashion; and

20 (d) Monitor all court orders to ensure compliance and to bring to the court's attention any  
21 change in circumstances that may require a modification of the court's order.

22 (3) If a juvenile court does not have available to it a CASA Volunteer Program, or a sufficient  
23 number of qualified CASA volunteers, the court may, in fulfillment of the requirements of this sec-  
24 tion, appoint a juvenile department employee or other suitable person to represent the child or  
25 ward's interest in court pursuant to ORS 419A.012 or 419B.195.

26 (4) Any person appointed as a court appointed special advocate in any judicial proceeding on  
27 behalf of the child or ward is immune from any liability for defamation or statements made in good  
28 faith by that person, orally or in writing, in the course of the case review or judicial proceeding.

29 (5) Any person appointed as a court appointed special advocate, CASA Volunteer Program di-  
30 rector, CASA Volunteer Program employee or member of the board of directors or trustees of any

**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 CASA Volunteer Program is immune from any liability for acts or omissions or errors in judgment  
 2 made in good faith in the course or scope of that person's duties or employment as part of a CASA  
 3 Volunteer Program.

4 (6) Whenever the court appoints a court appointed special advocate or other person under sub-  
 5 sections (1) to (3) of this section to represent the child or ward, it may require a parent, if able, or  
 6 guardian of the estate, if the estate is able, to pay, in whole or in part, the reasonable costs of CASA  
 7 services including reasonable attorney fees. The court's order of payment is enforceable in the same  
 8 manner as an order of support under ORS 419B.408.

9 (7) Upon presentation of the order of appointment by the court appointed special advocate, any  
 10 agency, hospital, school organization, division, office or department of the state, doctor, nurse or  
 11 other health care provider, psychologist, psychiatrist, police department or mental health clinic shall  
 12 permit the court appointed special advocate to inspect and copy any records relating to the child  
 13 or ward involved in the case, without the consent of the child, ward or parents.

14 (8) All records and information acquired or reviewed by a court appointed special advocate  
 15 during the course of official duties are deemed confidential under ORS 419A.255.

16 (9) For the purposes of a Child Abuse Prevention and Treatment Act (42 U.S.C. 5101 et seq.)  
 17 grant to this state under Public Law No. 93-247, or any related state or federal legislation, a court  
 18 appointed special advocate or other person appointed pursuant to subsections (1) to (3) of this sec-  
 19 tion is deemed a guardian ad litem to represent the interests of the child or ward in proceedings  
 20 before the court. *[Any provisions of this section and ORS 419B.035 and 419B.045 that cause this state*  
 21 *to lose federal funding are null and void.]*

22 (10) There is created a Court Appointed Special Advocate (CASA) Fund in the General Fund.  
 23 The fund consists of all moneys credited to it. Moneys in the Court Appointed Special Advocate  
 24 Fund are continuously appropriated to the *[State Commission on Children and Families]* **Judicial**  
 25 **Department** and may be used only to carry out the purposes of this section. The *[commission]* **de-**  
 26 **partment** may apply for and receive funds from federal and private sources for carrying out the  
 27 provisions of this section.

28 (11) The *[state commission]* **Judicial Department** may expend moneys from the Court Appointed  
 29 Special Advocate Fund directly or indirectly through contracts or grants for the creation, super-  
 30 vision and operation of CASA Volunteer Programs statewide *[in accordance with the provisions of*  
 31 *ORS 419A.045 to 419A.048]*. The *[commission]* **department** may also expend moneys from the Court  
 32 Appointed Special Advocate Fund to pay the reasonable costs of its administration of the Court  
 33 Appointed Special Advocate Fund. The *[commission]* **department** shall adopt rules for carrying out  
 34 its responsibilities under this section *[and ORS 419B.035 and 419B.045]* **in a statewide uniform and**  
 35 **consistent manner.**

36 **SECTION 2.** ORS 417.735 is amended to read:

37 417.735. (1) The State Commission on Children and Families shall promote the wellness of chil-  
 38 dren and families at the state level and shall act in accordance with the principles, characteristics  
 39 and values identified in ORS 417.708 to 417.725. The state commission shall provide no direct ser-  
 40 vices.

41 (2)(a) Funds for local commissions shall consist of payments from moneys appropriated for local  
 42 commissions to the State Commission on Children and Families by the Legislative Assembly. The  
 43 state commission shall develop an equitable formula for the distribution of funds to counties or re-  
 44 gions for services for children and families, and a minimum annual grant shall be provided to each  
 45 county or region.

1 (b) The state commission shall provide technical assistance and research-based information to  
 2 local commissions to support the development of county goals, performance measures and outcomes  
 3 for services and programs.

