

House Bill 2835

Sponsored by 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**.

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 amending ORS 418.595,
3 419A.116, 419B.150, 419B.185, 419B.337, 419B.340, 419B.470, 419B.476, 419B.498 and 419C.173.

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

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

6 418.595. (1) In considering what constitutes [*reasonable or*] active efforts or whether [*reasonable*
7 *or*] active efforts have been made under ORS 419B.185, 419B.337, 419B.340, 419B.470, 419B.476,
8 419B.498 and 419C.173, the Department of Human Services and the juvenile court shall consider
9 whether placement of a child and referral of a child and the child's family to a Strengthening, Pre-
10 serving and Reunifying Families program is or was in the child's best interests and the action most
11 likely to prevent or eliminate the need for removal of the child from the child's home or the action
12 most likely to make it possible for the child to safely return home.

13 (2) If the department or juvenile court determines that placement of the child and referral of the
14 child and the child's family to a program would not prevent or eliminate the need for removal of the
15 child from the child's home or be the action most likely to make it possible for the child to safely
16 return home, the department shall, in any description or documentation of its [*reasonable or*] active
17 efforts, include a written explanation of the reasons why the department did not believe the place-
18 ment of the child and referral of the child and the child's family to the program was in the child's
19 best interests and the course most likely to prevent placement or effect the return of the child to
20 the child's family.

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

22 419A.116. (1) After reviewing each case, the local citizen review board shall make written
23 findings and recommendations with respect to:

24 (a) Whether [*reasonable*] **active** efforts were made prior to the placement, to prevent or elimi-
25 nate the need for removal of the child or ward from the home;

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

30 (c) If the case plan at the time of the review is something other than to reunify the family,

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 whether the department has made reasonable efforts to place the child or ward in a timely manner
 2 in accordance with the case plan, including, if appropriate, placement of the child or ward through
 3 an interstate placement, and to complete the steps necessary to finalize the permanent placement
 4 of the child or ward;

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

6 (e) Compliance with the case plan;

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

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

9 (h) Other problems, solutions or alternatives the board determines should be explored; and

10 (i) Whether the court should appoint an attorney or other person as special advocate to repre-
 11 sent or appear on behalf of the child or ward under ORS 419B.195.

12 (2) The local citizen review board may, if the case plan has changed during the period since the
 13 last review by a local citizen review board or court hearing, make written findings and recommen-
 14 dations with respect to:

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

20 (b) Whether the department has made reasonable efforts to place the child or ward in a timely
 21 manner in accordance with the case plan, including, if appropriate, placement of the child or ward
 22 through an interstate placement, and to complete the steps necessary to finalize the permanent
 23 placement of the child or ward, if a case plan other than to reunify the family was in effect for any
 24 part of the period since the last review or hearing.

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

29 (4) No later than 10 days after receiving the findings and recommendations of the local citizen
 30 review board, a party adversely affected by the findings and recommendations may request judicial
 31 review.

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

33 419B.150. (1) A child may be taken into protective custody by a peace officer, counselor, em-
 34 ployee of the Department of Human Services or any other person authorized by the juvenile court
 35 of the county in which the child is found, in the following circumstances:

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

38 (b) When the juvenile court, by order indorsed on the summons as provided in ORS 419B.839 or
 39 otherwise, has ordered that the child be taken into protective custody; or

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

41 (2)(a) Before issuing an order under subsection (1)(b) of this section, the court shall review an
 42 affidavit sworn on information and belief provided by a peace officer, counselor or employee of the
 43 department or other person authorized by the juvenile court that sets forth with particularity the
 44 facts and circumstances on which the request for protective custody is based, why protective cus-
 45 tody is in the best interests of the child and the *[reasonable]* **active** efforts *[or, if the Indian Child*

1 *Welfare Act applies, active efforts*] made by the department to eliminate the need for protective cus-
2 tody of the child.

