

D R A F T

SUMMARY

Declares Oregon policy regarding Indian children. Modifies Oregon child welfare laws regarding Indian children to conform with federal Indian Child Welfare Act. Directs Department of Human Services to report biennially to Legislative Assembly regarding Indian children in child welfare system.

A BILL FOR AN ACT

1
2 Relating to Indian children; creating new provisions; and amending ORS
3 350.300, 418.627, 419A.004, 419A.116, 419A.252, 419B.090, 419B.100, 419B.118,
4 419B.150, 419B.171, 419B.185, 419B.192, 419B.305, 419B.310, 419B.325,
5 419B.331, 419B.337, 419B.340, 419B.365, 419B.366, 419B.449, 419B.452,
6 419B.476, 419B.498, 419B.500, 419B.521, 419B.529, 419B.532, 419B.875,
7 419B.878 and 419B.923.

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

OREGON INDIAN CHILD WELFARE ACT

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11
12
13 (Short Title)

14
15 **SECTION 1. Sections 1 to 20 of this 2020 Act may be cited as the**
16 **Oregon Indian Child Welfare Act.**

17
18 (Policy Regarding Indian Children)

19
20 **SECTION 2. The Legislative Assembly finds that in the Indian Child**

1 Welfare Act (25 U.S.C. 1901 et seq.), the United States Congress re-
2 cognized the special legal status of Indian tribes and their members.
3 It is the policy of the State of Oregon to protect the health and safety
4 of Indian children and the stability and security of Indian tribes and
5 families by promoting practices designed to prevent the removal of
6 Indian children from their families and, if removal is necessary and
7 lawful, to prioritize the placement of an Indian child with the Indian
8 child's extended family and tribal community. The State of Oregon
9 recognizes the inherent jurisdiction of Indian tribes to make decisions
10 regarding the custody of Indian children. The State of Oregon also
11 recognizes the importance of ensuring that Indian children and Indian
12 families receive appropriate services to obviate the need to remove an
13 Indian child from the Indian child's home and, if removal is necessary
14 and lawful, to effect the child's safe return home. The Oregon Indian
15 Child Welfare Act creates additional safeguards for Indian children to
16 address disproportionate rates of removal, to improve the treatment
17 of and services provided to Indian children and Indian families in the
18 child welfare system and to ensure that Indian children who must be
19 removed are placed with Indian families, communities and cultures.

20

21 (Definitions; Custody; Paternity;
22 Best Interests of Indian Child; Domicile;
23 Indian Child's Tribe)

24

25 **SECTION 3. Definitions.** As used in sections 1 to 20 of this 2020 Act:

26 (1) "Adoptive placement" means any action that may result in the
27 permanent placement of an Indian child for adoption, including any
28 action resulting in a final decree of adoption.

29 (2) "Emergency proceeding" means any court action that involves
30 the emergency removal or emergency placement of an Indian child,
31 including removal under ORS 419B.150, with or without a protective

1 custody order, or a shelter care proceeding under ORS 419B.185.

2 (3)(a) “Extended family member” has the meaning given that term
3 by the law or custom of an Indian child’s tribe.

4 (b) If the meaning of “extended family member” cannot be deter-
5 mined under paragraph (a) of this subsection, “extended family mem-
6 ber” means a person who has attained 18 years of age and who is the
7 Indian child’s grandparent, aunt, uncle, brother, sister, sister-in-law,
8 brother-in-law, niece, nephew, first cousin, second cousin, stepparent
9 or, as determined by the child’s tribe, clan or band member.

10 (4) “Foster care placement” means any action removing, or that
11 could result in the removal of, an Indian child from the child’s parent
12 or Indian custodian for temporary placement in a foster home or in-
13 stitution, including but not limited to the following:

14 (a) A jurisdictional hearing or an adjudicatory hearing under ORS
15 419B.100;

16 (b) The placement of the Indian child in the home of a guardian
17 under ORS 419B.366;

18 (c) The placement of the Indian child out of the home for the
19 commission of a status offense under ORS chapter 419C; or

20 (d) Any other action that alters the legal relationship between the
21 Indian child and the Indian child’s parent, including a guardianship
22 proceeding under ORS chapter 125, where parental rights have not
23 been terminated but where a parent or an Indian custodian cannot
24 regain custody of the Indian child or have state jurisdiction termi-
25 nated upon verbal or written request and without any formalities or
26 contingencies.

27 (5) “Indian” means a person who is a member of an Indian tribe or
28 who is an Alaska Native and a member of a regional corporation as
29 defined in section 7 of the Alaska Native Claims Settlement Act (43
30 U.S.C. 1606).

31 (6) “Indian child” means any unmarried person who has not at-

1 **tained 18 years of age and:**

2 **(a) Is a member or citizen of an Indian tribe; or**

3 **(b) Is eligible for membership or citizenship in an Indian tribe and**
4 **is the biological child of a member of an Indian tribe.**

5 **(7) “Indian Child Welfare Act” means the federal Indian Child**
6 **Welfare Act (25 U.S.C. 1901 et seq.).**

7 **(8) “Indian custodian” means an Indian, other than the Indian**
8 **child’s parent, who has legal custody, as described in section 4 of this**
9 **2020 Act, of the Indian child, or to whom temporary physical care,**
10 **custody and control has been transferred by the Indian child’s parent.**

11 **(9) “Indian foster home” means a foster home, including a tribally**
12 **licensed home, where one or more of the licensed or approved foster**
13 **parents is an Indian.**

14 **(10) “Indian tribe” or “tribe” means any Indian tribe, band, nation**
15 **or other organized group or community of Indians federally recognized**
16 **as eligible for the services provided to Indians by the Secretary of the**
17 **Interior because of their status as Indians, including any Alaska Na-**
18 **tive village as defined in 43 U.S.C. 1602(c).**

19 **(11) “Member” or “membership” means a determination by an In-**
20 **dian tribe that a person is a member or citizen in that Indian tribe.**

21 **(12) “Parent” means:**

22 **(a) A biological parent of an Indian child;**

23 **(b) An Indian who has lawfully adopted an Indian child, including**
24 **adoptions made under tribal law or custom; or**

25 **(c) A father whose paternity has been acknowledged or established**
26 **under section 5 of this 2020 Act.**

27 **(13) “Party” or “parties” means parties to a proceeding, as described**
28 **in ORS 419B.875.**

29 **(14) “Pre-adoptive placement” means any action that may result in**
30 **the temporary placement of an Indian child in a foster home or insti-**
31 **tution after the termination of parental rights but prior to or in lieu**

1 of adoptive placement.

2 (15) “Proceeding” means any action, other than an emergency pro-
3 ceeding, that may culminate in the termination of parental rights, a
4 foster care placement, a pre-adoptive placement or an adoptive place-
5 ment.

6 (16) “Reservation” means Indian country as defined in 18 U.S.C. 1151
7 and any lands not covered under that section, title to which is held
8 by the United States in trust for the benefit of an Indian tribe or in-
9 dividual or held by an Indian tribe or individual subject to a restriction
10 by the United States against alienation.

11 (17) “Status offense” means an act committed by a person under the
12 age of 18 years that is considered a violation solely as a result of the
13 person’s status as a minor.

14 (18) “Termination of parental rights” means any action that may
15 result in the termination of the parent-child relationship and any
16 placement in a permanent guardianship under ORS 419B.365.

17 (19) “Tribal court” means a court with jurisdiction over child cus-
18 tody proceedings and that is either a Court of Indian Offenses, a court
19 established and operated under the code or custom of an Indian tribe
20 or any other administrative body of a tribe that is vested with au-
21 thority over child custody proceedings.

22 (20)(a) “Voluntary proceeding” means a proceeding that a parent
23 or an Indian custodian has consented to.

24 (b) “Voluntary proceeding” does not include:

25 (A) A termination of parental rights, including when an Indian
26 child is not returned to the parent at the conclusion of any voluntary
27 placement agreement; or

28 (B) Any other proceeding in which a parent or an Indian custodian
29 consents to the proceeding under threat of removal of the Indian child
30 by a state court or agency or other threats by a private adoptive or
31 other agency.

1 **SECTION 4. Custody of Indian child.** (1) A parent or Indian custo-
2 dian has custody of an Indian child under sections 1 to 20 of this 2020
3 Act if the parent or Indian custodian has physical custody or legal
4 custody of the Indian child under any applicable tribal law, tribal
5 custom or state law.

6 (2) A parent or Indian custodian has continued custody of an Indian
7 child if the parent or Indian custodian currently has, or previously
8 had, custody of the Indian child.

9 (3) For the purposes of this section, the following individuals are
10 presumed to have continued custody of an Indian child:

11 (a) The Indian child's biological mother;

12 (b) A man who is married to the Indian child's biological mother;
13 and

14 (c) A man whose paternity has been acknowledged or established
15 as described in section 5 of this 2020 Act.

16 **SECTION 5. Paternity.** In addition to the methods for establishing
17 parentage under ORS 109.065, a man's paternity may be acknowledged
18 or established for the purposes of sections 1 to 20 of this 2020 Act if
19 the man's paternity has been:

20 (1) Established under tribal law;

21 (2) Recognized in accordance with tribal custom; or

22 (3) Openly proclaimed to the court by the man, the Indian child's
23 family, the Department of Human Services or an adoption agency.

24 **SECTION 6. Best interests of Indian child.** When making a deter-
25 mination regarding the best interests of an Indian child under sections
26 1 to 20 of this 2020 Act, the Indian Child Welfare Act or any regu-
27 lations or rules regarding the Indian Child Welfare Act or sections 1
28 to 20 of this 2020 Act, the juvenile court shall, in consultation with the
29 Indian child's tribe, consider the following relevant factors:

30 (1) The protection of the safety, well-being, development and sta-
31 bility of the Indian child;

1 **(2) The prevention of unnecessary out-of-home placement of the**
2 **Indian child;**

3 **(3) The prioritization of placement of the Indian child in accordance**
4 **with the placement preferences under section 20 of this 2020 Act;**

5 **(4) The value to the Indian child of establishing, developing or**
6 **maintaining a political, cultural, social and spiritual relationship with**
7 **the Indian child's tribe and tribal community; and**

8 **(5) The importance to the child of the Indian tribe's ability to**
9 **maintain the tribe's existence and integrity in promotion of the sta-**
10 **bility and security of Indian children and families.**

11 **SECTION 7. Domicile. For the purposes of sections 1 to 20 of this**
12 **2020 Act:**

13 **(1) A person's domicile is the place the person regards as home,**
14 **where the person intends to remain or to which, if absent, the person**
15 **intends to return.**

16 **(2) An Indian child's domicile is, in order of priority, the domicile**
17 **of:**

18 **(a) The Indian child's parents or, if the Indian child's parents do**
19 **not have the same domicile, the Indian child's parent who has physical**
20 **custody of the Indian child;**

21 **(b) The Indian child's Indian custodian; or**

22 **(c) The Indian child's guardian.**

23 **SECTION 7a. Enrollment. (1) The Department of Human Services,**
24 **upon request from an Indian child's parent or Indian custodian, shall**
25 **assist the Indian child's parent or custodian with enrolling the Indian**
26 **child in a tribe with which the child is eligible for enrollment.**

27 **(2) In any proceeding where there is reason to know the child is an**
28 **Indian child, the department shall notify the Indian child's parent or**
29 **Indian custodian of the right to request that the department assist the**
30 **Indian child's parent or Indian custodian with enrolling the child in a**
31 **tribe with which the child is eligible for enrollment.**

1 **SECTION 7b. Determination of Indian child's tribe.** (1) In a pro-
2 ceeding where there is reason to know that the child is an Indian
3 child, the Indian child's tribe is:

4 (a) If the Indian child is a member or eligible for membership in
5 only one tribe, the tribe with which the Indian child is a member or
6 eligible for membership.

7 (b) If the Indian child is a member of one tribe but eligible for
8 membership in one or more different tribes, the tribe with which the
9 Indian child is a member.

10 (c) If the Indian child is a member of more than one tribe or if the
11 Indian child is not a member of any tribe but is eligible for member-
12 ship with more than one tribe:

13 (A) The tribe designated by agreement between the tribes of which
14 the Indian child is a member or is eligible for membership; or

15 (B) If the tribes are unable to agree on the designation of the Indian
16 child's tribe, the tribe designated by the court.

17 (2) When designating an Indian child's tribe under subsection
18 (1)(c)(B) of this section, the court shall, after hearing, designate the
19 tribe with which the Indian child has the more significant contacts,
20 taking into consideration the following:

21 (a) The preference of the Indian child's parent;

22 (b) The length of the Indian child's current or prior domicile or
23 residence on or near the reservation of each tribe;

24 (c) The tribal membership of the Indian child's custodial parent or
25 Indian custodian;

26 (d) The interests asserted by each tribe;

27 (e) Whether a tribe has previously adjudicated a case involving the
28 Indian child; and

29 (f) If the court determines that the Indian child is of sufficient age
30 and capacity to meaningfully self-identify, the self-identification of the
31 Indian child.

1 (3) If an Indian child is a member or eligible for membership in
2 more than one tribe, the court may, in its discretion, permit the
3 tribes, other than the Indian child's tribe determined under subsection
4 (1) of this section, to participate in a proceeding involving the Indian
5 child in an advisory capacity or as a party, where appropriate.

6
7 (Jurisdiction; Transfer)
8

9 **SECTION 8. Determination of domicile and residence; records.** (1)

10 In any proceeding under ORS chapter 419B involving an Indian child,
11 the juvenile court must determine the residence and domicile of the
12 Indian child and whether the Indian child is a ward of tribal court.

13 (2)(a) The juvenile court shall communicate with any tribal courts
14 to the extent necessary to make a determination under subsection (1)
15 of this section, and shall, if applicable, coordinate with a tribal court
16 to facilitate the tribal court's assumption of jurisdiction.

17 (b) The juvenile court shall:

18 (A) Allow the parties to participate in any communications under
19 this subsection with a tribal court or, if a party is unable to participate
20 in a communication, provide the party with an opportunity to present
21 facts and legal arguments supporting the party's position before the
22 juvenile court makes a decision regarding jurisdiction;

23 (B) Create records of any communications under this section;

24 (C) Promptly notify the parties of each communication; and

25 (D) Provide the parties with access to the record of the communi-
26 cation.

27 (3) Notwithstanding subsection (2) of this section, communications
28 between the juvenile court and a tribal court regarding schedules,
29 calendars, court records and similar matters may occur without in-
30 forming the parties or creating a record of the communications.

31 (4) As used in this section "record" means information that is in-

1 scribed on a tangible medium or that is stored in an electronic or
2 other medium and is retrievable in perceivable form.

3 **SECTION 9. Jurisdiction.** (1) Except as provided in subsection (2)
4 of this section and notwithstanding Public Law 83-280, an Indian
5 child's tribe has exclusive jurisdiction over any proceeding under ORS
6 chapter 419B involving the Indian child if:

7 (a) The Indian child resides or is domiciled within the reservation
8 of the tribe; or

9 (b) The Indian child is a ward of a tribal court of the tribe.

10 (2) The juvenile court has jurisdiction over a proceeding described
11 in subsection (1) of this section if:

12 (a) The tribe has consented orally on the record or in writing to the
13 juvenile court's concurrent jurisdiction;

14 (b) The juvenile court is exercising emergency jurisdiction in com-
15 pliance with ORS 419B.150, 419B.152 or 419B.185 or other relevant
16 Oregon law; or

17 (c) The tribe has not entered into an applicable state-tribal Indian
18 child welfare agreement.

19 (3) The juvenile court has jurisdiction, as provided in ORS 419B.100
20 (1), over a proceeding involving an Indian child if:

21 (a) The Indian child does not reside or is not domiciled within the
22 reservation of the Indian child's tribe; and

23 (b) The Indian child is not a ward of the tribal court.

24 (4) The Indian child's tribe has jurisdiction over a proceeding de-
25 scribed in subsection (3) of this section if the juvenile court has
26 transferred jurisdiction to the Indian tribe as provided in section 10
27 of this 2020 Act.

28 **SECTION 10. Petition to transfer jurisdiction; objection.** (1) At any
29 point in a proceeding in which the juvenile court has jurisdiction un-
30 der ORS 419B.100 (1), an Indian child's parent, Indian custodian or
31 tribe may petition the court to transfer jurisdiction of the proceeding

1 to the tribal court of the Indian child's tribe. No later than three days
2 after filing the transfer petition, the petitioner shall deliver or mail
3 to the parties a copy of the petition and notice of the time set for filing
4 objections to the petition.

