

Enrolled
House Bill 4009

Sponsored by Representative SANCHEZ; Representatives BYNUM, GREENLICK, HELFRICH, KENY-GUYER, SOLLMAN (Presession filed.)

CHAPTER

AN ACT

Relating to juvenile dependency proceedings; creating new provisions; amending ORS 419B.470 and 419B.524; and declaring an emergency.

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

SECTION 1. Section 2 of this 2018 Act is added to and made a part of ORS chapter 419B.

SECTION 2. (1) As used in this section, “former parent” means a person who was previously the legal parent of a ward and whose parental rights to the ward have been terminated.

(2)(a) In a proceeding under ORS 419B.500, the Department of Human Services or a ward may file a motion to reinstate the parental rights of a former parent if:

(A)(i) The ward has not been adopted; or

(ii) The ward was previously adopted but no longer has a legal parent;

(B) No legal action to achieve the adoption of the ward has been initiated under ORS 109.309 or 419B.529;

(C) At least 18 months have passed since entry of the judgment terminating the former parent’s parental rights to the ward or, in the event of an appeal, at least six months have passed since issuance of an appellate judgment affirming the termination judgment, whichever is later; and

(D) Except as provided in paragraph (b) of this subsection, the ward is at least 12 years of age at the time the motion to reinstate parental rights is filed.

(b) If the ward is under 12 years of age at the time the motion to reinstate parental rights is filed, the court may allow the motion upon a showing of good cause.

(3) A motion to reinstate parental rights under this section must be in writing and state with particularity the factual and legal grounds for the motion.

(4) The moving party shall provide a copy of the motion to reinstate parental rights to the former parent and shall notify the court, the parties and, if the Indian Child Welfare Act applies, the tribe that a copy of the motion has been provided.

(5) If a motion to reinstate parental rights does not state a prima facie case as to the facts that must be proved under subsection (6) of this section, the court may deny the motion without a hearing.

(6)(a) If a motion to reinstate parental rights states a prima facie case as to the facts that must be proved under this subsection, the court shall hold a hearing on the merits of the motion. The court shall grant the motion if the moving party proves by clear and convincing evidence that:

(A) The former parent's conduct and conditions that led to the termination of parental rights have been ameliorated and the former parent is presently fit;

(B) The former parent wishes to have parental rights reinstated;

(C) The ward consents to the reinstatement of parental rights; and

(D) Reinstatement of parental rights is in the ward's best interests.

(b) In determining whether reinstatement of parental rights is in the ward's best interests under paragraph (a) of this subsection, the court shall consider:

(A) The ward's health, safety, permanency, age, maturity and ability to express the ward's preferences;

(B) The reasons that the former parent's parental rights were terminated;

(C) The former parent's stated reasons for wishing to have parental rights reinstated; and

(D) The likely impact on the ward of the former parent's past abuse or neglect.

(c) The moving party shall provide notice to the former parent of a hearing on the merits under paragraph (a) of this subsection.

(d) The department shall establish by rule procedures for investigating the present fitness of the former parent and for providing appropriate reunification services.

(7) If the court grants the motion to reinstate parental rights under subsection (6) of this section:

(a) The court shall enter an order reinstating parental rights that shall restore all parental rights and duties of the former parent as to the ward;

(b) The ward shall continue as a ward of the court for at least six months after entry of the order reinstating parental rights; and

(c) The court shall conduct a permanency hearing as provided in ORS 419B.470 within 60 days after entering the order under paragraph (a) of this subsection.

(8) An order reinstating parental rights under this section does not vacate or otherwise affect the validity of the original judgment terminating the parental rights of the former parent except to the extent that the order reinstates parental rights.

(9) In any proceeding under this section, the ward is entitled to have counsel appointed at state expense if the ward is determined to be financially eligible under the policies, procedures, standards and guidelines of the Public Defense Services Commission.

SECTION 3. ORS 419B.470 is amended to read:

419B.470. (1) The court shall conduct a permanency hearing within 30 days after a judicial finding is made under ORS 419B.340 (5) if, based upon that judicial finding, the Department of Human Services determines that it will not make reasonable efforts to reunify the family.

(2) In all other cases when a child or ward is in substitute care, the court shall conduct a permanency hearing no later than 12 months after the ward was found within the jurisdiction of the court under ORS 419B.100 or 14 months after the child or ward was placed in substitute care, whichever is the earlier.

(3) If a ward is removed from court sanctioned permanent foster care, the department shall request and the court shall conduct a permanency hearing within three months after the date of the change in placement.

(4) If a ward has been surrendered for adoption or the parents' rights have been terminated and the department has not physically placed the ward for adoption or initiated adoption proceedings within six months after the surrender or entry of an order terminating parental rights, the court shall conduct a permanency hearing within 30 days after receipt of the report required by ORS 419B.440 (1)(b)(B).

(5) If an order reinstating parental rights is entered under section 2 of this 2018 Act, the court shall conduct a permanency hearing within 60 days after entry of the order.

[5] (6) Unless good cause otherwise is shown, the court shall also conduct a permanency hearing at any time upon the request of the department, an agency directly responsible for care or placement of the child or ward, parents whose parental rights have not been terminated, an attorney

for the child or ward, a court appointed special advocate, a citizen review board, a tribal court or upon its own motion. The court shall schedule the hearing as soon as possible after receiving a request.

~~[(6)]~~ (7) After the initial permanency hearing conducted under subsection (1) or (2) of this section or any permanency hearing conducted under subsections (3) to ~~[(5)]~~ (6) of this section, the court shall conduct subsequent permanency hearings not less frequently than once every 12 months for as long as the child or ward remains in substitute care.

~~[(7)]~~ (8) After the permanency hearing conducted under subsection (4) of this section, the court shall conduct subsequent permanency hearings at least every six months for as long as the ward is not physically placed for adoption or adoption proceedings have not been initiated.

~~[(8)]~~ (9) If a child returns to substitute care after a court's previously established jurisdiction over the child has been dismissed or terminated, a permanency hearing shall be conducted no later than 12 months after the child is found within the jurisdiction of the court on a newly filed petition or 14 months after the child's most recent placement in substitute care, whichever is the earlier.

SECTION 4. ORS 419B.524 is amended to read:

419B.524. **Except as provided in section 2 of this 2018 Act**, unless there is an appeal from the order terminating the rights of the parent or parents, the order permanently terminates all rights of the parent or parents whose rights are terminated and the parent or parents have no standing to appear as such in any legal proceeding concerning the ward.

SECTION 5. **Section 2 of this 2018 Act and the amendments to ORS 419B.470 by section 3 of this 2018 Act apply to proceedings to reinstate the parental rights of parents whose rights were terminated before, on or after the effective date of this 2018 Act.**

SECTION 6. **Section 2 of this 2018 Act and the amendments to ORS 419B.470 and 419B.524 by sections 3 and 4 of this 2018 Act become operative on September 1, 2018.**

SECTION 7. **The Department of Human Services may take any action before the operative date specified in section 6 of this 2018 Act that is necessary for the department to exercise, on and after the operative date specified in section 6 of this 2018 Act, all of the duties, functions and powers conferred on the department by section 2 of this 2018 Act.**

SECTION 8. **This 2018 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2018 Act takes effect on its passage.**

Passed by House February 21, 2018

Repassed by House March 3, 2018

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate March 1, 2018

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Peter Courtney, President of Senate

Received by Governor:

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Approved:

.....M,....., 2018

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2018

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Dennis Richardson, Secretary of State