4 (c) The state commission may withhold funds from a local commission if services and programs  
 5 funded through the local commission do not meet appropriate performance measures and outcomes.

6 (3) The state commission shall:

7 (a) Set guidelines for the planning, coordination and delivery of services by local commissions  
 8 in partnership with other planning bodies and agencies providing services for children and families.  
 9 The guidelines shall be consistent with the key elements of the service system developed and im-  
 10 plemented under ORS 417.705 to 417.801. In conjunction with other planning bodies and agencies  
 11 providing social supports, the state commission shall use the local coordinated comprehensive plans  
 12 to advise agencies, the Legislative Assembly and the Governor;

13 (b) Advise the Legislative Assembly and the Governor concerning possible solutions to problems  
 14 facing children and families;

15 (c) In consultation with other agencies, identify high-level and intermediate outcomes relating  
 16 to children and families and monitor the progress of local coordinated comprehensive plans in  
 17 meeting intermediate outcome targets;

18 (d) Encourage the development of innovative projects, based on proven practices of effective-  
 19 ness, that benefit children and families;

20 (e) Ensure that all services for children and families are integrated and evaluated according to  
 21 their outcomes;

22 (f) Compile, analyze and distribute information that informs and supports statewide coordinated  
 23 planning;

24 (g) Establish a uniform system of reporting and collecting statistical data from counties and  
 25 other agencies serving children and families;

26 (h) Provide a process whereby the Department of Human Services, Oregon Health Authority,  
 27 Juvenile Crime Prevention Advisory Committee, Oregon Youth Authority, Department of Education,  
 28 Department of Community Colleges and Workforce Development, Employment Department, Housing  
 29 and Community Services Department and Oregon Business Development Department review all  
 30 findings from data collected by the local commissions through the local coordinated comprehensive  
 31 plans. The information gathered in this review shall be considered by those agencies in designing  
 32 future economic resources and services and in the coordination of services;

33 (i) Make recommendations to the Commission for Child Care for the development of the state's  
 34 biennial child care plan; and

35 (j) Communicate information and policy advice on current research and proven practices of ef-  
 36 fectiveness, from both inside and outside the state, including successful local strategies, to local  
 37 commissions, the Governor, the Legislative Assembly, state agencies and the public. The information  
 38 shall include progress in meeting intermediate outcome targets identified in the local coordinated  
 39 comprehensive plans.

40 (4)(a) The state commission shall develop a review and approval process for local coordinated  
 41 comprehensive plans that includes:

42 (A) A requirement that the local plan has been approved by the board or boards of county  
 43 commissioners;

44 (B) Assurance that the local plan meets essential criteria and approval required by appropriate  
 45 entities and meets appropriate systems and planning connections; and

1 (C) Review of state expenditures of resources allocated to the local commissions on children and  
2 families.

3 (b) The state commission shall develop the process under this subsection in consultation with  
4 other entities involved in the review and approval process.

5 (c) The state commission shall act on any waiver request from a local commission within 90 days  
6 after receipt of the request.

7 (d) The state commission may disapprove a local plan for failure to address the elements de-  
8 scribed in paragraph (a) of this subsection within 90 days after receipt of the request.

9 (5) The state commission, in coordination with the local commissions on children and families,  
10 shall:

11 (a) Assist the local commissions in the development and implementation of performance meas-  
12 ures and outcomes for evaluating services at the local level;

13 (b) Monitor the progress in meeting intermediate outcome targets in the local coordinated  
14 comprehensive plans;

15 (c) In conjunction with the Department of Human Services and using the staff resources and  
16 other resources of the state commission, educate, inform and provide technical assistance to local  
17 commissions, including but not limited to technical assistance with:

18 (A) Federal and state laws, regulations and rules, and changes therein, governing the use of  
19 federal and state funds;

20 (B) Facilitation;

21 (C) Planning;

22 (D) Policy development;

23 (E) Proven practices of effectiveness;

24 (F) Local systems development;

25 (G) Community problem solving and mobilization; and

26 (H) Other services, as appropriate;

27 (d) Conduct research and disseminate information to local commissions on children and families;

28 (e) Negotiate federal waivers in consultation with the Department of Human Services; and

29 (f) Develop a process for reviewing requests for waivers from requirements of the state com-  
30 mission. Requests for waivers shall be granted or denied as a part of the approval process for a local  
31 coordinated comprehensive plan. The state commission shall not grant a request for waiver that al-  
32 lows funds to be used for any purpose other than early childhood prevention, intervention and  
33 treatment programs.

34 (6) The state commission shall employ a staff director who shall be responsible for hiring and  
35 supervising any additional personnel necessary to assist the state commission in performing its du-  
36 ties. The staff director shall be responsible for management functions of the state commission sub-  
37 ject to policy direction by the state commission.