5 (2) Any party may, within the time fixed for the filing, file in the
6 proceeding objections to the transfer petition. An objecting party must
7 provide notice and a copy of the objection to the other parties. Ob-
8 jections under this subsection must specify the particulars of the ob-
9 jections, including:

10 (a) That the tribe has declined the transfer of jurisdiction;

11 (b) That one or both of the Indian child's parents object to the
12 transfer of jurisdiction; or

13 (c) That good cause exists to deny the transfer of jurisdiction.

14 (3) Upon receipt of a transfer petition, the juvenile court shall
15 contact the tribal court and request a timely response to the petition,
16 orally on the record or in writing, regarding whether the tribe intends
17 to decline the transfer of jurisdiction.

18 (4) If a party objects to the transfer petition for good cause, the
19 court shall fix the time for hearing on objections to the petition.

20 (5)(a) The court shall deny the transfer petition if:

21 (A) The tribe declines the transfer of jurisdiction;

22 (B) The Indian child's parent objects to the transfer of jurisdiction;

23 or

24 (C) The court finds, after hearing, that good cause exists to deny
25 the transfer of jurisdiction.

26 (b) Notwithstanding paragraph (a)(B) of this subsection, the ob-
27 jection of an Indian child's parent does not preclude the transfer of
28 jurisdiction if:

29 (A) The objecting parent's parental rights are later terminated or
30 the objecting parent dies; and

31 (B) The Indian child's remaining parent, Indian custodian or tribe

1 **files a new transfer petition subsequent to the termination of the ob-**
2 **jecting parent's parental rights or the death of the objecting parent.**

3 **(c) In determining whether good cause exists to deny the transfer**
4 **petition, the juvenile court may not consider:**

5 **(A) Whether the proceeding is at an advanced stage;**

6 **(B) Whether there have been prior proceedings involving the Indian**
7 **child for which no transfer petition was filed;**

8 **(C) Whether the transfer could affect the placement of the Indian**
9 **child;**

10 **(D) The Indian child's cultural connections with the tribe or its**
11 **reservation;**

12 **(E) The socioeconomic conditions of the Indian child's tribe or any**
13 **negative perception of tribal or United States Bureau of Indian Affairs'**
14 **social services or judicial systems; or**

15 **(F) Whether the transfer serves the best interests of the Indian**
16 **child.**

17 **(6) The juvenile court shall give deference to a transfer petition**
18 **made by a tribe.**

19 **(7) If the juvenile court denies a transfer of jurisdiction under this**
20 **section, the court shall document the basis for its denial in a written**
21 **order.**

22 **SECTION 11. Transfer. Upon determining that an Indian tribe has**
23 **jurisdiction over a proceeding under section 9 (1) or (4) of this 2020 Act,**
24 **the juvenile court shall expeditiously:**

25 **(1) Notify the tribal court of the pending dismissal of the proceed-**
26 **ing;**

27 **(2) If the tribal court accepts the transfer, dismiss the proceeding;**

28 **(3) Transfer all information regarding the proceeding, including but**
29 **not limited to pleadings and court records, to the tribal court; and**

30 **(4) Direct the Department of Human Services to:**

31 **(a) Coordinate with the tribal court and the Indian child's tribe to**

1 ensure that the transfer of the proceeding and the transfer of custody
2 of the Indian child is accomplished with minimal disruption of services
3 to the Indian child and the Indian child's family.

4 (b) Provide the Indian child's tribe with documentation related to
5 the Indian child's eligibility for state and federal assistance and in-
6 formation related to the Indian child's social history, treatment diag-
7 nosis and services and other relevant case and service related data.

8
9 (Inquiry; Notice)
10

11 SECTION 12. Emergency inquiry; inquiry; reason to know child is
12 Indian child. (1) In an emergency proceeding, when the nature of the
13 emergency allows, the person taking the child into protective custody
14 shall make a good faith effort to determine whether there is reason
15 to know that the child is an Indian child and to contact by telephone,
16 electronic mail, facsimile or other means of immediate communication
17 any tribe of which the child may be a member to determine the child's
18 affiliation.

19 (2) Except as provided in subsection (1) of this section, whenever a
20 person is required to determine whether there is reason to know that
21 a child is an Indian child, the person shall consult with, at a mini-
22 mum, the following individuals or entities to determine if the child is
23 an Indian child:

24 (a) The child;

25 (b) The child's parent or parents;

26 (c) Any person having custody of the child or with whom the child
27 resides;

28 (d) Extended family members of the child;

29 (e) Any other person who may reasonably be expected to have in-
30 formation regarding the child's membership or eligibility for mem-
31 bership in an Indian tribe; and

1 (f) Any Indian tribe in which the child may be a member or may
2 be eligible for membership.

3 (3)(a) At the commencement of any hearing in which the court is
4 required to inquire whether a child is an Indian child, the court shall
5 ask, on the record, each participant whether the participant knows or
6 has reason to know that the child is an Indian child.

7 (b) If no participant in the proceeding knows or has reason to know
8 that the child is an Indian child, the court shall instruct each party
9 to inform the court immediately if the party later receives information
10 that provides reason to know the child is an Indian child.

11 (4) A court has reason to know that a child is an Indian child if:

12 (a) Any participant in the proceeding, officer of the court involved
13 in the proceeding, Indian tribe, Indian organization or agency informs
14 the court that the child is an Indian child;

15 (b) Any participant in the proceeding, officer of the court involved
16 in the proceeding, Indian tribe, Indian organization or agency informs
17 the court that it has discovered information indicating that the child
18 is an Indian child;

19 (c) The child indicates to the court that the child is an Indian child;

20 (d) The court is informed that the domicile or residence of the
21 child, the child's parent or the child's Indian custodian is on a reser-
22 vation or in an Alaska Native village;

23 (e) The court is informed that the child is or has been a ward of a
24 tribal court;

25 (f) The court is informed that the child or the child's parent pos-
26 sesses an identification card or other record indicating membership in
27 an Indian tribe;

28 (g) Testimony or documents presented to the court indicate in any
29 way that the child may be an Indian child; or

30 (h) Any other indicia provided to the court, or within the court's
31 knowledge, indicates that the child is an Indian child.

1 (5) If the court has reason to know the child is an Indian child but
2 the court does not have sufficient evidence to determine that the child
3 is or is not an Indian child, the court must:

4 (a) Treat the child as an Indian child unless the court determines,
5 on the record, that the child does not meet the definition of an Indian
6 child; and

7 (b) Require the Department of Human Services or other party to
8 submit a report, declaration or testimony on the record that the de-
9 partment or other party used due diligence to identify and work with
10 all of the tribes of which there is reason to know the child may be a
11 member or be eligible for membership to verify whether:

12 (A) The child is a member; or

13 (B) The child is eligible for membership and is the biological child
14 of a member.

15 SECTION 13. Emergency notification; formal notice. (1)(a) In an
16 emergency proceeding, if there is reason to know that a child is an
17 Indian child and the nature of the emergency allows, the Department
18 of Human Services must notify by telephone, electronic mail, facsimile
19 or other means of immediate communication any tribe of which the
20 child is or may be a member.

21 (b) Notification under this subsection must include the basis for the
22 child's removal, the time, date and place of the initial hearing and a
23 statement that the tribe, as a party to the proceeding under ORS
24 419B.875, has the right to participate in the proceeding.

25 (2) Except as provided in subsection (1) of this section, if there is
26 reason to know a child is an Indian child and notice is required, the
27 party providing notice must:

28 (a) Promptly send notice of the proceeding as described in sub-
29 section (3) of this section; and

30 (b) File an original or a copy of each notice sent under this section
31 with the court, together with any return receipts or other proof of

1 **service.**

2 **(3)(a) Notice under subsection (2) of this section must be sent to:**

3 **(A) Each tribe where the child may be a member or eligible for**
4 **membership;**

5 **(B) The child's parents; and**

6 **(C) If applicable, the child's Indian custodian.**

7 **(b) If the identity or location of the child's parents, Indian custo-**
8 **dian or tribe cannot be ascertained, the notice shall be sent to the**
9 **appropriate United States Bureau of Indian Affairs Regional Director**
10 **listed in 25 C.F.R. 23.11(b).**

11 **(c) The notice must be sent by registered or certified mail, return**
12 **receipt requested.**

13 **(d) The notice must be in clear and understandable language and**
14 **include the following:**

15 **(A) The child's name, birth date and birthplace;**

16 **(B) All names known, including maiden, married and former names**
17 **or aliases, of the parents, the parents' birthplaces and tribal enroll-**
18 **ment numbers, if known;**

19 **(C) The names, birth dates, birthplaces and tribal enrollment in-**
20 **formation of other direct lineal ancestors of the child;**

21 **(D) The name of each Indian tribe in which the child is a member**
22 **or may be eligible for membership if a biological parent is a member;**

23 **(E) If notice is required to be sent to the United States Bureau of**
24 **Indian Affairs under paragraph (b) of this subsection, to the extent**
25 **known, information regarding the child's direct lineal ancestors, an**
26 **ancestral chart for each biological parent, and the child's tribal affil-**
27 **iations and blood quantum;**

28 **(F) A copy of the petition by which the proceeding was initiated**
29 **and, if a hearing has been scheduled, information on the date, time**
30 **and location of the hearing;**

31 **(G) The name of the petitioner and the name and address of the**

1 **petitioner's attorney;**

2 **(H) A statement that the child's parent or Indian custodian has the**
3 **right to intervene at any point in the proceeding;**

4 **(I) A statement that the child's tribe, as a party to the proceeding**
5 **under ORS 419B.875, has the right to participate in the proceeding;**

6 **(J) A statement that if the court determines that the child's parent**
7 **or Indian custodian is unable to afford counsel, the parent or Indian**
8 **custodian has the right to court-appointed counsel;**

9 **(K) A statement that the child's parent, Indian custodian or tribe**
10 **has the right, upon request, to up to 20 additional days to prepare for**
11 **the proceeding;**

12 **(L) A statement describing the potential legal consequences of the**
13 **proceeding on the future parental and custodial rights of the parent**
14 **or Indian custodian;**

15 **(M) The mailing addresses and telephone numbers of the court and**
16 **information related to all parties to the proceeding and individuals**
17 **notified under this section; and**

18 **(N) A statement that the information contained in the notice is**
19 **confidential and that the notice should not be shared with any person**
20 **not needing the information to exercise rights under sections 1 to 20**
21 **of this 2020 Act.**

22 **(4) If there is a reason to know that a parent or Indian custodian**
23 **possesses limited English proficiency and may not understand the**
24 **contents of the notice, the court must provide language access ser-**
25 **vices as required by Title VI of the Civil Rights Act of 1964 and other**
26 **federal and state laws. If the court is unable to secure translation or**
27 **interpretation support, the court shall contact or direct a party to**
28 **contact the Indian child's tribe or the local office of the United States**
29 **Bureau of Indian Affairs for assistance identifying a qualified trans-**
30 **lator or interpreter.**

31 **(5)(a) No hearing requiring notice under subsection (2) of this sec-**

1 tion may be held until at least 10 days after the later of receipt of the
2 notice by the Indian child's parent, Indian custodian or tribe or, if
3 applicable, the Secretary of the Bureau of Indian Affairs. Upon re-
4 quest, the court shall grant the Indian child's parent, Indian custodian
5 or tribe up to 20 additional days from the date upon which notice was
6 received by the parent, Indian custodian or tribe to prepare for par-
7 ticipation in the hearing.

8 (b) Nothing in this subsection prevents a court from reviewing a
9 removal of an Indian child from the Indian child's parent or Indian
10 custodian at an emergency proceeding before the expiration of the
11 waiting period described in paragraph (a) of this subsection to deter-
12 mine the appropriateness of the removal and potential return of the
13 child.

14
15 (Hearing Procedure)
16

17 SECTION 14. Qualified expert witness. (1) At any hearing where
18 there is reason to know a child is an Indian child and a qualified ex-
19 pert witness is required, at least one qualified expert witness must
20 testify regarding:

21 (a) Whether the Indian child's continued custody by the Indian
22 child's parent or Indian custodian is likely to result in serious emo-
23 tional or physical damage to the Indian child; and

24 (b) The prevailing social and cultural standards of the Indian child's
25 tribe.

26 (2) A person is a qualified expert witness under this section if the
27 Indian child's tribe has designated the person as being qualified to
28 testify to the prevailing social and cultural standards of the tribe.

29 (3) If the Indian child's tribe has not identified an expert witness,
30 the following individuals, in order of priority, may testify as a quali-
31 fied expert witness:

1 (a) A member of the Indian child’s tribe or other person of the
2 tribe’s choice who is recognized by the tribe as knowledgeable regard-
3 ing tribal customs regarding family organization or child rearing
4 practices;

5 (b) A person having substantial experience in the delivery of child
6 and family services to Indians and extensive knowledge of prevailing
7 social and cultural standards and child rearing practices within the
8 Indian child’s tribe; or

9 (c) Any person having substantial experience in the delivery of child
10 and family services to Indians and knowledge of prevailing social and
11 cultural standards and child rearing practices in Indian tribes with
12 cultural similarities to the child’s tribe.

13 (4) In addition to testimony from a qualified expert witness, the
14 court may hear supplemental testimony regarding subsection (1) of
15 this section from a professional person having substantial education
16 and experience in the area of the person’s specialty.

17 (5) No petitioning party, its employees or an employee of the De-
18 partment of Human Services may serve as a qualified expert witness
19 or supplemental expert witness under this section.

20 **SECTION 15. Active efforts.** (1) As used in this section, “active ef-
21 forts” means efforts that are affirmative, active, thorough, timely and
22 intended to maintain or reunite an Indian child with the Indian child’s
23 family.

24 (2) If there a reason to know that a child is an Indian child and
25 active efforts are required, the court must determine whether active
26 efforts have been made to prevent the breakup of the family or to re-
27 unite the family.

28 (3) Active efforts must:

29 (a) Be documented in detail in writing on the record;

30 (b) Include assisting the Indian child’s parent or parents or Indian
31 custodian through the steps of a case plan and with accessing or de-

1 **veloping the resources necessary to satisfy the case plan;**

2 **(c) Include providing assistance in a manner consistent with the**
3 **prevailing social and cultural conditions and way of life of the Indian**
4 **child's tribe;**

5 **(d) Be conducted in partnership with the Indian child and the In-**
6 **dian child's parents, extended family members, Indian custodians and**
7 **tribe; and**

8 **(e) Be tailored to the facts and circumstances of the case.**

9 **(4) Active efforts may include, as applicable, the following:**

10 **(a) Conducting a comprehensive assessment of the circumstances**
11 **of the Indian child's family, with a focus on reunification as the most**
12 **desirable goal;**

13 **(b) Identifying appropriate services and helping the Indian child's**
14 **parents overcome barriers to reunification, including actively assisting**
15 **the parents in obtaining the identified services;**

16 **(c) Identifying, notifying and inviting representatives of the Indian**
17 **child's tribe to participate in providing support and services to the**
18 **Indian child's family and in family team meetings, permanency plan-**
19 **ning, resolution of placement issues, reviews or other case manage-**
20 **ment related meetings;**

21 **(d) Conducting or causing to be conducted a diligent search for the**
22 **Indian child's extended family members, contacting and consulting**
23 **with the Indian child's extended family members and adult relatives**
24 **to provide family structure and support for the Indian child and the**
25 **Indian child's parents;**

26 **(e) Offering and employing culturally appropriate family preserva-**
27 **tion strategies and facilitating the use of remedial and rehabilitative**
28 **services provided by the Indian child's tribe;**

29 **(f) Taking steps to keep the Indian child and the Indian child's**
30 **siblings together whenever possible;**

31 **(g) Supporting regular visits with the Indian child's parents or In-**

1 **dian custodians in the most natural setting possible as well as trial**
2 **home visits during any period of removal, consistent with the need to**
3 **ensure the health, safety and welfare of the Indian child;**

4 **(h) Identifying community resources, including housing, financial**
5 **assistance, employment training, transportation, mental health,**
6 **health care, substance abuse prevention and treatment, parent train-**
7 **ing, transportation and peer support services and actively assisting the**
8 **Indian child's parents or, when appropriate, the Indian child's ex-**
9 **tended family, in utilizing and accessing those resources;**

10 **(i) Monitoring progress and participation in services;**

11 **(j) Considering alternative options to address the needs of the In-**
12 **dian child's parents and, where appropriate, the Indian child's ex-**
13 **tended family, if the services are not available; and**

14 **(k) Providing post-reunification services and monitoring.**

15 **SECTION 16. Parties to proceeding; right to appear. (1) As provided**
16 **in ORS 419B.875, an Indian child's Indian custodian or tribe is a party**
17 **to any proceeding involving the Indian child.**

18 **(2) Notwithstanding ORS 9.160 and 9.320, a tribe may be represented**
19 **by any individual, regardless of whether the individual is licensed to**
20 **practice law, in any proceeding involving an Indian child.**

21 **(3) An attorney who is not barred from practicing law in this state**
22 **may appear in any proceeding involving an Indian child without asso-**
23 **ciating with local counsel if the attorney establishes to the satisfaction**
24 **of the Oregon State Bar that:**

25 **(a) The attorney seeks to appear in a court in this state for the**
26 **limited purpose of participating in a proceeding under ORS chapter**
27 **419B subject to the provisions of sections 1 to 20 of this 2020 Act;**

28 **(b) The attorney represents an Indian child's tribe, parent or Indian**
29 **custodian; and**

30 **(c) The Indian child's tribe has affirmed the Indian child's mem-**
31 **bership or eligibility for membership under tribal law.**

1 (4) If available, the court shall allow alternative methods of partic-
2 ipation for any party to a proceeding involving an Indian child, in-
3 cluding participation by telephone, videoconferencing or other
4 participation methods.

