

House Bill 2502

Sponsored by Representative BARKER (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Modifies juvenile jeopardy law to describe hearings and proceedings that trigger jeopardy.
Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to jeopardy in juvenile adjudication proceedings; amending ORS 419A.190 and 419A.200; and
3 declaring an emergency.

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

5 **SECTION 1.** ORS 419A.190 is amended to read:

6 419A.190. (1) **As used in this section, an “adjudicatory hearing” or “adjudicatory pro-**
7 **ceeding” means a hearing or proceeding in which the juvenile court determines whether to**
8 **exercise jurisdiction over a youth or youth offender under ORS 419C.005 for committing an**
9 **act that is a violation, or that if done by an adult would constitute a violation, of a law or**
10 **ordinance of the United States or a state, county or city.**

11 (2) Except as provided in ORS 153.108 (1), proceedings in adult criminal court and other juvenile
12 court adjudicatory proceedings based on an act alleged in a petition or citation to have been com-
13 mitted by a [*child, ward,*] youth or youth offender or allegations arising out of the same conduct are
14 barred when the juvenile court judge or referee has begun taking evidence in an adjudicatory
15 hearing or has accepted a [*child, ward,*] youth or youth offender's admission or answer of no contest
16 to the allegations of the petition or citation. This section does not prevent appeal of any
17 preadjudicatory order of the court that could be appealed in a criminal case, including, but not
18 limited to, an order suppressing evidence.

19 **SECTION 2.** ORS 419A.200 is amended to read:

20 419A.200. (1) Except as provided in ORS 419A.190, any person or entity, including, but not lim-
21 ited to, a party to a juvenile court proceeding under ORS 419B.875 (1) or 419C.285 (1), whose rights
22 or duties are adversely affected by a judgment of the juvenile court may appeal therefrom. An ap-
23 peal from a circuit court must be taken to the Court of Appeals, and an appeal from a county court
24 must be taken to the circuit court.

25 (2) If the proceeding is in the circuit court and no record of the proceedings was kept, the court,
26 on motion made not later than 15 days after the entry of the court's judgment, shall grant a re-
27 hearing and shall direct that a record of the proceedings be kept. However, the court may not grant
28 a rehearing in a case barred by ORS 419A.190 without the consent of the [*child, ward,*] youth or
29 youth offender affected by such case. If a rehearing is held, the time for taking an appeal runs from
30 the date of entry of the court's judgment after the rehearing.

31 (3)(a) The appeal may be taken by causing a notice of appeal, in the form prescribed by ORS

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 19.250, to be served:

2 (A) On all parties who have appeared in the proceeding;

3 (B) On the trial court administrator or other person serving as clerk of the juvenile court; and

4 (C) On the juvenile court transcript coordinator, if a transcript is designated in connection with
5 the appeal.

6 (b) The original of the notice with proof of service must be filed with:

7 (A) The Court of Appeals if the appeal is from a circuit court; or

8 (B) The circuit court if the appeal is from a county court.

9 (c) The notice must be filed not later than 30 days after the entry of the court's judgment. On
10 appeal from the county court, the circuit court shall hear the matter de novo and its judgment is
11 appealable to the Court of Appeals in the same manner as if the proceeding had been commenced
12 in the circuit court.

13 (4) The counsel in the proceeding from which the appeal is being taken shall file and serve those
14 documents necessary to commence an appeal if the counsel is requested to do so by the party the
15 counsel represents. If the party requesting an appeal is represented by court-appointed counsel,
16 court-appointed counsel may discharge the duty to commence an appeal under this subsection by
17 complying with policies and procedures established by the office of public defense services for ap-
18 peals of juvenile court judgments.

19 (5)(a) Upon motion of a person, other than the state, entitled to appeal under subsection (1) of
20 this section, the appellate court shall grant the person leave to file a notice of appeal after the time
21 limits described in subsection (3) of this section if:

22 (A) The person shows a colorable claim of error in the proceeding from which the appeal is
23 taken; and

24 (B) The person shows that the failure to file a timely notice of appeal is not personally attrib-
25 utable to the person.

26 (b) A person other than the state is not entitled to relief under this subsection for failure to file
27 timely notice of cross-appeal when the state appeals pursuant to ORS 419A.208.

