

A-Engrossed
House Bill 2849

Ordered by the House April 19
Including House Amendments dated April 19

Sponsored by Representative SANCHEZ, Senator GELSER; Representatives LIVELY, SOLLMAN

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.

Modifies provisions of state law regarding custody of children or youth who have run away from home or placement to apply to all runaways. [*Heightens*] **Modifies** standards for taking child into protective custody with or without court order.

Permits application for protective custody order by declaration or sworn oral statement.

Permits person conducting child abuse investigation involving child with suspicious physical injuries to take child into protective custody only for period of time necessary to ensure that child is immediately photographed and, within 48 hours, assessed by medical professional.

A BILL FOR AN ACT

1
2 Relating to protective custody of children; creating new provisions; and amending ORS 418.937,
3 419B.021, 419B.023, 419B.055, 419B.100, 419B.121, 419B.150, 419B.185 and 419C.156.

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

5 **SECTION 1. Section 2 of this 2019 Act is added to and made a part of ORS chapter 419B.**

6 **SECTION 2. (1) If it reasonably appears that a child is a runaway, the child may be taken**
7 **into protective custody by a peace officer, counselor, employee of the Department of Human**
8 **Services or any other person authorized by the juvenile court of the county in which the**
9 **child is found.**

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

12 **(a)(A) Shall release the child without unnecessary delay to the custody of the child's**
13 **parent or guardian or to a shelter facility that has agreed to provide care and services to**
14 **runaway children and that has been designated by the juvenile court to provide such care**
15 **and services; or**

16 **(B) Shall follow the procedures described in ORS 419B.160, 419B.165, 419B.168 and**
17 **419B.171;**

18 **(b) Shall, if possible, determine the preferences of the child and the child's parent or**
19 **guardian as to whether the best interests of the child are better served by placement in a**
20 **shelter facility that has agreed to provide care and services to runaway children and that**
21 **has been designated by the juvenile court to provide such care and services or by release to**
22 **the child's parent or guardian; and**

23 **(c) Notwithstanding ORS 419B.165 and subsection (1) of this section, shall release the**
24 **child to a shelter facility that has agreed to provide care and services to runaway children**
25 **and that has been designated by the juvenile court to provide such care and services if it**

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 **reasonably appears that the child would not willingly remain at home if released to the**
2 **child's parent or guardian.**

3 **SECTION 3.** ORS 419B.150 is amended to read:

4 419B.150. *[(1) A child may be taken into protective custody by a peace officer, counselor, employee*
5 *of the Department of Human Services or any other person authorized by the juvenile court of the county*
6 *in which the child is found, in the following circumstances:]*

7 *[(a) When the child's condition or surroundings reasonably appear to be such as to jeopardize the*
8 *child's welfare;]*

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

11 *[(c) When it reasonably appears that the child has run away from home.]*

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

18 *[(b) Except as provided in paragraph (c) of this subsection, an order directing that a child be taken*
19 *into protective custody under subsection (1) of this section shall contain written findings, including a*
20 *brief description of the reasonable efforts or, if the Indian Child Welfare Act applies, active efforts to*
21 *eliminate the need for protective custody of the child that the department has made and why protective*
22 *custody is in the best interests of the child.]*

23 *[(c) The court may issue an order even though no services have been provided if the court makes*
24 *written findings that no existing services could eliminate the need for protective custody of the child*
25 *and that protective custody is in the best interests of the child.]*

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

28 *[(a)(A) Shall release the child without unnecessary delay to the custody of the child's parent or*
29 *guardian or to a shelter facility that has agreed to provide care and services to children who have run*
30 *away from home and that has been designated by the juvenile court to provide such care and services;*
31 *or]*

32 *[(B) Shall follow the procedures described in ORS 419B.160, 419B.165, 419B.168 and 419B.171;]*

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

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

43 **(1) As used in this section:**

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

45 **(b) "Reasonable cause" means a subjectively and objectively reasonable belief, given all**

1 of the circumstances and based on specific and articulable facts.

2 (c) "Severe harm" means:

3 (A) Life-threatening damage; or

4 (B) Significant or acute injury to a person's physical, sexual or psychological functioning.

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

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

8 (b) A counselor; or

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

10 (3)(a) Except as provided in paragraph (b) of this subsection, a child may be taken into
11 protective custody without a court order only when there is reasonable cause to believe that:

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

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

14 (C) There is an imminent threat that the child's parent or guardian will cause the child
15 to be beyond the reach of the juvenile court before the department can complete assessment
16 of an abuse allegation involving the child; or

17 (D) There is an imminent threat that the child's parent or guardian will cause the child
18 to be beyond the reach of the juvenile court before the court can order that the child be
19 taken into protective custody under subsection (6) of this section.