5 (5) Notwithstanding subsection (1) of this section, an Indian custo-
6 dian or tribe may notify the court, orally on the record or in writing,
7 that the Indian custodian or tribe withdraws as a party to the pro-
8 ceeding.

9 **SECTION 17. Right to counsel.** (1) If there is reason to know that
10 a child in a proceeding is an Indian child:

11 (a) The court shall appoint counsel to represent the Indian child.

12 (b) If the Indian child's parent or Indian custodian requests counsel
13 but is without sufficient financial means to employ suitable counsel
14 possessing skills and experience commensurate with the nature of the
15 petition and the complexity of the case, the court shall appoint suit-
16 able counsel to represent the Indian child's parent or Indian custodian
17 if the parent or Indian custodian is determined to be financially eligi-
18 ble under the policies, procedures, standards and guidelines of the
19 Public Defense Services Commission.

20 (2) Upon presentation of the order of appointment under this sec-
21 tion by the attorney for the Indian child, any agency, hospital, school
22 organization, division or department of the state, doctor, nurse or
23 other health care provider, psychologist, psychiatrist, police depart-
24 ment or mental health clinic shall permit the attorney to inspect and
25 copy any records of the Indian child involved in the case, without the
26 consent of the Indian child or the Indian child's parent or Indian
27 custodian. This subsection does not apply to records of a police agency
28 relating to an ongoing investigation prior to charging.

29 **SECTION 18. Right to examine documents.** In any proceeding where
30 there is reason to know that the child is an Indian child, each party
31 has the right to timely examine all reports or other documents held

1 by the Department of Human Services that are not otherwise subject
2 to a discovery exception or precluded under ORS 419B.881 (6) or (7),
3 as well as the record of any in camera showing of good cause for the
4 denial or regulation of disclosure of reports or other documents under
5 ORS 419B.881 (7).

6 **SECTION 19. Settlement conferences.** In any proceeding where
7 there is reason to know that the child is an Indian child, prior to
8 scheduling a settlement conference before a hearing on jurisdiction
9 or the termination of parental rights, the juvenile court shall provide
10 notice to the child's tribe pursuant to section 13 of this 2020 Act. In
11 addition to the requirements under section 13 of this 2020 Act, the
12 notice must include:

- 13 (1) A description of the settlement process;
14 (2) The procedure to schedule the settlement hearing; and
15 (3) The date that the jurisdictional hearing or termination of par-
16 ental rights hearing will occur if settlement is not reached.

17 **SECTION 19a. Violations of Oregon Indian Child Welfare Act.** (1)(a)
18 A petition to invalidate the placement of an Indian child or termi-
19 nation of parental rights involving an Indian child may be filed in any
20 court of competent jurisdiction by:

- 21 (A) The Indian child;
22 (B) The Indian child's parent or Indian custodian; or
23 (C) The Indian child's tribe.

24 (b) If the court determines that the placement of an Indian child
25 or termination of parental rights involving an Indian child violated the
26 requirements of the Oregon Indian Child Welfare Act, the court must
27 invalidate the placement or termination of parental rights.

28 (2)(a) If any party to a proceeding involving an Indian child asserts
29 or the court has reason to believe that the Indian child may have been
30 improperly removed or retained, the court must expeditiously deter-
31 mine whether the Indian child was improperly removed or retained.

1 (b) If the court finds that the Indian child was improperly removed
2 or retained, the court must terminate the proceeding and order the
3 Department of Human Services to immediately return the Indian child
4 to the Indian child's parent or Indian custodian, unless the court de-
5 termines that doing so would subject the Indian child to substantial
6 and immediate danger or threat of substantial and immediate danger.

7
8 (Protective Custody)
9

10 **SECTION 20. Placement preferences.** (1) If there is reason to know
11 that a child is an Indian child and the child is in need of placement
12 or continuation in substitute care, as defined in ORS 419A.004, the
13 child must be placed in the least restrictive setting that:

14 (a) Most closely approximates a family, taking into consideration
15 sibling attachment;

16 (b) Allows the Indian child's special needs, if any, to be met;

17 (c) Is in reasonable proximity to the Indian child's home, extended
18 family or siblings; and

19 (d)(A) Is in accordance with the order of preference established by
20 the Indian child's tribe; or

21 (B) If the Indian child's tribe has not established placement pref-
22 erences, is in accordance with the following order of preference:

23 (i) A member of the Indian child's extended family;

24 (ii) A foster home that is licensed, approved or specified by the In-
25 dian child's tribe;

26 (iii) An Indian foster home licensed or approved by an authorized
27 non-Indian licensing authority; or

28 (iv) An institution for children that has a program suitable to meet
29 the Indian child's needs and is approved by an Indian tribe or operated
30 by an Indian organization.

31 (2) If the juvenile court finds that an Indian child is in need of a

1 **guardianship or adoptive placement, preference must be given to**
2 **placement of the Indian child in accordance with the order of prefer-**
3 **ence established by the Indian child's tribe. If the Indian child's tribe**
4 **has not established guardianship or adoptive placement preferences,**
5 **then the Indian child shall be placed according to the following pref-**
6 **erence, in order of priority:**

7 **(a) With a member of the Indian child's extended family;**

8 **(b) With other members of the Indian child's tribe; or**

9 **(c) With other Indian families.**

10 **(3)(a) If any party objects to placement of an Indian child according**
11 **to the placement preferences under subsection (1) or (2) of this section,**
12 **the party may file an objection with the court, detailing the reasons**
13 **the party asserts that good cause exists for placement contrary to the**
14 **statutory placement preferences. No later than three days after filing**
15 **the objection, the objecting party shall deliver or mail to the other**
16 **parties a copy of the objection and a notice of the time set for replies**
17 **to the objection.**

18 **(b) Upon the filing of the objection, the juvenile court shall fix the**
19 **time for hearing on the objections to placement.**

20 **(c) If, after a hearing on the objection, the juvenile court deter-**
21 **mines that the objecting party has established, by clear and convincing**
22 **evidence, that there is good cause to depart from the placement pref-**
23 **erences under this section, the court may authorize placement of the**
24 **Indian child in an alternative placement.**

25 **(d) The court's determination under paragraph (c) of this sub-**
26 **section:**

27 **(A) Must be in writing and be based on:**

28 **(i) The preferences of the Indian child;**

29 **(ii) The presence of a sibling attachment that cannot be maintained**
30 **through the statutory placement preferences;**

31 **(iii) Any extraordinary physical, mental or emotional needs of the**

1 **Indian child that require specialized treatment services if, despite ac-**
2 **tive efforts, those services are unavailable in the community where**
3 **families who meet the placement preferences under subsection (1) or**
4 **(2) of this section reside; or**

5 **(iv) The availability, as determined by the prevailing social and**
6 **cultural standards of the Indian community in which the Indian**
7 **child's parent or extended family resides or with which the Indian**
8 **child's parent or extended family members maintain social and cul-**
9 **tural ties, of any suitable placement meeting the statutory preference**
10 **criteria.**

11 **(B) May be informed by but not determined by:**

12 **(i) The placement request of a parent of the Indian child, if the**
13 **parent has reviewed the placement options, if any, that comply with**
14 **the placement preferences under this section;**

15 **(ii) The ordinary bonding or attachment between the Indian child**
16 **and the alternative placement; or**

17 **(iii) The distance of the alternative placement from the Indian**
18 **child's parent and the Indian child's tribe.**

19 **(C) May not be based on the socioeconomic conditions of the Indian**
20 **child's tribe or any perception of the tribal or United States Bureau**
21 **of Indian Affairs social services or judicial systems.**

22

23

**ALIGNMENT OF
OREGON INDIAN CHILD WELFARE ACT
WITH OREGON JUVENILE CODE**

25

26

27

(Policy)

28

29 **SECTION 21.** ORS 418.627 is amended to read:

30 *418.627. [(1) The Legislative Assembly finds that in the Indian Child Wel-*
31 *fare Act, Public Law 95-608, the United States Congress recognized the special*

1 *legal status of Indian tribes and their members. This section implements the*
2 *federal policy of protecting Indian cultures by insuring the placement of In-*
3 *dian children within Indian families or communities, and that as a conse-*
4 *quence, the State of Oregon should take the actions provided in subsections (2)*
5 *to (4) of this section.]*

6 [(2)] (1) A person providing a foster home to an American Indian child
7 shall be eligible for payments under ORS 418.625 to 418.645 regardless of the
8 relationship by blood or marriage that the person has to the child where the
9 child's placement in the foster home is pursuant to the Indian Child Welfare
10 Act (25 U.S.C. 1901 et seq.).

11 [(3)] (2) Certification of a foster home described in subsection [(2)] (1) of
12 this section shall be pursuant to standards set out in an agreement between
13 the Department of Human Services and the tribe of which the child is a
14 member or, if there is no such agreement, certification shall be pursuant to
15 standards adopted by a federally recognized Indian tribe.

16 [(4)] (3) If subsection [(2) or (3)] (1) or (2) of this section is found to be
17 unconstitutional for any reason, then the entire section shall be null and
18 void.

19 **SECTION 22.** ORS 419B.090 is amended to read:

20 419B.090. (1) The juvenile court is a court of record and exercises juris-
21 diction as a court of general and equitable jurisdiction and not as a court
22 of limited or inferior jurisdiction. The juvenile court is called "The
23 _____ Court of _____ County, Juvenile Department."

24 (2)(a) It is the policy of the State of Oregon to recognize that children
25 are individuals who have legal rights. Among those rights are the right to:

- 26 (A) Permanency with a safe family;
27 (B) Freedom from physical, sexual or emotional abuse or exploitation; and
28 (C) Freedom from substantial neglect of basic needs.

29 (b) Parents and guardians have a duty to afford their children the rights
30 listed in paragraph (a) of this subsection. Parents and guardians have a duty
31 to remove any impediment to their ability to perform parental duties that

1 afford these rights to their children. When a parent or guardian fails to
2 fulfill these duties, the juvenile court may determine that it is in the best
3 interests of the child to remove the child from the parent or guardian either
4 temporarily or permanently.

5 (c) The provisions of this chapter shall be liberally construed to the end
6 that a child coming within the jurisdiction of the court may receive such
7 care, guidance, treatment and control as will lead to the child's welfare and
8 the protection of the community.

9 (3) It is the policy of the State of Oregon to safeguard and promote each
10 child's right to safety, stability and well-being and to safeguard and promote
11 each child's relationships with parents, siblings, grandparents, other rela-
12 tives and adults with whom a child develops healthy emotional attachments.

13 (4) It is the policy of the State of Oregon to guard the liberty interest of
14 parents protected by the Fourteenth Amendment to the United States Con-
15 stitution and to protect the rights and interests of children, as provided in
16 subsection (2) of this section. The provisions of this chapter shall be con-
17 strued and applied in compliance with federal constitutional limitations on
18 state action established by the United States Supreme Court with respect to
19 interference with the rights of parents to direct the upbringing of their
20 children, including, but not limited to, the right to:

21 (a) Guide the secular and religious education of their children;

22 (b) Make health care decisions for their children; and

23 (c) Discipline their children.

24 (5) It is the policy of the State of Oregon, in those cases not described
25 as extreme conduct under ORS 419B.502, to offer appropriate reunification
26 services to parents and guardians to allow them the opportunity to adjust
27 their circumstances, conduct or conditions to make it possible for the child
28 to safely return home within a reasonable time. The state shall provide to
29 parents and guardians with disabilities opportunities to benefit from or par-
30 ticipate in reunification services that are equal to those extended to indi-
31 viduals without disabilities. The state shall provide aids, benefits and

1 services different from those provided to parents and guardians without dis-
2 abilities, when necessary to ensure that parents and guardians with disabil-
3 ities are provided with an equal opportunity under this subsection. Although
4 there is a strong preference that children live in their own homes with their
5 own families, the state recognizes that it is not always possible or in the best
6 interests of the child or the public for children who have been abused or
7 neglected to be reunited with their parents or guardians. In those cases, the
8 State of Oregon has the obligation to create or provide an alternative, safe
9 and permanent home for the child.

10 (6) The State of Oregon recognizes the value of the **federal** Indian Child
11 Welfare Act (**25 U.S.C. 1901 et seq.**) and hereby incorporates the policies
12 of that Act **and the policies of the Oregon Indian Child Welfare Act**
13 **under section 2 of this 2020 Act.**

14

15

(Definitions)

16

17 **SECTION 23.** ORS 419A.004 is amended to read:

18 419A.004. As used in this chapter and ORS chapters 419B and 419C, unless
19 the context requires otherwise:

20 (1) “Age-appropriate or developmentally appropriate activities” means:

21 (a) Activities or items that are generally accepted as suitable for children
22 of the same chronological age or level of maturity or that are determined to
23 be developmentally appropriate for a child, based on the development of
24 cognitive, emotional, physical and behavioral capacities that are typical for
25 an age or age group; and

26 (b) In the case of a specific child, activities or items that are suitable for
27 the child based on the developmental stages attained by the child with re-
28 spect to the cognitive, emotional, physical and behavioral capacities of the
29 child.

30 (2) “Another planned permanent living arrangement” means an out-of-
31 home placement for a ward 16 years of age or older that is consistent with

1 the case plan and in the best interests of the ward other than placement:

2 (a) By adoption;

3 (b) With a legal guardian; or

4 (c) With a fit and willing relative.

5 (3) "CASA Volunteer Program" means a program that is approved or
6 sanctioned by a juvenile court, has received accreditation from the National
7 CASA Association and has entered into a contract with the Oregon Depart-
8 ment of Administrative Services under ORS 184.492 to recruit, train and su-
9 pervise volunteers to serve as court appointed special advocates.

10 (4) "Child care center" means a residential facility for wards or youth
11 offenders that is licensed, certified or otherwise authorized as a child-caring
12 agency as that term is defined in ORS 418.205.

13 (5) "Community service" has the meaning given that term in ORS 137.126.

14 (6) "Conflict of interest" means a person appointed to a local citizen re-
15 view board who has a personal or pecuniary interest in a case being reviewed
16 by that board.

17 (7) "Counselor" means a juvenile department counselor or a county juve-
18 nile probation officer.

19 (8) "Court" means the juvenile court.

20 (9) "Court appointed special advocate" means a person in a CASA Vol-
21 unteer Program who is appointed by the court to act as a court appointed
22 special advocate pursuant to ORS 419B.112.

23 (10) "Court facility" has the meaning given that term in ORS 166.360.

24 (11) "Current caretaker" means a foster parent:

25 (a) Who is currently caring for a ward who is in the legal custody of the
26 Department of Human Services and who has a permanency plan or concur-
27 rent permanent plan of adoption; and

28 (b) Who has cared for the ward, or at least one sibling of the ward, for
29 at least 12 cumulative months or for one-half of the ward's or sibling's life
30 where the ward or sibling is younger than two years of age, calculated cu-
31 mulatively.

