

# Enrolled House Bill 4214

Sponsored by Representatives KOTEK, LEWIS, SANCHEZ; Representatives DEXTER, GORSEK, HELT, KENY-GUYER, MARSH, MITCHELL, NOBLE, NOSSE, POWER, PRUSAK, SCHOUTEN, SOLLMAN, WILDE, WILLIAMS (at the request of Joint Committee on the First Special Session of 2020)

CHAPTER .....

## AN ACT

Relating to Indian children; creating new provisions; and amending ORS 350.300, 418.312, 418.595, 418.627, 419A.004, 419A.116, 419A.252, 419B.090, 419B.100, 419B.118, 419B.150, 419B.171, 419B.185, 419B.192, 419B.305, 419B.310, 419B.325, 419B.331, 419B.340, 419B.365, 419B.366, 419B.367, 419B.368, 419B.449, 419B.452, 419B.476, 419B.498, 419B.500, 419B.517, 419B.521, 419B.529, 419B.532, 419B.875, 419B.878, 419B.890, 419B.918 and 419B.923.

Whereas current research shows that family, culture and community promote resiliency and health development in Indian children; and

Whereas Congress, working with tribal nations, tribal leadership and advocates for Indian children, passed the Indian Child Welfare Act (25 U.S.C. 1901 et seq.) in 1978 to stop the removal of Indian children from their homes, families and communities; and

Whereas at the time Congress passed the Indian Child Welfare Act, Indian children were being removed by public and private agencies at rates as high as 25 percent to 35 percent; and

Whereas Indian children continue to be removed from their homes at rates higher than other non-Indian children; and

Whereas despite requirements under the Indian Child Welfare Act, application of the Indian Child Welfare Act in Oregon courts is inconsistent; and

Whereas clearly addressing in state law the coordination between and respective roles of the state and tribes regarding the provision of child welfare services to Indian children will provide uniform and consistent direction to state courts, tribes and practitioners to prevent unlawful removals of Indian children from their families and promote the stable placement of Indian children in loving, permanent homes that are connected to family and culture; now, therefore,

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

### **OREGON INDIAN CHILD WELFARE (Policy Regarding Indian Children)**

**SECTION 1. The Legislative Assembly finds that the United States Congress recognizes the special legal status of Indian tribes and their members. It is the policy of the State of Oregon to protect the health and safety of Indian children and the stability and security of Indian tribes and families by promoting practices designed to prevent the removal of Indian children from their families and, if removal is necessary and lawful, to prioritize the placement of an Indian child with the Indian child’s extended family and tribal community. The**

state recognizes the inherent jurisdiction of Indian tribes to make decisions regarding the custody of Indian children. The state also recognizes the importance of ensuring that Indian children and Indian families receive appropriate services to obviate the need to remove an Indian child from the Indian child's home and, if removal is necessary and lawful, to effect the child's safe return home. Sections 1 to 23 of this 2020 special session Act create additional safeguards for Indian children to address disproportionate rates of removal, to improve the treatment of and services provided to Indian children and Indian families in the child welfare system and to ensure that Indian children who must be removed are placed with Indian families, communities and cultures.

**(Definitions; Custody; Parentage;  
Best Interests of Indian Child; Domicile;  
Indian Child's Tribe)**

**SECTION 2. Definitions.** As used in sections 1 to 23 of this 2020 special session Act, unless the context provides otherwise:

(1) "Emergency proceeding" means any court action that involves the emergency removal or emergency placement of an Indian child, including removal under ORS 419B.150, with or without a protective custody order, or a shelter care proceeding under ORS 419B.185.

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

(b) If the meaning of "extended family member" cannot be determined under paragraph (a) of this subsection, "extended family member" means a person who has attained 18 years of age and who is the Indian child's grandparent, aunt, uncle, brother, sister, sister-in-law, brother-in-law, niece, nephew, first cousin, second cousin, stepparent or, as determined by the Indian child's tribe, clan or band member.

(3) "Indian" means a person who is a member of an Indian tribe or who is an Alaska Native and a member of a regional corporation as defined in section 7 of the Alaska Native Claims Settlement Act (43 U.S.C. 1606).

(4) "Indian child" means any unmarried person who has not attained 18 years of age and:

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

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

(5) "Indian custodian" means an Indian, other than the Indian child's parent, who has custody, as described in section 3 (1) of this 2020 special session Act, of the Indian child, or to whom temporary physical care, custody and control has been transferred by the Indian child's parent.

(6) "Indian tribe" or "tribe" means any Indian tribe, band, nation or other organized group or community of Indians federally recognized as eligible for the services provided to Indians by the United States Secretary of the Interior because of their status as Indians, including any Alaska Native village as defined in 43 U.S.C. 1602(c).

(7) "Juvenile court" has the meaning given that term in ORS 419A.004.

(8) "Member" or "membership" means a determination by an Indian tribe that a person is a member or citizen in that Indian tribe.

(9) "Parent" means:

(a) A biological parent of an Indian child;

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

(c) A father whose parentage has been acknowledged or established under section 4 of this 2020 special session Act.

(10) "Party" or "parties" means parties to a proceeding, as described in ORS 419B.875.

(11) "Reservation" means Indian country as defined in 18 U.S.C. 1151 and any lands not covered under that section, title to which is held by the United States in trust for the benefit of an Indian tribe or individual or held by an Indian tribe or individual subject to a restriction by the United States against alienation.

(12) "Tribal court" means a court with jurisdiction over child custody proceedings and that is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe or any other administrative body of a tribe that is vested with authority over child custody proceedings.

**SECTION 3. Custody of Indian child.** (1) An individual has custody of an Indian child under sections 1 to 23 of this 2020 special session Act if the individual has physical custody or legal custody of the Indian child under any applicable tribal law, tribal custom or state law.

(2) An Indian child's parent has continued custody of the Indian child if the parent currently has, or previously had, custody of the Indian child.

(3) For purposes of sections 1 to 23 of this 2020 special session Act, the following individuals are presumed to have continued custody of an Indian child:

(a) The Indian child's biological mother.

(b) A man who is married to the Indian child's biological mother.

(c) A man whose parentage has been acknowledged or established as described in section 4 of this 2020 special session Act.

**SECTION 4. Parentage.** In addition to the methods for establishing parentage under ORS 109.065, a man's parentage of an Indian child is acknowledged or established for purposes of sections 1 to 23 of this 2020 special session Act and ORS chapter 419B if the man's parentage has been:

(1) Established under tribal law;

(2) Recognized in accordance with tribal custom; or

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

**SECTION 5. Best interests of Indian child.** When making a determination regarding the best interests of an Indian child under sections 1 to 23 of this 2020 special session Act, ORS chapter 419B, the Indian Child Welfare Act (25 U.S.C. 1901 et seq.) or any regulations or rules regarding sections 1 to 23 of this 2020 special session Act or the Indian Child Welfare Act, the juvenile court shall, in consultation with the Indian child's tribe, consider the following relevant factors:

(1) The protection of the safety, well-being, development and stability of the Indian child;

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

(3) The prioritization of placement of the Indian child in accordance with the placement preferences under section 23 of this 2020 special session Act;

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

(5) The importance to the Indian child of the Indian tribe's ability to maintain the tribe's existence and integrity in promotion of the stability and security of Indian children and families.

**SECTION 6. Domicile.** For purposes of sections 1 to 23 of this 2020 special session Act:

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

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

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

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

(c) The Indian child's guardian.

**SECTION 7. Enrollment.** (1) Unless an Indian child's parent objects, the Department of Human Services shall provide assistance with enrolling an Indian child within the juvenile court's jurisdiction under ORS 419B.100 in a tribe with which the child is eligible for enrollment.

(2) In any proceeding under ORS chapter 419B where there is reason to know the child is an Indian child and the department reasonably believes that the Indian child is eligible for enrollment in a tribe, the department shall notify the Indian child's parent of the parent's right to object to the department's assistance under subsection (1) of this section.

**SECTION 8. Determination of Indian child's tribe.** (1) In a proceeding under ORS chapter 419B when there is reason to know that the child is an Indian child, the Indian child's tribe is:

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

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

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

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

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

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

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

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

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

(d) The interests asserted by each tribe;

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

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

(3) If an Indian child is a member of or is eligible for membership in more than one tribe, the court may, in its discretion, permit a tribe, in addition to the Indian child's tribe determined under subsection (1) of this section, to participate in a proceeding under ORS chapter 419B involving the Indian child in an advisory capacity or as a party.

**(Jurisdiction; Transfer)**

**SECTION 9. Determination of domicile and residence.** In any proceeding under ORS chapter 419B involving an Indian child, the juvenile court must determine the residence and domicile of the Indian child and whether the Indian child is a ward of tribal court. The juvenile court shall communicate with any tribal courts to the extent necessary to make a determination under this section.

**SECTION 10. Tribal-state agreements.** (1)(a) The Department of Human Services shall make a good faith effort to enter into a tribal-state agreement with any Indian tribe within the borders of this state.

(b) The department may also enter into a tribal-state agreement with any Indian tribe outside of this state having significant numbers of member children or membership-eligible children residing in this state.

(2) The purposes of a tribal-state agreement are to promote the continued existence and integrity of the Indian tribe as a political entity and to protect the vital interests of Indian

children in securing and maintaining political, cultural and social relationships with their tribe.

(3) A tribal-state agreement may include, but is not limited to, agreements regarding default jurisdiction over cases in which the state courts and tribal courts have concurrent jurisdiction, the transfer of cases between state courts and tribal courts, the assessment, removal, placement and custody of Indian children and any other child welfare services provided to Indian children.

(4) A tribal-state agreement must:

(a) Provide for the cooperative delivery of child welfare services to Indian children in this state, including the utilization, to the extent available, of services provided by the tribe or an organization whose mission is to serve the American Indian or Alaska Native population to implement the terms of the tribal-state agreement; and

(b) If services provided by the tribe or an organization whose mission is to serve the American Indian or Alaska Native population are unavailable, provide for the department's use of community services and resources developed specifically for Indian families and that have the demonstrated experience and capacity to provide culturally relevant and effective services to Indian children.

**SECTION 11. Saving clause.** Section 10 of this 2020 special session Act applies to tribal-state agreements entered into or renewed on or after the effective date of this 2020 special session Act.

**SECTION 12. Jurisdiction.** (1) Except as otherwise provided in this section, the juvenile court's jurisdiction under ORS 419B.100 (1) in a case involving an Indian child is concurrent with the Indian child's tribe.

(2) If a tribe is not subject to Public Law 83-280, the tribe has exclusive jurisdiction in a case described in ORS 419B.100 (1) involving an Indian child if:

(a) The Indian child is a ward of a tribal court of the Indian child's tribe; or

(b) The Indian child resides or is domiciled within the reservation of the tribe.