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

23 (4) A person authorized to take a child into protective custody shall apply for a protective
24 custody order, as described in subsection (6) of this section, by submitting a declaration
25 based on information and belief that sets forth with particularity:

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

27 (A) Protect the child from abuse;

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

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

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

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

34 (5)(a) The applicant under subsection (4) of this section shall deliver the declaration de-
35 scribed in subsection (4) of this section to the juvenile court.

36 (b) At the applicant's request, instead of the declaration described in subsection (4) of
37 this section, the judge may take an oral statement under oath. If the applicant makes the
38 oral statement to the judge out of court, the applicant shall record the oral statement and
39 retain a copy of the recording. The recording constitutes a declaration for the purposes of
40 subsection (4) of this section.

41 (6) The juvenile court may order that a child be taken into protective custody if, after
42 reviewing the declaration described in subsection (4) of this section, the court determines
43 that:

44 (a) Protective custody is necessary and the least restrictive means available to:

45 (A) Protect the child from abuse;

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

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

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

5 **(E) If the department knows or has reason to know that the child is an Indian child,**
6 **prevent imminent physical damage or harm to the child; and**

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

8 **(7) When the court issues a protective custody order under subsection (6) of this section,**
9 **the court may transmit the signed order to the applicant by a form of electronic communi-**
10 **cation approved by the court that delivers a complete printable image of the signed order.**
11 **The court shall file the original order in the court record.**

12 **SECTION 4.** ORS 418.937 is amended to read:

13 418.937. When making any placement decision involving a refugee child under ORS 419B.150,
14 419C.080 or 419C.088 **or section 2 of this 2019 Act**, the Department of Human Services and the
15 juvenile court shall consider that child’s culture and tradition. Unless shown to be inappropriate
16 and inconsistent with the best interests of the child, the department and juvenile court shall place
17 the child with the following in order of preference:

18 (1) Natural parents.

19 (2) Extended family members.

20 (3) Members of the same cultural heritage.

21 (4) Persons with knowledge and appreciation of the cultural heritage of the child.

22 **SECTION 5.** ORS 419B.023 is amended to read:

23 419B.023. (1) As used in this section:

24 (a) “Designated medical professional” means the person described in ORS 418.747 (9) or the
25 person’s designee.

26 (b) “Suspicious physical injury” includes, but is not limited to:

27 (A) Burns or scalds;

28 (B) Extensive bruising or abrasions on any part of the body;

29 (C) Bruising, swelling or abrasions on the head, neck or face;

30 (D) Fractures of any bone in a child under the age of three;

31 (E) Multiple fractures in a child of any age;

32 (F) Dislocations, soft tissue swelling or moderate to severe cuts;

33 (G) Loss of the ability to walk or move normally according to the child’s developmental ability;

34 (H) Unconsciousness or difficulty maintaining consciousness;

35 (I) Multiple injuries of different types;

36 (J) Injuries causing serious or protracted disfigurement or loss or impairment of the function
37 of any bodily organ; or

38 (K) Any other injury that threatens the physical well-being of the child.

39 (2)(a) If a person conducting an investigation under ORS 419B.020 observes a child who has
40 suffered suspicious physical injury and the person is certain or has a reasonable suspicion that the
41 injury is or may be the result of abuse, the person shall, in accordance with the protocols and pro-
42 cedures of the county multidisciplinary child abuse team described in ORS 418.747:

43 [(a)] (A) Immediately photograph or cause to have photographed the suspicious physical injuries
44 in accordance with ORS 419B.028; and

45 [(b)] (B) Ensure that a designated medical professional conducts a medical assessment within

1 48 hours, or sooner if dictated by the child's medical needs.

2 **(b) Notwithstanding ORS 419B.150, the person described in paragraph (a) of this sub-**
3 **section may take the child into protective custody, without a court order, only for the period**
4 **of time necessary to ensure compliance with the requirements of this subsection.**

5 (3) The requirement of subsection (2) of this section shall apply:

6 (a) Each time suspicious physical injury is observed by Department of Human Services or law
7 enforcement personnel:

8 (A) During the investigation of a new allegation of abuse; or

9 (B) If the injury was not previously observed by a person conducting an investigation under ORS
10 419B.020; and

11 (b) Regardless of whether the child has previously been photographed or assessed during an in-
12 vestigation of an allegation of abuse.

