

House Bill 2908

Oregon Implementation of the Preventing Sex Trafficking and Strengthening Families Act of 2014

INTRODUCTION

President Obama signed H.R. 4980, the Preventing Sex Trafficking and Strengthening Families Act, on September 29, 2014. The new law, in part, amends Part E of Title IV of the Social Security Act, relating to the case planning and case review requirements for children in substitute care. The new federal law goes into effect on October 1, 2015.

In December of 2014, a work group was formed to draft proposed conforming amendments to state law. The group included:

Oregon Legislature:

Channa Newell, Judiciary Committee Counsel

Oregon Judicial Department Juvenile & Family Court Programs Division:

Leola McKenzie, Director

Pamela Abernethy, Judge in Residence

Megan Hassen, Law and Policy Analyst

Department of Human Services Child Welfare Program:

Lois Day, Director

A.J. Goins, Federal Policy, Planning and Resources Manager

Department of Justice:

Joanne Southey, Deputy Chief Counsel/AIC Child Advocacy, Civil Enforcement Division

Linda Guss, Assistant Attorney General, Child Advocacy Section

Inge Wells, Assistant Attorney-in-Charge, Appellate Division

Office of Public Defense Services:

Mary-Shannon Storey, Juvenile Appellate Section Chief Deputy

Sarah Peterson, Deputy Defender 2

Youth, Rights and Justice:

Lisa Kay, Attorney

Over several meetings the group agreed on a set of amendments, explained further below. With the exception of minor grammatical corrections, the revisions strictly relate to implementation of the new federal requirements.

Pursuant to the Social Security Act, Title IV-E, Oregon receives foster care payment reimbursement for eligible children, as well as administrative and training funds from the federal government, provided the requirements of the federal law are maintained. The proposed changes to Oregon law will help ensure case planning and case reviews for children who are placed with the Department of Human Services (DHS) for care and supervision, remain in compliance with Title IV-E of the Social Security Act.

SECTION-BY-SECTION ANALYSIS

Section 1: ORS 419A.004 (Juvenile Code Definitions)

A. Reasonable and Prudent Parent Standard. New definitions are added in sections (1) and (21) of this statute to address the new “reasonable and prudent parent standard.” Under H.R. 4980, state agencies are required to provide training to foster parents to ensure they are following this standard, and providing wards in their care opportunities for participation in extracurricular, enrichment, cultural and social activities.

B. Another Planned Permanent Living Arrangement (APPLA). The proposed amendments in section (2) change the definition of “Planned Permanent Living Arrangement” to require that any child placed in an APPLA plan be at least age 16, in accordance with Title 1, Subtitle B, Section 112 of H.R. 4980. The word “another” has been added to be consistent with language in the federal statute.

Section 2: ORS 419A.116 (Citizen Review Board Reviews)

ORS 419A.116 sets forth the required findings that citizen review boards must make during periodic reviews. The new language in subsection (j) requires the citizen review board to make a finding as to whether the foster parent is following the reasonable and prudent parent standard when the child is 16 years of age or older with a permanency plan of APPLA, and whether the child has regular, ongoing opportunities to engage in extracurricular activities in accordance with Title 1, Subtitle B, Section 112 of H.R. 4980.

Section 3: ORS 419B.443 (DHS Court Reporting Requirements)

ORS 419B.443 sets forth the required content of reports from DHS to the court and the citizen review board. Subsection (g) provides a new requirement that information be included about the steps DHS is taking to ensure the substitute care provider is following the reasonable and prudent parent standard, and ensure the child or ward has regular, ongoing opportunities to engage in age-appropriate or developmentally appropriate activities. State agencies are required to document these steps under Title 1, Subtitle B, Section 112 of H.R. 4980.

Section 4: ORS 419B.449 (Court Review Requirements)

ORS 419B.449 sets forth findings the court must make during review hearings and permanency hearings. New section (3)(e) provides the court must make a finding when the ward is age 16 or older and in a plan of APPLA as to whether the ward's substitute caregiver is following the reasonable and prudent parent standard, and whether the ward has regular, ongoing opportunities to engage in age-appropriate or developmentally appropriate activities. This finding is required pursuant to Title 1, Subtitle B, Section 112 of H.R. 4980.