(3)(a) An Indian tribe subject to Public Law 83-280 may limit the juvenile court's exercise of jurisdiction under ORS 419B.100 (1) over an Indian child by entering into a tribal-state agreement described in section 10 of this 2020 special session Act.

(b) The juvenile court shall decline to exercise its jurisdiction under ORS 419B.100 (1) over an Indian child who is a ward of a tribal court of the Indian child's tribe, or who resides or is domiciled within the reservation of the tribe, if:

(A) The tribe has entered into a tribal-state agreement in which the state has agreed to decline jurisdiction; and

(B) The tribal-state agreement provides that the tribe has default jurisdiction over those cases.

(c)(A) If the juvenile court declines to exercise its jurisdiction under paragraph (b) of this subsection, the court shall coordinate with the tribal court to facilitate the tribal court's assumption of jurisdiction.

(B) The juvenile court shall:

(i) Allow the Indian child's parent, Indian custodian or tribe to participate in any communications under this subsection with a tribal court or, if the person is unable to participate in a communication, provide the person with an opportunity to represent facts and legal arguments supporting the person's position before the juvenile court makes a decision regarding jurisdiction;

(ii) Create records of any communications under this subsection;

(iii) Notify the Indian child's parent, Indian custodian or tribe in advance of each communication; and

(iv) Provide the Indian child's parent, Indian custodian or tribe with access to the record of the communication.

(C) Communications between the juvenile court and a tribal court regarding calendars, court records and similar matters may occur without informing the parties or creating a record of the communications.

(D) As used in this paragraph, "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(4) Notwithstanding subsections (2) and (3) of this section, the juvenile court has temporary exclusive jurisdiction over an Indian child who is taken into protective custody under ORS 419B.150 or 419B.152.

**SECTION 13. Motion to transfer to tribal court; objection.** (1) Except as provided in subsection (5) of this section, the juvenile court shall transfer a proceeding under ORS chapter 419B involving an Indian child if, at any time during the proceeding, the Indian child's parent, Indian custodian or tribe petitions the court to transfer the proceeding to the tribal court.

(2) Upon receipt of a transfer motion, the juvenile court shall contact the Indian child's tribe and request a timely response regarding whether the tribe intends to decline the transfer.

(3) A party may object to the transfer motion on the basis of one of the following:

- (a) That the Indian child's tribe has declined the transfer;
- (b) That one or both of the Indian child's parents object to the transfer; or
- (c) That good cause exists to deny the transfer.

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

(b) At the hearing, the objecting party has the burden of proof of establishing by clear and convincing evidence that good cause exists to deny the transfer.

(c) If the Indian child's tribe contests the assertion that good cause exists to deny the transfer, the court shall give the tribe's argument substantial weight.

(d) When making a determination whether good cause exists to deny the transfer motion, the juvenile court may not consider:

- (A) Whether the proceeding is at an advanced stage;
- (B) Whether there has been a prior proceeding involving the Indian child in which a transfer motion was not filed;
- (C) Whether the transfer could affect the placement of the Indian child;
- (D) The Indian child's cultural connections with the tribe or the tribe's reservation;
- (E) The socioeconomic conditions of the Indian child's tribe or any negative perception of tribal or United States Bureau of Indian Affairs' social services or judicial systems; or
- (F) Whether the transfer serves the best interests of the Indian child.

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

- (A) The tribe declines the transfer orally on the record or in writing;
- (B) The Indian child's parent objects to the transfer; or
- (C) The court finds by clear and convincing evidence, after hearing, that good cause exists to deny the transfer.

(b) Notwithstanding paragraph (a)(B) of this subsection, the objection of the Indian child's parent does not preclude the transfer if:

(A) The objecting parent dies or the objecting parent's parental rights are terminated and have not been reinstated under ORS 419B.532; and

(B) The Indian child's remaining parent, Indian custodian or tribe files a new transfer motion subsequent to the death of the objecting parent or the termination of the parental rights of the objecting parent.

(6) If the juvenile court denies a transfer under this section, the court shall document the basis for the denial in a written order.

**SECTION 14. Transfer.** Upon granting a transfer motion under section 13 of this 2020 special session Act, the juvenile court shall expeditiously:

- (1) Notify the tribal court of the pending dismissal of the proceeding;
- (2) Transfer all information regarding the proceeding, including but not limited to pleadings and court records, to the tribal court;
- (3) Direct the Department of Human Services to:
  - (a) Coordinate with the tribal court and the Indian child's tribe to ensure that the transfer of the proceeding and the transfer of custody of the Indian child is accomplished with minimal disruption of services to the Indian child and the Indian child's family; and
  - (b) Provide the Indian child's tribe with documentation related to the Indian child's eligibility for state and federal assistance and information related to the Indian child's social history, treatment diagnosis and services and other relevant case and service related data; and
- (4) Dismiss the proceeding upon confirmation from the tribal court that the tribal court received the transferred information.

(Inquiry; Notice)

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

(2) Except as provided in subsection (1) of this section, whenever a person is required under ORS chapter 419B to determine whether there is reason to know that a child is an Indian child, if the person has not already determined that the child is an Indian child, the person shall make a good faith effort to determine whether there is reason to know the child is an Indian child, including by consulting with:

- (a) The child;
- (b) The child's parent or parents;
- (c) Any person having custody of the child or with whom the child resides;
- (d) Extended family members of the child;
- (e) Any other person who may reasonably be expected to have information regarding the child's membership or eligibility for membership in an Indian tribe; and
- (f) Any Indian tribe of which the child may be a member or of which the child may be eligible for membership.

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

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

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

- (a) Any individual present in the proceeding, officer of the court involved in the proceeding, Indian tribe, Indian organization or agency informs the court that the child is an Indian child;
- (b) Any individual present in the proceeding, officer of the court involved in the proceeding, Indian tribe, Indian organization or agency informs the court that information has been discovered indicating that the child is an Indian child;
- (c) The child indicates to the court that the child is an Indian child;

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

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

(f) The court is informed that the child or the child's parent possesses an identification card or other record indicating membership in an Indian tribe;

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

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

(5) If the court has reason to know the child is an Indian child but the court does not have sufficient evidence to determine whether the child meets the definition of Indian child, the court must:

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

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

(A) The child is a member; or

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

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

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

(2) Except as provided in subsection (1) of this section, if there is reason to know a child in a proceeding under ORS chapter 419B is an Indian child and notice is required, the party providing notice must:

(a) Promptly send notice of the proceeding as described in subsection (3) of this section; and

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

(3) Notice under subsection (2) of this section must:

(a) Be sent to:

(A) Each tribe of which the child may be a member or of which the Indian child may be eligible for membership;

(B) The child's parents;

(C) The child's Indian custodian, if applicable; and

(D) The appropriate United States Bureau of Indian Affairs Regional Director listed in 25 C.F.R. 23.11(b), if the identity or location of the child's parents, Indian custodian or tribe cannot be ascertained.

(b) Be sent by registered or certified mail, return receipt requested.

(c) Be in clear and understandable language and include the following:

(A) The child's name, date of birth and place of birth;

(B) To the extent known, all names, including maiden, married and former names or aliases, of the child's parents, the parents' birthplaces and tribal enrollment numbers;

(C) To the extent known, the names, dates of birth, places of birth and tribal enrollment information of other direct lineal ancestors of the child;

(D) The name of each Indian tribe in which the child is a member or of which the Indian child may be eligible for membership;

(E) If notice is required to be sent to the United States Bureau of Indian Affairs under paragraph (a) of this subsection, to the extent known, information regarding the child's direct lineal ancestors, an ancestral chart for each biological parent, and the child's tribal affiliations and blood quantum;

(F) A copy of the petition initiating the proceeding and, if a hearing has been scheduled, information on the date, time and location of the hearing;

(G) The name of the petitioner and the name and address of the petitioner's attorney;

(H) A statement that the child's parent or Indian custodian, as a party to the proceeding under ORS 419B.875, has the right to participate in the proceeding;

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

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

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

(L) A statement that the child's parent, Indian custodian or tribe has the right to petition the court to transfer the proceeding to the tribal court;

(M) A statement describing the potential legal consequences of the proceeding on the future parental and custodial rights of the parent or Indian custodian;

(N) The mailing addresses and telephone numbers of the court and contact information for all parties to the proceeding and individuals notified under this section; and

(O) A statement that the information contained in the notice is confidential and that the notice should not be shared with any person not needing the information to exercise rights under sections 1 to 23 of this 2020 special session Act.

(4) If there is a reason to know that the Indian child's parent or Indian custodian has limited English proficiency and may not understand the contents of the notice under subsection (2) of this section, the court must provide language access services as required by Title VI of the Civil Rights Act of 1964 and other applicable federal and state laws. If the court is unable to secure translation or interpretation support, the court shall contact or direct a party to contact the Indian child's tribe or the local office of the United States Bureau of Indian Affairs for assistance identifying a qualified translator or interpreter.

(5)(a) No hearing requiring notice under subsection (2) of this section may be held until at least 10 days after the later of receipt of the notice by the Indian child's parent, Indian custodian or tribe or, if applicable, the United States Bureau of Indian Affairs. Upon request, the court shall grant the Indian child's parent, Indian custodian or tribe up to 20 additional days from the date upon which notice was received by the parent, Indian custodian or tribe to prepare for participation in the hearing.

(b) Nothing in this subsection prevents a court from reviewing a removal of an Indian child from the Indian child's parent or Indian custodian at an emergency proceeding before the expiration of the waiting period described in paragraph (a) of this subsection to determine the appropriateness of the removal and potential return of the child.

#### (Hearing Procedure)

**SECTION 17. Qualified expert witness.** (1) In any proceeding under ORS chapter 419B that requires the testimony of a qualified expert witness, the petitioner shall contact the Indian child's tribe and request that the tribe identify one or more individuals meeting the criteria described in subsection (3) or (4) of this section. The petitioner may also request the assistance of the United States Bureau of Indian Affairs in locating individuals meeting the

criteria described in subsection (3) or (4) of this section. The petitioner shall file a declaration with the court describing the efforts the petitioner made under this subsection to identify a qualified expert witness.

(2) At a hearing under ORS 419B.340, 419B.365, 419B.366 or 419B.521 when there is reason to know a child is an Indian child and a qualified expert witness is required, at least one qualified expert witness must testify regarding:

(a) Whether the Indian child's continued custody by the Indian child's parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child; and

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

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

(4) If the Indian child's tribe has not identified a qualified expert witness, the following individuals, in order of priority, may testify as a qualified expert witness:

(a) A member of the Indian child's tribe or another person of the tribe's choice who is recognized by the tribe as knowledgeable tribal customs regarding family organization or child rearing practices;

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

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

(5) In addition to testimony from a qualified expert witness, the court may hear supplemental testimony regarding information described in subsection (2) of this section from a professional having substantial education and experience in the area of the professional's specialty.

