

House Bill 4023

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Judiciary)

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**.

Creates community guardianships as permanency planning option for ward in substitute care. Authorizes persons seeking appointment as community guardian to seek order for limited participation in juvenile dependency proceeding.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to guardianships in juvenile dependency proceedings; creating new provisions; amending
3 ORS 419B.116; and declaring an emergency.

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

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

5 (a) **“Community guardian” means a child-caring agency licensed under ORS 418.205 to**
6 **418.310 that is petitioning for appointment as guardian of a ward under ORS 419B.365.**

7 (b) **“Community guardianship” means a guardianship granted under ORS 419B.365 to a**
8 **community guardian.**

9 (2) **The court may appoint a community guardian and establish a community**
10 **guardianship of a ward under ORS 419B.365 when, in addition to the requirements of ORS**
11 **419B.365:**

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

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

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

17 (d) **Except for another planned permanent living arrangement, there is no other appro-**
18 **priate permanency plan for the ward under ORS 419B.476 (5);**

19 (e) **The proposed community guardianship would include planning and guidance for the**
20 **ward’s successful transition to independent living, including needs and goals related to crisis**
21 **intervention, housing, physical and mental health, education, employment, community con-**
22 **nections and supportive relationships; and**

23 (f) **The ward gives informed consent to the establishment of the community guardianship.**

24 (3) **Informed consent of the ward under subsection (2)(f) of this section shall include the**
25 **ward’s written consent to information provided in writing to the ward by the court, the De-**
26 **partment of Human Services or the proposed community guardian about the consequences**
27 **of establishment of a community guardianship, including any loss of benefits currently being**
28 **received or that may prospectively be provided to the ward if another permanency plan were**
29 **ordered.**
30

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.

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

1 [(10)] (11) of this section, may be granted such relief as the court determines to be appropriate and
 2 in the best interests of the child or ward.

3 (7) A person who is not a party under ORS 419B.875 **or a person who intends to petition for**
 4 **appointment as a community guardian under section 2 of this 2012 Act** may seek rights of
 5 limited participation by filing a written motion for limited participation in a juvenile court pro-
 6 ceeding. **Except as provided in subsection (9) of this section**, the motion must state:

- 7 (a) The reason that limited participation is being sought;
- 8 (b) How the person’s limited participation is in the best interests of the child or ward;
- 9 (c) Why the parties cannot adequately present the case; and
- 10 (d) The specific rights of limited participation that are being sought.

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

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

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

- 21 (A) The person’s limited participation is in the best interests of the child or ward;
- 22 (B) The reason for limited participation and the specific rights sought are consistent with the
 23 best interests of the child or ward; and
- 24 (C) The parties cannot adequately present the case.

25 **(9) The requirements of subsections (7)(c) and (8)(c)(C) of this section do not apply to a**
 26 **motion or court order seeking or granting limited participation when the right of limited**
 27 **participation sought and granted would be for the purpose of establishing a community**
 28 **guardianship under section 2 of this 2012 Act.**

29 [(9)] (10) If the court grants a motion under subsection (8) of this section, the court shall specify
 30 in the order the rights of limited participation that are being granted.

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

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

37 [(11)] (12) The court may modify or set aside any order granting intervention or rights of limited
 38 participation as provided in ORS 419B.923.

39 **SECTION 3. Section 1 of this 2012 Act and the amendments to ORS 419B.116 by section**
 40 **2 of this 2012 Act apply to motions for limited participation and petitions for community**
 41 **guardianship filed on or after the effective date of this 2012 Act.**

42 **SECTION 4. This 2012 Act being necessary for the immediate preservation of the public**
 43 **peace, health and safety, an emergency is declared to exist, and this 2012 Act takes effect**
 44 **on its passage.**