

D R A F T

SUMMARY

Replaces requirement that Department of Human Services use reasonable efforts with requirement that department use active efforts to prevent or eliminate need for removal of children and wards from homes or to make it possible for children and wards to safely return home regardless of whether children and wards are Indian children subject to Indian Child Welfare Act.

A BILL FOR AN ACT

1
2 Relating to juvenile dependency proceedings; creating new provisions; and
3 amending ORS 418.595, 419A.116, 419B.150, 419B.185, 419B.337, 419B.340,
4 419B.470, 419B.476, 419B.498 and 419C.173.

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

6 **SECTION 1.** ORS 418.595 is amended to read:

7 418.595. (1) In considering what constitutes [*reasonable or*] active efforts
8 or whether [*reasonable or*] active efforts have been made under ORS 419B.185,
9 419B.337, 419B.340, 419B.470, 419B.476, 419B.498 and 419C.173, the Department
10 of Human Services and the juvenile court shall consider whether placement
11 of a child and referral of a child and the child's family to a Strengthening,
12 Preserving and Reunifying Families program is or was in the child's best
13 interests and the action most likely to prevent or eliminate the need for re-
14 moval of the child from the child's home or the action most likely to make
15 it possible for the child to safely return home.

16 (2) If the department or juvenile court determines that placement of the
17 child and referral of the child and the child's family to a program would not
18 prevent or eliminate the need for removal of the child from the child's home
19 or be the action most likely to make it possible for the child to safely return

1 home, the department shall, in any description or documentation of its [*rea-*
2 *sonable or*] active efforts, include a written explanation of the reasons why
3 the department did not believe the placement of the child and referral of the
4 child and the child's family to the program was in the child's best interests
5 and the course most likely to prevent placement or effect the return of the
6 child to the child's family.

7 **SECTION 2.** ORS 419A.116 is amended to read:

8 419A.116. (1) After reviewing each case, the local citizen review board
9 shall make written findings and recommendations with respect to:

10 (a) Whether [*reasonable*] **active** efforts were made prior to the placement,
11 to prevent or eliminate the need for removal of the child or ward from the
12 home;

13 (b) If the case plan at the time of the review is to reunify the family,
14 whether the Department of Human Services has made [*reasonable*] **active**
15 efforts [*or, if the Indian Child Welfare Act applies, active efforts*] to make it
16 possible for the child or ward to safely return home and whether the parent
17 has made sufficient progress to make it possible for the child or ward to
18 safely return home;

19 (c) If the case plan at the time of the review is something other than to
20 reunify the family, whether the department has made reasonable efforts to
21 place the child or ward in a timely manner in accordance with the case plan,
22 including, if appropriate, placement of the child or ward through an inter-
23 state placement, and to complete the steps necessary to finalize the perma-
24 nent placement of the child or ward;

25 (d) The continuing need for and appropriateness of the placement;

26 (e) Compliance with the case plan;

27 (f) The progress which has been made toward alleviating the need for
28 placement;

29 (g) A likely date by which the child or ward may be returned home or
30 placed for adoption;

31 (h) Other problems, solutions or alternatives the board determines should

1 be explored; and

2 (i) Whether the court should appoint an attorney or other person as spe-
3 cial advocate to represent or appear on behalf of the child or ward under
4 ORS 419B.195.

5 (2) The local citizen review board may, if the case plan has changed dur-
6 ing the period since the last review by a local citizen review board or court
7 hearing, make written findings and recommendations with respect to:

8 (a) Whether the Department of Human Services has made [*reasonable*]
9 **active** efforts [*or, if the Indian Child Welfare Act applies, active efforts*] to
10 make it possible for the child or ward to safely return home and whether the
11 parent has made sufficient progress to make it possible for the child or ward
12 to safely return home, if a plan to reunify the family was in effect for any
13 part of the period since the last review or hearing; or

14 (b) Whether the department has made reasonable efforts to place the child
15 or ward in a timely manner in accordance with the case plan, including, if
16 appropriate, placement of the child or ward through an interstate placement,
17 and to complete the steps necessary to finalize the permanent placement of
18 the child or ward, if a case plan other than to reunify the family was in ef-
19 fect for any part of the period since the last review or hearing.

