

House Bill 2626

Sponsored by Representative HICKS (Presession filed.)

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**.

Allows court to enter ex parte temporary protective order of restraint if respondent has not entered appearance or filed pleading.

Makes person who has established child-parent relationship or emotional ties with child party for purposes of juvenile dependency proceedings.

A BILL FOR AN ACT

1
2 Relating to court proceedings affecting children; creating new provisions; and amending ORS 107.097
3 and 419B.875.

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

5 **SECTION 1.** ORS 107.097 is amended to read:

6 107.097. (1) Except as otherwise provided in subsection (3) of this section, a court may not enter
7 ex parte a temporary order under ORS 107.095, 109.103 or 109.119 providing for the custody of, or
8 parenting time with, a child.

9 (2)(a) A [*party*] **petitioner** may apply to a court for a temporary protective order of restraint
10 **when the respondent has not yet entered an appearance or filed a pleading in the proceeding**
11 by filing with the court an affidavit conforming to the requirements of ORS 109.767.

12 (b) Upon receipt of an application under this subsection, the court may issue a temporary pro-
13 tective order of restraint restraining and enjoining each party from:

14 (A) Changing the child's usual place of residence;

15 (B) Interfering with the present placement and daily schedule of the child;

16 (C) Hiding or secreting the child from the other party;

17 (D) Interfering with the other party's usual contact and parenting time with the child;

18 (E) Leaving the state with the child without the written permission of the other party or the
19 permission of the court; or

20 (F) In any manner disturbing the current schedule and daily routine of the child until custody
21 or parenting time has been determined.

22 (c) A copy of the order and the supporting affidavit must be served on the other party in the
23 manner of service of a summons under ORCP 7. The order must include the following statement:

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26 Notice: You may request a hearing on this order as long as it remains in effect by filing with
27 the court a request for a hearing. In the request you must tell the court and the other party that
28 you object to the order and specifically why you disagree with the representation of the status quo
29 described in the order. In the request you must also inform the court of your telephone number or
30 contact number and your current residence, mailing or contact address.

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.

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(3)(a) A court may enter ex parte a temporary order providing for the custody of, or parenting time with, a child if:

(A) The party requesting an order is present in court and presents an affidavit alleging that the child is in immediate danger; and

(B) The court finds, based on the facts presented in the party’s testimony and affidavit and in the testimony of the other party, if the other party is present, that the child is in immediate danger.

(b) The party requesting an order under this subsection shall provide the court with telephone numbers where the party can be reached at any time during the day and a contact address.

(c) A copy of the order and the supporting affidavit must be served on the other party in the manner of service of a summons under ORCP 7. The order must include the following statement:

Notice: You may request a hearing on this order as long as it remains in effect by filing with the court a request for a hearing. In the request you must tell the court and the other party that you object to the order on the ground that the child was not in immediate danger at the time the order was issued. In the request you must also inform the court of your telephone number or contact number and your current residence, mailing or contact address.

(4)(a) A party against whom an order is entered under subsection (2) or (3) of this section may request a hearing by filing with the court a hearing request described in subsection (2) or (3) of this section at any time while the order is in effect.

(b) The court shall make reasonable efforts to hold a hearing within 14 days and shall hold a hearing no later than 21 days after receipt of the request for the hearing. The court shall notify each party of the time, date and place of the hearing.

(c) An order issued under subsection (2) or (3) of this section remains in effect through the date of the hearing. If the party against whom the order was entered fails to appear at the hearing without good cause, the court shall continue the order in effect. If the party who obtained the order fails to appear at the hearing without good cause, the court shall vacate the order.

(d) The issue at a hearing to contest:

(A) A temporary protective order of restraint is limited to a determination of the status quo at the time the order was issued **and whether the status quo remains in the best interests of the child.** [*If the child’s usual place of residence cannot be determined,*] **If the best interests of the child require a change in the status quo,** the court may make any further order the court finds appropriate [*in the best interests of the child*].

(B) A temporary order for the custody of, or parenting time with, a child is limited to whether the child was in immediate danger at the time the order was issued.

(5) The State Court Administrator shall prescribe the content and form of a request for a hearing described in subsections (2) and (3) of this section.

(6) As used in this section:

(a) “Child’s usual place of residence” has the meaning given that term in ORS 107.138.

(b) “Party’s usual contact and parenting time,” “present placement and daily schedule of the child” and “current schedule and daily routine of the child” have the meanings given “parent’s usual

1 contact and parenting time,” “present placement and daily schedule of the child” and “current
2 schedule and daily routine of the child” in ORS 107.138.

3 **SECTION 2.** ORS 419B.875 is amended to read:

4 419B.875. (1)(a) Parties to proceedings in the juvenile court under ORS 419B.100 and 419B.500
5 are:

6 (A) The child or ward;

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

8 (C) A putative father of the child or ward who has demonstrated a direct and significant com-
9 mitment to the child or ward by assuming, or attempting to assume, responsibilities normally asso-
10 ciated with parenthood, including but not limited to:

11 (i) Residing with the child or ward;

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

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

14 (D) The state;

15 (E) The juvenile department;

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

17 (G) The Department of Human Services or other child-caring agency if the agency has temporary
18 custody of the child or ward; *[and]*

19 (H) The tribe in cases subject to the Indian Child Welfare Act if the tribe has intervened pur-
20 suant to the Indian Child Welfare Act; **and**

21 **(I) A person who has established custody, visitation or other rights under ORS 109.119.**

22 (b) An intervenor who is granted intervention under ORS 419B.116 is a party to a proceeding
23 under ORS 419B.100. An intervenor under this paragraph is not a party to a proceeding under ORS
24 419B.500.

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

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

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

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

31 (d) The right of appeal; and

32 (e) The right to request a hearing.

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

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

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

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

45 (6) If a foster parent, preadoptive parent or relative is currently providing care for a child or

1 ward, the Department of Human Services shall give the foster parent, preadoptive parent or relative
2 notice of a proceeding concerning the child or ward. A foster parent, preadoptive parent or relative
3 providing care for a child or ward has the right to be heard at the proceeding. Except when allowed
4 to intervene, the foster parent, preadoptive parent or relative providing care for the child or ward
5 is not considered a party to the juvenile court proceeding solely because of notice and the right to
6 be heard at the proceeding.

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

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

14 **SECTION 3. The amendments to ORS 107.097 and 419B.875 by sections 1 and 2 of this 2013**
15 **Act apply to court proceedings commenced on or after the effective date of this 2013 Act.**

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