3 (b) Except as provided in paragraph (c) of this subsection, an order directing that a child be
4 taken into protective custody under subsection (1) of this section shall contain written findings, in-
5 cluding a brief description of the *[reasonable] active efforts [or, if the Indian Child Welfare Act ap-*
6 *plies, active efforts]* to eliminate the need for protective custody of the child that the department has
7 made and why protective custody is in the best interests of the child.

8 (c) The court may issue an order even though no services have been provided if the court makes
9 written findings that no existing services could eliminate the need for protective custody of the child
10 and that protective custody is in the best interests of the child.

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

13 (a)(A) Shall release the child without unnecessary delay to the custody of the child's parent or
14 guardian or to a shelter facility that has agreed to provide care and services to children who have
15 run away from home and that has been designated by the juvenile court to provide such care and
16 services; or

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

18 (b) Shall, if possible, determine the preferences of the child and the child's parent or guardian
19 as to whether the best interests of the child are better served by placement in a shelter facility that
20 has agreed to provide care and services to children who have run away from home and that has
21 been designated by the juvenile court to provide such care and services or by release to the child's
22 parent or guardian; and

23 (c) Notwithstanding ORS 419B.165 and subsection (1) of this section, shall release the child to
24 a shelter facility that has agreed to provide care and services to children who have run away from
25 home and that has been designated by the juvenile court to provide such care and services if it
26 reasonably appears that the child would not willingly remain at home if released to the child's
27 parent or guardian.

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

29 419B.185. (1) When a child or ward is taken, or is about to be taken, into protective custody
30 pursuant to ORS 419B.150, 419B.160, 419B.165, 419B.168 and 419B.171 and placed in detention or
31 shelter care, a parent, child or ward shall be given the opportunity to present evidence to the court
32 at the hearings specified in ORS 419B.183, and at any subsequent review hearing, that the child or
33 ward can be returned home without further danger of suffering physical injury or emotional harm,
34 endangering or harming others, or not remaining within the reach of the court process prior to ad-
35 judication. At the hearing:

36 (a) The court shall make written findings as to whether the Department of Human Services has
37 made *[reasonable] active efforts [or, if the Indian Child Welfare Act applies, active efforts]* to prevent
38 or eliminate the need for removal of the child or ward from the home and to make it possible for
39 the child or ward to safely return home. When the court finds that no services were provided but
40 that reasonable services would not have eliminated the need for protective custody, the court shall
41 consider the department to have made *[reasonable] active efforts [or, if the Indian Child Welfare*
42 *Act applies, active efforts]* to prevent or eliminate the need for protective custody. The court shall
43 include in the written findings a brief description of the preventive and reunification efforts made
44 by the department.

45 (b) In determining whether a child or ward shall be removed or continued out of home, the court

1 shall consider whether the provision of reasonable services can prevent or eliminate the need to
 2 separate the family.

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

7 (d) The court shall make a written finding in every order of removal that describes why it is in
 8 the best interests of the child or ward that the child or ward be removed from the home or contin-
 9 ued in care.

10 (e) When the court determines that a child or ward shall be removed from the home or contin-
 11 ued in care, the court shall make written findings whether the department made diligent efforts
 12 pursuant to ORS 419B.192. The court shall include in its written findings a brief description of the
 13 efforts made by the department.

14 (f) The court shall determine whether the child or ward is an Indian child as defined in ORS
 15 419A.004 or in the applicable State-Tribal Indian Child Welfare Agreement.

16 (g) The court may receive testimony, reports and other evidence without regard to whether the
 17 evidence is admissible under ORS 40.010 to 40.210 and 40.310 to 40.585 if the evidence is relevant
 18 to the determinations and findings required under this section. As used in this paragraph, “relevant
 19 evidence” has the meaning given that term in ORS 40.150.

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

- 22 (a) The efforts made to prevent taking the child or ward into protective custody and to provide
- 23 services to make it possible for the child or ward to safely return home;
- 24 (b) The efforts the department made pursuant to ORS 419B.192; and
- 25 (c) Why protective custody is in the best interests of the child or ward.