(6) No petitioning party, employees of the petitioning party or an employee of the Department of Human Services may serve as a qualified expert witness or a professional under this section.

**SECTION 18. Active efforts.** (1) As used in this section, "active efforts" means efforts that are affirmative, active, thorough, timely and intended to maintain or reunite an Indian child with the Indian child's family.

(2) If there is reason to know that a child in a proceeding under ORS chapter 419B is an Indian child and active efforts are required, the court must determine whether active efforts have been made to prevent the breakup of the family or to reunite the family.

(3) Active efforts require a higher standard of conduct than reasonable efforts.

(4) Active efforts must:

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

(b) Include assisting the Indian child's parent or parents or Indian custodian through the steps of a case plan and with accessing or developing the resources necessary to satisfy the case plan;

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

(d) Be conducted in partnership with the Indian child and the Indian child's parents, extended family members, Indian custodians and tribe; and

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

(5) Active efforts may include, as applicable, the following:

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

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

(c) Identifying, notifying and inviting representatives of the Indian child's tribe to participate in providing support and services to the Indian child's family and in family team meetings, permanency planning, resolution of placement issues, reviews or other case management related meetings;

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

(e) Offering and employing culturally appropriate family preservation strategies and facilitating the use of remedial and rehabilitative services provided by the Indian child's tribe;

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

(g) Supporting regular visits with the Indian child's parent or Indian custodian in the most natural setting possible, as well as trial home visits during any period of removal, consistent with the need to ensure the health, safety and welfare of the Indian child;

(h) Identifying community resources, including housing, financial assistance, employment training, transportation, mental health, health care, substance abuse prevention and treatment, parent training, transportation and peer support services and actively assisting the Indian child's parents or, when appropriate, the Indian child's extended family members, in utilizing and accessing those resources;

(i) Monitoring progress and participation of the Indian child's parents, Indian custodian or extended family members in the services as described in paragraphs (b), (c), (e) and (h) of this subsection;

(j) Considering alternative options to address the needs of the Indian child's parents and, where appropriate, the Indian child's extended family members, if the services as described in paragraphs (b), (c), (e) and (h) of this subsection are not available;

(k) Providing post-reunification services and monitoring for the duration of juvenile court's jurisdiction; and

(L) Any other efforts that are appropriate to the Indian child's circumstances.

**SECTION 19. Right to appear.** (1) Notwithstanding ORS 9.160 and 9.320, a tribe that is a party to a proceeding under ORS 419B.875 (1)(a)(H) may be represented by any individual, regardless of whether the individual is licensed to practice law.

(2) An attorney who is not barred from practicing law in this state may appear in any proceeding involving an Indian child without associating with local counsel if the attorney establishes to the satisfaction of the Oregon State Bar that:

(a) The attorney will appear in a court in this state for the limited purpose of participating in a proceeding under ORS chapter 419B subject to the provisions of sections 1 to 23 of this 2020 special session Act;

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

(c) The Indian child's tribe has affirmed the Indian child's membership or eligibility for membership under tribal law.

(3) Notwithstanding ORS 419B.875 (1)(a)(H), an Indian custodian or tribe may notify the court, orally on the record or in writing, that the Indian custodian or tribe withdraws as a party to the proceeding.

**SECTION 20. Right to counsel.** (1) If there is reason to know that a child in a proceeding under ORS chapter 419B is an Indian child:

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

(b) If the Indian child's parent or Indian custodian requests counsel to represent the parent or Indian custodian but is without sufficient financial means to employ suitable

counsel possessing skills and experience commensurate with the nature of the petition and the complexity of the case, the court shall appoint suitable counsel to represent the Indian child's parent or Indian custodian if the parent or Indian custodian is determined to be financially eligible under the policies, procedures, standards and guidelines of the Public Defense Services Commission.

(2) Upon presentation of the order of appointment under this section by the attorney for the Indian child, any agency, hospital, school organization, division or department of the state, doctor, nurse or other health care provider, psychologist, psychiatrist, police department or mental health clinic shall permit the attorney for the Indian child to inspect and copy any records of the Indian child involved in the case, without the consent of the Indian child or the Indian child's parent or Indian custodian. This subsection does not apply to records of a police agency relating to an ongoing investigation prior to bringing charges.

**SECTION 21. Right to examine documents.** In any proceeding under ORS chapter 419B when there is reason to know that the child is an Indian child, each party has the right to timely examine all reports or other documents held by the Department of Human Services that are not otherwise subject to a discovery exception under ORS 419B.881 or precluded under state or federal law.

**SECTION 22. Improper placements or terminations of parental rights involving Indian children.** (1) A petition to invalidate the placement of an Indian child, the guardianship of an Indian child or the termination of parental rights involving an Indian child may be filed in any court of competent jurisdiction by:

(a) An Indian child who is or was under the jurisdiction of the juvenile court under ORS chapter 419B;

(b) The Indian child's parent or Indian custodian from whose custody such child was removed; or

(c) The Indian child's tribe.

(2)(a) The court shall invalidate the placement of an Indian child, the guardianship of an Indian child or the termination of parental rights involving an Indian child if the court determines that any provision of sections 12, 13, 16 (2), (3)(a) or (b), (5)(a), 20 (1) or 21 of this 2020 special session Act, ORS 418.312 or, where required, section 17 (2), 18 or 23 of this 2020 special session Act has been violated.

(b) The proceeding that led to the violation must be vacated and, if the proceeding led to the removal or placement of the Indian child, the court shall order the child immediately returned to the Indian child's parent or Indian custodian, and any issues determined must be relitigated.

(3)(a) If any party to a proceeding under ORS chapter 419B involving an Indian child asserts or the court has reason to believe that the Indian child may have been improperly retained following a visit or temporary relinquishment of custody or improperly removed, the court shall expeditiously determine whether the Indian child was improperly retained or improperly removed.

(b) If the court finds that the Indian child was improperly retained or improperly removed, the court shall terminate the proceeding and order the Department of Human Services to immediately return the Indian child to the Indian child's parent or Indian custodian, unless the court determines by clear and convincing evidence that doing so would subject the Indian child to substantial and immediate danger or a threat of substantial and immediate danger.

(Preferred Placement)

**SECTION 23. Placement preferences.** (1) If there is reason to know that a child is an Indian child and the child is in need of placement or continuation in substitute care, as de-

defined in ORS 419A.004, except as provided in subsection (4) of this section the child must be placed in the least restrictive setting that:

- (a) Most closely approximates a family, taking into consideration sibling attachment;
- (b) Allows the Indian child's special needs, if any, to be met;
- (c) Is in reasonable proximity to the Indian child's home, extended family or siblings; and
- (d)(A) Is in accordance with the order of preference established by the Indian child's tribe; or

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

- (i) A member of the Indian child's extended family;
- (ii) A foster home licensed, approved or specified by the Indian child's tribe;
- (iii) A foster home licensed or approved by a licensing authority in this state and in which one or more of the licensed or approved foster parents is an Indian; or
- (iv) An institution for children that has a program suitable to meet the Indian child's needs and is approved by an Indian tribe or operated by an Indian organization.

(2) If the juvenile court finds that an Indian child is in need of a guardianship pursuant to ORS 419B.365 or 419B.366, except as provided in subsection (4) of this section, the Indian child shall be placed:

- (a) In accordance with the order of preference established by the Indian child's tribe; or
- (b) If the Indian child's tribe has not established guardianship placement preferences, according to the following order of preference:

- (A) With a member of the Indian child's extended family;
- (B) With other members of the Indian child's tribe; or
- (C) With other Indian families.

(3) If any party asserts or the court has reason to believe that the Indian child may have been placed contrary to the placement preferences of subsection (1) or (2) of this section, the court shall make a determination regarding the placement under section 22 of this 2020 special session Act.

(4)(a) A party may move the court for authority to make a placement contrary to the placement preferences of subsection (1) or (2) of this section. The motion must detail the reasons the party asserts that good cause exists for placement contrary to the placement preferences established by subsection (1) or (2) of this section.

(b) Upon the filing of an objection to a motion under this subsection, the juvenile court shall fix the time for hearing on the objections.

(c) If the juvenile court determines that the moving party has established, by clear and convincing evidence, that there is good cause to depart from the placement preferences under this section, the court may authorize placement in an alternative placement.

(d) The court's determination under paragraph (c) of this subsection:

- (A) Must be in writing and be based on:
  - (i) The preferences of the Indian child;
  - (ii) The presence of a sibling attachment that cannot be maintained through placement consistent with the placement preferences established by subsection (1) or (2) of this section;
  - (iii) Any extraordinary physical, mental or emotional needs of the Indian child that require specialized treatment services if, despite active efforts, those services are unavailable in the community where families who meet the placement preferences under subsection (1) or (2) of this section reside; or

(iv) Whether, despite a diligent search, a placement meeting the placement preferences under this section is unavailable, as determined by the prevailing social and cultural standards of the Indian community in which the Indian child's parent or extended family resides or with which the Indian child's parent or extended family members maintain social and cultural ties.

**(B) May be informed by but not determined by the placement request of a parent of the Indian child, if the parent has reviewed the placement options, if any, that comply with the placement preferences under this section.**

**(C) May not be based on:**

- (i) The socioeconomic conditions of the Indian child's tribe;**
- (ii) Any perception of the tribal or United States Bureau of Indian Affairs social services or judicial systems;**
- (iii) The distance between a placement meeting the placement preferences under this section that is located on or near a reservation and the Indian child's parent; or**
- (iv) The ordinary bonding or attachment between the Indian child and a nonpreferred placement arising from time spent in the nonpreferred placement.**

**INDIAN CHILD WELFARE  
IN EXISTING OREGON JUVENILE CODE  
(Policy)**

**SECTION 24.** ORS 418.627 is amended to read:

418.627. *[(1) The Legislative Assembly finds that in the Indian Child Welfare Act, Public Law 95-608, the United States Congress recognized the special legal status of Indian tribes and their members. This section implements the federal policy of protecting Indian cultures by insuring the placement of Indian children within Indian families or communities, and that as a consequence, the State of Oregon should take the actions provided in subsections (2) to (4) of this section.]*

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

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

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

**SECTION 25.** ORS 419B.090 is amended to read:

419B.090. (1) The juvenile court is a court of record and exercises jurisdiction as a court of general and equitable jurisdiction and not as a court of limited or inferior jurisdiction. The juvenile court is called "The \_\_\_\_\_ Court of \_\_\_\_\_ County, Juvenile Department."

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

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

(b) Parents and guardians have a duty to afford their children the rights listed in paragraph (a) of this subsection. Parents and guardians have a duty to remove any impediment to their ability to perform parental duties that afford these rights to their children. When a parent or guardian fails to fulfill these duties, the juvenile court may determine that it is in the best interests of the child to remove the child from the parent or guardian either temporarily or permanently.

