Enrolled
House Bill 4023

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CHAPTER .....

AN ACT

Relating to guardianships in juvenile dependency proceedings; creating new provisions; amending ORS 419B.116 and 419B.368; and declaring an emergency.

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

SECTION 1. (1) As used in this section:

(a) "Community guardian" means a child-caring agency licensed under ORS 418.205 to 418.310 that is filing a motion for appointment as guardian of a ward under ORS 419B.366.

(b) "Community guardianship" means a guardianship granted under ORS 419B.366 to a community guardian.

(2) The court may appoint a community guardian and establish a community guardianship of a ward under ORS 419B.366 when, in addition to the requirements of ORS 419B.366:

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

(b) The ward has spent three or more years in substitute care;

(c) The proposed community guardian has provided care or services to the ward under ORS 418.205 to 418.310 in the 12 months immediately preceding the filing of the motion for community guardianship;

(d) Except for another planned permanent living arrangement, there is no other appropriate permanency plan for the ward under ORS 419B.476 (5);

(e) The proposed community guardianship would include planning and guidance for the ward's successful transition to independent living, including needs and goals related to crisis intervention, housing, physical and mental health, education, employment, community connections and supportive relationships;

(f) The ward gives informed consent to the establishment of the community guardianship; and

(g) The ward has access to court-appointed counsel under ORS 419B.195.

(3) Informed consent of the ward under subsection (2)(f) of this section shall include:

(a) The ward's written consent to information provided in writing to the ward by the court, the Department of Human Services or the proposed community guardian about the consequences of establishment of a community guardianship, including any loss of benefits currently being received or that may prospectively be provided to the ward if another permanency plan were ordered; and

(b) The ward's written acknowledgment that the ward cannot be placed in substitute care in the legal custody of the Department of Human Services after reaching 18 years of age.

SECTION 2. ORS 419B.116 is amended to read:

419B.116. (1)(a) As used in this section, "caregiver relationship" means a relationship between a person and a child or ward:

(A) That has existed:

(i) For the 12 months immediately preceding the initiation of the dependency proceeding;

(ii) For at least six months during the dependency proceeding; or

(iii) For half of the child or ward's life if the child or ward is less than six months of age;

(B) In which the person had physical custody of the child or ward or resided in the same household as the child or ward;

(C) In which the person provided the child or ward on a daily basis with the love, nurturing and other necessities required to meet the child or ward's psychological and physical needs; and

(D) On which the child depended to meet the child or ward's needs.

(b) "Caregiver relationship" does not include a relationship between a child or ward and a person who is the nonrelated foster parent of the child or ward unless the relationship continued for a period of at least 12 consecutive months.

(2) A person asserting that the person has a caregiver relationship with a child or ward may file a motion for intervention in a juvenile dependency proceeding.

(3) Filing a motion under subsection (2) of this section is the sole means by which a person may become a party to a juvenile dependency proceeding as an intervenor. An order granting intervention under this section is exclusively for juvenile dependency proceedings and does not confer standing or rights of intervention in any other action. Intervention is not allowed in proceedings under ORS 419B.500.

(4) A motion for intervention under subsection (2) of this section must state:

(a) The person's relationship to the child or ward and the person's involvement in the child or ward's life;

(b) The reason that intervention is sought;

(c) How the person's intervention is in the best interests of the child or ward;

(d) Why the existing parties cannot adequately present the case; and

(e) What specific relief is being sought.

(5)(a) If a party wishes to oppose a motion for intervention, the party must file a written objection to the motion stating the grounds for the objection no later than 21 days after the motion is filed. If no written objection is filed as provided in this paragraph, the court may grant the motion without a hearing. Except as provided in paragraph (b) of this subsection, if a written objection is filed as provided in this paragraph, the court shall hold a hearing on the motion.

(b) If a motion for intervention does not state a prima facie case as to the facts that must be proved under paragraph (c) of this subsection, the court may deny the motion without a hearing.

(c) If the court holds a hearing on the motion for intervention, the court may grant the motion for intervention if the person moving to intervene in the case proves by a preponderance of the evidence that:

(A) A caregiver relationship exists between the person and the child or ward;

(B) The intervention is in the best interests of the child or ward;

(C) The reason for intervention and the specific relief sought are consistent with the best interests of the child or ward; and

(D) The existing parties cannot adequately present the case.

(6) A person granted intervention is a party to the case and, except as provided in subsection [*(10)*] **(11)** of this section, may be granted such relief as the court determines to be appropriate and in the best interests of the child or ward.

(7) A person who is not a party under ORS 419B.875 **or a person who intends to file a motion for appointment as a community guardian under section 1 of this 2012 Act** may seek rights of limited participation by filing a written motion for limited participation in a juvenile court proceeding. **Except as provided in subsection (9) of this section,** the motion must state:

(a) The reason that limited participation is being sought;

(b) How the person's limited participation is in the best interests of the child or ward;

(c) Why the parties cannot adequately present the case; and

(d) The specific rights of limited participation that are being sought.

(8)(a) If a party wishes to oppose a motion filed under subsection (7) of this section, the party must file a written objection to the motion stating the grounds for the objection no later than 21 days after the motion is filed. If no written objection is filed as provided in this paragraph, the court may grant the motion without a hearing.

(b) If a motion seeking rights of limited participation does not state a prima facie case as to the facts that must be proved under paragraph (c) of this subsection, the court may deny the motion without a hearing.

(c) If the court holds a hearing on the motion seeking rights of limited participation, the court may grant the motion if the person seeking rights of limited participation proves by a preponderance of the evidence that:

(A) The person's limited participation is in the best interests of the child or ward;

(B) The reason for limited participation and the specific rights sought are consistent with the best interests of the child or ward; and

(C) The parties cannot adequately present the case.

(9) The requirements of subsections (7)(c) and (8)(c)(C) of this section do not apply to a motion or court order seeking or granting limited participation when the right of limited participation sought and granted would be for the purpose of establishing a community guardianship under section 1 of this 2012 Act.

[*(9)*] **(10)** If the court grants a motion under subsection (8) of this section, the court shall specify in the order the rights of limited participation that are being granted.

[*(10)(a)*] **(11)(a)** At any time, a person granted intervention or a person granted rights of limited participation may move to be considered a temporary placement or visitation resource for the child or ward.

(b) At any time after a court has determined at a permanency hearing that the permanent plan for the child or ward should be something other than to return home, a person granted intervention may move to be considered the permanent placement resource for the child or ward.

[*(11)*] **(12)** The court may modify or set aside any order granting intervention or rights of limited participation as provided in ORS 419B.923.

SECTION 3. 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 ward's best interests.

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

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

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

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

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

(d) The ward'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.

(8) If a guardianship is established under section 1 of this 2012 Act and ORS 419B.366, the court shall conduct a court review not later than 60 days before the ward reaches 18 years of age. At the hearing, the court shall inform the ward that after reaching 18 years of age the ward may not be placed in substitute care in the legal custody of the Department of Human Services.

SECTION 4. Section 1 of this 2012 Act and the amendments to ORS 419B.116 and 419B.368 by sections 2 and 3 of this 2012 Act apply to motions for limited participation and motions for community guardianship filed on or after the effective date of this 2012 Act.

SECTION 5. This 2012 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2012 Act takes effect on its passage.

Passed by House February 27, 2012

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Ramona Kenady Line, Chief Clerk of House

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

Passed by Senate February 29, 2012

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Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2012

Approved:

.....M.,....., 2012

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M.,....., 2012

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Kate Brown, Secretary of State