13 (4)(a) Department or law enforcement personnel shall make a reasonable effort to locate a des-
14 ignated medical professional. If after reasonable efforts a designated medical professional is not
15 available to conduct a medical assessment within 48 hours, the child shall be evaluated by an
16 available physician, a physician assistant licensed under ORS 677.505 to 677.525, naturopathic phy-
17 sician licensed under ORS chapter 685 or a nurse practitioner licensed under ORS 678.375 to
18 678.390.

19 (b) If the child is evaluated by a health care provider as defined in ORS 127.505 other than a
20 designated medical professional, the health care provider shall make photographs, clinical notes,
21 diagnostic and testing results and any other relevant materials available to the designated medical
22 professional for consultation within 72 hours following evaluation of the child.

23 (c) The person conducting the medical assessment may consult with and obtain records from the
24 child's health care provider under ORS 419B.050.

25 (5) Nothing in this section prevents a person conducting a child abuse investigation from seek-
26 ing immediate medical treatment from a hospital emergency room or other medical provider for a
27 child who is physically injured or otherwise in need of immediate medical care.

28 (6) If the child described in subsection (2) of this section is less than five years of age, the des-
29 ignated medical professional may, within 14 days, refer the child for a screening for early inter-
30 vention services or early childhood special education, as those terms are defined in ORS 343.035.
31 The referral may not indicate the child is subject to a child abuse investigation unless written
32 consent is obtained from the child's parent authorizing such disclosure. If the child is already re-
33 ceiving those services, or is enrolled in the Head Start program, a person involved in the delivery
34 of those services to the child shall be invited to participate in the county multidisciplinary child
35 abuse team's review of the case and shall be provided with paid time to do so by the person's em-
36 ployer.

37 (7) Nothing in this section limits the rights provided to minors in ORS chapter 109 or the ability
38 of a minor to refuse to consent to the medical assessment described in this section.

39 **SECTION 6.** ORS 419B.021 is amended to read:

40 419B.021. (1) Except as provided in subsection (2) of this section, the following persons must
41 possess a bachelor's, master's or doctoral degree from an accredited institution of higher education:

42 (a) A person who conducts an investigation under ORS 419B.020; and

43 (b) A person who makes the following determinations:

44 (A) That a child must be taken into protective custody under ORS 419B.150 **or section 2 of this**
45 **2019 Act;** and

1 (B) That the child should not be released to the child's parent or other responsible person under
2 ORS 419B.165 (2).

3 (2) Subsection (1) of this section does not apply to:

4 (a) A person who was employed or otherwise engaged by the Department of Human Services for
5 the purpose of conducting investigations or making determinations before January 1, 2012, provided
6 the person's employment or engagement for these purposes has been continuous and uninterrupted.

7 (b) A law enforcement official as that term is defined in ORS 147.005.

8 **SECTION 7.** ORS 419B.055 is amended to read:

9 419B.055. (1) The Attorney General may bring an action in a circuit court for a citation or a
10 stalking protective order under ORS 30.866 or 163.730 to 163.750 on behalf of an employee of the
11 Department of Human Services who, because of being involved in the conduct described in sub-
12 section (3) of this section, is the subject of repeated and unwanted contact by another person that
13 causes alarm or coercion to the employee. The Attorney General's responsibility under this sub-
14 section is limited to circumstances in which an employee of the department submits a written re-
15 quest to the Attorney General that:

16 (a) Has been approved in writing by the Director of Human Services or the director's designee;

17 (b) Sets forth sufficient facts and evidence, the truth of which has been affirmed by the em-
18 ployee; and

19 (c) Based solely upon the opinion of the Attorney General, is an action that is likely to succeed.

20 (2) The action brought under this section may not include a request for:

21 (a) Special and general damages, including damages for emotional distress;

22 (b) Economic or noneconomic damages;

23 (c) Punitive damages; or

24 (d) Attorney fees and costs.

25 (3) Departmental employees on whose behalf the citation or stalking protective order may be
26 obtained under subsection (1) of this section include employees who:

27 (a) Conduct a child abuse investigation under ORS 419B.020;

28 (b) Make a determination that a child must be taken into protective custody under ORS 419B.150
29 **or section 2 of this 2019 Act;**

30 (c) Make a determination that a child should not be released to the child's parent or other re-
31 sponsible person under ORS 419B.165 (2); and

32 (d) Are involved in developing a case plan or making a placement decision for a child in the
33 legal custody of the department.