20 (3) In determining whether the Department of Human Services has made
21 [*reasonable*] **active** efforts [*or, if the Indian Child Welfare Act applies, active*
22 *efforts*] to make it possible for the child or ward to safely return home, the
23 local citizen review board shall consider the child or ward's health and
24 safety the paramount concerns.

25 (4) No later than 10 days after receiving the findings and recommen-
26 dations of the local citizen review board, a party adversely affected by the
27 findings and recommendations may request judicial review.

28 **SECTION 3.** ORS 419B.150 is amended to read:

29 419B.150. (1) A child may be taken into protective custody by a peace of-
30 ficer, counselor, employee of the Department of Human Services or any other
31 person authorized by the juvenile court of the county in which the child is

1 found, in the following circumstances:

2 (a) When the child's condition or surroundings reasonably appear to be
3 such as to jeopardize the child's welfare;

4 (b) When the juvenile court, by order indorsed on the summons as pro-
5 vided in ORS 419B.839 or otherwise, has ordered that the child be taken into
6 protective custody; or

7 (c) When it reasonably appears that the child has run away from home.

8 (2)(a) Before issuing an order under subsection (1)(b) of this section, the
9 court shall review an affidavit sworn on information and belief provided by
10 a peace officer, counselor or employee of the department or other person
11 authorized by the juvenile court that sets forth with particularity the facts
12 and circumstances on which the request for protective custody is based, why
13 protective custody is in the best interests of the child and the [reasonable]
14 **active** efforts [or, if the Indian Child Welfare Act applies, active efforts] made
15 by the department to eliminate the need for protective custody of the child.

16 (b) Except as provided in paragraph (c) of this subsection, an order di-
17 recting that a child be taken into protective custody under subsection (1) of
18 this section shall contain written findings, including a brief description of
19 the [reasonable] **active** efforts [or, if the Indian Child Welfare Act applies,
20 active efforts] to eliminate the need for protective custody of the child that
21 the department has made and why protective custody is in the best interests
22 of the child.

23 (c) The court may issue an order even though no services have been pro-
24 vided if the court makes written findings that no existing services could
25 eliminate the need for protective custody of the child and that protective
26 custody is in the best interests of the child.

27 (3) When a child is taken into protective custody as a runaway under
28 subsection (1) of this section, the peace officer or other person who takes the
29 child into custody:

30 (a)(A) Shall release the child without unnecessary delay to the custody
31 of the child's parent or guardian or to a shelter facility that has agreed to

1 provide care and services to children who have run away from home and that
2 has been designated by the juvenile court to provide such care and services;
3 or

4 (B) Shall follow the procedures described in ORS 419B.160, 419B.165,
5 419B.168 and 419B.171;

6 (b) Shall, if possible, determine the preferences of the child and the child's
7 parent or guardian as to whether the best interests of the child are better
8 served by placement in a shelter facility that has agreed to provide care and
9 services to children who have run away from home and that has been des-
10 ignated by the juvenile court to provide such care and services or by release
11 to the child's parent or guardian; and

12 (c) Notwithstanding ORS 419B.165 and subsection (1) of this section, shall
13 release the child to a shelter facility that has agreed to provide care and
14 services to children who have run away from home and that has been des-
15 ignated by the juvenile court to provide such care and services if it reason-
16 ably appears that the child would not willingly remain at home if released
17 to the child's parent or guardian.

18 **SECTION 4.** ORS 419B.185 is amended to read:

19 419B.185. (1) When a child or ward is taken, or is about to be taken, into
20 protective custody pursuant to ORS 419B.150, 419B.160, 419B.165, 419B.168
21 and 419B.171 and placed in detention or shelter care, a parent, child or ward
22 shall be given the opportunity to present evidence to the court at the
23 hearings specified in ORS 419B.183, and at any subsequent review hearing,
24 that the child or ward can be returned home without further danger of suf-
25 fering physical injury or emotional harm, endangering or harming others, or
26 not remaining within the reach of the court process prior to adjudication.
27 At the hearing:

28 (a) The court shall make written findings as to whether the Department
29 of Human Services has made [reasonable] **active** efforts [or, if the Indian
30 Child Welfare Act applies, active efforts] to prevent or eliminate the need for
31 removal of the child or ward from the home and to make it possible for the

1 child or ward to safely return home. When the court finds that no services
2 were provided but that reasonable services would not have eliminated the
3 need for protective custody, the court shall consider the department to have
4 made [reasonable] **active** efforts [or, if the Indian Child Welfare Act applies,
5 *active efforts*] to prevent or eliminate the need for protective custody. The
6 court shall include in the written findings a brief description of the preven-
7 tive and reunification efforts made by the department.

