
MEMORANDUM

Legislative Fiscal Office
900 Court St. NE, Room H-178
Salem, Oregon 97301
Phone 503-986-1828
FAX 503-373-7807

To: Human Services Subcommittee of the Joint Committee on Ways and Means

From: Laurie Byerly, Legislative Fiscal Office, 503-986-1833

Date: May 16, 2013

Subject: HB 3249-A
Work Session Recommendations

HB 3249-A requires the Department of Human Services (DHS) to make thorough efforts to locate grandparents of a child committed to the department's custody in order to give notice to the grandparents of a hearing concerning the child. Under current law, the burden is on the grandparents to make a request, in writing, for DHS to provide notice of a hearing. The bill also establishes a procedure for the juvenile court to consider a grandparent's request for visitation or other contact with a child who is in DHS custody.

The measure and staff measure summary are available on the Oregon Legislative Information System (OLIS). The measure previously had hearings in House Judiciary on 3/18/13 and 4/9/13.

The bill does not have a revenue impact; the fiscal impact is minimal. A subsequent referral to Ways and Means was placed on the bill when it was initially sent to House Judiciary.

There are no proposed amendments.

The Legislative Fiscal Office recommends that the measure be moved to the Joint Committee on Ways and Means.

Motion: I move HB 3249-A to the Joint Committee on Ways and Means with a "do pass" recommendation.

Assignment of Carriers

Full: _____

2nd Chamber: _____

Joint Committee on Ways and Means

Carrier – House: Rep.
Carrier – Senate: Sen.

Revenue: No revenue impact

Fiscal: Minimal fiscal impact, no statement issued

Action:

Vote:

House

Yeas:

Nays:

Exc:

Senate

Yeas:

Nays:

Exc:

Prepared By: Laurie Byerly, Legislative Fiscal Office

Meeting Date: 5/16/2013

WHAT THE MEASURE DOES: Requires Department of Human Services to exercise due diligence to locate grandparents of a child who is before a court in a dependency matter where there is an allegation of abuse and neglect and the court is considering placing the child outside the home. Gives grandparents a right to be heard in a dependency matter involving a grandchild. Allows a grandparent visitation rights with a grandchild in dependency matter except in a termination of parental rights proceeding. Applies to proceedings commenced on or after the effective date of this Act.

ISSUES DISCUSSED:

-

EFFECT OF COMMITTEE AMENDMENT: No amendment proposed.

BACKGROUND: In Oregon, 28,000 grandparents have custody of their grandchildren. Currently, the Department of Human Services will give notice to a grandparent of a dependency proceeding involving a grandchild if the grandparent requests notice but not seek them out. Research shows that children placed with grandparents or other family members do better than when placed with strangers.

A-Engrossed
House Bill 3249

Ordered by the House April 15
Including House Amendments dated April 15

Sponsored by Representative KRIEGER, Senator KRUSE; Representatives BENTZ, BOONE, CAMERON, CONGER, ESQUIVEL, FREEMAN, GOMBERG, HANNA, HUFFMAN, JOHNSON, OLSON, PARRISH, SMITH, SPRENGER, THATCHER, THOMPSON, WEIDNER, WHISNANT, WHITSETT, Senators BAERTSCHIGER JR, FERRIOLI, GEORGE, GIROD, HANSELL, JOHNSON, KNOPP, OLSEN, ROBLAN, THOMSEN, WHITSETT, WINTERS

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.

[Requires Department of Human Services to exercise due diligence to identify and locate grandparent of ward in department's custody and to give grandparent notice of hearings concerning ward. Requires court to give grandparent of ward opportunity to be heard but does not make grandparent party to juvenile court proceeding.]

[Allows grandparent of ward to request visitation or other contact or communication with ward at any hearing concerning ward under certain circumstances.]

[Requires service of adoption petition and papers on grandparent in adoption proceeding for minor child. Allows grandparent to file motion in any adoption proceeding requesting grandparent visitation with minor child after adoption.]

Requires Department of Human Services to make diligent efforts to identify and obtain contact information for grandparent of child or ward committed to department's custody and to provide grandparent with notice of hearing concerning child or ward. Requires court to give grandparent present at hearing concerning child or ward opportunity to be heard. Requires court to make written findings regarding notice of hearing to grandparent of child or ward.