1 (12) “Department” means the Department of Human Services.

2 (13) “Detention” or “detention facility” means a facility established under
3 ORS 419A.010 to 419A.020 and 419A.050 to 419A.063 for the detention of
4 youths or youth offenders pursuant to a judicial commitment or order.

5 (14) “Director” means the director of a juvenile department established
6 under ORS 419A.010 to 419A.020 and 419A.050 to 419A.063.

7 (15) “Guardian” means guardian of the person and not guardian of the
8 estate.

9 (16) “Indian child” [*means any unmarried person less than 18 years of age*
10 *who is:*]

11 [(a) *A member of an Indian tribe; or*]

12 [(b) *Eligible for membership in an Indian tribe and is the biological child*
13 *of a member of an Indian tribe.*] **has the meaning given that term in**
14 **section 3 of this 2020 Act.**

15 (17) “Juvenile court” means the court having jurisdiction of juvenile
16 matters in the several counties of this state.

17 (18) “Local citizen review board” means the board specified by ORS
18 419A.090 and 419A.092.

19 (19) “Parent” means the biological or adoptive mother and the legal par-
20 ent of the child, ward, youth or youth offender. As used in this subsection,
21 “legal parent” means:

22 (a) A person who has adopted the child, ward, youth or youth offender
23 or whose parentage has been established or declared under ORS 25.501 to
24 25.556 or 109.065 or by a juvenile court; and

25 (b) In cases in which [*the Indian Child Welfare Act applies*] **sections 1**
26 **to 20 of this 2020 Act apply**, a man [*who is a father under applicable tribal*
27 *law*] **whose paternity has been established as described in section 5 of**
28 **this 2020 Act.**

29 (20) “Permanent foster care” means an out-of-home placement in which
30 there is a long-term contractual foster care agreement between the foster
31 parents and the department that is approved by the juvenile court and in

1 which the foster parents commit to raise a ward in substitute care or youth
2 offender until the age of majority.

3 (21) “Public building” has the meaning given that term in ORS 166.360.

4 (22) “Proctor foster home” has the meaning given that term in ORS
5 418.205.

6 (23) “Qualified residential treatment program” means a program described
7 in ORS 419B.356.

8 (24) “Reasonable and prudent parent standard” means the standard,
9 characterized by careful and sensible parental decisions that maintain the
10 health, safety and best interests of a child or ward while encouraging the
11 emotional and developmental growth of the child or ward, that a substitute
12 care provider shall use when determining whether to allow a child or ward
13 in substitute care to participate in extracurricular, enrichment, cultural and
14 social activities.

15 (25) “Reasonable time” means a period of time that is reasonable given a
16 child or ward’s emotional and developmental needs and ability to form and
17 maintain lasting attachments.

18 (26) “Records” means any information in written form, pictures, photo-
19 graphs, charts, graphs, recordings or documents pertaining to a case.

20 (27) “Resides” or “residence,” when used in reference to the residence of
21 a child, ward, youth or youth offender, means the place where the child,
22 ward, youth or youth offender is actually living or the jurisdiction in which
23 wardship or jurisdiction has been established.

24 (28) “Restitution” has the meaning given that term in ORS 137.103.

25 (29) “Serious physical injury” means:

26 (a) A serious physical injury as defined in ORS 161.015; or

27 (b) A physical injury that:

28 (A) Has a permanent or protracted significant effect on a child’s daily
29 activities;

30 (B) Results in substantial and recurring pain; or

31 (C) In the case of a child under 10 years of age, is a broken bone.

1 (30) “Shelter care” means a home or other facility suitable for the safe-
2 keeping of a child, ward, youth or youth offender who is taken into tempo-
3 rary custody pending investigation and disposition.

4 (31) “Short-term detention facility” means a facility established under
5 ORS 419A.050 (3) for holding youths and youth offenders pending further
6 placement.

7 (32) “Sibling” means one of two or more children or wards related:

8 (a) By blood or adoption through a common legal parent; or

9 (b) Through the marriage of the children’s or wards’ legal or biological
10 parents.

11 (33)(a) “Substitute care” means an out-of-home placement directly super-
12 vised by the department or other agency, including placement in a foster
13 family home, group home, child-caring agency as defined in ORS 418.205 or
14 other child caring institution or facility.

15 (b) “Substitute care” does not include care in:

16 (A) A detention facility, forestry camp or youth correction facility;

17 (B) A family home that the court has approved as a ward’s permanent
18 placement, when a child-caring agency as defined in ORS 418.205 has been
19 appointed guardian of the ward and when the ward’s care is entirely pri-
20 vately financed;

21 (C) In-home placement subject to conditions or limitations;

22 (D) A facility or other entity that houses or provides services only to
23 youth offenders committed to the custody of the Oregon Youth Authority by
24 the juvenile court; or

25 (E) A youth offender foster home as that term is defined in ORS 420.888.

26 (34) “Surrogate” means a person appointed by the court to protect the
27 right of the child, ward, youth or youth offender to receive procedural safe-
28 guards with respect to the provision of free appropriate public education.

29 (35) “Tribal court” [*means a court with jurisdiction over child custody*
30 *proceedings and that is either a Court of Indian Offenses, a court established*
31 *and operated under the code of custom of an Indian tribe or any other ad-*

1 *ministrative body of a tribe that is vested with authority over child custody*
2 *proceedings]* **has the meaning given that term in section 3 of this 2020**
3 **Act.**

4 (36) “Victim” means any person determined by the district attorney, the
5 juvenile department or the court to have suffered direct financial, psycho-
6 logical or physical harm as a result of the act that has brought the youth
7 or youth offender before the juvenile court. When the victim is a minor,
8 “victim” includes the legal guardian of the minor. The youth or youth
9 offender may not be considered the victim. When the victim of the crime
10 cannot be determined, the people of Oregon, as represented by the district
11 attorney, are considered the victims.

12 (37) “Violent felony” means any offense that, if committed by an adult,
13 would constitute a felony and:

- 14 (a) Involves actual or threatened serious physical injury to a victim; or
- 15 (b) Is a sexual offense. As used in this paragraph, “sexual offense” has the
16 meaning given the term “sex crime” in ORS 163A.005.

17 (38) “Ward” means a person within the jurisdiction of the juvenile court
18 under ORS 419B.100.

19 (39) “Young person” means a person who has been found responsible ex-
20 cept for insanity under ORS 419C.411 and placed under the jurisdiction of
21 the Psychiatric Security Review Board.

22 (40) “Youth” means a person under 18 years of age who is alleged to have
23 committed an act that is a violation, or, if done by an adult would constitute
24 a violation, of a law or ordinance of the United States or a state, county or
25 city.

26 (41) “Youth care center” has the meaning given that term in ORS 420.855.

27 (42) “Youth offender” means a person who has been found to be within
28 the jurisdiction of the juvenile court under ORS 419C.005 for an act com-
29 mitted when the person was under 18 years of age.

30

31

(Jurisdiction)

1 **SECTION 24.** ORS 419B.100 is amended to read:

2 419B.100. (1) Except as otherwise provided in subsection (5) of this section
3 and ORS 107.726, the juvenile court has exclusive original jurisdiction in any
4 case involving a person who is under 18 years of age and:

5 (a) Who is beyond the control of the person's parents, guardian or other
6 person having custody of the person;

7 (b) Whose behavior is such as to endanger the welfare of the person or
8 of others;

9 (c) Whose condition or circumstances are such as to endanger the welfare
10 of the person or of others;

11 (d) Who is dependent for care and support on a public or private child-
12 caring agency that needs the services of the court in planning for the best
13 interest of the person;

14 (e) Whose parents or any other person or persons having custody of the
15 person have:

16 (A) Abandoned the person;

17 (B) Failed to provide the person with the care or education required by
18 law;

19 (C) Subjected the person to cruelty, depravity or unexplained physical
20 injury; or

21 (D) Failed to provide the person with the care, guidance and protection
22 necessary for the physical, mental or emotional well-being of the person;

23 (f) Who is a runaway;

24 (g) Who has filed a petition for emancipation pursuant to ORS 419B.550
25 to 419B.558; or

26 (h) Who is subject to an order entered under ORS 419C.411 (7)(a).

27 (2) The court shall have jurisdiction under subsection (1) of this section
28 even though the child is receiving adequate care from the person having
29 physical custody of the child.

30 (3) The provisions of subsection (1) of this section do not prevent a court
31 of competent jurisdiction from entertaining a civil action or suit involving

1 a child.

2 (4) The court does not have further jurisdiction as provided in subsection
3 (1) of this section after a minor has been emancipated pursuant to ORS
4 419B.550 to 419B.558.

5 (5)[(a)] [*An Indian tribe has exclusive*] **Tribal** jurisdiction over any child
6 custody proceeding involving an Indian child **is determined as provided in**
7 **section 9 of this 2020 Act** [*who resides or is domiciled within the reservation*
8 *of the tribe, except where the jurisdiction is otherwise vested in the state by*
9 *existing federal law*].

10 [(b) *Upon the petition of either parent, the Indian custodian or the Indian*
11 *child's tribe, the juvenile court, absent good cause to the contrary and absent*
12 *objection by either parent, shall transfer a proceeding for the foster care*
13 *placement of, or termination of parental rights to, an Indian child not*
14 *domiciled or residing within the reservation of the Indian child's tribe, to the*
15 *jurisdiction of the tribe.*]

16 [(c) *The juvenile court shall give full faith and credit to the public acts,*
17 *records and judicial proceedings of an Indian tribe applicable to an Indian*
18 *child custody proceeding to the same extent that the juvenile court gives full*
19 *faith and credit to the public acts, records and judicial proceedings of any*
20 *other entity.*]

21

22 **(Protective Custody; Placement)**

23

24 **SECTION 25.** ORS 419B.150 is amended to read:

25 419B.150. (1) As used in this section:

26 (a) "Abuse" has the meaning given that term in ORS 419B.005.

27 (b) "Reasonable cause" means a subjectively and objectively reasonable
28 belief, given all of the circumstances and based on specific and articulable
29 facts.

30 (c) "Severe harm" means:

31 (A) Life-threatening damage; or

1 (B) Significant or acute injury to a person's physical, sexual or psycho-
2 logical functioning.

3 (2) The following persons are authorized to take a child into protective
4 custody under this section:

5 (a) A peace officer, as defined in ORS 420.905;

6 (b) A counselor; or

7 (c) An employee of the Department of Human Services.

8 **(3)(a) Prior to taking a child into protective custody under this**
9 **section, the person taking the child into protective custody shall de-**
10 **termine whether there is reason to know the child is an Indian child,**
11 **as provided in section 12 of this 2020 Act.**

12 **(b) If there is reason to know the child is an Indian child, the re-**
13 **quirements of section 13 (1) of this 2020 Act must be met prior to**
14 **taking the child into protective custody.**

15 ~~[(3)(a)]~~ (4)(a) Except as provided in paragraph (b) of this subsection, a
16 child may be taken into protective custody without a court order only when
17 there is reasonable cause to believe that:

18 (A) There is an imminent threat of severe harm to the child;

19 (B) The child poses an imminent threat of severe harm to self or others;

20 or

21 (C) There is an imminent threat that the child's parent or guardian will
22 cause the child to be beyond the reach of the juvenile court before the court
23 can order that the child be taken into protective custody under subsection
24 ~~[(6)]~~ (7) of this section.

25 (b) If there is reason to know that the child is an Indian child, the child
26 may be taken into protective custody without a court order only when it is
27 necessary to prevent imminent physical damage or harm to the child.

28 ~~[(4)]~~ (5) A person authorized to take a child into protective custody shall
29 apply for a protective custody order, as described in subsection ~~[(6)]~~ (7) of
30 this section, by submitting a declaration based on information and belief that
31 sets forth with particularity:

1 (a) Why protective custody is necessary and the least restrictive means
2 available to:

3 (A) Protect the child from abuse;

4 (B) Prevent the child from inflicting harm on self or others;

5 (C) Ensure that the child remains within the reach of the juvenile court
6 to protect the child from abuse or to prevent the child from inflicting harm
7 on self or others; or

8 (D) If the department knows or has reason to know that the child is an
9 Indian child, prevent imminent physical damage or harm to the child.

10 (b) Why protective custody is in the best interests of the child.

11 ~~[(5)(a)]~~ **(6)(a)** The applicant under subsection ~~[(4)]~~ **(5)** of this section shall
12 deliver the declaration described in subsection ~~[(4)]~~ **(5)** of this section to the
13 juvenile court.

14 (b) At the applicant's request, instead of the declaration described in
15 subsection ~~[(4)]~~ **(5)** of this section, the judge may take an oral statement
16 under oath. If the applicant makes the oral statement to the judge out of
17 court, the applicant shall record the oral statement and retain a copy of the
18 recording. The recording constitutes a declaration for the purposes of sub-
19 section ~~[(4)]~~ **(5)** of this section.

20 ~~[(6)]~~ **(7)** The juvenile court may order that a child be taken into protective
21 custody if, after reviewing the declaration described in subsection ~~[(4)]~~ **(5)**
22 of this section, the court determines that:

23 (a) Protective custody is necessary and the least restrictive means avail-
24 able to:

25 (A) Protect the child from abuse;

26 (B) Prevent the child from inflicting harm on self or others;

27 (C) Ensure that the child remains within the reach of the juvenile court
28 to protect the child from abuse or prevent the child from inflicting harm on
29 self or others;

30 (D) Ensure the safety of a child who has run away from home; or

31 (E) If the department knows or has reason to know that the child is an

1 Indian child, prevent imminent physical damage or harm to the child; and

2 (b) Protective custody is in the best interests of the child.

3 [(7)] (8) When the court issues a protective custody order under sub-
4 section [(6)] (7) of this section, the court may transmit the signed order to
5 the applicant by a form of electronic communication approved by the court
6 that delivers a complete printable image of the signed order. The court shall
7 file the original order in the court record.

8 **SECTION 26.** ORS 419B.171 is amended to read:

9 419B.171. (1) Except where the child is taken into protective custody
10 pursuant to an order of the court, the person taking the child into protective
11 custody shall promptly file with the court or a counselor a brief written re-
12 port stating all of the following:

13 [(1)] (a) The child's name, age and address.

14 [(2)] (b) The name and address of the person having legal or physical
15 custody of the child.

16 [(3)] (c) Efforts to notify the person having legal or physical custody of
17 the child and the results of those efforts.

18 [(4)] (d) Reasons for and circumstances under which the child was taken
19 into protective custody.

20 [(5)] (e) If the child is not taken to court, the placement of the child.

21 [(6)] (f) If the child was not released, the reason why the child was not
22 released.

23 [(7)] (g) If the child is not taken to court, why the type of placement was
24 chosen.

25 [(8)] (h) Efforts to determine whether [*the child or the parents have any*
26 *Indian heritage*] **there is reason to know that the child is an Indian**
27 **child, as required under section 12 of this 2020 Act**, and the results of
28 those efforts.