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

(3) It is the policy of the State of Oregon to safeguard and promote each child's right to safety, stability and well-being and to safeguard and promote each child's relationships with parents, sib-

lings, grandparents, other relatives and adults with whom a child develops healthy emotional attachments.

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

- (a) Guide the secular and religious education of their children;
- (b) Make health care decisions for their children; and
- (c) Discipline their children.

(5) It is the policy of the State of Oregon, in those cases not described as extreme conduct under ORS 419B.502, to offer appropriate reunification services to parents and guardians to allow them the opportunity to adjust their circumstances, conduct or conditions to make it possible for the child to safely return home within a reasonable time. The state shall provide to parents and guardians with disabilities opportunities to benefit from or participate in reunification services that are equal to those extended to individuals without disabilities. The state shall provide aids, benefits and services different from those provided to parents and guardians without disabilities, when necessary to ensure that parents and guardians with disabilities are provided with an equal opportunity under this subsection. Although there is a strong preference that children live in their own homes with their own families, the state recognizes that it is not always possible or in the best interests of the child or the public for children who have been abused or neglected to be reunited with their parents or guardians. In those cases, the State of Oregon has the obligation to create or provide an alternative, safe and permanent home for the child.

*[(6) The State of Oregon recognizes the value of the Indian Child Welfare Act and hereby incorporates the policies of that Act.]*

**(6) It is the policy of the State of Oregon, in a case involving an Indian child, to safeguard and promote the Indian child's connections with the Indian child's family, culture and tribe in accordance with the policies regarding Indian children in dependency proceedings under section 1 of this 2020 special session Act.**

#### **(Definitions)**

**SECTION 26.** ORS 419A.004 is amended to read:

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

(1) "Age-appropriate or developmentally appropriate activities" means:

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

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

(2) "Another planned permanent living arrangement" means an out-of-home placement for a ward 16 years of age or older that is consistent with the case plan and in the best interests of the ward other than placement:

- (a) By adoption;
- (b) With a legal guardian; or
- (c) With a fit and willing relative.

(3) "CASA Volunteer Program" means a program that is approved or sanctioned by a juvenile court, has received accreditation from the National CASA Association and has entered into a con-

tract with the Oregon Department of Administrative Services under ORS 184.492 to recruit, train and supervise volunteers to serve as court appointed special advocates.

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

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

(6) "Conflict of interest" means a person appointed to a local citizen review board who has a personal or pecuniary interest in a case being reviewed by that board.

(7) "Counselor" means a juvenile department counselor or a county juvenile probation officer.

(8) "Court" means the juvenile court.

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

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

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

(a) Who is currently caring for a ward who is in the legal custody of the Department of Human Services and who has a permanency plan or concurrent permanent plan of adoption; and

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

(12) "Department" means the Department of Human Services.

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

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

(15) "Guardian" means guardian of the person and not guardian of the estate.

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

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

*[(b) Eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.]*

**(16) "Indian child" has the meaning given that term in section 2 of this 2020 special session Act.**

(17) "Juvenile court" means the court having jurisdiction of juvenile matters in the several counties of this state.

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

(19) "Parent" means the biological or adoptive mother and the legal parent of the child, ward, youth or youth offender. As used in this subsection, "legal parent" means:

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

(b) *[In cases in which the Indian Child Welfare Act applies, a man who is a father under applicable tribal law.]* **If the child is an Indian child, a man whose parentage has been established as described in section 4 of this 2020 special session Act.**

(20) "Permanent foster care" means an out-of-home placement in which there is a long-term contractual foster care agreement between the foster parents and the department that is approved by the juvenile court and in which the foster parents commit to raise a ward in substitute care or youth offender until the age of majority.

(21) "Public building" has the meaning given that term in ORS 166.360.

(22) "Proctor foster home" has the meaning given that term in ORS 418.205.

(23) "Qualified residential treatment program" means a program described in ORS 419B.356.

(24) "Reasonable and prudent parent standard" means the standard, characterized by careful and sensible parental decisions that maintain the health, safety and best interests of a child or ward while encouraging the emotional and developmental growth of the child or ward, that a substitute

care provider shall use when determining whether to allow a child or ward in substitute care to participate in extracurricular, enrichment, cultural and social activities.

(25) "Reasonable time" means a period of time that is reasonable given a child or ward's emotional and developmental needs and ability to form and maintain lasting attachments.

(26) "Records" means any information in written form, pictures, photographs, charts, graphs, recordings or documents pertaining to a case.

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

(28) "Restitution" has the meaning given that term in ORS 137.103.

(29) "Serious physical injury" means:

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

(b) A physical injury that:

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

(B) Results in substantial and recurring pain; or

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

(30) "Shelter care" means a home or other facility suitable for the safekeeping of a child, ward, youth or youth offender who is taken into temporary custody pending investigation and disposition.

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

(32) "Sibling" means one of two or more children or wards related:

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

(b) Through the marriage of the children's or wards' legal or biological parents.

(33)(a) "Substitute care" means an out-of-home placement directly supervised by the department or other agency, including placement in a foster family home, group home, child-caring agency as defined in ORS 418.205 or other child caring institution or facility.

(b) "Substitute care" does not include care in:

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

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

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

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

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

(34) "Surrogate" means a person appointed by the court to protect the right of the child, ward, youth or youth offender to receive procedural safeguards with respect to the provision of free appropriate public education.

(35) "Tribal court" [*means a court with jurisdiction over child custody proceedings and that is either a Court of Indian Offenses, a court established and operated under the code of custom of an Indian tribe or any other administrative body of a tribe that is vested with authority over child custody proceedings*] **has the meaning given that term in section 2 of this 2020 special session Act.**

(36) "Victim" means any person determined by the district attorney, the juvenile department or the court to have suffered direct financial, psychological or physical harm as a result of the act that has brought the youth or youth offender before the juvenile court. When the victim is a minor, "victim" includes the legal guardian of the minor. The youth or youth offender may not be considered the victim. When the victim of the crime cannot be determined, the people of Oregon, as represented by the district attorney, are considered the victims.

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

(a) Involves actual or threatened serious physical injury to a victim; or

(b) Is a sexual offense. As used in this paragraph, “sexual offense” has the meaning given the term “sex crime” in ORS 163A.005.

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

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

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

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

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

### (Jurisdiction)

**SECTION 27.** ORS 419B.100 is amended to read:

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

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

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

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

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

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

(A) Abandoned the person;

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

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

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

(f) Who is a runaway;

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

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

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

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

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

*[(5)(a)]* **(5) [An Indian tribe has exclusive] Except as provided in section 12 of this 2020 special session Act, jurisdiction over any child custody proceeding involving an Indian child is determined as provided in section 12 of this 2020 special session Act. [who resides or is domiciled within the reservation of the tribe, except where the jurisdiction is otherwise vested in the state by existing federal law.]**

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

*[(c) The juvenile court shall give full faith and credit to the public acts, records and judicial proceedings of an Indian tribe applicable to an Indian child custody proceeding to the same extent that*

*the juvenile court gives full faith and credit to the public acts, records and judicial proceedings of any other entity.]*

**(Parties to Proceedings)**

**SECTION 28.** ORS 419B.875 is amended to read:

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

- (A) The child or ward;
- (B) The parents or guardian of the child or ward;
- (C) A putative father of the child or ward who has demonstrated a direct and significant commitment to the child or ward by assuming, or attempting to assume, responsibilities normally associated with parenthood, including but not limited to:
  - (i) Residing with the child or ward;
  - (ii) Contributing to the financial support of the child or ward; or
  - (iii) Establishing psychological ties with the child or ward;
- (D) The state;
- (E) The juvenile department;
- (F) A court appointed special advocate, if appointed;
- (G) The Department of Human Services or other child-caring agency if the agency has temporary custody of the child or ward; and
- (H) [*The tribe*] In cases [*subject to the Indian Child Welfare Act if the tribe has intervened pursuant to the Indian Child Welfare Act*] **where there is reason to know, as described in section 15 of this 2020 special session Act, that a child involved is an Indian child:**

- (i) **The Indian child's tribe; and**
- (ii) **The Indian child's Indian custodian.**

(b) An intervenor who is granted intervention under ORS 419B.116 is a party to a proceeding under ORS 419B.100. An intervenor under this paragraph is not a party to a proceeding under ORS 419B.500.

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

- (a) The right to notice of the proceeding and copies of the petitions, answers, motions and other papers;
- (b) The right to appear with counsel and, except for intervenors under subsection (1)(b) of this section, to have counsel appointed as otherwise provided by law;
- (c) The right to call witnesses, cross-examine witnesses and participate in hearings;
- (d) The right of appeal; and
- (e) The right to request a hearing.

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

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

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

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

(6) If a foster parent, preadoptive parent or relative is currently providing care for a child or ward, the Department of Human Services shall give the foster parent, preadoptive parent or relative notice of a proceeding concerning the child or ward. A foster parent, preadoptive parent or relative

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

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

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

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

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

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

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

(8) Interpreters for parties and persons granted rights of limited participation shall be appointed in the manner specified by ORS 45.275 and 45.285.

#### **(Protective Custody; Placement)**

**SECTION 29.** ORS 419B.150 is amended to read:

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

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

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

(c) "Severe harm" means:

(A) Life-threatening damage; or

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

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

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

(b) A counselor; or

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

**(3)(a) Prior to taking a child into protective custody under this section, the person taking the child into protective custody shall determine whether there is reason to know the child is an Indian child, as provided in section 15 of this 2020 special session Act.**

**(b) If there is reason to know the child is an Indian child, the emergency notification requirements of section 16 (1) of this 2020 special session Act must be met prior to taking the child into protective custody.**

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

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

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

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

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

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

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

(A) Protect the child from abuse;

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

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

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

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

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

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

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

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

(A) Protect the child from abuse;

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

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

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

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

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

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

**SECTION 30.** ORS 419B.171 is amended to read:

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

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

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

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

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

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

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

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

[8] (h) Efforts to determine whether *[the child or the parents have any Indian heritage]* **there is reason to know that the child is an Indian child, as required under section 15 of this 2020 special session Act, and the results of those efforts.**

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

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

(b) **Confirmation that notification about the emergency proceeding under section 16 (1) of this 2020 special session Act has been provided;**

(c) **If the Indian child's parent or Indian custodian is unknown, a detailed explanation of what efforts have been made to locate and contact the parent or Indian custodian, including contact with the appropriate United States Bureau of Indian Affairs Regional Director;**

(d) **The tribal affiliation of the Indian child and the Indian child's parent or Indian custodian;**

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

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

(g) **A specific and detailed account of the circumstances that led the person responsible for the emergency removal of the Indian child to determine that removal of the Indian child was necessary to prevent imminent physical damage or harm and to remove the Indian child;**

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

(i) **A statement of the efforts that have been taken to assist the Indian child's parent or Indian custodian so that the Indian child may remain in or safely be returned to the custody of the Indian child's parent or Indian custodian.**

**SECTION 31.** ORS 419B.185 is amended to read:

419B.185. (1) When a child or ward is taken, or is about to be taken, into protective custody pursuant to ORS 419B.150, **419B.152**, 419B.160, 419B.165, 419B.168 *[and]* or 419B.171 *[or ORS 419B.152]* and placed in shelter care, a parent, child or ward shall be given the opportunity to present evidence to the court at the hearings specified in ORS 419B.183, and at any subsequent review hearing, that the child or ward can be returned home without further danger of suffering physical injury or emotional harm, endangering or harming others, or not remaining within the reach of the court process prior to adjudication. At the hearing:

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

(A) **Whether there is reason to know, as described in section 15 of this 2020 special session Act, that the child or ward is an Indian child; and**

(B) Whether the Department of Human Services has made reasonable efforts or, if *[the Indian Child Welfare Act applies]* **there is reason to know as described in section 15 of this 2020 special session Act the child or ward is an Indian child**, active efforts pursuant to section 18 of this 2020 special session Act to prevent or eliminate the need for removal of the child or ward from the home and to make it possible for the child or ward to safely return home. When the court finds that no services were provided but that reasonable services would not have eliminated the need for protective custody, the court shall consider the department to have made reasonable efforts or, if *[the Indian Child Welfare Act applies]* **there is reason to know that the child or ward is an Indian child**, active efforts to prevent or eliminate the need for protective custody. The court shall include in the written findings a brief description of the preventive and reunification efforts made by the department.

