

House Bill 3249

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 **as introduced**.

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.

A BILL FOR AN ACT

1
2 Relating to grandparent rights; creating new provisions; and amending ORS 109.309, 109.332 and
3 419B.875.

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

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

6 419B.875. (1)(a) Parties to proceedings in the juvenile court under ORS 419B.100 and 419B.500
7 are:

8 (A) The child or ward;

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

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

13 (i) Residing with the child or ward;

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

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

16 (D) The state;

17 (E) The juvenile department;

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

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

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

23 (b) An intervenor who is granted intervention under ORS 419B.116 is a party to a proceeding
24 under ORS 419B.100. An intervenor under this paragraph is not a party to a proceeding under ORS
25 419B.500.

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

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

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

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

7 (d) The right of appeal; and

8 (e) The right to request a hearing.

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

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

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

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

21 (6) If a foster parent, preadoptive parent or relative is currently providing care for a child or
22 ward, the Department of Human Services shall give the foster parent, preadoptive parent or relative
23 notice of a proceeding concerning the child or ward. A foster parent, preadoptive parent or relative
24 providing care for a child or ward has the right to be heard at the proceeding. Except when allowed
25 to intervene, the foster parent, preadoptive parent or relative providing care for the child or ward
26 is not considered a party to the juvenile court proceeding solely because of notice and the right to
27 be heard at the proceeding.

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

33 **(7)(a) The Department of Human Services shall exercise due diligence in efforts to iden-
34 tify and locate grandparents of a child or ward and, when the department knows the identify
35 of and has contact information for a grandparent, the department shall give the grandparent
36 notice of a hearing concerning the child or ward.**

37 **(b) If a grandparent is present at a hearing concerning a child or ward, the court shall
38 give the grandparent an opportunity to be heard.**

39 **(c) The court's orders or judgments entered after hearings under ORS 419B.185, 419B.310,
40 419B.325, 419B.449 and 419B.476 must include findings of the court as to whether the
41 grandparent had notice of the hearing, attended the hearing and had an opportunity to be
42 heard.**

43 **(d) Notwithstanding the provisions of this subsection, a grandparent is not a party to the
44 juvenile court proceeding unless the grandparent has been granted rights of intervention
45 under ORS 419B.116.**

1 (e) As used in this subsection, “grandparent” has the meaning given that term in ORS
2 109.119.

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

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

6 **SECTION 3.** (1) At any time after a ward has been placed in the legal custody of the
7 Department of Human Services for care, placement and supervision pursuant to ORS
8 419B.337, a grandparent of the ward may request, at any hearing concerning the ward, that
9 the court order visitation or other contact or communication between the grandparent and
10 the ward.

11 (2) The court may grant the grandparent’s request in whole or in part if the court finds
12 by clear and convincing evidence that:

13 (a) Prior to the establishment of wardship:

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

16 (B) Prior to the establishment of wardship, there could have been an opportunity to es-
17 tablish an ongoing relationship between the grandparent and the ward except for circum-
18 stances that existed beyond the grandparent’s control;

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

22 (c) Ordering visitation or other contact or communication between the grandparent and
23 the ward will not reduce the frequency or the quality of a parent’s visitation or other contact
24 or communication with the ward;

25 (d) If the court determines consultation with the ward is appropriate, that the ward has
26 been consulted and agrees that the court should allow the grandparent’s request in whole
27 or in part; and

28 (e) Ordering visitation or other contact or communication between the grandparent and
29 the ward is in the ward’s best interests.

30 (3) The court may, on its own motion or upon motion made by a grandparent or a party
31 in the proceeding, modify or set aside any order or judgment made under this section as
32 provided in ORS 419B.923.

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

36 (5) As used in this section, “grandparent” has the meaning given that term in ORS
37 109.119.

38 **SECTION 4.** ORS 109.309 is amended to read:

39 109.309. (1) Any person may petition the circuit court for leave to adopt another person and, if
40 desired, for a change of the other person’s name. One petitioner, the child, one parent or the person,
41 who is not an adoption agency, consenting to the adoption as required under ORS 109.312 (1) must
42 be a resident of this state. As used in this subsection, “resident” means a person who has resided
43 in this state continuously for a period of six months prior to the date of the petition.