29 (2) If **there is reason to know that** the child is an Indian child[, *the*
30 *placement of the child shall be according to the preferences and criteria set*
31 *out in the Indian Child Welfare Act.*], **the report under subsection (1) of**

1 **this section must also include:**

2 **(a) The name and address of the Indian child's parents and, if any,**
3 **Indian custodians;**

4 **(b) The steps taken to provide notice under section 13 (1) of this 2020**
5 **Act about the emergency proceeding to the Indian child's tribe;**

6 **(c) If the Indian child's parents or Indian custodians are unknown,**
7 **a detailed explanation of what efforts have been made to locate and**
8 **contact them, including contact with the appropriate United States**
9 **Bureau of Indian Affairs Regional Director;**

10 **(d) The tribal affiliation of the Indian child and the Indian child's**
11 **parents or Indian custodians;**

12 **(e) The residence and the domicile of the Indian child;**

13 **(f) If either the residence or the domicile of the Indian child is be-**
14 **lieved to be on a reservation or in an Alaska Native village, the name**
15 **of the tribe affiliated with that reservation or village;**

16 **(g) A specific and detailed account of the circumstances that led the**
17 **person responsible for the emergency removal of the Indian child to**
18 **determine that the Indian child was at risk of imminent physical**
19 **damage or harm and to remove the Indian child;**

20 **(h) If the Indian child is believed to reside or be domiciled on a**
21 **reservation, a statement describing the efforts that were made and are**
22 **being made to contact the tribe and transfer the Indian child to the**
23 **tribe's jurisdiction; and**

24 **(i) A statement of the efforts that have been taken to assist the**
25 **Indian child's parents or Indian custodians so the Indian child may**
26 **remain in or safely be returned to the custody of the Indian child's**
27 **parents or Indian custodians.**

28 **SECTION 27.** 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
30 protective custody pursuant to ORS 419B.150, **419B.152**, 419B.160, 419B.165,
31 419B.168 [*and*] **or** 419B.171 [*or ORS 419B.152*] and placed in shelter care, a

1 parent, child or ward shall be given the opportunity to present evidence to
2 the court at the hearings specified in ORS 419B.183, and at any subsequent
3 review hearing, that the child or ward can be returned home without further
4 danger of suffering physical injury or emotional harm, endangering or
5 harming others, or not remaining within the reach of the court process prior
6 to adjudication. At the hearing:

7 (a) The court shall make written findings as to:

8 **(A) Whether there is reason to know, as described in section 12 of**
9 **this 2020 Act, that the child is an Indian child; and**

10 **(B) Whether the Department of Human Services has made reasonable ef-**
11 **forts or, if [the Indian Child Welfare Act applies] there is reason to know**
12 **the child is an Indian child, active efforts pursuant to section 15 of this**
13 **2020 Act to prevent or eliminate the need for removal of the child or ward**
14 **from the home and to make it possible for the child or ward to safely return**
15 **home. When the court finds that no services were provided but that reason-**
16 **able services would not have eliminated the need for protective custody, the**
17 **court shall consider the department to have made reasonable efforts or, if**
18 **[the Indian Child Welfare Act applies] there is reason to know that the**
19 **child is an Indian child, active efforts to prevent or eliminate the need for**
20 **protective custody. The court shall include in the written findings a brief**
21 **description of the preventive and reunification efforts made by the depart-**
22 **ment.**

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

26 (c) In determining whether the department has made reasonable efforts
27 or, if [the Indian Child Welfare Act applies] **there is reason to know the**
28 **child is an Indian child, active efforts to prevent or eliminate the need for**
29 **removal of the child or ward from the home and to make it possible for the**
30 **child or ward to safely return home, the court shall consider the child or**
31 **ward's health and safety the paramount concerns.**

1 **(d) The court shall determine whether the child or ward is an In-**
2 **dian child as defined in section 3 of this 2020 Act.**

3 [(d)] **(e) The court shall make a written finding in every order of removal**
4 **that describes why it is in the best interests of the child or ward that the**
5 **child or ward be removed from the home or continued in care or, if the**
6 **court determines under paragraph (d) of this subsection that the child**
7 **or ward is an Indian child, why the Indian child’s removal or contin-**
8 **uation in care is necessary to prevent the risk of imminent physical**
9 **damage or harm to the Indian child.**

10 [(e)] **(f) When the court determines that a child or ward shall be removed**
11 **from the home or continued in care, the court shall make written findings**
12 **whether the department made diligent efforts pursuant to ORS 419B.192 or,**
13 **if the court determines the child or ward is an Indian child, section**
14 **20 of this 2020 Act.** The court shall include in its written findings a brief
15 description of the efforts made by the department.

16 [(f) *The court shall determine whether the child or ward is an Indian child*
17 *as defined in ORS 419A.004 or in the applicable State-Tribal Indian Child*
18 *Welfare Agreement.*]

19 (g) The court may receive testimony, reports and other evidence without
20 regard to whether the evidence is admissible under ORS 40.010 to 40.210 and
21 40.310 to 40.585 if the evidence is relevant to the determinations and findings
22 required under this section. As used in this paragraph, “relevant evidence”
23 has the meaning given that term in ORS 40.150.

24 (2) To aid the court in making the written findings required by subsection
25 (1)(a), [(d) and] (e) **or (f)** of this section, the department shall present written
26 documentation to the court outlining:

27 (a) The efforts made to prevent taking the child or ward into protective
28 custody and to provide services to make it possible for the child or ward to
29 safely return home;

30 (b) The efforts the department made pursuant to ORS 419B.192 **or, if**
31 **there is reason to know the child or ward is an Indian child, section**

1 **20 of this 2020 Act; and**

2 (c) Why protective custody is in the best interests of the child or ward
3 **or, if there is reason to know the child or ward is an Indian child, why**
4 **protective custody is necessary to prevent the risk of imminent phys-**
5 **ical damage or harm to the Indian child.**

6 **(3)(a) The court may not enter an order taking a child or ward into**
7 **protective custody under this section unless the department provides**
8 **documentation that it has inquired as to the Indian status or tribal**
9 **affiliation of the child or ward as required under section 12 of this 2020**
10 **Act.**

11 (b) If there is reason to know that the child is an Indian child, the
12 court may not enter an order taking a child into protective custody
13 unless:

14 (A) The court determines that the department has complied with
15 the notice requirements under section 13 of this 2020 Act; and

16 (B) After holding a hearing, the court finds in writing that a pre-
17 ponderance of the evidence indicates that protective custody is neces-
18 sary to prevent imminent physical damage or harm to the child.

19 (c)(A) If there is reason to know the child or ward is an Indian child
20 and the court enters a protective custody order under this section, the
21 order must direct the department to immediately notify the court if
22 new information indicates that the emergency necessitating the pro-
23 tective custody of the Indian child has changed.

24 (B) Whenever the court receives notice from the department that
25 the circumstances necessitating the protective custody of the Indian
26 child have changed, the court shall promptly hold a hearing under this
27 section to determine whether protective custody continues to be nec-
28 essary.

29 (C) The court shall immediately terminate the protective custody
30 of an Indian child if the court determines that protective custody is
31 no longer necessary to prevent imminent physical damage or harm to

1 **the Indian child.**

2 **(d) If there is reason to know the child is an Indian child, a pro-**
3 **TECTIVE ORDER UNDER THIS SECTION MAY NOT BE CONTINUED FOR MORE THAN**
4 **30 DAYS UNLESS THE COURT:**

5 **(A) Has commenced a hearing on the petition for protective cus-**
6 **tody;**

7 **(B) Determines that restoring the Indian child to a parent of the**
8 **Indian child or the Indian child's custodian would subject the Indian**
9 **child to imminent physical damage or harm;**

10 **(C) Has been unable to transfer the proceeding to the jurisdiction**
11 **of the Indian child's tribe; or**

12 **(D) Has been unable to commence a hearing on the petition for**
13 **protective custody for a reason other than scheduling or availability**
14 **of counsel and the reason has been documented in writing on the re-**
15 **cord.**

16 **SECTION 28.** ORS 419B.192 is amended to read:

17 419B.192. (1) If the court finds that a child or ward is in need of place-
18 ment or continuation in substitute care, there shall be a preference given to
19 placement of the child or ward with relatives and persons who have a
20 caregiver relationship with the child or ward as defined in ORS 419B.116.
21 The Department of Human Services shall make diligent efforts to place the
22 child or ward with such persons and shall report to the court the efforts
23 made by the department to effectuate that placement.

24 (2) If a child or ward in need of placement or continuation in substitute
25 care has a sibling also in need of placement or continuation in substitute
26 care, the department shall make diligent efforts to place the siblings together
27 and shall report to the court the efforts made by the department to carry out
28 the placement, unless the court finds that placement of the siblings together
29 is not in the best interests of the child or the ward or the child's or the
30 ward's sibling.

31 (3) In attempting to place the child or ward pursuant to subsections (1)

1 and (2) of this section, the department shall consider, but not be limited to
2 considering, the following:

3 (a) The ability of the person being considered to provide safety for the
4 child or ward, including a willingness to cooperate with any restrictions
5 placed on contact between the child or ward and others, and to prevent
6 anyone from influencing the child or ward in regard to the allegations of the
7 case;

8 (b) The ability of the person being considered to support the efforts of the
9 department to implement the permanent plan for the child or ward;

10 (c) The ability of the person being considered to meet the child or ward's
11 physical, emotional and educational needs, including the child or ward's need
12 to continue in the same school or educational placement;

13 (d) Which person has the closest existing personal relationship with the
14 child or ward if more than one person requests to have the child or ward
15 placed with them pursuant to this section; and

16 (e) The ability of the person being considered to provide a placement for
17 the child's or ward's sibling who is also in need of placement or continuation
18 in substitute care.

19 (4) When the court is required to make findings regarding the
20 department's diligent efforts to place a child or ward with relatives or per-
21 sons with a caregiver relationship under subsection (1) of this section, and
22 the court determines that, contrary to the placement decision of the depart-
23 ment, placement with a relative is not in the best interest of the child or
24 ward under ORS 419B.349, the court shall make written findings setting forth
25 the reasons why the court finds that placement of the child or ward with an
26 available relative is not in the best interest of the child.

27 (5) Notwithstanding subsections (1) to [(3)] (4) of this section, in cases
28 where [*the Indian Child Welfare Act applies, the placement preferences of the*
29 *Indian Child Welfare Act shall be followed*] **there is reason to know the**
30 **child or ward is an Indian child, the placement preferences under**
31 **section 20 of this 2020 Act shall be followed.**

1 **SECTION 29.** ORS 419B.340 is amended to read:

2 419B.340. (1) If the court awards custody to the Department of Human
3 Services, the court shall include in the disposition order a determination
4 whether the department has made reasonable efforts or, if [*the Indian Child*
5 *Welfare Act applies*] **the ward is an Indian child**, active efforts to prevent
6 or eliminate the need for removal of the ward from the home. If the ward
7 has been removed prior to the entry of the order, the order shall also include
8 a determination whether the department has made reasonable or active ef-
9 forts to make it possible for the ward to safely return home. In making the
10 determination under this subsection, the court shall consider the ward's
11 health and safety the paramount concerns.

12 (2) In support of its determination whether reasonable or active efforts
13 have been made by the department, the court shall enter a brief description
14 of what preventive and reunification efforts were made and why further ef-
15 forts could or could not have prevented or shortened the separation of the
16 family.

17 (3) When the first contact with the family has occurred during an emer-
18 gency in which the ward could not remain without jeopardy at home even
19 with reasonable services being provided, the department shall be considered
20 to have made reasonable or active efforts to prevent or eliminate the need
21 for removal.

22 (4) When the court finds that preventive or reunification efforts have not
23 been reasonable or active, but further preventive or reunification efforts
24 could not permit the ward to remain without jeopardy at home, the court
25 may authorize or continue the removal of the ward.

26 (5) If a court determines that one of the following circumstances exist,
27 the juvenile court may make a finding that the department is not required
28 to make reasonable efforts to make it possible for the ward to safely return
29 home:

30 (a) Aggravated circumstances including, but not limited to, the following:

31 (A) The parent by abuse or neglect has caused the death of any child;

1 (B) The parent has attempted, solicited or conspired, as described in ORS
2 161.405, 161.435 or 161.450 or under comparable laws of any jurisdiction, to
3 cause the death of any child;

4 (C) The parent by abuse or neglect has caused serious physical injury to
5 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 tor-
8 ture;

9 (F) The parent has abandoned the ward as described in ORS 419B.100
10 (1)(e); or

11 (G) The parent has unlawfully caused the death of the other parent of the
12 ward;

13 (b) The parent has been convicted in any jurisdiction of one of the fol-
14 lowing crimes:

15 (A) Murder of another child of the parent, which murder would have been
16 an offense under 18 U.S.C. 1111(a);

17 (B) Manslaughter in any degree of another child of the parent, which
18 manslaughter would have been an offense under 18 U.S.C. 1112(a);

19 (C) Aiding, abetting, attempting, conspiring or soliciting to commit an
20 offense described in subparagraph (A) or (B) of this paragraph; or

21 (D) Felony assault that results in serious physical injury to the ward or
22 another child of the parent; or

23 (c) The parent's rights to another child have been terminated involuntar-
24 ily.

25 (6) If, pursuant to a determination under subsection (5) of this section, the
26 juvenile court makes a finding that the department is not required to make
27 reasonable efforts to prevent or eliminate the need for removal of the ward
28 from the home or to make it possible for the ward to safely return home, and
29 the department determines that it will not make such efforts, the court shall
30 conduct a permanency hearing as provided in ORS 419B.470 no later than 30
31 days after the judicial finding under subsection (5) of this section.

1 (7) When [*an Indian child is involved*] **the ward is an Indian child**, the
 2 department must satisfy the court that active efforts, **as described in sec-**
 3 **tion 15 of this 2020 Act**, have been made to provide remedial services and
 4 rehabilitative programs designed to prevent the breakup of the Indian family
 5 and that these efforts have proven unsuccessful. Foster care placement may
 6 not be ordered in a proceeding in the absence of a determination, supported
 7 by clear and convincing evidence, including the testimony of [*expert wit-*
 8 *nesses*] **a qualified expert witness under section 14 of this 2020 Act**, that
 9 the continued custody of the Indian child by the parent or Indian custodian
 10 is likely to result in serious emotional or physical injury to the Indian child.

11
 12 **(Hearings)**
 13

14 **SECTION 30.** ORS 419B.305 is amended to read:

15 419B.305. (1) Except as otherwise provided in this section, no later than
 16 60 days **or, if there is reason to know as described in section 12 of this**
 17 **2020 Act that the child is an Indian child, 30 days** after a petition alleg-
 18 ing that a child is within the jurisdiction of the court under ORS 419B.100
 19 has been filed, the court shall hold a hearing on the petition and enter an
 20 order under ORS 419B.325 (1). Upon written order supported by factual
 21 findings of good cause, the court may continue a petition beyond 60 days **or,**
 22 **if there is reason to know the child is an Indian child, 30 days.**

23 (2) No later than 30 days after a petition alleging jurisdiction under ORS
 24 419B.100 is filed, all parties shall comply with ORS 419B.881.

25 (3) When a person denies allegations in the petition, the court shall set
 26 the case for a hearing within the time limits prescribed by subsection (1) of
 27 this section. Upon written order supported by factual findings of good cause,
 28 the court may continue the hearing beyond the 60-day time limit.

29 (4) Upon expiration of any continuance granted by this section, the court
 30 shall give a petition filed under ORS 419B.100 that is beyond the time limit
 31 imposed by subsection (1) of this section the highest priority on the court

1 docket.

2 **SECTION 31.** ORS 419B.310 is amended to read:

3 419B.310. (1) [*The*] **A hearing described in ORS 419B.305** shall be held
4 by the court without a jury and may be continued from time to time. During
5 the hearing of a case filed pursuant to ORS 419B.100, the court, on its own
6 motion or upon the motion of a party, may take testimony from any child
7 appearing as a witness and may exclude the child's parents and other persons
8 if the court finds such action would be likely to be in the best interests of
9 the child. However, the court [*shall*] **may** not exclude the attorney for each
10 party and the testimony shall be reported.

11 (2) Stenographic notes or other report of the hearings shall be taken only
12 when required by the court.

13 (3) **Except as otherwise provided in this section,** the facts alleged in
14 the petition showing the child to be within the jurisdiction of the court as
15 provided in ORS 419B.100 (1), unless admitted, must be established:

16 (a) By a preponderance of competent evidence; **or**

17 (b) **If there is reason to know the child is an Indian child, by clear**
18 **and convincing evidence.**

19 (4)(a) **At any hearing of a case filed pursuant to ORS 419B.100, the**
20 **court shall determine whether there is reason to know under section**
21 **12 of this 2020 Act that the child is an Indian child.**

22 (b) **If there is reason to know that the child is an Indian child, the**
23 **jurisdictional requirements of section 9 of this 2020 Act must be met**
24 **before the court may assume jurisdiction of the case.**

25 **SECTION 32.** ORS 419B.325 is amended to read:

26 419B.325. (1) At the termination of the hearing or hearings in the pro-
27 ceeding, the court shall enter an appropriate order directing the disposition
28 to be made of the case.

29 (2) For the purpose of determining proper disposition of the ward, testi-
30 mony, reports or other material relating to the ward's mental, physical and
31 social history and prognosis may be received by the court without regard to

1 their competency or relevancy under the rules of evidence.