Permits grandparent to request visitation or other contact or communication between grandparent and ward at hearing concerning ward if grandparent has provided required notice to department and parties in proceeding. Sets forth circumstances under which court may order visitation or other contact or communication between grandparent and ward. Prohibits grandparent from appealing court order or judgment denying request for visitation or other contact or communication with ward.

A BILL FOR AN ACT

Relating to grandparent rights; creating new provisions; and amending ORS 419B.875.

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

SECTION 1. ORS 419B.875 is amended to read:

419B.875. (1)(a) Parties to proceedings in the juvenile court under ORS 419B.100 and 419B.500 are:

(A) The child or ward;

(B) The parents or guardian of the child or ward;

(C) A putative father of the child or ward who has demonstrated a direct and significant commitment to the child or ward by assuming, or attempting to assume, responsibilities normally associated with parenthood, including but not limited to:

(i) Residing with the child or ward;

(ii) Contributing to the financial support of the child or ward; or

(iii) Establishing psychological ties with the child or ward;

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 (D) The state;

2 (E) The juvenile department;

3 (F) A court appointed special advocate, if appointed;

4 (G) The Department of Human Services or other child-caring agency if the agency has temporary
5 custody of the child or ward; and

6 (H) The tribe in cases subject to the Indian Child Welfare Act if the tribe has intervened pur-
7 suant to the Indian Child Welfare Act.

8 (b) An intervenor who is granted intervention under ORS 419B.116 is a party to a proceeding
9 under ORS 419B.100. An intervenor under this paragraph is not a party to a proceeding under ORS
10 419B.500.

11 (2) The rights of the parties include, but are not limited to:

12 (a) The right to notice of the proceeding and copies of the petitions, answers, motions and other
13 papers;

14 (b) The right to appear with counsel and, except for intervenors under subsection (1)(b) of this
15 section, to have counsel appointed as otherwise provided by law;

16 (c) The right to call witnesses, cross-examine witnesses and participate in hearings;

17 (d) The right of appeal; and

18 (e) The right to request a hearing.

19 (3) A putative father who satisfies the criteria set out in subsection (1)(a)(C) of this section shall
20 be treated as a parent, as that term is used in this chapter and ORS chapters 419A and 419C, until
21 the court confirms his paternity or finds that he is not the legal or biological father of the child or
22 ward.

23 (4) If no appeal from the judgment or order is pending, a putative father whom a court of com-
24 petent jurisdiction has found not to be the child or ward's legal or biological father or who has filed
25 a petition for filiation that was dismissed is not a party under subsection (1) of this section.

26 (5)(a) A person granted rights of limited participation under ORS 419B.116 is not a party to a
27 proceeding under ORS 419B.100 or 419B.500 but has only those rights specified in the order granting
28 rights of limited participation.

29 (b) Persons moving for or granted rights of limited participation are not entitled to appointed
30 counsel but may appear with retained counsel.

31 (6) If a foster parent, preadoptive parent or relative is currently providing care for a child or
32 ward, the Department of Human Services shall give the foster parent, preadoptive parent or relative
33 notice of a proceeding concerning the child or ward. A foster parent, preadoptive parent or relative
34 providing care for a child or ward has the right to be heard at the proceeding. Except when allowed
35 to intervene, the foster parent, preadoptive parent or relative providing care for the child or ward
36 is not considered a party to the juvenile court proceeding solely because of notice and the right to
37 be heard at the proceeding.

38 *[(7) When a legal grandparent of a child or ward requests in writing and provides a mailing ad-
39 dress, the Department of Human Services shall give the legal grandparent notice of a hearing con-
40 cerning the child or ward and the court shall give the legal grandparent an opportunity to be heard.
41 Except when allowed to intervene, a legal grandparent is not considered a party to the juvenile court
42 proceeding solely because of notice and an opportunity to be heard.]*

43 **(7)(a) The Department of Human Services shall make diligent efforts to identify and ob-
44 tain contact information for the grandparents of a child or ward committed to the
45 department's custody. Except as provided in paragraph (b) of this subsection, when the de-**

1 department knows the identity of and has contact information for a grandparent, the depart-
2 ment shall give the grandparent notice of a hearing concerning the child or ward. Upon a
3 showing of good cause, the court may relieve the department of its responsibility to provide
4 notice under this paragraph.