44 (2) Except as provided in subsection (3) of this section, when the petition is for the adoption of
45 a minor child, the adoption is governed by the Uniform Child Custody Jurisdiction and Enforcement

1 Act, ORS 109.701 to 109.834.

2 (3)(a) Notwithstanding ORS 109.741 and 109.744, a court of this state has jurisdiction over the
3 adoption of a minor child if, immediately prior to the filing of a petition for adoption:

4 (A) The minor child resided in this state for at least six consecutive months including periods
5 of temporary absence;

6 (B) One parent or another person, who is not an adoption agency, consenting to the adoption
7 as required under ORS 109.312 (1) resided in this state for at least six consecutive months including
8 periods of temporary absence;

9 (C) The prospective adoptive parent resided in this state for at least six consecutive months
10 including periods of temporary absence and substantial evidence is available in this state concerning
11 the present or future care of the minor child;

12 (D) It appears that no court of another state would have jurisdiction under circumstances sub-
13 stantially in accordance with subparagraphs (A) to (C) of this paragraph; or

14 (E) A court of another state has declined to exercise jurisdiction on the grounds that this state
15 is a more appropriate forum to hear a petition for adoption of the minor child and it is in the best
16 interests of the minor child that a court of this state assume jurisdiction.

17 (b) As used in paragraph (a) of this subsection, “periods of temporary absence” means periods
18 of absence of not more than a total of 30 days in the prior six consecutive months.

19 (4) The petition to adopt a person 18 years of age or older may be filed in the county where the
20 petitioner, the person to be adopted or the person who consents to the adoption resides.

21 (5) In a petition to adopt a minor child, venue lies in the Oregon county with which the child
22 has the most significant connection or in the Oregon county in which the licensed adoption agency
23 is located.

24 (6)(a) When the petition is for the adoption of a minor child, the petitioner shall also file at the
25 time of filing the petition:

26 (A) A written statement containing the full names and permanent addresses of:

27 (i) The child;

28 (ii) The petitioner;

29 (iii) All persons whose consent to the adoption is required under ORS 109.312 when such names
30 are either known or may be readily ascertained by the petitioner;

31 (iv) The persons with whom the child has lived during the last five years and the places where
32 the child has lived during that period, if the names and addresses may be readily ascertained by the
33 petitioner;

34 (v) If known to the petitioner, any person not a party to the proceeding who has physical cus-
35 tody of the child or claims rights of legal custody or physical custody of, or parenting time or
36 visitation with, the child; and

37 (vi) The Oregon licensed adoption agency, if any, or the relative or person that privately placed
38 the child for adoption.

39 (B) The documents demonstrating consent under ORS 109.312 to the adoption of the minor child.

40 (C) Written evidence documenting a current home study that has been approved by either the
41 Department of Human Services or an Oregon licensed adoption agency submitted for the purpose
42 of demonstrating that the petitioner meets the minimum standards for adoptive homes as set forth
43 in the department’s administrative rules.

44 (b) A relative who qualifies under the department administrative rules for a waiver of the
45 department’s home study requirements described in paragraph (a)(C) of this subsection may file the

1 request for waiver along with the petition for adoption.

2 (c) The department, upon request by the petitioner, may waive the home study requirements
3 described in paragraph (a)(C) of this subsection in an adoption in which one of the child's biological
4 or adoptive parents retains parental rights. The department shall waive post-placement reports in
5 an adoption in which one of the child's biological or adoptive parents retains parental rights.

6 (7)(a) The petitioner shall cause copies of the documents required to be filed with the court
7 under subsection (6) of this section to be served [*upon the Director of Human Services*], by either
8 registered or certified mail with return receipt or personal service[,] **and** within 30 days after the
9 documents have been filed with the court[.], **upon:**

10 **(A) The Director of Human Services;**

11 [*(b) In the case of an adoption described in subsection (6)(c) of this section, the petitioner shall also*
12 *serve the petition, by either registered or certified mail with return receipt or personal service.*]

13 [(A)] **(B) [On]** All persons whose consent to the adoption is required under ORS 109.312, unless
14 the person's written consent is filed with the court; and

15 [(B) *On the parents of the party whose parental rights would be terminated, if the names and ad-*
16 *dresses are known or may be readily ascertained by the petitioner. Service required by this subpara-*
17 *graph may be waived by the court for good cause.*]

18 **(C) The grandparent, as defined in ORS 109.119, of the child, if the name and address are**
19 **known or may be readily ascertained by the petitioner.**

20 [(c)] **(b)** When a parent of the child is deceased or incapacitated, the petitioner shall also serve
21 the petition on the parents of the deceased or incapacitated parent, if the names and addresses are
22 known or may be readily ascertained by the petitioner. Service required by this paragraph may be
23 waived by the court for good cause. As used in this paragraph:

24 (A) "Incapacitated" means a condition in which a person's ability to receive and evaluate in-
25 formation effectively or to communicate decisions is impaired to such an extent that the person
26 lacks the capacity to meet the essential requirements for the person's physical health or safety.