2 **(3) If there is reason to know under section 12 of this 2020 Act that**
3 **the ward is an Indian child, the court's order under this section must**
4 **be in compliance with the placement preferences for Indian children**
5 **under section 20 of this 2020 Act.**

6 **SECTION 33.** ORS 419B.331 is amended to read:

7 419B.331. **Except as provided in sections 1 to 20 of this 2020 Act,** when
8 the court determines it would be in the best interest and welfare of a ward,
9 the court may place the ward under protective supervision. The court may
10 direct that the ward remain in the legal custody of the ward's parents or
11 other person with whom the ward is living, or the court may direct that the
12 ward be placed in the legal custody of some relative or some person main-
13 taining a foster home approved by the court, or in a child care center or a
14 youth care center authorized to accept the ward. The court may specify
15 particular requirements to be observed during the protective supervision
16 consistent with recognized juvenile court practice, including but not limited
17 to restrictions on visitation by the ward's parents, restrictions on the ward's
18 associates, occupation and activities, restrictions on and requirements to be
19 observed by the person having the ward's legal custody, and requirements for
20 visitation by and consultation with a juvenile counselor or other suitable
21 counselor.

22 **SECTION 34.** ORS 419B.337 is amended to read:

23 419B.337. (1) When the court determines it would be in the best interest
24 and for the welfare of a ward, the court may place the ward in the legal
25 custody of the Department of Human Services for care, placement and
26 supervision. When the court enters an order removing a ward from the
27 ward's home or an order continuing care, the court shall make a written
28 finding as to whether:

29 (a) Removal of the ward from the ward's home or continuation of care is
30 in the best interest and for the welfare of the ward;

31 (b) Reasonable efforts, considering the circumstances of the ward and

1 parent, have been made to prevent or eliminate the need for removal of the
2 ward from the home or to make it possible for the ward to safely return
3 home. In making this finding, the court shall consider the ward's health and
4 safety the paramount concerns; and

5 (c) Diligent efforts have been made to place the ward pursuant to ORS
6 419B.192 **or, if there is reason to know as described in section 12 of this**
7 **2020 Act that the ward is an Indian child, section 20 of this 2020 Act.**

8 (2) The court may specify the particular type of care, supervision or ser-
9 vices to be provided by the Department of Human Services to wards placed
10 in the department's custody and to the parents or guardians of the wards,
11 but the actual planning and provision of such care, supervision or services
12 is the responsibility of the department. The department may place the ward
13 in a child care center authorized to accept the ward.

14 (3) The court may make an order regarding visitation by the ward's par-
15 ents or siblings. The Department of Human Services is responsible for de-
16 veloping and implementing a visitation plan consistent with the court's
17 order.

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

21 (5) If the ward has been placed in the custody of the Department of Hu-
22 man Services, the court shall make no commitment directly to any residen-
23 tial facility, but shall cause the ward to be delivered into the custody of the
24 department at the time and place fixed by rules of the department. A ward
25 so committed may not be placed in a Department of Corrections institution.

26 (6) Commitment of a ward to the Department of Human Services contin-
27 ues until dismissed by the court or until the ward becomes 21 years of age.

28 (7) A court may dismiss commitment of a ward to the Department of Hu-
29 man Services if:

30 (a)(A) Dismissal is appropriate because the ward has been safely reunited
31 with a parent or because a safe alternative to reunification has been imple-

1 mented for the ward; and

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

4 (i) The department has provided case planning pursuant to ORS 419B.343
5 that addresses the ward's needs and goals for a transition to successful
6 adulthood, including needs and goals relating to housing, physical and men-
7 tal health, education, employment, community connections and supportive
8 relationships;

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

11 (iii) The department has involved the ward in the development of the case
12 plan and in the provision of appropriate services; and

13 (iv) The ward has safe and stable housing and is unlikely to become
14 homeless as a result of dismissal of commitment of the ward to the depart-
15 ment; or

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

18 **(8) If there is reason to know that the ward is an Indian child, the**
19 **court shall review the placement of the ward no less than every 30**
20 **days and make a determination whether the ward will continue in**
21 **substitute care as required under ORS 419B.185.**

22 **SECTION 35.** ORS 419B.476 is amended to read:

23 419B.476. (1) A permanency hearing shall be conducted in the manner
24 provided in ORS 418.312, 419B.310, 419B.812 to 419B.839 and 419B.908, except
25 that the court may receive testimony and reports as provided in ORS
26 419B.325.

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

28 (a) If the case plan at the time of the hearing is to reunify the family,
29 determine whether the Department of Human Services has made reasonable
30 efforts or, if [*the Indian Child Welfare Act applies*] **there is reason to know**
31 **as described in section 12 of this 2020 Act that the ward is an Indian**

1 **child**, active efforts **as described in section 15 of this 2020 Act** to make
2 it possible for the ward to safely return home and whether the parent has
3 made sufficient progress to make it possible for the ward to safely return
4 home. In making its determination, the court shall consider:

5 **(A) Except as provided in subparagraph (B) of this paragraph**, the
6 ward's health and safety the paramount concerns.

7 **(B) If there is reason to know the ward is an Indian child, the court**
8 **may not change the case plan to something other than to reunify the**
9 **family unless the court determines, by clear and convincing evidence,**
10 **that:**

11 **(i) Active efforts as described in section 15 of this 2020 Act were**
12 **provided to make it possible for the Indian child to safely return home;**

13 **(ii) Those active efforts failed to eliminate the necessity for con-**
14 **tinued removal based on serious emotional or physical damage to the**
15 **ward;**

16 **(iii) The parent has not made sufficient progress to make it possible**
17 **for the Indian child to safely return home; and**

18 **(iv) The new permanency plan complies with the placement prefer-**
19 **ences for Indian children under section 20 of this 2020 Act.**

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

26 (c) If the case plan at the time of the hearing is something other than to
27 reunify the family, determine whether the department has considered per-
28 manent placement options for the ward, including, if appropriate, whether
29 the department has considered both permanent in-state placement options
30 and permanent interstate placement options for the ward.

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

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

5 (a) Whether the plan is adequate to ensure the ward's transition to suc-
6 cessful adulthood;

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

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

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

12 (a) If the case plan changed during the period since the last review by a
13 local citizen review board or court hearing and a plan to reunify the family
14 was in effect for any part of that period, determine whether the department
15 has made reasonable efforts or, if [*the Indian Child Welfare Act applies*]
16 **there is reason to know as described in section 12 of this 2020 Act that**
17 **the ward is an Indian child**, active efforts **as described in section 15 of**
18 **this 2020 Act** to make it possible for the ward to safely return home. In
19 making its determination, the court shall consider the ward's health and
20 safety the paramount concerns[;]. **If there is reason to know the ward is**
21 **an Indian child and the court finds that active efforts were not pro-**
22 **vided to make it possible for the ward to safely return home, the court**
23 **may not change the permanency plan to something other than to re-**
24 **unify the family. The court may not set a date for a new permanency**
25 **hearing earlier than the passage of the number of days active efforts**
26 **were not previously provided.**

27 (b) If the case plan changed during the period since the last review by a
28 local citizen review board or court hearing and a plan other than to reunify
29 the family was in effect for any part of that period, determine whether the
30 department has made reasonable efforts to place the ward in a timely manner
31 in accordance with the plan, including, if appropriate, placement of the ward

1 through an interstate placement, and to complete the steps necessary to fi-
2 nalize the permanent placement[;].

3 (c) If the court determines that further efforts will make it possible for
4 the ward to safely return home within a reasonable time, order that the
5 parents participate in specific services for a specific period of time and make
6 specific progress within that period of time[;].

7 (d) Determine the adequacy and compliance with the case plan and the
8 case progress report[;].

9 (e) Review the efforts made by the department to develop the concurrent
10 permanent plan, including but not limited to identification of appropriate
11 permanent in-state placement options and appropriate permanent interstate
12 placement options and, if adoption is the concurrent case plan, identification
13 and selection of a suitable adoptive placement for the ward[;].

14 (f) Order the department to develop or expand the case plan or concurrent
15 permanent plan and provide a case progress report to the court and other
16 parties within 10 days after the permanency hearing[;].

17 (g) Order the department or agency to modify the care, placement and
18 supervision of the ward[;].

19 (h) Order the local citizen review board to review the status of the ward
20 prior to the next court hearing[; *or*].

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

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

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

29 (b) The court's determination of the permanency plan for the ward that
30 includes whether and, if applicable, when:

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

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

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

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

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

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

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

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

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

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

26 (A) Why another planned permanent living arrangement is in the ward's
27 best interests and a compelling reason, that must be documented by the de-
28 partment, why it would not be in the best interests of the ward to be re-
29 turned home, placed for adoption, placed with a legal guardian or placed
30 with a fit and willing relative; and

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

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

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

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

11 (i) If **there is reason to know that** an Indian child is involved, the tribal
12 affiliation of the ward.

13 (j) If the ward has been placed in an interstate placement, the court's
14 determination of whether the interstate placement continues to be appropri-
15 ate and in the best interests of the ward.

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

18 (7) If **there is reason to know that** an Indian child is involved, the court
19 shall follow the placement preference [*established by the Indian Child Wel-*
20 *fare Act*] **under section 20 of this 2020 Act.**

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

27 **SECTION 36.** ORS 419B.878 is amended to read:

28 419B.878. When a court conducts a hearing, the court shall inquire, **as**
29 **described in section 12 of this 2020 Act**, whether a child is an Indian child
30 [*subject to the Indian Child Welfare Act*]. If the court knows or has reason
31 to know that an Indian child is involved, the court shall enter an order re-

1 quiring the Department of Human Services to [*notify the Indian child's tribe*
2 *of the pending proceedings and of the tribe's right to intervene*] **comply with**
3 **the inquiry and notice provisions of sections 12 and 13 of this 2020 Act**
4 and shall enter an order that the [*case be treated as an Indian Child Welfare*
5 *Act case until such time as the court determines that the case is not an Indian*
6 *Child Welfare Act case*] **child be treated as an Indian child until such**
7 **time as the court determines that the child is not an Indian child.**

8
9 **(Guardianships)**

10
11 **SECTION 37.** ORS 419B.365 is amended to read:

12 419B.365. (1) At any time following establishment of jurisdiction and
13 wardship under ORS 419B.100, but prior to filing of a petition under ORS
14 419B.500, or after dismissal of a petition filed under ORS 419B.500 if it fails
15 to result in termination of the parent's rights, a party, or person granted
16 rights of limited participation for the purpose of filing a guardianship peti-
17 tion, may file, and the court may hear, a petition for permanent
18 guardianship. If the Department of Human Services chooses not to partic-
19 ipate in a proceeding initiated by an intervenor under ORS 419B.875, the
20 state is not foreclosed from filing a subsequent action should the intervenor's
21 petition be denied.

22 (2) The grounds for granting a permanent guardianship are the same as
23 those for termination of parental rights.

24 (3) The court shall grant a permanent guardianship if it finds by clear
25 and convincing evidence that:

26 (a) The grounds cited in the petition are true; and

27 (b) It is in the best interest of the ward that the parent never have
28 physical custody of the ward but that other parental rights and duties should
29 not be terminated.

30 (4)(a) **Notwithstanding subsection (3) of this section,** if an Indian
31 child is involved, [*the permanent guardianship must be in compliance with the*

1 *Indian Child Welfare Act. Notwithstanding subsection (3) of this section, the*
2 *facts supporting any finding made to establish a permanent guardianship for*
3 *an Indian child, including the finding that continued custody by the parents*
4 *or Indian custodian would result in serious emotional or physical harm to the*
5 *Indian child, must be established beyond a reasonable doubt.] **the court may***
6 **grant the permanent guardianship of the Indian child only if, after**
7 **inquiry as required under section 12 of this 2020 Act and notice as re-**
8 **quired under section 13 of this 2020 Act, and in addition to any other**
9 **findings required for the termination of parental rights under ORS**
10 **419B.500 to 419B.524, the court finds:**

11 **(A) That evidence, including the testimony of one or more qualified**
12 **expert witnesses under section 14 of this 2020 Act, establishes beyond**
13 **a reasonable doubt that the Indian child’s continued custody by the**
14 **child’s parent or Indian custodian is likely to result in serious emo-**
15 **tional or physical damage to the Indian child;**

16 **(B) That active efforts under section 15 of this 2020 Act to reunite**
17 **the Indian family did not eliminate the necessity for permanent**
18 **guardianship based on serious emotional or physical damage to the**
19 **Indian child; and**

20 **(C) That the placement of the Indian child complies with the**
21 **placement preferences for Indian children under section 20 of this 2020**
22 **Act.**

23 **(b) The evidence under paragraph (a) of this subsection must show**
24 **a causal relationship between the particular conditions in the Indian**
25 **child’s home and the likelihood that continued custody of the Indian**
26 **child will result in serious emotional or physical damage to the par-**
27 **ticular Indian child who is the subject of the child custody proceeding.**
28 **In the absence of a causal relationship, evidence that shows only the**
29 **existence of community or family poverty, isolation, single**
30 **parenthood, custodian age, crowded or inadequate housing, substance**
31 **abuse or nonconforming social behavior does not, by itself, constitute**

1 **evidence beyond a reasonable doubt that continued custody is likely**
2 **to result in serious emotional or physical damage to the Indian child.**

3 (5) Unless vacated under ORS 419B.368, a guardianship established under
4 this section continues as long as the ward is subject to the court's jurisdic-
5 tion as provided in ORS 419B.328.

6 **SECTION 38.** ORS 419B.366 is amended to read:

7 419B.366. (1) A party, or a person granted rights of limited participation
8 for the purpose of filing a guardianship motion, may file a motion to estab-
9 lish a guardianship. The motion must be in writing and state with
10 particularity the factual and legal grounds for the motion.

11 (2) Except as otherwise provided in subsection (3) of this section, the facts
12 supporting any finding made or relief granted under this section must be
13 established by a preponderance of evidence.

14 (3)(a) If **there is reason to know** an Indian child is involved, [*the*
15 *guardianship must be in compliance with the Indian Child Welfare Act. The*
16 *facts supporting any finding made to establish a guardianship for an Indian*
17 *child, including the finding that continued custody by the parents or Indian*
18 *custodian would result in serious emotional or physical harm to the Indian*
19 *child, must be established by clear and convincing evidence.*] **the court may**
20 **grant the guardianship of the Indian child only if, after inquiry as re-**
21 **quired under section 12 of this 2020 Act and notice as required under**
22 **section 13 of this 2020 Act, the court finds:**

23 (A) **Clear and convincing evidence, including the testimony of one**
24 **or more qualified expert witnesses under section 14 of this 2020 Act,**
25 **that the Indian child's continued custody by the child's parent or In-**
26 **dian custodian is likely to result in serious emotional or physical**
27 **damage to the Indian child;**

28 (B) **That active efforts under section 15 of this 2020 Act to reunite**
29 **the Indian family did not eliminate the necessity for guardianship**
30 **based on serious emotional or physical damage to the Indian child; and**

31 (C) **That the placement of the Indian child complies with the**

1 **placement preferences for Indian children under section 20 of this 2020**
2 **Act.**

3 **(b) The evidence under paragraph (a) of this subsection must show**
4 **a causal relationship between the particular conditions in the Indian**
5 **child's home and the likelihood that continued custody of the Indian**
6 **child will result in serious emotional or physical damage to the par-**
7 **ticular Indian child who is the subject of the child custody proceeding.**
8 **In the absence of a causal relationship, evidence that shows only the**
9 **existence of community or family poverty, isolation, single**
10 **parenthood, custodian age, crowded or inadequate housing, substance**
11 **abuse or nonconforming social behavior does not, by itself, constitute**
12 **clear and convincing evidence that continued custody is likely to re-**
13 **sult in serious emotional or physical damage to the Indian child.**

14 (4) In a proceeding under this section, the court may receive testimony
15 and reports as provided in ORS 419B.325.

16 (5) If the court has approved a plan of guardianship under ORS 419B.476,
17 the court may grant the motion for guardianship if the court determines,
18 after a hearing, that:

19 (a) The ward cannot safely return to a parent within a reasonable time;

20 (b) Adoption is not an appropriate plan for the ward;

21 (c) The proposed guardian is suitable to meet the needs of the ward and
22 is willing to accept the duties and authority of a guardian; and

23 (d) Guardianship is in the ward's best interests. In determining whether
24 guardianship is in the ward's best interests, the court shall consider the
25 ward's wishes.

26 (6) Unless vacated pursuant to ORS 419B.368, a guardianship established
27 under this section continues as long as the ward is subject to the court's
28 jurisdiction as provided in ORS 419B.328.