38 (7) To the extent that federal funding is not jeopardized, the State Commission on Children and  
39 Families shall enter into an interagency agreement with the Department of Human Services in  
40 which they agree on a system to:

41 (a) Distribute all Title XX Social Services Block Grant funds;

42 (b) Ensure that federal and state requirements are met for federal funds administered by the  
43 state commission; and

44 (c) Carry out the necessary auditing, monitoring and information requirements for federal funds  
45 distributed by the state commission.

1 (8) In addition to the authority under subsection (5)(e) of this section, the state commission may  
 2 direct the Department of Human Services or the appropriate state department providing services for  
 3 children and families to negotiate federal waivers. If the Department of Human Services or any  
 4 other state agency does not pursue a federal waiver recommended by the state commission, the state  
 5 commission may ask the Governor to direct the Department of Human Services or other state  
 6 agency to apply for and negotiate the waiver.

7 (9) If the Department of Human Services or any other state agency refuses to distribute state  
 8 or federal funds as requested by the state commission, the state commission may ask the Governor  
 9 to direct the Department of Human Services or other state agency to distribute the funds.

10 (10) The programs shall be funded as fully as possible by Title XX of the federal Social Security  
 11 Act, consistent with the terms and conditions of the block grant program and the local coordinated  
 12 comprehensive plans that reflect community priorities established by the local planning process.

13 (11) In conjunction with the Department of Human Services, the state commission, as soon as  
 14 possible, shall develop a plan to re-engineer and integrate the data processing systems related to  
 15 children's programs with the objective of making management information more accessible. The  
 16 state commission shall make regular presentations to the Joint Legislative Committee on Informa-  
 17 tion Management and Technology on its progress in developing and implementing the plan.

18 (12) Before each regular session of the Legislative Assembly, the state commission shall report,  
 19 to the Governor and to the appropriate joint interim committee as determined by the Speaker of the  
 20 House of Representatives and the President of the Senate, the following:

21 (a) Any additional proposals contained in "A Positive Future for Oregon's Children and  
 22 Families" by the 1991-1992 Oregon Children's Care Team Interim Task Force that should be under-  
 23 taken;

24 (b) The status in all counties of local service systems related to the health and wellness of  
 25 children and the adequacy of financial resources to deliver services;

26 (c) The progress in achieving desired outcomes, including but not limited to the statewide  
 27 guidelines set by the state commission under ORS 417.710 (1);

28 (d) Barriers to achieving intermediate and high-level outcome targets as identified in local co-  
 29 ordinated comprehensive plans;

30 (e) Proposed solutions to barriers identified under paragraph (d) of this subsection, including  
 31 proven, effective and innovative strategies; and

32 (f) County and community mobilization to increase public awareness and involvement and fund-  
 33 ing of community determined priorities.

34 (13)(a) The state commission may solicit, accept and receive federal moneys or moneys or other  
 35 property from persons or corporations, public or private, for the purpose of carrying out the pro-  
 36 visions of ORS 417.705 to 417.801 [and 419A.170].

37 (b) All federal moneys collected or received under paragraph (a) of this subsection shall be ac-  
 38 cepted and transferred or expended by the state commission upon such terms and conditions as are  
 39 prescribed by the federal government.

40 (c) All moneys and other property accepted by the state commission under this subsection shall  
 41 be transferred, expended or used upon such terms and conditions as are prescribed by the donor in  
 42 a manner consistent with applicable law.

43 (14) The state commission shall:

44 (a) Implement the recommendations of the Juvenile Crime Prevention Advisory Committee, as  
 45 approved by the Governor; and

1 (b) In cooperation with other state and federal agencies, coordinate technical assistance efforts  
2 on a statewide and county-specific basis relating to juvenile crime prevention programs and services.

3 (15) The state commission may contract with local governments or other entities to administer  
4 juvenile crime prevention programs and services. In accordance with the applicable provisions of  
5 ORS chapter 183, the state commission may adopt rules necessary for the administration of juvenile  
6 crime prevention programs and services.