8 (b) In determining whether a child or ward shall be removed or continued
9 out of home, the court shall consider whether the provision of reasonable
10 services can prevent or eliminate the need to separate the family.

11 (c) In determining whether the department has made [reasonable] **active**
12 efforts [or, if the Indian Child Welfare Act applies, *active efforts*] to prevent
13 or eliminate the need for removal of the child or ward from the home and
14 to make it possible for the child or ward to safely return home, the court
15 shall consider the child or ward's health and safety the paramount concerns.

16 (d) The court shall make a written finding in every order of removal that
17 describes why it is in the best interests of the child or ward that the child
18 or ward be removed from the home or continued in care.

19 (e) When the court determines that a child or ward shall be removed from
20 the home or continued in care, the court shall make written findings whether
21 the department made diligent efforts pursuant to ORS 419B.192. The court
22 shall include in its written findings a brief description of the efforts made
23 by the department.

24 (f) The court shall determine whether the child or ward is an Indian child
25 as defined in ORS 419A.004 or in the applicable State-Tribal Indian Child
26 Welfare Agreement.

27 (g) The court may receive testimony, reports and other evidence without
28 regard to whether the evidence is admissible under ORS 40.010 to 40.210 and
29 40.310 to 40.585 if the evidence is relevant to the determinations and findings
30 required under this section. As used in this paragraph, "relevant evidence"
31 has the meaning given that term in ORS 40.150.

1 (2) To aid the court in making the written findings required by subsection
2 (1)(a), (d) and (e) of this section, the department shall present written doc-
3 umentation to the court outlining:

4 (a) The efforts made to prevent taking the child or ward into protective
5 custody and to provide services to make it possible for the child or ward to
6 safely return home;

7 (b) The efforts the department made pursuant to ORS 419B.192; and

8 (c) Why protective custody is in the best interests of the child or ward.

9 **SECTION 5.** ORS 419B.337 is amended to read:

10 419B.337. (1) When the court determines it would be in the best interest
11 and for the welfare of a ward, the court may place the ward in the legal
12 custody of the Department of Human Services for care, placement and
13 supervision. When the court enters an order removing a ward from the
14 ward's home or an order continuing care, the court shall make a written
15 finding as to whether:

16 (a) Removal of the ward from the ward's home or continuation of care is
17 in the best interest and for the welfare of the ward;

18 (b) [*Reasonable*] **Active** efforts, considering the circumstances of the ward
19 and parent, have been made to prevent or eliminate the need for removal of
20 the ward from the home or to make it possible for the ward to safely return
21 home. In making this finding, the court shall consider the ward's health and
22 safety the paramount concerns; and

23 (c) Diligent efforts have been made to place the ward pursuant to ORS
24 419B.192.

25 (2) The court may specify the particular type of care, supervision or ser-
26 vices to be provided by the Department of Human Services to wards placed
27 in the department's custody and to the parents or guardians of the wards,
28 but the actual planning and provision of such care, supervision or services
29 is the responsibility of the department. The department may place the ward
30 in a child care center authorized to accept the ward.

31 (3) The court may make an order regarding visitation by the ward's par-

1 ents or siblings. The Department of Human Services is responsible for de-
2 veloping and implementing a visitation plan consistent with the court's
3 order.

4 (4) Uniform commitment blanks, in a form approved by the Director of
5 Human Services, shall be used by all courts for placing wards in the legal
6 custody of the Department of Human Services.

7 (5) If the ward has been placed in the custody of the Department of Hu-
8 man Services, the court shall make no commitment directly to any residen-
9 tial facility, but shall cause the ward to be delivered into the custody of the
10 department at the time and place fixed by rules of the department. A ward
11 so committed may not be placed in a Department of Corrections institution.

12 (6) Commitment of a ward to the Department of Human Services contin-
13 ues until dismissed by the court or until the ward becomes 21 years of age.