29 **SECTION 39.** ORS 419B.449 is amended to read:

30 419B.449. (1) Upon receiving any report required by ORS 419B.440, the
31 court may hold a hearing to review the child or ward's condition and cir-

1 cumstances and to determine if the court should continue jurisdiction and
2 wardship or order modifications in the care, placement and supervision of the
3 child or ward. The court shall hold a hearing:

4 (a) In all cases under ORS 419B.440 (1)(b)(B) when the parents' rights
5 have been terminated;

6 (b) If requested by the child or ward, the attorney for the child or ward,
7 if any, the parents or the public or private agency having guardianship or
8 legal custody of the child or ward within 30 days of receipt of the notice
9 provided in ORS 419B.452;

10 (c) Not later than six months after receipt of a report made under ORS
11 419B.440 (1)(a) on a ward who is in the legal custody of the Department of
12 Human Services pursuant to ORS 419B.337 but who is placed in the physical
13 custody of a parent or a person who was appointed the ward's legal guardian
14 prior to placement of the ward in the legal custody of the department;

15 (d) Within 30 days after receipt of a report made under ORS 419B.440
16 (1)(b)(C); *[or]*

17 (e) Within 10 days after receipt of a report made under ORS 419B.440
18 (1)(c)[.]; **or**

19 **(f) If there is reason to know, as described in section 12 of this 2020**
20 **Act, that the child or ward is an Indian child, within 30 days after**
21 **receipt of a report required by ORS 419B.440.**

22 (2) The court shall conduct a hearing provided in subsection (1) of this
23 section in the manner provided in ORS 419B.310, except that the court may
24 receive testimony and reports as provided in ORS 419B.325. At the conclusion
25 of the hearing, the court shall enter findings of fact.

26 (3) If the child or ward is in substitute care and the decision of the court
27 is to continue the child or ward in substitute care, the findings of the court
28 shall specifically state:

29 (a)(A) Why continued care is necessary as opposed to returning the child
30 or ward home or taking prompt action to secure another permanent place-
31 ment; and

1 (B) The expected timetable for return or other permanent placement.

2 (b) Whether the agency having guardianship or legal custody of the child
3 or ward has made diligent efforts to place the child or ward pursuant to ORS
4 419B.192.

5 (c) The number of placements made, schools attended, face-to-face contacts
6 with the assigned case worker and visits had with parents or siblings since
7 the child or ward has been in the guardianship or legal custody of the agency
8 and whether the frequency of each of these is in the best interests of the
9 child or ward.

10 (d) For a child or ward 14 years of age or older, whether the child or ward
11 is progressing adequately toward graduation from high school and, if not, the
12 efforts that have been made by the agency having custody or guardianship
13 to assist the child or ward to graduate.

14 (e) For a ward 16 years of age or older with a permanency plan of another
15 planned permanent living arrangement, the steps the department is taking
16 to ensure that:

17 (A) The ward's substitute care provider is following the reasonable and
18 prudent parent standard; and

19 (B) The ward has regular, ongoing opportunities to engage in age-
20 appropriate or developmentally appropriate activities, including consultation
21 with the ward in an age-appropriate manner about the opportunities the
22 ward has to participate in the activities.

23 (4)(a) If the ward is in the legal custody of the department but has been
24 placed in the physical custody of the parent or a person who was appointed
25 the ward's legal guardian prior to placement of the ward in the legal custody
26 of the department, and the decision is to continue the ward in the legal
27 custody of the department and the physical custody of the parent or guard-
28 ian, the findings of the court shall specifically state:

29 [(a)] (A) Why it is necessary and in the best interests of the ward to
30 continue the ward in the legal custody of the department; and

31 [(b)] (B) The expected timetable for dismissal of the department's legal

1 custody of the ward and termination of the wardship.

2 **(b) The court may not change the placement of a ward described in**
3 **this subsection unless, after hearing on removal, the court finds in**
4 **writing that the inquiry and notice requirements under sections 12 and**
5 **13 of this 2020 Act have been met and, if there is reason to know as**
6 **described in section 12 of this 2020 Act that the ward is an Indian child,**
7 **that the new placement is in compliance with the placement prefer-**
8 **ences under section 20 of this 2020 Act.**

9 (5) In making the findings under subsection (2) of this section, the court
10 shall consider the efforts made to develop the concurrent case plan, includ-
11 ing, but not limited to, identification of appropriate permanent placement
12 options for the child or ward both inside and outside this state and, if
13 adoption is the concurrent case plan, identification and selection of a suit-
14 able adoptive placement for the child or ward.

15 (6) In addition to findings of fact required by subsection (2) of this sec-
16 tion, the court may order the department to consider additional information
17 in developing the case plan or concurrent case plan.

18 (7) Any final decision of the court made pursuant to the hearing provided
19 in subsection (1) of this section is appealable under ORS 419A.200.

20

21 **(Adoptions)**

22

23 **SECTION 40.** ORS 419B.498 is amended to read:

24 419B.498. (1) Except as provided in subsection (2) of this section, the De-
25 partment of Human Services shall simultaneously file a petition to terminate
26 the parental rights of a child or ward's parents and identify, recruit, process
27 and approve a qualified family for adoption if the child or ward is in the
28 custody of the department and:

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

31 (b) A parent has been convicted of murder of another child of the parent,

1 voluntary manslaughter of another child of the parent, aiding, abetting, at-
2 tempting, conspiring or soliciting to commit murder or voluntary
3 manslaughter of the child or ward or of another child of the parent or felony
4 assault that has resulted in serious physical injury to the child or ward or
5 to another child of the parent; or

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

8 (2) The department shall file a petition to terminate the parental rights
9 of a parent in the circumstances described in subsection (1) of this section
10 unless:

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

13 (b) There is a compelling reason, which is documented in the case plan,
14 for determining that filing such a petition would not be in the best interests
15 of the child or ward. Such compelling reasons include, but are not limited
16 to:

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

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

23 (C) The court or local citizen review board in a prior hearing or review
24 determined that while the case plan was to reunify the family the department
25 did not make reasonable efforts or, if the [*Indian Child Welfare Act*
26 *applies*] **child or ward is an Indian child**, active efforts, **as described in**
27 **section 15 of this 2020 Act**, to make it possible for the child or ward to
28 safely return home; or

29 (c) The department has not provided to the family of the child or ward,
30 consistent with the time period in the case plan, such services as the de-
31 partment deems necessary for the child or ward to safely return home, if

1 reasonable efforts to make it possible for the child or ward to safely return
2 home are required to be made with respect to the child or ward.

3 (3) No petition to terminate the parental rights of a child or ward's par-
4 ents pursuant to subsection (1) of this section or pursuant to ORS 419B.500,
5 419B.502, 419B.504, 419B.506 or 419B.508 may be filed until the court has de-
6 termined that the permanency plan for the child or ward should be adoption
7 after a permanency hearing pursuant to ORS 419B.476.

8 **SECTION 41.** ORS 419B.500 is amended to read:

9 419B.500. The parental rights of the parents of a ward may be terminated
10 as provided in this section and ORS 419B.502 to 419B.524, only upon a peti-
11 tion filed by the state or the ward for the purpose of freeing the ward for
12 adoption if the court finds it is in the best interest of the ward **or, if there**
13 **is reason to know as described in section 12 of this 2020 Act that the**
14 **ward is an Indian child, that continued custody of the ward is likely**
15 **to result in serious emotional or physical harm to the ward.** [*If an In-*
16 *Indian child is involved, the termination of parental rights must be in compli-*
17 *ance with the Indian Child Welfare Act.] The rights of one parent may be
18 terminated without affecting the rights of the other parent.*

19 **SECTION 42.** ORS 419B.521 is amended to read:

20 419B.521. (1) The court shall hold a hearing on the question of terminat-
21 ing the rights of the parent or parents. The court may not hold the hearing
22 any earlier than 10 days after service or final publication of the summons.
23 The facts on the basis of which the rights of the parents are terminated,
24 unless admitted, must be established by clear and convincing evidence and
25 a stenographic or other report authorized by ORS 8.340 shall be taken of the
26 hearing.

27 (2) Not earlier than provided in subsection (1) of this section and not
28 later than six months from the date on which summons for the petition to
29 terminate parental rights is served, the court before which the petition is
30 pending shall hold a hearing on the petition except for good cause shown.
31 When determining whether or not to grant a continuance for good cause, the

1 judge shall take into consideration the age of the child or ward and the po-
 2 tential adverse effect delay may have on the child or ward. The court shall
 3 make written findings when granting a continuance.

4 (3) The court, on its own motion or upon the motion of a party, may take
 5 testimony from any child appearing as a witness and may exclude the child's
 6 parents and other persons if the court finds such action would be likely to
 7 be in the best interests of the child. However, the court may not exclude the
 8 attorney for each party and any testimony taken under this subsection shall
 9 be recorded.

10 (4)(a) Notwithstanding subsection (1) of this section, if an Indian child
 11 is involved, [*termination of parental rights must be supported by evidence be-*
 12 *yond a reasonable doubt, including testimony of qualified expert witnesses,*
 13 *that continued custody of the child is likely to result in serious emotional or*
 14 *physical harm to the child.*] **the court may not hold a hearing on the**
 15 **termination of parental rights unless after inquiry as required under**
 16 **section 12 of this 2020 Act and notice as required under section 13 of**
 17 **this 2020 Act, and in addition to any other findings required under ORS**
 18 **419B.500 to 419B.524, the court finds:**

19 (A) **That evidence, including the testimony of one or more qualified**
 20 **expert witnesses under section 14 of this 2020 Act, establishes beyond**
 21 **a reasonable doubt that the Indian child's continued custody by the**
 22 **child's parent or Indian custodian is likely to result in serious emo-**
 23 **tional or physical damage to the Indian child;**

24 (B) **That active efforts under section 15 of this 2020 Act to reunite**
 25 **the Indian family did not eliminate the necessity for termination based**
 26 **on serious emotional or physical damage to the Indian child; and**

27 (C) **That the prospective placement complies with the placement**
 28 **preferences for Indian children under section 20 of this 2020 Act.**

29 (b) **The evidence under paragraph (a) of this subsection must show**
 30 **a causal relationship between the particular conditions in the Indian**
 31 **child's home and the likelihood that continued custody of the Indian**

1 **child will result in serious emotional or physical damage to the par-**
2 **ticular Indian child who is the subject of the child custody proceeding.**
3 **In the absence of a causal relationship, evidence that shows only the**
4 **existence of community or family poverty, isolation, single**
5 **parenthood, custodian age, crowded or inadequate housing, substance**
6 **abuse or nonconforming social behavior does not, by itself, constitute**
7 **evidence beyond a reasonable doubt that continued custody is likely**
8 **to result in serious emotional or physical damage to the Indian child.**

9 **SECTION 43.** ORS 419B.529 is amended to read:

10 419B.529. (1) Notwithstanding ORS 109.309, a prospective adoptive parent
11 is not required to file a petition for adoption when:

12 (a) One of the following has occurred:

13 (A) A juvenile court that is a circuit court has entered an order of per-
14 manent commitment of a ward to the Department of Human Services under
15 ORS 419B.527; or

16 (B) The parent has signed and the department has accepted a release and
17 surrender to the department, and the parent has signed[:]

18 [(i)] a certificate of irrevocability and waiver as provided in ORS 418.270
19 regarding a child[: or]

20 [(ii)] *A certificate of waiver under the Indian Child Welfare Act regarding*
21 *a child*];

22 (b) The department has completed a home study as defined in ORS 109.304
23 that finds the prospective parent is suitable to adopt the child or ward and
24 the department consents to the adoption of the child or ward by the pro-
25 spective parent;

26 (c) Written evidence of a home study and a placement report requesting
27 the juvenile court to enter a judgment of adoption have been filed in the
28 juvenile court proceeding; [and]

29 (d) At the time the placement report is filed under paragraph (c) of this
30 subsection, the prospective adoptive parent files the adoption report form
31 required under ORS 109.400[.]; **and**

1 **(e) The child is not an Indian child.**

2 (2) Notwithstanding subsection (1) of this section, a prospective adoptive
3 parent is required to file an Adoption Summary and Segregated Information
4 Statement with accompanying exhibits as provided under ORS 109.317.

5 (3) Notwithstanding ORS 21.135, the clerk of the juvenile court may not
6 charge or collect first appearance fees for a proceeding under this section.

7 (4) After the filing of written evidence of a home study and the placement
8 report requesting the court to enter a judgment of adoption, the juvenile
9 court that entered the order of permanent commitment, or the juvenile court
10 having jurisdiction over a ward for whom the department has accepted a
11 release and surrender and a certificate signed by the parent as provided in
12 subsection (1)(a)(B) of this section, may proceed as provided in ORS 109.307
13 and 109.350 and may enter a judgment of adoption.

14 (5) Records of adoptions filed and established under this section shall be
15 kept in accordance with, and are subject to, ORS 109.319.

16 **SECTION 44.** ORS 419B.532 is amended to read:

17 419B.532. (1) As used in this section, “former parent” means a person who
18 was previously the legal parent of a ward and whose parental rights to the
19 ward have been terminated.

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

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

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

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

27 (C) At least 18 months have passed since entry of the judgment termi-
28 nating the former parent’s parental rights to the ward or, in the event of an
29 appeal, at least six months have passed since issuance of an appellate judg-
30 ment affirming the termination judgment, whichever is later; and

31 (D) Except as provided in paragraph (b) of this subsection, the ward is

1 at least 12 years of age at the time the motion to reinstate parental rights
2 is filed.

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

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

9 (4) The moving party shall provide a copy of the motion to reinstate
10 parental rights to the former parent and shall notify the court, the parties
11 and, if [*the Indian Child Welfare Act applies*] **there is reason to know as**
12 **described in section 12 of this 2020 Act that the ward is an Indian**
13 **child**, the tribe that a copy of the motion has been provided.

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

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

21 (A) The former parent's conduct and conditions that led to the termi-
22 nation of parental rights have been ameliorated and the former parent is
23 presently fit;

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

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

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

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

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

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

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

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

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

8 (d) The department shall establish by rule procedures for investigating the
9 present fitness of the former parent and for providing appropriate reunifica-
10 tion services.

11 (7) If the court grants the motion to reinstate parental rights under sub-
12 section (6) of this section:

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

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

17 (c) The court shall conduct a permanency hearing as provided in ORS
18 419B.470 within 60 days after entering the order under paragraph (a) of this
19 subsection.

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

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

28

29 **(Citizen Review Boards)**

30

31 **SECTION 45.** ORS 419A.116 is amended to read:

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

3 (a) Whether reasonable efforts were made prior to the placement, to pre-
4 vent or eliminate the need for removal of the child or ward from the home;

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

11 (c) If the case plan at the time of the review is something other than to
12 reunify the family, whether the department has made reasonable efforts to
13 place the child or ward in a timely manner in accordance with the case plan,
14 including, if appropriate, placement of the child or ward through an inter-
15 state placement, and to complete the steps necessary to finalize the perma-
16 nent placement of the child or ward;

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

18 (e) Compliance with the case plan;

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

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

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

25 (i) Whether the court should appoint an attorney or other person as spe-
26 cial advocate to represent or appear on behalf of the child or ward under
27 ORS 419B.195; [*and*]

28 (j) For a ward 16 years of age or older with a permanency plan of another
29 planned permanent living arrangement, the steps the department is taking
30 to ensure that:

31 (A) The ward's substitute care provider is following the reasonable and

1 prudent parent standard; and

2 (B) The ward has regular, ongoing opportunities to engage in age-
3 appropriate or developmentally appropriate activities, including consultation
4 with the ward in an age-appropriate manner about the opportunities the
5 ward has to participate in the activities[.];

6 **(k) Whether there is reason to know, as described in section 12 of
7 this 2020 Act, that the child or ward is an Indian child; and**

8 **(L) If there is reason to know the child or ward is an Indian child:**

9 **(A) Whether the department made active efforts as described in
10 section 15 of this 2020 Act to prevent the breakup of the Indian family
11 prior to the child's removal and whether those efforts did not elimi-
12 nate the necessity for removal based on serious emotional or physical
13 damage to the child;**

14 **(B) If the case plan at the time of the review is to reunify the
15 family, whether the department has provided active efforts to make
16 it possible for the child to safely return home, whether active efforts
17 have eliminated the necessity for continued removal based on serious
18 emotional or physical damage to the child and whether the parent has
19 made sufficient progress to make it possible for the child to return
20 home; and**

21 **(C) If the case plan at the time of the review is something other
22 than to reunify the family, whether the department has made active
23 efforts to place the child in a timely manner in accordance with the
24 placement preferences under section 20 of this 2020 Act.**

25 (2) The local citizen review board may, if the case plan has changed dur-
26 ing the period since the last review by a local citizen review board or court
27 hearing, make written findings and recommendations with respect to:

28 (a) Whether the Department of Human Services has made reasonable ef-
29 forts or, if [*the Indian Child Welfare Act applies*] **there is reason to know
30 as described section 12 of this 2020 Act that the child is an Indian
31 child**, active efforts to make it possible for the child or ward to safely return

1 home and whether the parent has made sufficient progress to make it possi-
2 ble for the child or ward to safely return home, if a plan to reunify the
3 family was in effect for any part of the period since the last review or
4 hearing; or

5 (b) Whether the department has made reasonable efforts to place the child
6 or ward in a timely manner in accordance with the case plan, including, if
7 appropriate, placement of the child or ward through an interstate placement,
8 and to complete the steps necessary to finalize the permanent placement of
9 the child or ward, if a case plan other than to reunify the family was in ef-
10 fect for any part of the period since the last review or hearing.