5 (b) If a grandparent of a child or ward is present at a hearing concerning the child or
6 ward, and the court informs the grandparent of the date and time of a future hearing, the
7 department is not required to give notice of the future hearing to the grandparent.

8 (c) If a grandparent is present at a hearing concerning a child or ward, the court shall
9 give the grandparent an opportunity to be heard.

10 (d) The court's orders or judgments entered in proceedings under ORS 419B.185, 419B.310,
11 419B.325, 419B.449, 419B.476 and 419B.500 must include findings of the court as to whether
12 the grandparent had notice of the hearing, attended the hearing and had an opportunity to
13 be heard.

14 (e) Notwithstanding the provisions of this subsection, a grandparent is not a party to the
15 juvenile court proceeding unless the grandparent has been granted rights of intervention
16 under ORS 419B.116.

17 (f) As used in this subsection, "grandparent" has the meaning given that term in ORS
18 109.119.

19 (8) Interpreters for parties and persons granted rights of limited participation shall be appointed
20 in the manner specified by ORS 45.275 and 45.285.

21 **SECTION 2.** Section 3 of this 2013 Act is added to and made a part of ORS chapter 419B.

22 **SECTION 3.** (1) The grandparent of a ward who has been placed in the legal custody of
23 the Department of Human Services for care, placement and supervision pursuant to ORS
24 419B.337 and who is in substitute care as defined in ORS 419A.004 may, at any hearing con-
25 cerning the ward except for a hearing under ORS 419B.500, request that the court order
26 visitation or other contact or communication between the grandparent and the ward, pro-
27 vided the grandparent has notified the department and parties in the proceeding of the
28 grandparent's intent to make the request at the hearing at least 30 days before the date of
29 the hearing.

30 (2) If the notice required under subsection (1) of this section has been given, the court
31 may grant the grandparent's request in whole or in part if the court finds that:

32 (a) Prior to the establishment of wardship:

33 (A) An ongoing relationship existed between the grandparent and the ward that included
34 regular visits or other contact or communication; or

35 (B) Despite the grandparent's efforts, no ongoing relationship existed between the
36 grandparent and the ward due to circumstances beyond the grandparent's control;

37 (b) Ordering visitation or other contact or communication between the grandparent and
38 the ward will support and not interfere with development and implementation of a permanent
39 or concurrent permanent plan for the ward;

40 (c) Ordering visitation or other contact or communication between the grandparent and
41 the ward will not reduce the frequency or the quality of a parent's visitation or other contact
42 or communication with the ward;

43 (d) If the court determines consultation with the ward is appropriate, the ward has been
44 consulted and agrees that the court should allow the grandparent's request in whole or in
45 part;

1 (e) Ordering visitation or other contact or communication between the grandparent and
2 the ward is in the ward's best interests; and

3 (f) Ordering visitation or other contact or communication between the grandparent and
4 the ward would not unreasonably burden the resources of the Department of Human Ser-
5 vices.

6 (3) Unless otherwise agreed by the Department of Human Services and the grandparent,
7 the costs of transportation, lodging, food or other expenses required to implement visitation
8 ordered by the court under this section shall be the responsibility of the grandparent.

9 (4) Notwithstanding ORS 419A.200, a grandparent may not appeal from or otherwise
10 challenge on appeal an order or judgment of the court denying in whole or in part a request
11 for visitation or other contact or communication made under this section.

12 (5) The court may receive testimony, reports or other material relating to the ward's
13 mental, physical and social history and prognosis without regard to the competency or rele-
14 vancy of the testimony, reports or other material under the rules of evidence for the purpose
15 of making the findings required by subsection (2) of this section.

16 (6) As used in this section, "grandparent" has the meaning given that term in ORS
17 109.119.

18 **SECTION 4.** Section 3 of this 2013 Act and the amendments to ORS 419B.875 by section
19 1 of this 2013 Act apply to juvenile dependency proceedings pending or commenced on or after
20 the effective date of this 2013 Act.
21 _____