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

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

**(d) The court shall determine whether the child or ward is an Indian child.**

*[(d)]* (e) The court shall make a written finding in every order of removal that describes:

(A) Why it is in the best interests of the child or ward that the child or ward be removed from the home or continued in care; **and**

**(B) If the court determines under paragraph (d) of this subsection that the child or ward is an Indian child, why the Indian child's removal or continuation in care is necessary to prevent imminent physical damage or harm to the Indian child.**

*[(e)]* (f) When the court determines that a child or ward shall be removed from the home or continued in care, the court shall make written findings whether the department made diligent efforts pursuant to ORS 419B.192. The court shall include in its written findings a brief description of the efforts made by the department.

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

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

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

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

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

(c) Why protective custody is in the best interests of the child or ward~~].~~; **and**

**(d) If there is reason to know the child or ward is an Indian child, why protective custody is necessary to prevent imminent physical damage or harm to the Indian child.**

**(3)(a) The court may not enter an order taking a child or ward into protective custody under this section unless the department provides documentation that the department has made inquiries as required under section 15 of this 2020 special session Act to determine whether there is reason to know the child or ward is an Indian child.**

**(b) If there is reason to know that the child or ward is an Indian child, the court may not enter an order taking the child or ward into protective custody unless after holding a hearing the court finds in writing:**

**(A) That the department has complied with the notice requirements under section 16 of this 2020 special session Act;**

**(B) That removal of the child or ward is in the best interest, as described in section 5 of this 2020 special session Act, of the child or ward; and**

**(C) That a preponderance of the evidence indicates that protective custody is necessary to prevent imminent physical damage or harm to the child.**

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

**(B) Whenever the court receives notice from the department that the emergency necessitating the protective custody of the Indian child has changed, the court shall promptly hold a hearing under this section to determine whether protective custody continues to be necessary.**

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

(d) If there is reason to know the child or ward is an Indian child, a protective order under this section may not be continued for more than 30 days unless the court:

(A) Has set the case for a hearing on the petition asserting dependency jurisdiction;

(B) Determines that restoring the Indian child to the Indian child's parent or Indian custodian would subject the Indian child to imminent physical damage or harm;

(C) Despite diligent efforts, has been unable to transfer the proceeding to the jurisdiction of the Indian child's tribe; or

(D) Has been unable to set the case for a hearing on the petition showing the child or ward to be within the court's jurisdiction under ORS 419B.100 for a reason other than scheduling or availability of counsel and the reason has been documented in writing on the record.

**SECTION 32.** ORS 419B.192 is amended to read:

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

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

(3) In attempting to place the child or ward pursuant to subsections (1) and (2) of this section, the department shall consider, but not be limited to considering, the following:

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

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

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

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

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

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

(5) Notwithstanding subsections (1) to [(3)] (4) of this section, in cases where [*the Indian Child Welfare Act applies, the placement preferences of the Indian Child Welfare Act shall be followed*] **there is reason to know, as described in section 15 of this 2020 special session Act, the child or ward is an Indian child, the department shall make diligent efforts to place the child or ward**

according to the placement preferences described in section 23 of this 2020 special session Act.

**SECTION 33.** ORS 419B.340 is amended to read:

419B.340. (1) If the court awards custody to the Department of Human Services, the court shall include in the disposition order a determination whether the department has made reasonable efforts or, if the *[Indian Child Welfare Act applies]* **ward is an Indian child**, active efforts, **as described in section 18 of this 2020 special session Act**, to prevent or eliminate the need for removal of the ward from the home. If the ward has been removed prior to the entry of the order, the order shall also include a determination whether the department has made reasonable or active efforts to make it possible for the ward to safely return home. In making the determination under this subsection, the court shall consider the ward's health and safety the paramount concerns.

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

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

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

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

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

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

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

(C) The parent by abuse or neglect has caused serious physical injury to any child;

(D) The parent has subjected any child to rape, sodomy or sexual abuse;

(E) The parent has subjected any child to intentional starvation or torture;

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

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

(b) The parent has been convicted in any jurisdiction of one of the following crimes:

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

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

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

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

(c) The parent's rights to another child have been terminated involuntarily.

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

*[(7) When an Indian child is involved, the department must satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup*

*of the Indian family and that these efforts have proven unsuccessful. Foster care placement may not be ordered in a proceeding in the absence of a determination, supported by clear and convincing evidence, including the testimony of expert witnesses, that the continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical injury to the Indian child.]*

**(Hearings)**

**SECTION 34.** ORS 419B.305 is amended to read:

419B.305. (1) Except as otherwise provided in this section, no later than 60 days after a petition alleging that a child is within the jurisdiction of the court under ORS 419B.100 has been filed, the court shall hold a hearing on the petition and enter an order under ORS 419B.325 (1). Upon written order supported by factual findings of good cause, the court may continue a petition beyond 60 days.

**(2)(a) If there is reason to know, as described in section 15 of this 2020 special session Act, that the child is an Indian child and if the court found under ORS 419B.185 (3)(b)(C) that protective custody is necessary to prevent imminent physical damage or harm to the child, no later than 30 days after the petition is filed, the court shall hold the hearing and enter the order described in subsection (1) of this section, unless:**

**(A) The child has been returned to the child's parent or Indian custodian;**

**(B) The court orders the child to be returned to the child's parent or Indian custodian;**

**(C) The court continues the protective order regarding the child for more than 30 days as provided in ORS 419B.185 (3)(d); or**

**(D) The court grants the child's parent, Indian custodian or tribe an extension of time to prepare for participation in the hearing under section 16 (5) of this 2020 special session Act.**

**(b) The court may not schedule a hearing on the petition, or enter an order on the petition, unless the inquiry and notice requirements of sections 15 and 16 of this 2020 special session Act and all relevant timelines have been followed.**

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

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

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

**SECTION 35.** ORS 419B.310 is amended to read:

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

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

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

**(A) By a preponderance of competent evidence[.]; or**

**(B) If there is reason to know under section 15 of this 2020 special session Act that the child is an Indian child, by clear and convincing competent evidence.**

(b) The evidence under paragraph (a)(B) of this section must:

(A) Include testimony of one or more qualified expert witnesses under section 17 of this 2020 special session Act, demonstrating that the Indian child's continued custody by the child's parent or custody by the child's Indian custodian is likely to result in serious emotional or physical damage to the Indian child; and

(B) Show a causal relationship between the particular conditions in the Indian child's home and the likelihood that the Indian child's continued custody by the child's parent or custody by the child's Indian custodian will result in serious emotional or physical damage to the particular Indian child who is the subject of the child custody proceeding. Evidence that shows the existence of community or family poverty, isolation, single parenthood, custodian age, crowded or inadequate housing, substance abuse or nonconforming social behavior does not, by itself, establish a causal relationship as required by this paragraph.

(c) As used in this subsection, "custody" and "continued custody" have the meanings described in section 3 of this 2020 special session Act.

(4)(a) At any hearing of a case filed pursuant to ORS 419B.100, the court shall determine whether there is reason to know under section 15 of this 2020 special session Act that the child is an Indian child.

(b) If there is reason to know that the child is an Indian child, the jurisdictional requirements of section 12 of this 2020 special session Act and ORS 419B.305 must be met before the court may assume jurisdiction of the case.

**SECTION 36.** ORS 419B.325 is amended to read:

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

(2) For the purpose of determining proper disposition of the ward, testimony, reports or other material relating to the ward's mental, physical and social history and prognosis may be received by the court without regard to their competency or relevancy under the rules of evidence.

(3) **If there is reason to know under section 15 of this 2020 special session Act that the ward is an Indian child, the court's order under this section must be in compliance with the placement preferences described in section 23 of this 2020 special session Act.**

**SECTION 37.** ORS 419B.331 is amended to read:

419B.331. **Except as provided in sections 1 to 23 of this 2020 special session Act,** when the court determines it would be in the best interest and welfare of a ward, the court may place the ward under protective supervision. The court may direct that the ward remain in the legal custody of the ward's parents or other person with whom the ward is living, or the court may direct that the ward be placed in the legal custody of some relative or some person maintaining a foster home approved by the court, or in a child care center or a youth care center authorized to accept the ward. The court may specify particular requirements to be observed during the protective supervision consistent with recognized juvenile court practice, including but not limited to restrictions on visitation by the ward's parents, restrictions on the ward's associates, occupation and activities, restrictions on and requirements to be observed by the person having the ward's legal custody, and requirements for visitation by and consultation with a juvenile counselor or other suitable counselor.

**SECTION 38.** ORS 419B.476 is amended to read:

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

(2) At a permanency hearing the court shall:

(a) If the case plan at the time of the hearing is to reunify the family, determine whether the Department of Human Services has made reasonable efforts or, if [*the Indian Child Welfare Act applies*] **there is reason to know as described in section 15 of this 2020 special session Act that the ward is an Indian child,** active efforts as described in section 18 of this 2020 special session Act to make it possible for the ward to safely return home and whether the parent has made suffi-

cient progress to make it possible for the ward to safely return home. In making its determination, the court shall consider the ward's health and safety the paramount concerns.