28 (c) The request for leave to file a notice of appeal after the time limits prescribed in subsection
29 (3) of this section must be filed no later than 90 days after entry of the judgment being appealed and
30 must be accompanied by the notice of appeal sought to be filed. A request for leave under this
31 subsection may be filed by mail and is deemed filed on the date of mailing if the request is mailed
32 as provided in ORS 19.260.

33 (d) The court may not grant relief under this subsection unless the state has notice and oppor-
34 tunity to respond to the person's request for relief.

35 (6) An appeal to the Court of Appeals must be conducted in the same manner as an appeal under
36 ORS chapter 19 except that the court shall advance the appeal on the court's docket in the same
37 manner as appeals in criminal cases.

38 (7)(a) Except as provided in ORS 419A.208 (2), or when otherwise ordered by the appellate court,
39 the filing of an appeal does not suspend an order or judgment of the juvenile court nor discharge
40 the ward or youth offender from the custody of the person, institution or agency in whose custody
41 the ward or youth offender may have been placed nor preclude the juvenile court after notice and
42 hearing from entering such further orders relating to the ward or youth offender's custody pending
43 final disposition of the appeal as it finds necessary by reason only of matters transpiring subsequent
44 to the order or judgment appealed from. The trial court administrator shall immediately file certified
45 copies of any such order or judgment with the Court of Appeals.

1 (b) Notwithstanding the filing of an appeal from a jurisdictional or dispositional judgment or an
 2 order entered pursuant to ORS 419B.449 or 419B.476, the juvenile court may proceed with the ad-
 3 judication of a petition seeking termination of the parental rights of a parent of the ward who is
 4 subject to the judgment from which the appeal is taken.

5 (c) The appeal of any judgment entered in a termination of parental rights proceeding under
 6 paragraph (b) of this subsection must be consolidated, if appropriate, with any pending appeal of an
 7 order or judgment entered under ORS 419B.325, 419B.449 or 419B.476. The consolidated appeal must
 8 be conducted and advanced on the court's docket in the same manner as termination of parental
 9 rights cases.

10 (8) On appeal of a judgment or final order, the appellate court may review any interlocutory
 11 order that:

12 (a) Involves the merits or necessarily affects the judgment or final order appealed from; and

13 (b) Was made after entry of the last appealable judgment or final order preceding entry of the
 14 judgment or final order being appealed.

15 (9) The district attorney or Attorney General shall represent the state in the appeal.

16 (10)(a) The court from which an appeal is taken shall prepare and transmit a record on appeal
 17 in the manner provided in ORS 19.365, except that, when the appeal is to the circuit court from a
 18 county court, the record on appeal shall be prepared and transmitted by the county court to the
 19 circuit court.

20 (b) The court to which an appeal is taken under this section shall keep a record of the case on
 21 appeal that includes but is not limited to notices of appeal, briefs, motions, orders of the court and
 22 other papers filed with the court on appeal.

23 (c) The record on appeal prepared and transmitted under paragraph (a) of this subsection, when
 24 it is in the custody of the court to which the appeal is taken, and the record of the case on appeal
 25 kept under paragraph (b) of this subsection are subject to the same limitations on inspection, copy-
 26 ing and disclosure of records, reports and materials as those set forth under ORS 419A.255.

27 (d) The court on appeal may consent to disclosure of:

28 (A) Records described in paragraph (a) of this subsection, while in the custody of the court to
 29 which the appeal is taken, in the same manner and under the same circumstances as the juvenile
 30 court consents to disclosure under ORS 419A.255;

31 (B) Records described in paragraph (b) of this subsection; or

32 (C) An audio or video recording prepared of an oral proceeding on appeal, in the same manner
 33 as permitted under ORS 419A.256 (1)(b), (3) and (4).

34 (e) Notwithstanding any other provision of law, any decision, as that term is defined in ORS
 35 19.450, issued by the Court of Appeals or the Supreme Court, on appeal or review of a juvenile court
 36 decision, is not confidential and is not exempt from disclosure.

37 **SECTION 3. This 2019 Act being necessary for the immediate preservation of the public**
 38 **peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect**
 39 **on its passage.**