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

27 419B.337. (1) When the court determines it would be in the best interest and for the welfare of
 28 a ward, the court may place the ward in the legal custody of the Department of Human Services for
 29 care, placement and supervision. When the court enters an order removing a ward from the ward’s
 30 home or an order continuing care, the court shall make a written finding as to whether:

- 31 (a) Removal of the ward from the ward’s home or continuation of care is in the best interest and
- 32 for the welfare of the ward;
- 33 (b) [*Reasonable*] **Active** efforts, considering the circumstances of the ward and parent, have been
- 34 made to prevent or eliminate the need for removal of the ward from the home or to make it possible
- 35 for the ward to safely return home. In making this finding, the court shall consider the ward’s health
- 36 and safety the paramount concerns; and
- 37 (c) Diligent efforts have been made to place the ward pursuant to ORS 419B.192.

38 (2) The court may specify the particular type of care, supervision or services to be provided by
 39 the Department of Human Services to wards placed in the department’s custody and to the parents
 40 or guardians of the wards, but the actual planning and provision of such care, supervision or ser-
 41 vices is the responsibility of the department. The department may place the ward in a child care
 42 center authorized to accept the ward.

43 (3) The court may make an order regarding visitation by the ward’s parents or siblings. The
 44 Department of Human Services is responsible for developing and implementing a visitation plan
 45 consistent with the court’s order.

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

3 (5) If the ward has been placed in the custody of the Department of Human Services, the court
 4 shall make no commitment directly to any residential facility, but shall cause the ward to be deliv-
 5 ered into the custody of the department at the time and place fixed by rules of the department. A
 6 ward so committed may not be placed in a Department of Corrections institution.

7 (6) Commitment of a ward to the Department of Human Services continues until dismissed by
 8 the court or until the ward becomes 21 years of age.

9 (7) A court may dismiss commitment of a ward to the Department of Human Services if:

10 (a)(A) Dismissal is appropriate because the ward has been safely reunited with a parent or be-
 11 cause a safe alternative to reunification has been implemented for the ward; and

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

13 (i) The department has provided case planning pursuant to ORS 419B.343 that addresses the
 14 ward's needs and goals for a successful transition to independent living, including needs and goals
 15 relating to housing, physical and mental health, education, employment, community connections and
 16 supportive relationships;

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

18 (iii) The department has involved the ward in the development of the case plan and in the pro-
 19 vision of appropriate services; and

20 (iv) The ward has safe and stable housing and is unlikely to become homeless as a result of
 21 dismissal of commitment of the ward to the department; or

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

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

24 419B.340. (1) If the court awards custody to the Department of Human Services, the court shall
 25 include in the disposition order a determination whether the department has made [*reasonable*] **ac-**
 26 **tive** efforts [*or, if the Indian Child Welfare Act applies, active efforts*] to prevent or eliminate the
 27 need for removal of the ward from the home. If the ward has been removed prior to the entry of the
 28 order, the order shall also include a determination whether the department has made [*reasonable*
 29 *or*] active efforts to make it possible for the ward to safely return home. In making the determi-
 30 nation under this subsection, the court shall consider the ward's health and safety the paramount
 31 concerns.

32 (2) In support of its determination whether [*reasonable or*] active efforts have been made by the
 33 department, the court shall enter a brief description of what preventive and reunification efforts
 34 were made and why further efforts could or could not have prevented or shortened the separation
 35 of the family.

36 (3) When the first contact with the family has occurred during an emergency in which the ward
 37 could not remain without jeopardy at home even with reasonable services being provided, the de-
 38 partment shall be considered to have made [*reasonable or*] active efforts to prevent or eliminate the
 39 need for removal.