7  
8 **TRANSFER**

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10 **SECTION 3. All the duties, functions and powers of the State Commission on Children**  
11 **and Families relating to the creation, supervision and operation of court appointed special**  
12 **advocates under ORS 419A.170 and CASA Volunteer Programs as defined in ORS 419A.004 are**  
13 **imposed upon, transferred to and vested in the Judicial Department.**

14  
15 **RECORDS AND PROPERTY**

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17 **SECTION 4. On or before July 1, 2011, the staff director of the State Commission on**  
18 **Children and Families shall deliver to the Judicial Department all records and property**  
19 **within the jurisdiction of the staff director that relate to the duties, functions and powers**  
20 **of the state commission with respect to the creation, supervision and operation of court**  
21 **appointed special advocates under ORS 419A.170 and CASA Volunteer Programs as defined**  
22 **in ORS 419A.004, and the Judicial Department shall take possession of the records and**  
23 **property transferred under this section.**

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25 **UNEXPENDED REVENUES**

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27 **SECTION 5. (1) The unexpended balances of amounts authorized to be expended by the**  
28 **State Commission on Children and Families for the biennium beginning July 1, 2011, from**  
29 **revenues dedicated, continuously appropriated, appropriated or otherwise made available for**  
30 **the purpose of administering and enforcing the duties, functions and powers of the state**  
31 **commission with respect to the creation, supervision and operation of court appointed special**  
32 **advocates under ORS 419A.170 and CASA Volunteer Programs as defined in ORS 419A.004 are**  
33 **transferred to and are available for expenditure by the Judicial Department for the biennium**  
34 **beginning July 1, 2011, for the purpose of administering and enforcing the duties, functions**  
35 **and powers of the Judicial Department in the creation, supervision and operation of court**  
36 **appointed special advocates under ORS 419A.170 and CASA Volunteer Programs as defined**  
37 **in ORS 419A.004.**

38 (2) The expenditure classifications, if any, established by Acts authorizing or limiting  
39 expenditures by the state commission remain applicable to expenditures by the Judicial De-  
40 partment under this section.

41  
42 **ACTION, PROCEEDING, PROSECUTION**

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44 **SECTION 6. The transfer of duties, functions and powers to the Judicial Department by**  
45 **section 3 of this 2011 Act does not affect any action, proceeding or prosecution involving or**

1 with respect to the duties, functions and powers begun before and pending at the time of the  
 2 transfer, except that the Judicial Department is substituted for the State Commission on  
 3 Children and Families in the action, proceeding or prosecution.

4  
 5 **LIABILITY, DUTY, OBLIGATION**  
 6

7 **SECTION 7.** (1) Nothing in sections 3 to 6 of this 2011 Act or the amendments to ORS  
 8 417.735 and 419A.170 by sections 1 and 2 of this 2011 Act relieves a person of a liability, duty  
 9 or obligation accruing under or with respect to the duties, functions and powers transferred  
 10 by section 3 of this 2011 Act. The Judicial Department may undertake the collection or  
 11 enforcement of any such liability, duty or obligation.

12 (2) The rights and obligations of the State Commission on Children and Families legally  
 13 incurred under contracts, leases and business transactions executed, entered into or begun  
 14 before the operative date of section 3 of this 2011 Act are transferred to the Judicial De-  
 15 partment. For the purpose of succession to these rights and obligations, the Judicial De-  
 16 partment is a continuation of the State Commission on Children and Families and not a new  
 17 authority.

18  
 19 **RULES**  
 20

21 **SECTION 8.** Notwithstanding the transfer of duties, functions and powers by section 3  
 22 of this 2011 Act, the rules of the State Commission on Children and Families that pertain to  
 23 the creation, supervision and operation of court appointed special advocates under ORS  
 24 419A.170 and CASA Volunteer Programs as defined in ORS 419A.004 in effect on the operative  
 25 date of section 3 of this 2011 Act continue in effect until superseded or repealed by rules of  
 26 the Judicial Department. References in rules of the State Commission on Children and  
 27 Families pertaining to the duties, functions and powers transferred by section 3 of this 2011  
 28 Act to the state commission, or to an officer or employee of the state commission, are con-  
 29 sidered to be references to the Judicial Department or to an officer or employee of the Ju-  
 30 dicial Department.

31 **SECTION 9.** Whenever, in any uncodified law or resolution of the Legislative Assembly  
 32 or in any rule, document, record or proceeding authorized by the Legislative Assembly per-  
 33 taining to the duties, functions and powers transferred by section 3 of this 2011 Act, refer-  
 34 ence is made to the State Commission on Children and Families, or to an officer or employee  
 35 of the state commission, the reference is considered to be a reference to the Judicial De-  
 36 partment or to an officer or employee of the Judicial Department.

37  
 38 **OPERATIVE DATE**  
 39

40 **SECTION 10.** The amendments to ORS 417.735 and 419A.170 by sections 1 and 2 of this  
 41 2011 Act and sections 3 to 9 of this 2011 Act become operative on July 1, 2011.

42  
 43 **DISCLAIMER**  
 44

45 **SECTION 11.** The unit captions used in this 2011 Act are provided only for the conven-

1 ience of the reader and do not become part of the statutory law of this state or express any  
2 legislative intent in the enactment of this 2011 Act.

3 SECTION 12. This 2011 Act being necessary for the immediate preservation of the public  
4 peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect  
5 on its passage.  
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