

Senate Bill 932

Sponsored by Senator PROZANSKI (at the request of Youth, Rights & Justice)

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**.

Limits certain circumstances when child may be taken into protective custody to when there is reasonable cause to believe child is in imminent danger of serious bodily injury. Requires court findings of need for removal based on prevention of imminent danger of serious bodily injury to child.

Prohibits court from changing case plan for reunifying family and returning ward to parent at permanency hearing unless court determines by preponderance of competent evidence, or parties stipulate, that health and safety of ward requires change in case plan.

Permits court order or judgment to be modified or set aside when prospective enforcement is no longer in interests of justice or in best interests of child. Permits order or judgement placing ward to be modified or set aside after granting of adoption petition when adoptive parents subsequently lose or relinquish parental rights.

Expands circumstances under which certificate of irrevocability and waiver and release or surrender of child for adoption may be revoked.

A BILL FOR AN ACT

1
2 Relating to children; creating new provisions; and amending ORS 418.270, 419B.150, 419B.185,
3 419B.476 and 419B.923.

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

5 **SECTION 1.** ORS 419B.150 is amended to read:

6 419B.150. (1) A child may be taken into protective custody by a peace officer, counselor, em-
7 ployee of the Department of Human Services or any other person authorized by the juvenile court
8 of the county in which the child is found, in the following circumstances:

9 (a) When [*the child's condition or surroundings reasonably appear to be such as to jeopardize the*
10 *child's welfare*] **there is reasonable cause to believe that the child is in imminent danger of**
11 **serious bodily injury and the removal is reasonably necessary to prevent that specific bodily**
12 **injury;**

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

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

16 (2)(a) Before issuing an order under subsection (1)(b) of this section, the court shall review an
17 affidavit sworn on information and belief provided by a peace officer, counselor or employee of the
18 department or other person authorized by the juvenile court that sets forth with particularity the
19 facts and circumstances on which the request for protective custody is based, why protective cus-
20 tody is [*in the best interests of the child*] **necessary to prevent imminent danger of serious bodily**
21 **injury to the child** and the reasonable efforts or, if the Indian Child Welfare Act applies, active
22 efforts made by the department to eliminate the need for protective custody of the child.

23 (b) Except as provided in paragraph (c) of this subsection, an order directing that a child be
24 taken into protective custody under subsection (1) of this section shall contain written findings, in-
25 cluding a brief description of the reasonable efforts or, if the Indian Child Welfare Act applies, ac-

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 tive efforts to eliminate the need for protective custody of the child that the department has made
 2 and why protective custody is *[in the best interests of the child]* **necessary to prevent imminent**
 3 **danger of serious bodily injury to the child.**

4 (c) The court may issue an order even though no services have been provided if the court makes
 5 written findings that no existing services could eliminate the need for protective custody of the child
 6 and that protective custody is *[in the best interests of the child]* **necessary to prevent imminent**
 7 **danger of serious bodily injury to the child.**

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

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

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

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

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

25 **SECTION 2.** ORS 419B.185 is amended to read:

26 419B.185. (1) When a child or ward is taken, or is about to be taken, into protective custody
 27 pursuant to ORS 419B.150, 419B.160, 419B.165, 419B.168 and 419B.171 and placed in detention or
 28 shelter care, a parent, child or ward shall be given the opportunity to present evidence to the court
 29 at the hearings specified in ORS 419B.183, and at any subsequent review hearing, that the child or
 30 ward can be returned home without further danger of suffering physical injury or emotional harm,
 31 endangering or harming others, *[or]* not remaining within the reach of the court process prior to
 32 adjudication **or, in the case of protective custody taken under ORS 419B.150 (1)(a) or (b),**
 33 **suffering imminent danger of serious bodily injury.** At the hearing:

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

43 (b) In determining whether a child or ward shall be removed or continued out of home, the court
 44 shall consider whether the provision of reasonable services can prevent or eliminate the need to
 45 separate the family.