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

43 (5) If a court determines that one of the following circumstances exist, the juvenile court may
 44 make a finding that the department is not required to make [*reasonable*] **active** efforts to make it
 45 possible for the ward to safely return home:

- 1 (a) Aggravated circumstances including, but not limited to, the following:
- 2 (A) The parent by abuse or neglect has caused the death of any child;
- 3 (B) The parent has attempted, solicited or conspired, as described in ORS 161.405, 161.435 or
- 4 161.450 or under comparable laws of any jurisdiction, to cause the death of any child;
- 5 (C) The parent by abuse or neglect has caused serious physical injury to any child;
- 6 (D) The parent has subjected any child to rape, sodomy or sexual abuse;
- 7 (E) The parent has subjected any child to intentional starvation or torture;
- 8 (F) The parent has abandoned the ward as described in ORS 419B.100 (1)(e); or
- 9 (G) The parent has unlawfully caused the death of the other parent of the ward;
- 10 (b) The parent has been convicted in any jurisdiction of one of the following crimes:
- 11 (A) Murder of another child of the parent, which murder would have been an offense under 18
- 12 U.S.C. 1111(a);
- 13 (B) Manslaughter in any degree of another child of the parent, which manslaughter would have
- 14 been an offense under 18 U.S.C. 1112(a);
- 15 (C) Aiding, abetting, attempting, conspiring or soliciting to commit an offense described in sub-
- 16 paragraph (A) or (B) of this paragraph; or
- 17 (D) Felony assault that results in serious physical injury to the ward or another child of the
- 18 parent; or
- 19 (c) The parent's rights to another child have been terminated involuntarily.
- 20 (6) If, pursuant to a determination under subsection (5) of this section, the juvenile court makes
- 21 a finding that the department is not required to make *[reasonable]* **active** efforts to prevent or
- 22 eliminate the need for removal of the ward from the home or to make it possible for the ward to
- 23 safely return home, and the department determines that it will not make such efforts, the court shall
- 24 conduct a permanency hearing as provided in ORS 419B.470 no later than 30 days after the judicial
- 25 finding under subsection (5) of this section.
- 26 (7) When an Indian child is involved, the department must satisfy the court that active efforts
- 27 have been made to provide remedial services and rehabilitative programs designed to prevent the
- 28 breakup of the Indian family and that these efforts have proven unsuccessful. Foster care placement
- 29 may not be ordered in a proceeding in the absence of a determination, supported by clear and con-
- 30 vincing evidence, including the testimony of expert witnesses, that the continued custody of the In-
- 31 dian child by the parent or Indian custodian is likely to result in serious emotional or physical
- 32 injury to the Indian child.
- 33 **SECTION 7.** ORS 419B.470 is amended to read:
- 34 419B.470. (1) The court shall conduct a permanency hearing within 30 days after a judicial
- 35 finding is made under ORS 419B.340 (5) if, based upon that judicial finding, the Department of Hu-
- 36 man Services determines that it will not make *[reasonable]* **active** efforts to reunify the family.
- 37 (2) In all other cases when a child or ward is in substitute care, the court shall conduct a
- 38 permanency hearing no later than 12 months after the ward was found within the jurisdiction of the
- 39 court under ORS 419B.100 or 14 months after the child or ward was placed in substitute care,
- 40 whichever is the earlier.
- 41 (3) If a ward is removed from court sanctioned permanent foster care, the department shall re-
- 42 quest and the court shall conduct a permanency hearing within three months after the date of the
- 43 change in placement.
- 44 (4) If a ward has been surrendered for adoption or the parents' rights have been terminated and
- 45 the department has not physically placed the ward for adoption or initiated adoption proceedings

1 within six months after the surrender or entry of an order terminating parental rights, the court
 2 shall conduct a permanency hearing within 30 days after receipt of the report required by ORS
 3 419B.440 (2)(b).

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

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

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

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

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

21 419B.476. (1) A permanency hearing shall be conducted in the manner provided in ORS 418.312,
 22 419B.310, 419B.812 to 419B.839 and 419B.908, except that the court may receive testimony and re-
 23 ports as provided in ORS 419B.325.