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

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

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

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

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

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

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

(4) At a permanency hearing the court may:

(a) If the case plan changed during the period since the last review by a local citizen review board or court hearing and a plan to reunify the family was in effect for any part of that period, determine whether the department has made reasonable efforts or, if [*the Indian Child Welfare Act applies*] **there is reason to know as described in section 15 of this 2020 special session Act that the ward is an Indian child**, active efforts **as described in section 18 of this 2020 special session Act** to make it possible for the ward to safely return home. In making its determination, the court shall consider the ward's health and safety the paramount concerns;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(j) **If there is reason to know that the ward is an Indian child and the court determines that the permanency plan for the ward should be something other than to reunify the family, the court's determination, by clear and convincing evidence, that:**

**(A) Active efforts as described in section 18 of this 2020 special session Act were provided to make it possible for the Indian child to safely return home;**

**(B) Despite the efforts provided, continued removal of the Indian child is necessary to prevent serious emotional or physical damage to the Indian child;**

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

**(D) The new permanency plan complies with the placement preferences described in section 23 of this 2020 special session Act.**

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

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

(7) If **there is reason to know that** an Indian child is involved[, *the court shall follow the placement preference established by the Indian Child Welfare Act.*]:

(a) **The court shall follow the placement preferences described in section 23 of this 2020 special session Act.**

(b) **If the court finds that the department did not provide active efforts to make it possible for the Indian child to safely return home, the court may not, at that permanency hearing, change the permanency plan to something other than to reunify the family.**

(c) **If the court finds that the department did not provide active efforts to make it possible for the Indian child to return home, except as otherwise required under ORS 419B.470, the court may not set a date for a subsequent permanency hearing until the department has provided active efforts for the number of days that active efforts were not previously provided.**

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

**SECTION 39.** ORS 419B.517 is amended to read:

419B.517. (1) The use of mediation shall be encouraged in cases involving:

[(1)] (a) A parent or guardian in a juvenile dependency proceeding in which the child is taken into protective custody or placed in substitute care; or

[(2)] (b) The termination of parental rights.

(2) **If there is reason to know that the child or ward is an Indian child, prior to hearing a petition for guardianship under ORS 419B.365 or 419B.366, or termination of parental rights under ORS 419B.500, the court shall offer to order mediation between the Indian child's tribe and the proposed guardian or, if the hearing is for the termination of parental rights, the proposed adoptive placement.**

**SECTION 40.** ORS 419B.878 is amended to read:

419B.878. When a court conducts a hearing, the court shall inquire, **as described in section 15 of this 2020 special session Act**, whether a child is an Indian child [*subject to the Indian Child Welfare Act*]. If the court knows or has reason to know that an Indian child is involved, the court shall enter an order requiring the Department of Human Services to [*notify the Indian child's tribe of the pending proceedings and of the tribe's right to intervene*] **comply with the inquiry and notice provisions of sections 15 and 16 of this 2020 special session Act** and shall enter an order that the [*case be treated as an Indian Child Welfare Act case until such time as the court determines that the case is not an Indian Child Welfare Act case*] **child be treated as an Indian child until such time as the court determines that the child is not an Indian child.**

**SECTION 41.** ORS 419B.890 is amended to read:

419B.890. (1) After the proponent of the petition has completed the presentation of evidence, any other party, without waiving the right to offer evidence in the event the motion is not granted, may move for dismissal of any or all of the allegations of the petition on the ground that upon the facts and the law the proponent of the petition has failed to prove the allegations or, if proven, the allegations do not constitute a legal basis for the relief sought by the petition. The court may order dismissal of the petition or one or more of the allegations of the petition, or the court may decline to render any order until the close of all the evidence.

(2) Unless the court in its judgment of dismissal otherwise specifies, a dismissal under this section operates as an adjudication without prejudice.

(3) At any time at the request of a party or upon the court's own motion, the court may order a settlement conference or, if funds are available for a mediator, mediation.

**(4) If there is reason to know that the child or ward is an Indian child, prior to scheduling a settlement conference on jurisdiction, guardianship under ORS 419B.365 or 419B.366 or termination of parental rights under ORS 419B.500, the petitioner shall provide notice to the Indian child's tribe pursuant to section 16 of this 2020 special session Act. In addition, the court shall provide notice to the Indian child's tribe that includes a description of the settlement process, the procedure to schedule the settlement conference and the date that the hearing will occur if settlement is not reached.**

**SECTION 42.** ORS 419B.918 is amended to read:

419B.918. (1) Notwithstanding ORS 419B.815, 419B.816, 419B.819 and 419B.820, on timely written motion of a person showing good cause, a court may permit the person, instead of appearing personally, to participate in any hearing related to a petition alleging jurisdiction under ORS 419B.100, a petition to establish a permanent guardianship under ORS 419B.365 or a petition seeking termination of parental rights under ORS 419B.500, 419B.502, 419B.504, 419B.506 or 419B.508 in any manner that complies with the requirements of due process including, but not limited to, telephonic or other electronic means.

(2) If a person who is summoned or ordered to appear under ORS 419B.815, 419B.816, 419B.819 or 419B.820 seeks to reschedule any hearing at which the person is required to appear, the person must:

(a) Appear personally at the time specified in the summons or order to request the change; or  
(b) Include in the person's written motion requesting the change the person's current mailing address, to which the court may send notice of the new date for the hearing if the motion is granted.

(3) In any proceeding that involves the interstate placement of a child or ward, the court may:

(a) Permit a party from outside this state to provide information, testify or otherwise participate in the proceeding in any manner the court designates, provided the party complies with subsection (1) of this section, if applicable;

(b) Permit an attorney from outside this state representing any party to participate in the proceeding in any manner the court designates; and

(c) Obtain information or testimony in any manner the court designates from a state or private agency located in another state.

**(4)(a) Notwithstanding subsections (1) and (3) of this section, a party to a proceeding involving an Indian child may move the court to permit the party or any witness for the moving party to participate remotely or to provide remote location testimony.**

**(b) Subject to ORS 45.400, the court may allow the moving party or a witness for the moving party to give remote location testimony.**

**(c) If the moving party will not be providing testimony and if facilities are available that would permit the moving party to participate remotely, the court shall allow the moving party to participate remotely.**

**(d) As used in this subsection:**

**(A) "Participate remotely" means to participate, other than by testifying, from a physical location outside of the courtroom of record via simultaneous electronic transmission.**

**(B) "Remote location testimony" has the meaning given that term in ORS 45.400.**

**(C) "Simultaneous electronic transmission" means television, telephone or any other form of electronic communication transmission if the form of transmission allows the court, the attorneys and the party participating remotely to communicate with each other during the proceeding.**

#### **(Guardianships)**

**SECTION 43.** ORS 419B.365 is amended to read:

419B.365. (1) At any time following establishment of jurisdiction and wardship under ORS 419B.100, but prior to filing of a petition under ORS 419B.500, or after dismissal of a petition filed under ORS 419B.500 if it fails to result in termination of the parent's rights, a party, or person

granted rights of limited participation for the purpose of filing a guardianship petition, may file, and the court may hear, a petition for permanent guardianship. If the Department of Human Services chooses not to participate in a proceeding initiated by an intervenor under ORS 419B.875, the state is not foreclosed from filing a subsequent action should the intervenor's petition be denied.

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

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

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

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

**(4)(a) Notwithstanding subsection (3) of this section,** if an Indian child is involved, [*the permanent guardianship must be in compliance with the Indian Child Welfare Act. Notwithstanding subsection (3) of this section, the facts supporting any finding made to establish a permanent guardianship for an Indian child, including the finding that continued custody by the parents or Indian custodian would result in serious emotional or physical harm to the Indian child, must be established beyond a reasonable doubt.*] **the court may grant the permanent guardianship of the Indian child only:**

**(A) If the court has offered the parties the opportunity to participate in mediation as required under ORS 419B.517;**

**(B) If requested by the tribe, an agreement is in place that requires the proposed guardian to maintain connection between the Indian child and the Indian child's tribe; and**

**(C) If after inquiry as required under section 15 of this 2020 special session Act and notice as required under section 16 of this 2020 special session Act, and in addition to any other findings required for the termination of parental rights under ORS 419B.500 to 419B.524, the court finds:**

**(i) That evidence, including the testimony of one or more qualified expert witnesses under section 17 of this 2020 special session Act, establishes beyond a reasonable doubt that the Indian child's continued custody by the child's parent or custody by the child's Indian custodian is likely to result in serious emotional or physical damage to the Indian child;**

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

**(iii) That the placement of the Indian child complies with the placement preferences described in section 23 of this 2020 special session Act.**

**(b) The evidence under paragraph (a) of this subsection must show a causal relationship between the particular conditions in the Indian child's home and the likelihood that custody or continued custody of the Indian child will result in serious emotional or physical damage to the particular Indian child who is the subject of the child custody proceeding. Evidence that shows the existence of community or family poverty, isolation, single parenthood, custodian age, crowded or inadequate housing, substance abuse or nonconforming social behavior does not, by itself, establish a causal relationship as required by this paragraph.**

**(c) As used in this subsection, "custody" and "continued custody" have the meanings described in section 3 of this 2020 special session Act.**

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

**SECTION 44.** ORS 419B.366 is amended to read:

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

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

(3)(a) If there is reason to know, as described in section 15 of this 2020 special session Act, an Indian child is involved, the *[guardianship must be in compliance with the Indian Child Welfare Act. The facts supporting any finding made to establish a guardianship for an Indian child, including the finding that continued custody by the parents or Indian custodian would result in serious emotional or physical harm to the Indian child, must be established by clear and convincing evidence.]* court may grant the guardianship of the Indian child only:

(A) If the court has offered the parties the opportunity to participate in mediation as required under ORS 419B.517;

(B) If requested by the tribe, an agreement is in place that requires the proposed guardian to maintain connection between the Indian child and the Indian child's tribe; and

(C) If after inquiry as required under section 15 of this 2020 special session Act and notice as required under section 16 of this 2020 special session Act, the court finds:

(i) Clear and convincing evidence, including the testimony of one or more qualified expert witnesses under section 17 of this 2020 special session Act, that the Indian child's continued custody by the child's parent or custody by the child's Indian custodian is likely to result in serious emotional or physical damage to the Indian child;

(ii) That active efforts under section 18 of this 2020 special session Act to reunite the Indian family did not eliminate the necessity for guardianship based on serious emotional or physical damage to the Indian child; and

(iii) That the placement of the Indian child complies with the placement preferences as described in section 23 of this 2020 special session Act.

(b) The evidence under paragraph (a) of this subsection must show a causal relationship between the particular conditions in the Indian child's home and the likelihood that custody or continued custody of the Indian child will result in serious emotional or physical damage to the particular Indian child who is the subject of the child custody proceeding. Evidence that shows the existence of community or family poverty, isolation, single parenthood, custodian age, crowded or inadequate housing, substance abuse or nonconforming social behavior does not, by itself, establish a causal relationship as required by this paragraph.

(c) As used in this subsection, "custody" and "continued custody" have the meanings described in section 3 of this 2020 special session Act.