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

5 (d) The court shall make a written finding in every order of removal that describes why it is in
 6 the best interests of the child or ward that the child or ward be removed from the home or contin-
 7 ued in care **or, in the case of removal under ORS 419B.150 (1)(a) or (b), that the imminent**
 8 **danger of serious bodily injury to the child would be lessened or eliminated if the child was**
 9 **removed from the home or continued 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 **or, in the case of re-**
 26 **moval under ORS 419B.150 (1)(a) or (b), that the imminent danger of serious bodily injury to**
 27 **the child would be lessened or eliminated by taking the child into protective custody.**

28 **SECTION 3.** ORS 419B.476 is amended to read:

29 419B.476. (1)(a) A permanency hearing shall be conducted in the manner provided in ORS
 30 418.312, 419B.310, 419B.812 to 419B.839 and 419B.908, except that the court may receive testimony
 31 and reports as provided in ORS 419B.325.

32 **(b) Notwithstanding any other provision of this section, whenever the case plan at the**
 33 **time of the hearing is to reunify the family and return the ward to the ward's parent, the**
 34 **court may not change the case plan for reunification unless the court determines by a pre-**
 35 **ponderance of the competent evidence, or the parties stipulate, that the health and safety**
 36 **of the ward requires the change in the case plan.**

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

38 (a) If the case plan at the time of the hearing is to reunify the family, determine whether the
 39 Department of Human Services has made reasonable efforts or, if the Indian Child Welfare Act ap-
 40 plies, active efforts to make it possible for the ward to safely return home and whether the parent
 41 has made sufficient progress to make it possible for the ward to safely return home. In making its
 42 determination, the court shall consider the ward's health and safety the paramount concerns.

43 (b) If the case plan at the time of the hearing is something other than to reunify the family,
 44 determine whether the department has made reasonable efforts to place the ward in a timely manner
 45 in accordance with the plan, including, if appropriate, reasonable efforts to place the ward through

1 an interstate placement, and to complete the steps necessary to finalize the permanent placement.

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

6 (d) Make the findings of fact under ORS 419B.449 (3).

7 (3) When the ward is 14 years of age or older, in addition to making the determination required
8 by subsection (2) of this section, at a permanency hearing the court shall review the comprehensive
9 plan for the ward's transition to successful adulthood and determine and make findings as to:

10 (a) Whether the plan is adequate to ensure the ward's transition to successful adulthood;

11 (b) Whether the department has offered appropriate services pursuant to the plan; and

12 (c) Whether the department has involved the ward in the development of the plan.

13 (4) At a permanency hearing the court may:

14 (a) If the case plan changed during the period since the last review by a local citizen review
15 board or court hearing and a plan to reunify the family was in effect for any part of that period,
16 determine whether the department has made reasonable efforts or, if the Indian Child Welfare Act
17 applies, active efforts to make it possible for the ward to safely return home. In making its deter-
18 mination, the court shall consider the ward's health and safety the paramount concerns;

19 (b) If the case plan changed during the period since the last review by a local citizen review
20 board or court hearing and a plan other than to reunify the family was in effect for any part of that
21 period, determine whether the department has made reasonable efforts to place the ward in a timely
22 manner in accordance with the plan, including, if appropriate, placement of the ward through an
23 interstate placement, and to complete the steps necessary to finalize the permanent placement;

24 (c) If the court determines that further efforts will make it possible for the ward to safely return
25 home within a reasonable time, order that the parents participate in specific services for a specific
26 period of time and make specific progress within that period of time;

27 (d) Determine the adequacy and compliance with the case plan and the case progress report;

28 (e) Review the efforts made by the department to develop the concurrent permanent plan, in-
29 cluding but not limited to identification of appropriate permanent in-state placement options and
30 appropriate permanent interstate placement options and, if adoption is the concurrent case plan,
31 identification and selection of a suitable adoptive placement for the ward;

32 (f) Order the department to develop or expand the case plan or concurrent permanent plan and
33 provide a case progress report to the court and other parties within 10 days after the permanency
34 hearing;

35 (g) Order the department or agency to modify the care, placement and supervision of the ward;

36 (h) Order the local citizen review board to review the status of the ward prior to the next court
37 hearing; or

38 (i) Set another court hearing at a later date.

39 (5) The court shall enter an order within 20 days after the permanency hearing. In addition to
40 any determinations or orders the court may make under subsection (4) of this section, the order
41 shall include the following:

42 (a) The court's determinations required under subsections (2) and (3) of this section, including
43 a brief description of the efforts the department has made with regard to the case plan in effect at
44 the time of the permanency hearing.