14 (7) A court may dismiss commitment of a ward to the Department of Hu-
15 man Services if:

16 (a)(A) Dismissal is appropriate because the ward has been safely reunited
17 with a parent or because a safe alternative to reunification has been imple-
18 mented for the ward; and

19 (B) The ward is at least 14 years of age but less than 21 years of age and
20 the court finds that:

21 (i) The department has provided case planning pursuant to ORS 419B.343
22 that addresses the ward's needs and goals for a successful transition to in-
23 dependent living, including needs and goals relating to housing, physical and
24 mental health, education, employment, community connections and support-
25 ive relationships;

26 (ii) The department has provided appropriate services pursuant to the case
27 plan;

28 (iii) The department has involved the ward in the development of the case
29 plan and in the provision of appropriate services; and

30 (iv) The ward has safe and stable housing and is unlikely to become
31 homeless as a result of dismissal of commitment of the ward to the depart-

1 ment; or

2 (b) The ward has been committed to the custody of the Oregon Youth
3 Authority.

4 **SECTION 6.** ORS 419B.340 is amended to read:

5 419B.340. (1) If the court awards custody to the Department of Human
6 Services, the court shall include in the disposition order a determination
7 whether the department has made [*reasonable*] **active** efforts [*or, if the In-*
8 *dian Child Welfare Act applies, active efforts*] to prevent or eliminate the
9 need for removal of the ward from the home. If the ward has been removed
10 prior to the entry of the order, the order shall also include a determination
11 whether the department has made [*reasonable or*] active efforts to make it
12 possible for the ward to safely return home. In making the determination
13 under this subsection, the court shall consider the ward's health and safety
14 the paramount concerns.

15 (2) In support of its determination whether [*reasonable or*] active efforts
16 have been made by the department, the court shall enter a brief description
17 of what preventive and reunification efforts were made and why further ef-
18 forts could or could not have prevented or shortened the separation of the
19 family.

20 (3) When the first contact with the family has occurred during an emer-
21 gency in which the ward could not remain without jeopardy at home even
22 with reasonable services being provided, the department shall be considered
23 to have made [*reasonable or*] active efforts to prevent or eliminate the need
24 for removal.

25 (4) When the court finds that preventive or reunification efforts have not
26 been [*reasonable or*] active, but further preventive or reunification efforts
27 could not permit the ward to remain without jeopardy at home, the court
28 may authorize or continue the removal of the ward.

29 (5) If a court determines that one of the following circumstances exist,
30 the juvenile court may make a finding that the department is not required
31 to make [*reasonable*] **active** efforts to make it possible for the ward to safely

1 return home:

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

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

4 (B) The parent has attempted, solicited or conspired, as described in ORS
5 161.405, 161.435 or 161.450 or under comparable laws of any jurisdiction, to
6 cause the death of any child;

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

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

10 (E) The parent has subjected any child to intentional starvation or tor-
11 ture;

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

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

16 (b) The parent has been convicted in any jurisdiction of one of the fol-
17 lowing crimes:

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

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

22 (C) Aiding, abetting, attempting, conspiring or soliciting to commit an
23 offense described in subparagraph (A) or (B) of this paragraph; or

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

26 (c) The parent's rights to another child have been terminated involuntar-
27 ily.

28 (6) If, pursuant to a determination under subsection (5) of this section, the
29 juvenile court makes a finding that the department is not required to make
30 [reasonable] **active** efforts to prevent or eliminate the need for removal of
31 the ward from the home or to make it possible for the ward to safely return

1 home, and the department determines that it will not make such efforts, the
2 court shall conduct a permanency hearing as provided in ORS 419B.470 no
3 later than 30 days after the judicial finding under subsection (5) of this sec-
4 tion.

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

14 **SECTION 7.** ORS 419B.470 is amended to read:

15 419B.470. (1) The court shall conduct a permanency hearing within 30
16 days after a judicial finding is made under ORS 419B.340 (5) if, based upon
17 that judicial finding, the Department of Human Services determines that it
18 will not make [*reasonable*] **active** efforts to reunify the family.

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

24 (3) If a ward is removed from court sanctioned permanent foster care, the
25 department shall request and the court shall conduct a permanency hearing
26 within three months after the date of the change in placement.

27 (4) If a ward has been surrendered for adoption or the parents' rights have
28 been terminated and the department has not physically placed the ward for
29 adoption or initiated adoption proceedings within six months after the sur-
30 render or entry of an order terminating parental rights, the court shall
31 conduct a permanency hearing within 30 days after receipt of the report re-

1 quired by ORS 419B.440 (2)(b).