11 (3) In determining whether the Department of Human Services has made
12 reasonable efforts or, if [*the Indian Child Welfare Act applies*] **there is**
13 **reason to know as described in section 12 of this 2020 Act that the child**
14 **is an Indian child**, active efforts to make it possible for the child or ward
15 to safely return home, the local citizen review board shall consider the child
16 or ward's health and safety the paramount concerns.

17 (4) No later than 10 days after receiving the findings and recommen-
18 dations of the local citizen review board, a party adversely affected by the
19 findings and recommendations may request judicial review.

20

21

CONFORMING AMENDMENTS

22

23 **SECTION 46.** ORS 350.300 is amended to read:

24 350.300. (1) Notwithstanding ORS 341.290, 352.105 or 353.050, a current
25 foster child or former foster child under 25 years of age who is enrolled in
26 courses totaling one or more credit hours at an institution of higher educa-
27 tion as an undergraduate student shall have the amount of tuition and all
28 fees levied against the student waived if attending an institution of higher
29 education for purposes of pursuing an initial undergraduate degree.

30 (2) A student who is a current foster child or former foster child is enti-
31 tled to waiver of tuition and all fees under subsection (1) of this section until

1 the student has received the equivalent of four years of undergraduate edu-
2 cation.

3 (3) As a condition of receiving a tuition waiver for an academic year, a
4 current foster child or former foster child must complete and submit the Free
5 Application for Federal Student Aid for that academic year.

6 (4) A waiver of tuition and all fees under subsection (1) of this section
7 may be reduced by the amount of any federal aid scholarships or grants, an
8 award from the Oregon Opportunity Grant program established under ORS
9 348.205 and any other aid received from the institution of higher education.
10 For the purposes of this subsection, “federal aid scholarships or grants” does
11 not include Chafee Education and Training Grant vouchers (P.L. 107-133).

12 (5) As used in this section:

13 (a) “Former foster child” means an individual who, for a total of six or
14 more months while between 14 and 21 years of age, was:

15 (A) A ward of the court pursuant to ORS 419B.100 (1)(b) to (e), in the
16 legal custody of the Department of Human Services for out-of-home place-
17 ment and not dismissed from care before reaching 16 years of age; or

18 (B) An Indian child subject to [*the Indian Child Welfare Act (25 U.S.C.*
19 *1901 et seq.*)] **sections 1 to 20 of this 2020 Act**, under the jurisdiction of a
20 tribal court for out-of-home placement and not dismissed from care before
21 reaching 16 years of age.

22 (b) “Institution of higher education” means:

23 (A) A public university listed in ORS 352.002;

24 (B) A community college operated under ORS chapter 341; or

25 (C) The Oregon Health and Science University.

26 **SECTION 47.** ORS 419A.252 is amended to read:

27 419A.252. As used in this section and ORS 419A.253, 419A.255 and
28 419A.256:

29 (1) “Person” means an individual, a public body as defined in ORS 174.109
30 or a tribe that [*has intervened in*] **is a party to** a juvenile court proceeding
31 pursuant to [*the Indian Child Welfare Act (25 U.S.C. 1901 et seq.)*] **ORS**

1 **419B.875.**

2 (2) "Prospective appellate attorney" means an attorney designated by the
3 office of public defense services established under ORS 151.216 to potentially
4 represent a child, ward, youth, youth offender, or a parent or guardian of a
5 child, ward, youth or youth offender, in a juvenile case when the case has
6 been referred to the office of public defense services for appeal.

7 (3) "Public defense provider" means an attorney or a law firm designated
8 by the office of public defense services established under ORS 151.216 to po-
9 tentially represent a child, ward, youth, youth offender or the parent or
10 guardian of a child, ward, youth or youth offender in a juvenile court pro-
11 ceeding.

12 (4) "Record of the case" or "record of each case," whether maintained in
13 paper or electronic form, includes but is not limited to the following and
14 includes records filed in juvenile court proceedings commenced before Janu-
15 ary 1, 2014, when the records are substantially similar to the following:

16 (a) The summons and other process;

17 (b) Petitions;

18 (c) Papers in the nature of pleadings, answers, motions, affidavits and
19 other papers that are filed with the court, including supporting documenta-
20 tion;

21 (d) Local citizen review board findings and recommendations submitted
22 under ORS 419A.118 or 419B.367;

23 (e) Guardianship report summaries filed with the court under ORS
24 419B.367;

25 (f) Orders and judgments of the court, including supporting documenta-
26 tion;

27 (g) Transcripts under ORS 419A.256;

28 (h) Exhibits and materials offered as exhibits whether or not received in
29 evidence; and

30 (i) Other documents that become part of the record of the case by opera-
31 tion of law.

1 (5) "Supplemental confidential file," whether maintained in paper or
2 electronic form, includes reports and other material relating to the child,
3 ward, youth or youth offender's history and prognosis, including but not
4 limited to reports filed under ORS 419B.440, and includes similar reports and
5 other materials filed in juvenile court proceedings commenced before Janu-
6 ary 1, 2014, that:

7 (a) Are not or do not become part of the record of the case; and

8 (b) Are not offered or received as evidence in the case.

9 **SECTION 48.** ORS 419B.118 is amended to read:

10 419B.118. (1) Subject to the provisions of subsections (2), (3) and (4) of this
11 section, a juvenile court proceeding shall commence in the county of
12 wardship if, at the commencement of the proceeding, wardship exists as a
13 result of proceedings under this chapter, or, in the absence of such wardship,
14 in the county where the child resides.

15 (2) If the proceeding is based on allegations of jurisdiction under ORS
16 419B.100 (1)(a), (b) or (c), the proceeding may also commence in the county
17 in which the alleged act or behavior took place.

18 (3) If the proceeding is based on allegations of jurisdiction under ORS
19 419B.100 (1)(b), (c), (d), (e) or (f), the proceedings may also commence in the
20 county where the child is present when the proceeding begins.

21 (4) A termination of parent-child relationship proceeding may be com-
22 menced in the county of wardship or where the child or ward resides or is
23 found unless the child is an Indian child [*subject to the Indian Child Welfare*
24 *Act*] and the tribal court has assumed jurisdiction **under section 9 of this**
25 **2020 Act.**

26 **SECTION 49.** ORS 419B.452 is amended to read:

27 419B.452. Except when a child or ward has been surrendered for adoption
28 or the parents' rights have been terminated, the court shall send a copy of
29 the report required by ORS 419B.440 to the parents and shall notify the
30 parents either that a hearing will be held or that the parents may request
31 a hearing at which time they may ask for modifications in the care, treat-

1 ment and supervision of the child or ward. If the court finds that informing
2 the parents of the identity and location of the foster parents of the child or
3 ward is not in the best interest of the child or ward, the court may order
4 such information deleted from the report before sending the report to the
5 parents. If **there is reason to know that** an Indian child is involved, the
6 court shall send a copy of the report to the Indian child's tribe as required
7 by the notice requirements [*of the Indian Child Welfare Act*] **under section**
8 **13 of this 2020 Act.**

9 **SECTION 50.** ORS 419B.875 is amended to read:

10 419B.875. (1)(a) Parties to proceedings in the juvenile court under ORS
11 419B.100 and 419B.500 are:

12 (A) The child or ward;

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

14 (C) A putative father of the child or ward who has demonstrated a direct
15 and significant commitment to the child or ward by assuming, or attempting
16 to assume, responsibilities normally associated with parenthood, including
17 but not limited to:

18 (i) Residing with the child or ward;

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

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

21 (D) The state;

22 (E) The juvenile department;

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

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

26 (H) [*The tribe*] In cases [*subject to the Indian Child Welfare Act if the*
27 *tribe has intervened pursuant to the Indian Child Welfare Act*] **where there**
28 **is reason to know, as described in section 12 of this 2020 Act, that a**
29 **child involved is an Indian child:**

30 (i) **The Indian child's tribe; and**

31 (ii) **The Indian child's Indian custodian.**

1 (b) An intervenor who is granted intervention under ORS 419B.116 is a
2 party to a proceeding under ORS 419B.100. An intervenor under this para-
3 graph is not a party to a proceeding under ORS 419B.500.

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

5 (a) The right to notice of the proceeding and copies of the petitions, an-
6 swers, motions and other papers;

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

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

12 (d) The right of appeal; and

13 (e) The right to request a hearing.

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

19 (4) If no appeal from the judgment or order is pending, a putative father
20 whom a court of competent jurisdiction has found not to be the child or
21 ward's legal or biological parent or who has filed a petition for filiation that
22 was dismissed is not a party under subsection (1) of this section.

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

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

28 (6) If a foster parent, preadoptive parent or relative is currently providing
29 care for a child or ward, the Department of Human Services shall give the
30 foster parent, preadoptive parent or relative notice of a proceeding concern-
31 ing the child or ward. A foster parent, preadoptive parent or relative pro-

1 viding care for a child or ward has the right to be heard at the proceeding.
2 Except when allowed to intervene, the foster parent, preadoptive parent or
3 relative providing care for the child or ward is not considered a party to the
4 juvenile court proceeding solely because of notice and the right to be heard
5 at the proceeding.

6 (7)(a) The Department of Human Services shall make diligent efforts to
7 identify and obtain contact information for the grandparents of a child or
8 ward committed to the department's custody. Except as provided in para-
9 graph (b) of this subsection, when the department knows the identity of and
10 has contact information for a grandparent, the department shall give the
11 grandparent notice of a hearing concerning the child or ward. Upon a
12 showing of good cause, the court may relieve the department of its respon-
13 sibility to provide notice under this paragraph.

14 (b) If a grandparent of a child or ward is present at a hearing concerning
15 the child or ward, and the court informs the grandparent of the date and
16 time of a future hearing, the department is not required to give notice of the
17 future hearing to the grandparent.

18 (c) If a grandparent is present at a hearing concerning a child or ward,
19 the court shall give the grandparent an opportunity to be heard.

20 (d) The court's orders or judgments entered in proceedings under ORS
21 419B.185, 419B.310, 419B.325, 419B.449, 419B.476 and 419B.500 must include
22 findings of the court as to whether the grandparent had notice of the hear-
23 ing, attended the hearing and had an opportunity to be heard.

24 (e) Notwithstanding the provisions of this subsection, a grandparent is
25 not a party to the juvenile court proceeding unless the grandparent has been
26 granted rights of intervention under ORS 419B.116.

27 (f) As used in this subsection, "grandparent" means the legal parent of
28 the child's or ward's legal parent, regardless of whether the parental rights
29 of the child's or ward's legal parent have been terminated under ORS
30 419B.500 to 419B.524.

31 (8) Interpreters for parties and persons granted rights of limited partic-

1 ipation shall be appointed in the manner specified by ORS 45.275 and 45.285.

2 **SECTION 51.** ORS 419B.923 is amended to read:

3 419B.923. (1) Except as otherwise provided in this section, on motion and
4 such notice and hearing as the court may direct, the court may modify or
5 set aside any order or judgment made by it. Reasons for modifying or setting
6 aside an order or judgment include, but are not limited to:

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

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

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

25 (4) Except as provided in subsection (6) of this section, notice and a
26 hearing as provided in ORS 419B.195, 419B.198, 419B.201, 419B.205, 419B.208,
27 419B.310, 419B.325 and 419B.893 must be provided in any case when the effect
28 of modifying or setting aside the order or judgment will or may be to deprive
29 a parent of the legal custody of the child or ward, to place the child or ward
30 in an institution or agency or to transfer the child or ward from one insti-
31 tution or agency to another. The provisions of this subsection do not apply

1 to a parent whose rights have been terminated under ORS 419B.500 to
2 419B.524 or whose child has been permanently committed by order or judg-
3 ment of the court unless an appeal from the order or judgment is pending.

4 (5) When **there is reason to know that** an Indian child is involved, no-
5 tice must be provided as required under [*the Indian Child Welfare Act*] **sec-**
6 **tion 13 of this 2020 Act.**

7 (6) Except when the child or ward is an Indian child, notice and a hearing
8 are not required when the effect of modifying or setting aside the order or
9 judgment will be to transfer the child or ward from one foster home to an-
10 other.

11 (7) A motion under subsection (1) of this section may be filed with and
12 decided by the trial court during the time an appeal from a judgment is
13 pending before an appellate court. The moving party shall serve a copy of
14 the motion on the appellate court. The moving party shall file a copy of the
15 trial court's order or judgment in the appellate court within seven days of
16 the date of the trial court order or judgment. Any necessary modification of
17 the appeal required by the court order or judgment must be pursuant to rule
18 of the appellate court.

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

22

23

MISCELLANEOUS

24

25 **SECTION 52. Reports. No later than September 15 of every even-**
26 **numbered year, the Department of Human Services and the Judicial**
27 **Department shall report to the interim committees of the Legislative**
28 **Assembly relating to children regarding:**

29 (1) **The number of Indian children involved in dependency pro-**
30 **ceedings during the prior two-year period.**

31 (2) **The average duration Indian children were in protective custody.**

1 **(3) The ratio of Indian children to non-Indian children in protective**
2 **custody.**

3 **(4) Which tribes the Indian children in protective custody were**
4 **members of or eligible for membership.**

5 **(5) The number of Indian children in foster care who are in each**
6 **of the placement preference categories described in section 20 of this**
7 **2020 Act and the number of those placements that have Indian parents**
8 **in the home.**

9 **(6) The number of Indian children placed in adoptive homes in each**
10 **of the placement preference categories described in section 20 of this**
11 **2020 Act and the number of those placements that have Indian parents**
12 **in the home.**

13 **(7) The number of available placements and common barriers to**
14 **recruitment and retention of appropriate placements.**

15 **(8) The number of times the court determined that good cause ex-**
16 **isted to deviate from the statutory placement preferences under sec-**
17 **tion 20 of this 2020 Act.**

18 **(9) The number of cases that were transferred to tribal court under**
19 **section 11 of this 2020 Act.**

20 **(10) The number of times the court found good cause to decline to**
21 **transfer jurisdiction of a case to tribal court upon request and the**
22 **most common reasons the court found good cause to decline a transfer**
23 **petition.**

24 **(11) The efforts the Department of Human Services and the Judicial**
25 **Department have taken to ensure compliance with the Oregon Indian**
26 **Child Welfare Act.**

27 **SECTION 53. First report due.** **The report under section 52 of this**
28 **2020 Act is first due no later than September 15, 2022.**

29 **SECTION 54. Full faith and credit.** **The juvenile court shall give full**
30 **faith and credit to the public acts, records and judicial proceedings of**
31 **an Indian tribe applicable to an Indian child custody proceeding.**

1 **SECTION 55. Conflict of laws. If any provision of sections 1 to 20**
2 **of this 2020 Act is found to contravene the federal Indian Child Welfare**
3 **Act (25 U.S.C. 1901 et seq.), it shall not serve to render inoperative any**
4 **remaining provisions of sections 1 to 20 of this 2020 Act that may be**
5 **held not to conflict with the federal Indian Child Welfare Act.**

6 **SECTION 56. Rules. The Department of Human Services and the**
7 **Judicial Department may adopt rules to implement sections 1 to 20 of**
8 **this 2020 Act.**

9 **SECTION 57. Captions. The unit and section captions used in this**
10 **2020 Act are provided only for the convenience of the reader and do**
11 **not become part of the statutory law of this state or express any leg-**
12 **islative intent in the enactment of this 2020 Act.**

13