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

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

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

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

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

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

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

**SECTION 45.** ORS 419B.367 is amended to read:

419B.367. (1) Upon granting a motion for guardianship under ORS 419B.366 or upon granting a petition for guardianship under ORS 419B.365, the court shall issue letters of guardianship to the guardian. As provided in ORS 419A.255, a guardian may disclose letters of guardianship when necessary to fulfill the duties of a guardian. Letters of guardianship must be in substantially the following form:

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State of Oregon, )



419B.376. A guardian is not liable to third persons for acts of the ward solely by reason of being appointed guardian.

**SECTION 46.** ORS 419B.449 is amended to read:

419B.449. (1) Upon receiving any report required by ORS 419B.440, the court may hold a hearing to review the child or ward's condition and circumstances and to determine if the court should continue jurisdiction and wardship or order modifications in the care, placement and supervision of the child or ward. The court shall hold a hearing:

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

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

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

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

(e) Within 10 days after receipt of a report made under ORS 419B.440 (1)(c).

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

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

(a)(A) Why continued care is necessary as opposed to returning the child or ward home or taking prompt action to secure another permanent placement; and

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

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

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

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

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

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

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

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

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

(b) The expected timetable for dismissal of the department's legal custody of the ward and termination of the wardship.

**(5) If there is reason to know, as described in section 15 of this 2020 special session Act, that the child or ward is an Indian child and the child or ward is in the legal custody of the**

department but has been placed in the physical custody of the parent or a person who was appointed the child's or ward's legal guardian prior to placement of the child or ward in the legal custody of the department, the court may order that the child or ward be placed in the physical custody of a substitute care provider only after making all of the inquiry, notice and findings required under ORS 419B.305 and 419B.310.

[(5)] (6) In making the findings under subsection (2) of this section, the court shall consider the efforts made to develop the concurrent case plan, including, but not limited to, identification of appropriate permanent placement options for the child or ward both inside and outside this state and, if adoption is the concurrent case plan, identification and selection of a suitable adoptive placement for the child or ward.

(7)(a) If there is reason to know, as described in section 15 of this 2020 special session Act, that the child or ward is an Indian child, the findings of the court shall specifically state whether the department has provided active efforts to reunify the Indian child with the Indian child's parent or Indian custodian.

(b) If the court finds that active efforts have not been provided, the court shall order that the Indian child be immediately returned to the Indian child's parent.

(c) Notwithstanding paragraph (b) of this subsection, if the court finds that returning the Indian child to the Indian child's parent will result in substantial and immediate danger or threat of danger to the Indian child, the court shall:

(A) Determine the period of time during which active efforts were not provided;

(B) Order the department to provide those services necessary for the provision of active efforts;

(C) Order the department to continue placement of the Indian child pursuant to the placement preferences under section 23 of this 2020 special session Act; and

(D) Order the department to continue to foster relationships with any individuals identified by the department as long-term placement resources meeting the placement preferences under section 23 of this 2020 special session Act.

[(6)] (8) In addition to findings of fact required by subsection (2) of this section, the court may order the department to consider additional information in developing the case plan or concurrent case plan.

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

#### (Adoptions)

**SECTION 47.** ORS 419B.498 is amended to read:

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

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

(b) A parent has been convicted of murder of another child of the parent, voluntary manslaughter of another child of the parent, aiding, abetting, attempting, conspiring or soliciting to commit murder or voluntary manslaughter of the child or ward or of another child of the parent or felony assault that has resulted in serious physical injury to the child or ward or to another child of the parent; or

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

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

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

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

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

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

(C) The court or local citizen review board in a prior hearing or review determined that while the case plan was to reunify the family the department did not make reasonable efforts or, if the *[Indian Child Welfare Act applies]* **child or ward is an Indian child**, active efforts, **as described in section 18 of this 2020 special session Act**, to make it possible for the child or ward to safely return home; or

(c) The department has not provided to the family of the child or ward, consistent with the time period in the case plan, such services as the department deems necessary for the child or ward to safely return home, if reasonable efforts to make it possible for the child or ward to safely return home are required to be made with respect to the child or ward.

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

**SECTION 48.** ORS 419B.500 is amended to read:

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

**SECTION 49.** ORS 419B.521 is amended to read:

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

(2) Not earlier than provided in subsection (1) of this section and not later than six months from the date on which summons for the petition to terminate parental rights is served, the court before which the petition is pending shall hold a hearing on the petition except for good cause shown. When determining whether or not to grant a continuance for good cause, the judge shall take into consideration the age of the child or ward and the potential adverse effect delay may have on the child or ward. The court shall make written findings when granting a continuance.

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

*[(4)]* **(4)(a)** Notwithstanding subsection (1) of this section, if an Indian child is involved, termination of parental rights must be supported by **competent** evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that continued custody of the child is likely to result in serious emotional or physical harm to the child.

(b) The court may not enter an order terminating parental rights unless:

(A) The court has offered the parties the opportunity to participate in mediation as required under ORS 419B.517;

(B) If requested by the tribe, an agreement is in place that requires the Department of Human Services to maintain connection between the Indian child and the Indian child's tribe; and

(C) After inquiry as required under section 15 of this 2020 special session Act and notice as required under section 16 of this 2020 special session Act, and in addition to any other findings required under ORS 419B.500 to 419B.524, the court determines:

(i) That evidence, including the testimony of one or more qualified expert witnesses under section 17 of this 2020 special session Act, establishes beyond a reasonable doubt that the Indian child's continued custody by the child's parent or custody by the child's Indian custodian is likely to result in serious emotional or physical damage to the Indian child; and

(ii) That active efforts under section 18 of this 2020 special session Act to reunite the Indian family did not eliminate the necessity for termination based on serious emotional or physical damage to the Indian child.

(c) The evidence under this section must show a causal relationship between the particular conditions in the Indian child's home and the likelihood that custody or continued custody of the Indian child will result in serious emotional or physical damage to the particular Indian child who is the subject of the child custody proceeding. Evidence that shows the existence of community or family poverty, isolation, single parenthood, custodian age, crowded or inadequate housing, substance abuse or nonconforming social behavior does not, by itself, establish a causal relationship as required by this paragraph.

(d) As used in this subsection, "custody" and "continued custody" have the meanings described in section 3 of this 2020 special session Act.

**SECTION 50.** ORS 419B.529 is amended to read:

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

(a) One of the following has occurred:

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

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

(i) A certificate of irrevocability and waiver as provided in ORS 418.270 regarding a child; or

(ii) A certificate of waiver under the Indian Child Welfare Act regarding a child;

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

(c) **If the child is an Indian child:**

(A) The department has offered to coordinate mediation between the Indian child's tribe and the proposed adoptive placement;

(B) If requested by the tribe, an agreement is in place that requires the proposed adoptive parent to maintain connection between the Indian child and the Indian child's tribe; and

(C) If an agreement described in paragraph (c)(B) of this subsection is in place, the department incorporates the terms of the agreement into the placement report;

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

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

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

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

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

**(b) If the child is an Indian child and the Indian child's tribe has entered into an agreement described in subsection (1)(c)(B) of this section, the judgment of adoption must include the terms of the agreement.**

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

**SECTION 51.** ORS 419B.532 is amended to read:

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

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

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

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

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

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

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

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

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

(4) The moving party shall provide a copy of the motion to reinstate parental rights to the former parent and shall notify the court, the parties and, if [*the Indian Child Welfare Act applies*] **there is reason to know, as described in section 15 of this 2020 special session Act, that the ward is an Indian child**, the tribe that a copy of the motion has been provided.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **(Citizen Review Boards)**

**SECTION 52.** ORS 419A.116 is amended to read:

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

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

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

(c) If the case plan at the time of the review is something other than to reunify the family, whether the department has made reasonable efforts to place the child or ward in a timely manner in accordance with the case plan, including, if appropriate, placement of the child or ward through an interstate placement, and to complete the steps necessary to finalize the permanent placement of the child or ward;

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

(e) Compliance with the case plan;

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

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

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

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

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

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

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

**(k) Whether there is reason to know, as described in section 15 of this 2020 special session Act, that the child or ward is an Indian child; and**

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

**(A) Whether the department made active efforts, as described in section 18 of this 2020 special session Act, to prevent the breakup of the Indian family prior to the child's removal and whether those efforts did not eliminate the necessity for removal based on serious emotional or physical damage to the child;**

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

**(C) If the case plan at the time of review is to reunify the family and the child or ward is placed in a home outside the placement preferences described in section 23 of this 2020 special session Act, whether the department has continued to maintain the relationship of the child or ward with potential adoption preferences or whether the department has continued to search for a permanent placement that satisfies the placement preferences described in section 23 of this 2020 special session Act; and**

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

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

(a) Whether the Department of Human Services has made reasonable efforts or, if [*the Indian Child Welfare Act applies*] **there is reason to know, as described section 15 of this 2020 special session Act, that the child is an Indian child**, active efforts to make it possible for the child or ward to safely return home and whether the parent has made sufficient progress to make it possible for the child or ward to safely return home, if a plan to reunify the family was in effect for any part of the period since the last review or hearing; or

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

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

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

### **(Voluntary Placement)**

**SECTION 53.** ORS 418.312 is amended to read:

418.312. (1) The Department of Human Services may not require any parent or legal guardian to transfer legal custody of a child in order to have the child placed in a child-caring agency under ORS 418.205 to 418.327, 418.470, 418.475, 418.480 to 418.500, 418.950 to 418.970 and 418.992 to 418.998 in a foster home, group home or institutional child care setting, when the sole reason for the placement is the need to obtain services for the child's emotional, behavioral or mental disorder or developmental or physical disability. In all such cases, the child shall be placed pursuant to a voluntary placement agreement. When a child is placed pursuant to a voluntary placement agreement, the department shall have responsibility for the child's placement and care.

(2) If a child is placed pursuant to a voluntary placement agreement in a qualified residential treatment program described in ORS 419B.356, the placement is subject to judicial approval under ORS 419B.360.