2 (5) Unless good cause otherwise is shown, the court shall also conduct a
3 permanency hearing at any time upon the request of the department, an
4 agency directly responsible for care or placement of the child or ward, par-
5 ents whose parental rights have not been terminated, an attorney for the
6 child or ward, a court appointed special advocate, a citizen review board, a
7 tribal court or upon its own motion. The court shall schedule the hearing
8 as soon as possible after receiving a request.

9 (6) After the initial permanency hearing conducted under subsection (1)
10 or (2) of this section or any permanency hearing conducted under subsections
11 (3) to (5) of this section, the court shall conduct subsequent permanency
12 hearings not less frequently than once every 12 months for as long as the
13 child or ward remains in substitute care.

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

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

24 **SECTION 8.** ORS 419B.476 is amended to read:

25 419B.476. (1) A permanency hearing shall be conducted in the manner
26 provided in ORS 418.312, 419B.310, 419B.812 to 419B.839 and 419B.908, except
27 that the court may receive testimony and reports as provided in ORS
28 419B.325.

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

30 (a) If the case plan at the time of the hearing is to reunify the family,
31 determine whether the Department of Human Services has made

1 [reasonable] **active** efforts [or, if the *Indian Child Welfare Act* applies, active
2 efforts] to make it possible for the ward to safely return home and whether
3 the parent has made sufficient progress to make it possible for the ward to
4 safely return home. In making its determination, the court shall consider
5 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
7 reunify the family, determine whether the department has made reasonable
8 efforts to place the ward in a timely manner in accordance with the plan,
9 including, if appropriate, reasonable efforts to place the ward through an
10 interstate placement, and to complete the steps necessary to finalize the
11 permanent placement.

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

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

18 (3)(a) In the circumstances described in paragraph (b) of this subsection,
19 in addition to making the determination required by subsection (2)(a) or (b)
20 of this section, at a permanency hearing the court shall review the compre-
21 hensive plan for the ward's transition to independent living and determine
22 and make findings as to:

23 (A) Whether the plan is adequate to ensure the ward's successful transi-
24 tion to independent living;

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

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

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

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

31 (B) The ward is 14 years of age or older and there is a comprehensive plan

1 for the ward's transition to independent living.

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

3 (a) If the case plan changed during the period since the last review by a
4 local citizen review board or court hearing and a plan to reunify the family
5 was in effect for any part of that period, determine whether the department
6 has made [*reasonable*] **active** efforts [*or, if the Indian Child Welfare Act ap-*
7 *plies, active efforts*] to make it possible for the ward to safely return home.
8 In making its determination, the court shall consider the ward's health and
9 safety the paramount concerns;

10 (b) If the case plan changed during the period since the last review by a
11 local citizen review board or court hearing and a plan other than to reunify
12 the family was in effect for any part of that period, determine whether the
13 department has made reasonable efforts to place the ward in a timely manner
14 in accordance with the plan, including, if appropriate, placement of the ward
15 through an interstate placement, and to complete the steps necessary to fi-
16 nalize the permanent placement;

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

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

23 (e) Review the efforts made by the department to develop the concurrent
24 permanent plan, including but not limited to identification of appropriate
25 permanent in-state placement options and appropriate permanent interstate
26 placement options and, if adoption is the concurrent case plan, identification
27 and selection of a suitable adoptive placement for the ward;

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

31 (g) Order the department or agency to modify the care, placement and

1 supervision of the ward;

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

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

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

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

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

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

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

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

18 (D) The ward will be placed in another planned permanent living ar-
19 rangement;

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

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

29 (e) If the court determines that the permanency plan for the ward should
30 be establishment of a legal guardianship or placement with a fit and willing
31 relative, the court's determination of why neither placement with parents

1 nor adoption is appropriate;

2 (f) If the court determines that the permanency plan for the ward should
3 be a planned permanent living arrangement, the court's determination of a
4 compelling reason, that must be documented by the department, why it would
5 not be in the best interests of the ward to be returned home, placed for
6 adoption, placed with a legal guardian or placed with a fit and willing rela-
7 tive;

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

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

13 (i) If the ward has been placed in an interstate placement, the court's
14 determination of whether the interstate placement continues to be appropri-
15 ate and in the best interests of the ward.