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

25 (a) If the case plan at the time of the hearing is to reunify the family, determine whether the
 26 Department of Human Services has made [*reasonable*] **active** efforts [*or, if the Indian Child Welfare*
 27 *Act applies, active efforts*] to make it possible for the ward to safely return home and whether the
 28 parent has made sufficient progress to make it possible for the ward to safely return home. In
 29 making its determination, the court shall consider the ward's health and safety the paramount con-
 30 cerns.

31 (b) If the case plan at the time of the hearing is something other than to reunify the family,
 32 determine whether the department has made reasonable efforts to place the ward in a timely manner
 33 in accordance with the plan, including, if appropriate, reasonable efforts to place the ward through
 34 an interstate placement, and to complete the steps necessary to finalize the permanent placement.

35 (c) If the case plan at the time of the hearing is something other than to reunify the family,
 36 determine whether the department has considered permanent placement options for the ward, in-
 37 cluding, if appropriate, whether the department has considered both permanent in-state placement
 38 options and permanent interstate placement options for the ward.

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

40 (3)(a) In the circumstances described in paragraph (b) of this subsection, in addition to making
 41 the determination required by subsection (2)(a) or (b) of this section, at a permanency hearing the
 42 court shall review the comprehensive plan for the ward's transition to independent living and de-
 43 termine and make findings as to:

44 (A) Whether the plan is adequate to ensure the ward's successful transition to independent liv-
 45 ing;

- 1 (B) Whether the department has offered appropriate services pursuant to the plan; and
 2 (C) Whether the department has involved the ward in the development of the plan.
 3 (b) The requirements of paragraph (a) of this subsection apply when:
 4 (A) The ward is 16 years of age or older; or
 5 (B) The ward is 14 years of age or older and there is a comprehensive plan for the ward's
 6 transition to independent living.
 7 (4) At a permanency hearing the court may:
 8 (a) If the case plan changed during the period since the last review by a local citizen review
 9 board or court hearing and a plan to reunify the family was in effect for any part of that period,
 10 determine whether the department has made [*reasonable*] **active** efforts [*or, if the Indian Child*
 11 *Welfare Act applies, active efforts*] to make it possible for the ward to safely return home. In making
 12 its determination, the court shall consider the ward's health and safety the paramount concerns;
 13 (b) If the case plan changed during the period since the last review by a local citizen review
 14 board or court hearing and a plan other than to reunify the family was in effect for any part of that
 15 period, determine whether the department has made reasonable efforts to place the ward in a timely
 16 manner in accordance with the plan, including, if appropriate, placement of the ward through an
 17 interstate placement, and to complete the steps necessary to finalize the permanent placement;
 18 (c) If the court determines that further efforts will make it possible for the ward to safely return
 19 home within a reasonable time, order that the parents participate in specific services for a specific
 20 period of time and make specific progress within that period of time;
 21 (d) Determine the adequacy and compliance with the case plan and the case progress report;
 22 (e) Review the efforts made by the department to develop the concurrent permanent plan, in-
 23 cluding but not limited to identification of appropriate permanent in-state placement options and
 24 appropriate permanent interstate placement options and, if adoption is the concurrent case plan,
 25 identification and selection of a suitable adoptive placement for the ward;
 26 (f) Order the department to develop or expand the case plan or concurrent permanent plan and
 27 provide a case progress report to the court and other parties within 10 days after the permanency
 28 hearing;
 29 (g) Order the department or agency to modify the care, placement and supervision of the ward;
 30 (h) Order the local citizen review board to review the status of the ward prior to the next court
 31 hearing; or
 32 (i) Set another court hearing at a later date.
 33 (5) The court shall enter an order within 20 days after the permanency hearing. In addition to
 34 any determinations or orders the court may make under subsection (4) of this section, the order
 35 shall include:
 36 (a) The court's determination required under subsections (2) and (3) of this section, including a
 37 brief description of the efforts the department has made with regard to the case plan in effect at the
 38 time of the permanency hearing;
 39 (b) The court's determination of the permanency plan for the ward that includes whether and,
 40 if applicable, when:
 41 (A) The ward will be returned to the parent;
 42 (B) The ward will be placed for adoption, and a petition for termination of parental rights will
 43 be filed;
 44 (C) The ward will be referred for establishment of legal guardianship; or
 45 (D) The ward will be placed in another planned permanent living arrangement;