Section 5: ORS 419B.476 (Permanency Hearings)

A. 419B.476(3): transition planning. The law currently requires the court to review the comprehensive plan for the ward's transition to independent living when the ward is age 16, or at age 14, if a plan has been developed, and make findings as to its adequacy, whether appropriate services have been offered pursuant to the plan, and whether DHS has involved the ward in developing the plan. The proposed amendment requires the court to review comprehensive transition planning for all wards age 14 and up, consistent with the new case system review requirements in Title 1, Subtitle B, Section 113 of H.R. 4980. In addition, references to "independent living" have been changed to "successful adulthood" consistent with the language provided in the new federal law.

B. 419B.476(5) and (6): APPLA for wards age 16 and older. Proposed amendments to language in subsection (5)(b)(E) clarifies an APPLA plan is only available to wards age 16 and up. New subsection (6) adds a requirement that the court ask the ward about the ward's desired permanency outcome. Finally, subsection (5)(g)(B) is added to ensure the court makes a finding regarding the reasonable and prudent parent standard and the ward's opportunities to engage in age-appropriate or developmentally appropriate activities when the permanency plan is changed to APPLA. These changes are consistent with Title 1, Subtitle B, Section 112 of H.R. 4980.

C. Placement with a fit and willing relative. New subsection 5(b)(D) adds "placement with a fit and willing relative" as a separate permanency plan that the court may designate. References to this plan are already included in ORS 419B.476(5)(b)(e)-(f), requiring the court to rule out placement with a fit and willing relative as a permanency plan option before determining the case plan should be APPLA. This change clarifies for courts and parties that this is a legally recognized plan, separate and distinct from guardianship and adoption. This clarification will be helpful as DHS and the court review cases involving wards with a current permanency plan of APPLA who are under age 16, and who will no longer qualify for that designation under the new federal law. It is likely that some of these wards will have their plans changed to placement with a fit and willing relative.

The group could not agree on whether implementation of a permanency plan of placement with a fit and willing relative would have to be done through a permanent foster care agreement, so no legal mechanism for finalization of the plan is currently provided. DHS anticipates clarifying this through rule-making.

Section 6: ORS 419B.337 (Commitment to Custody of Department of Human Services)

References to “independent living” have been changed to “successful adulthood” consistent with the language provided in Title 1, Subtitle B, Section 113 of H.R. 4980.

Section 7: ORS 419B.343 (DHS Case Planning)

Proposed modifications to subsection (3) require DHS to ensure case planning includes transition planning for wards age 14 and up. Current law makes provision of transition services to wards age 14 and 15 discretionary. Language in subsection (3)(a) is modified to delete references to “independent living” and replace them with “successful adulthood.” Finally, new subsection (3)(b) is added to reflect the requirement that case plans for wards who have reached age 14 include a document containing a list of the ward’s rights, along with a signed acknowledgment by the ward that the ward has received a copy and the rights have been explained in an age-appropriate way. All three changes are necessary to be consistent with Title 1, Subtitle B, Section 113 of H.R. 4980.

Section 8: ORS 419B.371 (Community Guardianship)

Language in subsection (2)(e) is modified to delete references to “independent living” and replace them with “successful adulthood” consistent with Title 1, Subtitle B, Section 113 of H.R. 4980.

Section 9: ORS 418.201 (Foster Children’s Bill of Rights)

A new subsection (5)(d) is added to reference the requirement in Title 1, Subtitle B, Section 113 of H.R. 4980 that case plans for wards who have reached age 14 include a document containing a list of the ward’s rights, along with a signed acknowledgment by the ward that the ward has received a copy and the rights have been explained in an age-appropriate way. Although this requirement is also referenced in section (7) as an amendment to ORS 419B.343, the group felt it was important to also include it in the Foster Children’s Bill of Rights, which provides the primary source of law on this subject in Oregon.

Section 10: ORS 419B.395 (Judgment of Paternity or Nonpaternity)

Subsection (4)(c) is amended to correct cross references to the renumbered definitional sections in ORS 419A.004.