34 **SECTION 8.** ORS 419B.100 is amended to read:

35 419B.100. (1) Except as otherwise provided in subsection (5) of this section and ORS 107.726, the
36 juvenile court has exclusive original jurisdiction in any case involving a person who is under 18
37 years of age and:

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

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

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

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

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

1 (A) Abandoned the person;

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

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

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

6 (f) Who [*has run away from the home of the person*] **is a runaway**;

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

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

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

11 (3) The provisions of subsection (1) of this section do not prevent a court of competent juris-
12 diction from entertaining a civil action or suit involving a child.

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

15 (5)(a) An Indian tribe has exclusive jurisdiction over any child custody proceeding involving an
16 Indian child who resides or is domiciled within the reservation of the tribe, except where the juris-
17 diction is otherwise vested in the state by existing federal law.

18 (b) Upon the petition of either parent, the Indian custodian or the Indian child's tribe, the ju-
19 venile court, absent good cause to the contrary and absent objection by either parent, shall transfer
20 a proceeding for the foster care placement of, or termination of parental rights to, an Indian child
21 not domiciled or residing within the reservation of the Indian child's tribe, to the jurisdiction of the
22 tribe.

23 (c) The juvenile court shall give full faith and credit to the public acts, records and judicial
24 proceedings of an Indian tribe applicable to an Indian child custody proceeding to the same extent
25 that the juvenile court gives full faith and credit to the public acts, records and judicial proceedings
26 of any other entity.

27 **SECTION 9.** ORS 419B.121 is amended to read:

28 419B.121. Notwithstanding ORS 419C.145, the court may order the detention of a child who re-
29 sides in another state if the court finds probable cause to believe that the child [*has run away from*
30 *home or from a placement*] **is a runaway**. If a child is ordered detained under this section, the court
31 shall make such orders as are necessary to cause the child to be immediately returned to the child's
32 state of residence.

33 **SECTION 10.** ORS 419B.185 is amended to read:

34 419B.185. (1) When a child or ward is taken, or is about to be taken, into protective custody
35 pursuant to ORS 419B.150, 419B.160, 419B.165, 419B.168 and 419B.171 **or section 2 of this 2019 Act**
36 and placed in detention or shelter care, a parent, child or ward shall be given the opportunity to
37 present evidence to the court at the hearings specified in ORS 419B.183, and at any subsequent re-
38 view hearing, that the child or ward can be returned home without further danger of suffering
39 physical injury or emotional harm, endangering or harming others, or not remaining within the
40 reach of the court process prior to adjudication. At the hearing:

41 (a) The court shall make written findings as to whether the Department of Human Services has
42 made reasonable efforts or, if the Indian Child Welfare Act applies, active efforts to prevent or
43 eliminate the need for removal of the child or ward from the home and to make it possible for the
44 child or ward to safely return home. When the court finds that no services were provided but that
45 reasonable services would not have eliminated the need for protective custody, the court shall con-

1 sider the department to have made reasonable efforts or, if the Indian Child Welfare Act applies,
2 active efforts to prevent or eliminate the need for protective custody. The court shall include in the
3 written findings a brief description of the preventive and reunification efforts made by the depart-
4 ment.

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

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

12 (d) The court shall make a written finding in every order of removal that describes why it is in
13 the best interests of the child or ward that the child or ward be removed from the home or contin-
14 ued in care.

15 (e) When the court determines that a child or ward shall be removed from the home or contin-
16 ued in care, the court shall make written findings whether the department made diligent efforts
17 pursuant to ORS 419B.192. The court shall include in its written findings a brief description of the
18 efforts made by the department.

19 (f) The court shall determine whether the child or ward is an Indian child as defined in ORS
20 419A.004 or in the applicable State-Tribal Indian Child Welfare Agreement.

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

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

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

29 (b) The efforts the department made pursuant to ORS 419B.192; and

30 (c) Why protective custody is in the best interests of the child or ward.

31 **SECTION 11.** ORS 419C.156 is amended to read:

32 419C.156. Notwithstanding ORS 419C.145 (1) and (2), the court may order the detention of a
33 youth who resides in another state if the court makes written findings that there is probable cause
34 to believe that the youth [*has run away from home or from a placement*] **is a runaway** and that de-
35 scribe why it is in the best interests of the youth to be placed in detention. If a youth is ordered
36 detained under this section, the court shall make such orders as are necessary to cause the youth
37 to be immediately returned to the youth's state of residence.

38