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

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

8 (e) If the court determines that the permanency plan for the ward should be establishment of a
 9 legal guardianship or placement with a fit and willing relative, the court's determination of why
 10 neither placement with parents nor adoption is appropriate;

11 (f) If the court determines that the permanency plan for the ward should be a planned permanent
 12 living arrangement, the court's determination of a compelling reason, that must be documented by
 13 the department, why it would not be in the best interests of the ward to be returned home, placed
 14 for adoption, placed with a legal guardian or placed with a fit and willing relative;

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

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

19 (i) If the ward has been placed in an interstate placement, the court's determination of whether
 20 the interstate placement continues to be appropriate and in the best interests of the ward.

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

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

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

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

33 (a) The child or ward has been in substitute care under the responsibility of the department for
 34 15 months of the most recent 22 months;

35 (b) A parent has been convicted of murder of another child of the parent, voluntary
 36 manslaughter of another child of the parent, aiding, abetting, attempting, conspiring or soliciting to
 37 commit murder or voluntary manslaughter of the child or ward or of another child of the parent or
 38 felony assault that has resulted in serious physical injury to the child or ward or to another child
 39 of the parent; or

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

42 (2) The department shall file a petition to terminate the parental rights of a parent in the cir-
 43 cumstances described in subsection (1) of this section unless:

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

1 (b) There is a compelling reason, which is documented in the case plan, for determining that
 2 filing such a petition would not be in the best interests of the child or ward. Such compelling rea-
 3 sons include, but are not limited to:

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

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

8 (C) The court or local citizen review board in a prior hearing or review determined that while
 9 the case plan was to reunify the family, the department did not make [*reasonable*] **active** efforts [*or,*
 10 *if the Indian Child Welfare Act applies, active efforts*] to make it possible for the child or ward to
 11 safely return home; or

12 (c) The department has not provided to the family of the child or ward, consistent with the time
 13 period in the case plan, such services as the department deems necessary for the child or ward to
 14 safely return home, if [*reasonable*] **active** efforts to make it possible for the child or ward to safely
 15 return home are required to be made with respect to the child or ward.

16 (3) No petition to terminate the parental rights of a child or ward’s parents pursuant to sub-
 17 section (1) of this section or pursuant to ORS 419B.500, 419B.502, 419B.504, 419B.506 or 419B.508
 18 may be filed until the court has determined that the permanency plan for the child or ward should
 19 be adoption after a permanency hearing pursuant to ORS 419B.476.

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

21 419C.173. (1) When the youth is taken, or is about to be taken, into temporary custody pursuant
 22 to ORS 419C.080 and 419C.088 and placed in shelter care, a parent or youth shall be given the op-
 23 portunity to present evidence to the court at the hearing specified in ORS 419C.170, and at any
 24 subsequent review hearing, that the youth can be returned home without further danger of suffering
 25 physical injury or emotional harm, endangering or harming others, or not remaining within the
 26 reach of the court process prior to adjudication.

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

29 (3) At the hearing:

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

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

36 (c) The court shall make a written finding in every order of removal that it is in the best in-
 37 terest of the youth and the community that the youth be removed from the home or continued in
 38 care.

39 **SECTION 11.** The amendments to ORS 418.595, 419A.116, 419B.150, 419B.185, 419B.337,
 40 419B.340, 419B.470, 419B.476, 419B.498 and 419C.173 by sections 1 to 10 of this 2013 Act apply
 41 to active efforts made by the Department of Human Services on or after the effective date
 42 of this 2013 Act.