45 (b) The court's determination of the permanency plan for the ward that includes whether and,

1 if applicable, when:

2 (A) The ward will be returned to the parent;

3 (B) The ward will be placed for adoption, and a petition for termination of parental rights will
4 be filed;

5 (C) The ward will be referred for establishment of legal guardianship;

6 (D) The ward will be placed with a fit and willing relative; or

7 (E) If the ward is 16 years of age or older, the ward will be placed in another planned permanent
8 living arrangement.

9 (c) If the court determines that the permanency plan for the ward should be to return home
10 because further efforts will make it possible for the ward to safely return home within a reasonable
11 time, the court's determination of the services in which the parents are required to participate, the
12 progress the parents are required to make and the period of time within which the specified progress
13 must be made.

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

16 (e) If the court determines that the permanency plan for the ward should be establishment of a
17 legal guardianship, the court's determination of why neither placement with parents nor adoption
18 is appropriate.

19 (f) If the court determines that the permanency plan for a ward should be placement with a fit
20 and willing relative, the court's determination of why placement with the ward's parents, or for
21 adoption, or placement with a legal guardian, is not appropriate.

22 (g) If the court determines that the permanency plan for a ward 16 years of age or older should
23 be another planned permanent living arrangement, the court's determinations:

24 (A) Why another planned permanent living arrangement is in the ward's best interests and a
25 compelling reason, that must be documented by the department, why it would not be in the best
26 interests of the ward to be returned home, placed for adoption, placed with a legal guardian or
27 placed with a fit and willing relative; and

28 (B) That the department has taken steps to ensure that:

29 (i) The ward's substitute care provider is following the reasonable and prudent parent standard;
30 and

31 (ii) The ward has regular, ongoing opportunities to engage in age-appropriate or developmentally
32 appropriate activities, including consultation with the ward in an age-appropriate manner about the
33 opportunities the ward has to participate in the activities.

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

37 (i) If an Indian child is involved, the tribal affiliation of the ward.

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

40 (6) In making the determinations under subsection (5)(g) of this section, the court shall ask the
41 ward about the ward's desired permanency outcome.

42 (7) If an Indian child is involved, the court shall follow the placement preference established by
43 the Indian Child Welfare Act.

44 (8) Any final decision of the court made pursuant to the permanency hearing is appealable under
45 ORS 419A.200. On appeal of a final decision of the court under this subsection, the court's finding,

1 if any, under ORS 419B.340 (5) that the department is not required to make reasonable efforts to
2 make it possible for the ward to safely return home is an interlocutory order to which a party may
3 assign error.

4 **SECTION 4.** ORS 419B.923 is amended to read:

5 419B.923. (1) Except as otherwise provided in this section, on motion and such notice and
6 hearing as the court may direct, the court may modify or set aside any order or judgment made by
7 it. Reasons for modifying or setting aside an order or judgment include, but are not limited to:

8 (a) Clerical mistakes in judgments, orders or other parts of the record and errors in the order
9 or judgment arising from oversight or omission. These mistakes and errors may be corrected by the
10 court at any time on its own motion or on the motion of a party and after notice as the court orders
11 to all parties who have appeared. During the pendency of an appeal, an order or judgment may be
12 corrected as provided in subsection (7) of this section.

13 (b) Excusable neglect.

14 (c) Newly discovered evidence that by due diligence could not have been discovered in time to
15 present it at the hearing from which the order or judgment issued.

16 **(d) A substantial change in circumstances such that prospective enforcement of the or-**
17 **der or judgment is no longer in the interests of justice and is no longer in the best interests**
18 **of the child or ward.**

19 (2) A motion to modify or set aside an order or judgment or request a new hearing must be
20 accompanied by an affidavit that states with reasonable particularity the facts and legal basis for
21 the motion.

22 (3)(a) A motion to modify or set aside an order or judgment must be made within a reasonable
23 time except no order or judgment pursuant to ORS 419B.527 may be set aside or modified during the
24 pendency of a proceeding for the adoption of the ward, nor after a petition for adoption has been
25 granted.