**(3)(a) If a child is placed pursuant to a voluntary placement agreement and there is reason to know under section 15 of this 2020 special session Act that the child is an Indian child, the placement and voluntary placement agreement must be approved by the juvenile court.**

**(b) The juvenile court may approve the voluntary placement agreement if:**

**(A) The court finds that the Indian child's parent or Indian custodian entered into the voluntary placement agreement without a threat of removal by the Department of Human Services or an Oregon licensed adoption agency;**

**(B) The proposed placement conforms with the placement preferences described in section 23 of this 2020 special session Act;**

**(C) The agreement is executed in writing and filed with the court;**

**(D) The court has explained to the Indian child's parent or Indian custodian the terms and consequences of the agreement, including that if the Indian child remains in custody for more than 12 months, the juvenile court will hold a permanency hearing which could eventually result in the termination of parental rights, and that the Indian child's parent or Indian custodian may withdraw consent to the agreement at any time prior to an entry of a final decree of termination of parental rights and have the child returned to the parent's custody; and**

**(E) The juvenile court certifies that the explanation required under paragraph (b)(D) of this subsection was provided in English or, if English is not the primary language of the Indian child's parent or Indian custodian, in the primary language of the Indian child's parent or Indian custodian, and that the explanation was fully understood by the parent or Indian custodian.**

**(c) An Indian child's parent or Indian custodian may terminate the voluntary placement agreement at any time prior to an entry of an order terminating parental rights. To terminate the voluntary placement agreement, the parent or Indian custodian must file a written notice of termination with the court or otherwise testify before the court. The court shall promptly notify the department of the termination and order the immediate return of the Indian child to the physical custody of the Indian child's parent or Indian custodian.**

**[(3)(a)] (4)(a) If a child remains in voluntary placement for more than 180 days, the juvenile court shall make a judicial determination, within the first 180 days of the placement, that the placement is in the best interests of the child.**

**(b) If a child remains in voluntary placement for more than 12 months, the juvenile court shall hold a permanency hearing as provided in ORS 419B.476 no later than 14 months after the child's original voluntary placement, and not less frequently than once every 12 months thereafter during the continuation of the child's original voluntary placement, to determine the future status of the child.**

**[(4)] (5) As used in this section, "voluntary placement agreement" means a binding, written agreement between the department and the parent or legal guardian of a minor child that does not transfer legal custody to the department but that specifies, at a minimum, the legal status of the**

child and the rights and obligations of the parent or legal guardian, the child and the department while the child is in placement.

## CONFORMING AMENDMENTS

**SECTION 54.** ORS 350.300 is amended to read:

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

(2) A student who is a current foster child or former foster child is entitled to waiver of tuition and all fees under subsection (1) of this section until the student has received the equivalent of four years of undergraduate education.

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

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

(5) As used in this section:

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

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

(B) An Indian child subject to *[the Indian Child Welfare Act (25 U.S.C. 1901 et seq.)]* **sections 1 to 23 of this 2020 special session Act**, under the jurisdiction of a tribal court for out-of-home placement and not dismissed from care before reaching 16 years of age.

(b) “Institution of higher education” means:

(A) A public university listed in ORS 352.002;

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

(C) The Oregon Health and Science University.

**SECTION 55.** ORS 418.595 is amended to read:

418.595. (1) In considering what constitutes reasonable or active efforts or whether reasonable or active efforts have been made under ORS 419B.185, 419B.337, 419B.340, 419B.470, 419B.476, 419B.498 *[and]* **or 419C.173 or section 18 of this 2020 special session Act**, the Department of Human Services and the juvenile court shall consider whether placement of a child and referral of a child and the child’s family to a Strengthening, Preserving and Reunifying Families program is or was in the child’s best interests and the action most likely to prevent or eliminate the need for removal of the child from the child’s home or the action most likely to make it possible for the child to safely return home.

(2) If the department or juvenile court determines that placement of the child and referral of the child and the child’s family to a program would not prevent or eliminate the need for removal of the child from the child’s home or be the action most likely to make it possible for the child to safely return home, the department shall, in any description or documentation of its reasonable or active efforts, include a written explanation of the reasons why the department did not believe the placement of the child and referral of the child and the child’s family to the program was in the child’s best interests and the course most likely to prevent placement or effect the return of the child to the child’s family.

**SECTION 56.** ORS 419A.252 is amended to read:

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

(1) "Person" means an individual, a public body as defined in ORS 174.109 or a tribe that *[has intervened in]* **is a party to** a juvenile court proceeding pursuant to *[the Indian Child Welfare Act (25 U.S.C. 1901 et seq.)]* **ORS 419B.875.**

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

(3) "Public defense provider" means an attorney or a law firm designated by the office of public defense services established under ORS 151.216 to potentially represent a child, ward, youth, youth offender or the parent or guardian of a child, ward, youth or youth offender in a juvenile court proceeding.

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

- (a) The summons and other process;
- (b) Petitions;
- (c) Papers in the nature of pleadings, answers, motions, affidavits and other papers that are filed with the court, including supporting documentation;
- (d) Local citizen review board findings and recommendations submitted under ORS 419A.118 or 419B.367;
- (e) Guardianship report summaries filed with the court under ORS 419B.367;
- (f) Orders and judgments of the court, including supporting documentation;
- (g) Transcripts under ORS 419A.256;
- (h) Exhibits and materials offered as exhibits whether or not received in evidence; and
- (i) Other documents that become part of the record of the case by operation of law.

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

- (a) Are not or do not become part of the record of the case; and
- (b) Are not offered or received as evidence in the case.

**SECTION 57.** ORS 419B.118 is amended to read:

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

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

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

(4) A termination of parent-child relationship proceeding may be commenced in the county of wardship or where the child or ward resides or is found unless the child is an Indian child *[subject to the Indian Child Welfare Act]* and the tribal court has assumed jurisdiction **under section 12 of this 2020 special session Act.**

**SECTION 58.** ORS 419B.368 is amended to read:

419B.368. (1) The court, on its own motion or upon the motion of a party and after such hearing as the court may direct, may review, modify or vacate a guardianship order.

(2) The court may modify a guardianship order if the court determines to do so would be in the ward's best interests.

(3) The court may vacate a guardianship order, return the ward to the custody of a parent and make any other order the court is authorized to make under this chapter if the court determines that:

(a) It is in the ward's best interests to vacate the guardianship;

(b) The conditions and circumstances giving rise to the establishment of the guardianship have been ameliorated; and

(c) The parent is presently able and willing to adequately care for the ward.

(4) The court may vacate a guardianship order after determining that the guardian is no longer willing or able to fulfill the duties of a guardian. Upon vacating a guardianship order under this subsection, the court shall conduct a hearing:

(a) Within 14 days, make written findings required in ORS 419B.185 (1)(a), (d) [and], (e) **and (f)** and make any order directing disposition of the ward that the court is authorized to make under this chapter; and

(b) Pursuant to ORS 419B.476 within 90 days.

(5) In determining whether it is in the ward's best interests to modify or vacate a guardianship, the court shall consider, but is not limited to considering:

(a) The ward's emotional and developmental needs;

(b) The ward's need to maintain existing attachments and relationships and to form attachments and relationships, including those with the birth family;

(c) The ward's health and safety; and

(d) The ward's wishes.

(6) In addition to service required under ORS 419B.851, a party filing a motion to vacate a guardianship shall serve the motion upon the Department of Human Services.

(7) Notwithstanding subsection (1) of this section, a parent may not move the court to vacate a guardianship once a guardianship is granted under ORS 419B.365.

(8) If a guardianship is established under ORS 419B.366 and 419B.371, the court shall conduct a court review not later than 60 days before the ward reaches 18 years of age. At the hearing, the court shall inform the ward that after reaching 18 years of age the ward may not be placed in substitute care in the legal custody of the Department of Human Services.

**SECTION 59.** ORS 419B.452 is amended to read:

419B.452. Except when a child or ward has been surrendered for adoption or the parents' rights have been terminated, the court shall send a copy of the report required by ORS 419B.440 to the parents and shall notify the parents either that a hearing will be held or that the parents may request a hearing at which time they may ask for modifications in the care, treatment and supervision of the child or ward. If the court finds that informing the parents of the identity and location of the foster parents of the child or ward is not in the best interest of the child or ward, the court may order such information deleted from the report before sending the report to the parents. If **there is reason to know, as described in section 15 of this 2020 special session Act, that** an Indian child is involved, the court shall send a copy of the report to the Indian child's tribe as required by the notice requirements [of the *Indian Child Welfare Act*] **under section 16 of this 2020 special session Act.**

**SECTION 60.** ORS 419B.923 is amended to read:

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

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

(b) Excusable neglect.

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

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

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

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

(5) When **there is reason to know, as described in section 15 of this 2020 special session Act, that** an Indian child is involved, notice must be provided as required under [*the Indian Child Welfare Act*] **section 16 of this 2020 special session Act.**

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

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

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

## MISCELLANEOUS

**SECTION 61. Reports.** No later than September 15 of every even-numbered year, the Department of Human Services and the Judicial Department shall report to the interim committees of the Legislative Assembly relating to children regarding:

(1) The number of Indian children involved in dependency proceedings during the prior two-year period.

(2) The average duration Indian children were in protective custody.

(3) The ratio of Indian children to non-Indian children in protective custody.

(4) Which tribes the Indian children in protective custody were members of or of which they were eligible for membership.

(5) The number of Indian children in foster care who are in each of the placement preference categories described in section 23 of this 2020 special session Act and the number of those placements that have Indian parents in the home.

(6) The number of Indian children placed in adoptive homes in each of the placement preference categories described in section 23 of this 2020 special session Act and the number of those placements that have Indian parents in the home.

(7) The number of available placements and common barriers to recruitment and retention of appropriate placements.

(8) The number of times the court determined that good cause existed to deviate from the statutory placement preferences under section 23 of this 2020 special session Act.

(9) The number of cases that were transferred to tribal court under section 14 of this 2020 special session Act.

(10) The number of times the court found good cause to decline to transfer jurisdiction of a case to tribal court upon request and the most common reasons the court found good cause to decline a transfer petition.

(11) The efforts the Department of Human Services and the Judicial Department have taken to ensure compliance with the provisions of sections 1 to 23 of this 2020 special session Act and the amendments to statutes by sections 24 to 60 of this 2020 special session Act.

**SECTION 62. First report due.** The report under section 61 of this 2020 special session Act is first due no later than September 15, 2022.

**SECTION 63. Full faith and credit.** The juvenile court shall give full faith and credit to the public acts, records and judicial proceedings of an Indian tribe applicable to an Indian child custody proceeding.

**SECTION 64. Conflict of laws.** If any provision of sections 1 to 23 of this 2020 special session Act or the amendments to statutes by sections 24 to 60 of this 2020 special session Act is found to contravene the Indian Child Welfare Act (25 U.S.C. 1901 et seq.), it shall not serve to render inoperative any remaining provisions of sections 1 to 23 of this 2020 special session Act or the amendments to statutes by sections 24 to 60 of this 2020 special session Act that may be held not to conflict with the Indian Child Welfare Act.

**SECTION 65. Rules.** The Department of Human Services and the Judicial Department may adopt rules to implement sections 1 to 23 of this 2020 special session Act.

**SECTION 66. Captions.** The unit and section captions used in this 2020 special session Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2020 special session Act.

Passed by House June 26, 2020

.....  
Timothy G. Sekerak, Chief Clerk of House

.....  
Tina Kotek, Speaker of House

Passed by Senate June 26, 2020

.....  
Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2020

Approved:

.....M.,....., 2020

.....  
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2020

.....  
Bev Clarno, Secretary of State