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

18 (7) Any final decision of the court made pursuant to the permanency
19 hearing is appealable under ORS 419A.200. On appeal of a final decision of
20 the court under this subsection, the court's finding, if any, under ORS
21 419B.340 (5) that the department is not required to make [*reasonable*] **active**
22 efforts to make it possible for the ward to safely return home is an
23 interlocutory order to which a party may assign error.

24 **SECTION 9.** ORS 419B.498 is amended to read:

25 419B.498. (1) Except as provided in subsection (2) of this section, the De-
26 partment of Human Services shall simultaneously file a petition to terminate
27 the parental rights of a child or ward's parents and identify, recruit, process
28 and approve a qualified family for adoption if the child or ward is in the
29 custody of the department and:

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

1 (b) A parent has been convicted of murder of another child of the parent,
2 voluntary manslaughter of another child of the parent, aiding, abetting, at-
3 tempting, conspiring or soliciting to commit murder or voluntary
4 manslaughter of the child or ward or of another child of the parent or felony
5 assault that has resulted in serious physical injury to the child or ward or
6 to another child of the parent; or

7 (c) A court of competent jurisdiction has determined that the child or
8 ward is an abandoned child.

9 (2) The department shall file a petition to terminate the parental rights
10 of a parent in the circumstances described in subsection (1) of this section
11 unless:

12 (a) The child or ward is being cared for by a relative and that placement
13 is intended to be permanent;

14 (b) There is a compelling reason, which is documented in the case plan,
15 for determining that filing such a petition would not be in the best interests
16 of the child or ward. Such compelling reasons include, but are not limited
17 to:

18 (A) The parent is successfully participating in services that will make it
19 possible for the child or ward to safely return home within a reasonable time
20 as provided in ORS 419B.476 (5)(c);

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

24 (C) The court or local citizen review board in a prior hearing or review
25 determined that while the case plan was to reunify the family, the depart-
26 ment did not make [*reasonable*] **active** efforts [*or, if the Indian Child Welfare*
27 *Act applies, active efforts*] to make it possible for the child or ward to safely
28 return home; or

29 (c) The department has not provided to the family of the child or ward,
30 consistent with the time period in the case plan, such services as the de-
31 partment deems necessary for the child or ward to safely return home, if

1 [reasonable] **active** efforts to make it possible for the child or ward to safely
2 return home are required to be made with respect to the child or ward.

3 (3) No petition to terminate the parental rights of a child or ward's par-
4 ents pursuant to subsection (1) of this section or pursuant to ORS 419B.500,
5 419B.502, 419B.504, 419B.506 or 419B.508 may be filed until the court has de-
6 termined that the permanency plan for the child or ward should be adoption
7 after a permanency hearing pursuant to ORS 419B.476.

8 **SECTION 10.** ORS 419C.173 is amended to read:

9 419C.173. (1) When the youth is taken, or is about to be taken, into tem-
10 porary custody pursuant to ORS 419C.080 and 419C.088 and placed in shelter
11 care, a parent or youth shall be given the opportunity to present evidence
12 to the court at the hearing specified in ORS 419C.170, and at any subsequent
13 review hearing, that the youth can be returned home without further danger
14 of suffering physical injury or emotional harm, endangering or harming
15 others, or not remaining within the reach of the court process prior to ad-
16 judication.

17 (2) If the victim requests, the district attorney or juvenile department
18 shall notify the victim of a hearing under this section.

19 (3) At the hearing:

20 (a) The court shall make a written finding as to whether [reasonable]
21 **active** efforts have been made, considering the circumstances of the youth's
22 conduct, to prevent or eliminate the need for removal of the youth from the
23 home;

24 (b) In determining whether a youth shall be removed or continued out of
25 the home, the court shall consider whether the provision of reasonable and
26 available services can prevent or eliminate the need to remove the youth
27 from the home; and

28 (c) The court shall make a written finding in every order of removal that
29 it is in the best interest of the youth and the community that the youth be
30 removed from the home or continued in care.

31 **SECTION 11.** The amendments to ORS 418.595, 419A.116, 419B.150,

1 **419B.185, 419B.337, 419B.340, 419B.470, 419B.476, 419B.498 and 419C.173 by**
2 **sections 1 to 10 of this 2013 Act apply to active efforts made by the**
3 **Department of Human Services on or after the effective date of this**
4 **2013 Act.**

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