26 **(b) Notwithstanding paragraph (a) of this subsection, an order or judgment entered under**
27 **ORS 419B.527 may be modified or set aside after a petition for adoption has been granted**
28 **when the adoptive parents subsequently lose or relinquish their parental rights to the ward.**

29 (4) Except as provided in subsection (6) of this section, notice and a hearing as provided in ORS
30 419B.195, 419B.198, 419B.201, 419B.205, 419B.208, 419B.310, 419B.325 and 419B.893 must be provided
31 in any case when the effect of modifying or setting aside the order or judgment will or may be to
32 deprive a parent of the legal custody of the child or ward, to place the child or ward in an institu-
33 tion or agency or to transfer the child or ward from one institution or agency to another. The pro-
34 visions of this subsection do not apply to a parent whose rights have been terminated under ORS
35 419B.500 to 419B.524 or whose child has been permanently committed by order or judgment of the
36 court unless an appeal from the order or judgment is pending.

37 (5) When an Indian child is involved, notice must be provided as required under the Indian Child
38 Welfare Act.

39 (6) Except when the child or ward is an Indian child, notice and a hearing are not required when
40 the effect of modifying or setting aside the order or judgment will be to transfer the child or ward
41 from one foster home to another.

42 (7) A motion under subsection (1) of this section may be filed with and decided by the trial court
43 during the time an appeal from a judgment is pending before an appellate court. The moving party
44 shall serve a copy of the motion on the appellate court. The moving party shall file a copy of the
45 trial court's order or judgment in the appellate court within seven days of the date of the trial court

1 order or judgment. Any necessary modification of the appeal required by the court order or judg-
2 ment must be pursuant to rule of the appellate court.

3 (8) This section does not limit the inherent power of a court to modify an order or judgment
4 within a reasonable time or the power of a court to set aside an order or judgment for fraud upon
5 the court.

6 **SECTION 5.** ORS 418.270, as amended by section 14, chapter 106, Oregon Laws 2016, is
7 amended to read:

8 418.270. (1) If licensed for such purposes by the Department of Human Services, a child-caring
9 agency may receive children from the children's parents or legal guardians for special, temporary
10 or continued care. The parents or guardians may sign releases or surrenders giving to the agency
11 guardianship and control of the children during the period of care, which may be extended until the
12 children arrive at legal age. Releases do not surrender the rights of parents or guardians in respect
13 to the adoption of children and do not entitle the agency to give consent to the adoption of the
14 children unless the release or surrender expressly recites that the release or surrender is given for
15 the purpose of adoption. Child-caring agencies are authorized to place children for adoption or
16 family foster care only if authorized by the department in the license issued by the department to
17 the agency.

18 (2) Severance of family ties with children by adoption or otherwise may be accomplished only
19 by the order of a court of competent jurisdiction.

20 (3) In the absence of the certificate provided for in subsection (4) of this section, it is unlawful
21 to present a child released or surrendered to a child-caring agency by a parent, parents or guardian
22 for a court to pass upon the adoption of the child until at least six months have elapsed after signing
23 the release or surrender.

24 (4) Parents or guardians who have given a child into the guardianship of a child-caring agency
25 by release or surrender under this section for the purpose of adoption may, concurrently or subse-
26 quently and without any adoption proceeding having been initiated, agree that the release or sur-
27 render shall become irrevocable as soon as the child is placed by the agency in the physical custody
28 of a person or persons for the purpose of adoption, and waive their right to personal appearance in
29 court in matters of adoption of the child, by a duly signed and attested certificate. From and after
30 physical placement for adoption, the certificate of irrevocability and waiver and the release or sur-
31 render may not be revoked by the parent or guardian unless:

32 (a) Fraud or duress is affirmatively proved;

33 (b) **An order or judgment terminating the parent's rights under ORS 419B.527 has been**
34 **set aside and the adoptive parents subsequently lose or relinquish their parental rights to**
35 **the child; or**

36 (c) **The child has been physically removed from the person with whom the child was**
37 **placed for adoption and the court finds that it is in the child's best interests under ORS**
38 **419B.923 (1)(d) to revoke the certificate of irrevocability and waiver and the release or sur-**
39 **render.**

40 (5) No agreement to release or surrender a child for adoption, or other agreement or waiver of
41 rights having the same effect, executed before March 24, 1971, in connection with the surrender of
42 a child into the guardianship of a child-caring agency for purposes of adoption, may be revoked or
43 held invalid for any reason except upon affirmative proof of fraud or duress.

44 **SECTION 6. The amendments to ORS 418.270, 419B.150, 419B.185, 419B.476 and 419B.923**
45 **by sections 1 to 5 of this 2017 Act apply to court and protective custody proceedings com-**

1 menced, and court orders or judgments entered, on or after the effective date of this 2017
2 Act.
3 _____