27 (B) "Meet the essential requirements for the person's physical health or safety" means those
28 actions necessary to provide the health care, food, shelter, clothing, personal hygiene and other care
29 without which serious physical injury or illness is likely to occur.

30 [(d)] **(c)** The court may not rule upon the petition until at least 90 days after the date that the
31 documents were served upon the director. However, the department may waive the 90-day period.

32 (8)(a) Within 90 days after the service on the director, the department shall investigate and file
33 for the consideration of the judge before whom the petition for adoption is pending a placement re-
34 port containing information regarding the status of the child and evidence concerning the suitability
35 of the proposed adoption. The department may designate an Oregon licensed adoption agency to
36 investigate and report to the court. If the department designates an Oregon licensed adoption
37 agency to investigate and report to the court, the department shall make the designation and pro-
38 vide all necessary information and materials to the Oregon licensed adoption agency no later than
39 30 days after the service on the director. However, the department may waive the placement report
40 requirement.

41 (b) Upon receipt of a written request by the petitioner's attorney, the department shall furnish
42 to that attorney copies of any information that the department has filed with the court.

43 (c) The department may charge the petitioner a fee for investigating a proposed nonagency
44 adoption and preparing the home study report described in subsection (6)(a)(C) of this section and
45 the placement report described in paragraph (a) of this subsection. The petitioner shall report the

1 fee amount to the court. The court granting the adoption shall make a finding as to whether the fee
 2 is necessary and reasonable. Any fee charged may not exceed reasonable costs for investigation,
 3 home study and placement report preparation. The department shall prescribe by rule the procedure
 4 for computing the investigation, home study and placement report preparation fee. The rules shall
 5 provide a waiver of either part or all of the fee based upon the petitioner's ability to pay.

6 (9) The amounts of any fees collected under subsection (8) of this section are continuously ap-
 7 propriated to the department for use in preparing the home study and placement reports required
 8 under subsections (6)(a)(C) and (8)(a) of this section.

9 (10)(a) Except as provided in paragraph (b) of this subsection, a court may not grant a judgment
 10 for the adoption of a minor child unless the petitioner has filed with the court the documents de-
 11 scribed in subsections (6) and (8)(a) of this section.

12 (b) A person is not required to file a home study or a placement report with the court when the
 13 department has granted the person a waiver under department rules.

14 (11) The adoption shall comply with the Indian Child Welfare Act (25 U.S.C. 1901 et seq.), if
 15 applicable. Every adoption petition involving the Indian Child Welfare Act shall include the follow-
 16 ing:

17 (a) A statement of the efforts to notify the appropriate Indian tribe or tribes of the adoption;
 18 and

19 (b) A statement of the efforts to comply with the placement preferences of the Indian Child
 20 Welfare Act (25 U.S.C. 1901 et seq.) or the placement preferences of the appropriate Indian tribe.

21 **SECTION 5.** ORS 109.332 is amended to read:

22 109.332. (1) When a petition has been filed under ORS 109.309 concerning the adoption [*by a*
 23 *stepparent*] of a child, a grandparent served with a copy of the petition under ORS 109.309 (7) may
 24 file a motion with the court asking the court to award a grandparent the right to regular visitation
 25 with the child after the adoption. A motion under this subsection must be filed no later than 30 days
 26 after service of the petition.

27 (2) The court shall award a grandparent visitation rights only if the court finds by clear and
 28 convincing evidence that:

29 (a) Establishing visitation rights is in the best interests of the child;

30 (b) A substantial relationship existed prior to the adoption between the child and the
 31 grandparent seeking visitation rights; and

32 (c) Establishing visitation rights does not substantially interfere with the relationship between
 33 the child and the adoptive family.

34 (3) As used in this section, "grandparent" includes a grandparent who has established custody,
 35 visitation or other rights under ORS 109.119.

36 **SECTION 6. (1) Sections 2 and 3 of this 2013 Act and the amendments to ORS 419B.875**
 37 **by section 1 of this 2013 Act apply to juvenile dependency proceedings pending or commenced**
 38 **on or after the effective date of this 2013 Act.**

39 **(2) The amendments to ORS 109.309 and 109.332 by sections 4 and 5 of this 2013 Act apply**
 40 **to adoption proceedings commenced on or after the effective date of this 2013 Act.**