

Senate Bill 517

Sponsored by Senator GIROD (Pre-session filed.)

SUMMARY

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

Directs Department of Human Services to provide person having legal custody of child with explanation for child's removal and description of expected remedial steps person must take for child's return.

A BILL FOR AN ACT

1
2 Relating to required notifications upon removal of child from home; creating new provisions; and
3 amending ORS 419B.150, 419B.171 and 419B.185.

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

5 **SECTION 1.** ORS 419B.150, as amended by section 29, chapter 14, Oregon Laws 2020 (first
6 special session), is amended to read:

7 419B.150. (1) As used in this section:

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

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

11 (c) "Severe harm" means:

12 (A) Life-threatening damage; or

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

14 (2) The following persons are authorized to take a child into protective custody under this sec-
15 tion:

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

17 (b) A counselor; or

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

19 (3)(a) Prior to taking a child into protective custody under this section, the person taking the
20 child into protective custody shall determine whether there is reason to know the child is an Indian
21 child, as provided in section 15, chapter 14, Oregon Laws 2020 (first special session).

22 (b) If there is reason to know the child is an Indian child, the emergency notification require-
23 ments of section 16 (1), chapter 14, Oregon Laws 2020 (first special session), must be met prior to
24 taking the child into protective custody.

25 (4)(a) Except as provided in paragraph (b) of this subsection, a child may be taken into protec-
26 tive custody without a court order only when there is reasonable cause to believe that:

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

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

29 (C) There is an imminent threat that the child's parent or guardian will cause the child to be
30 beyond the reach of the juvenile court before the court can order that the child be taken into pro-
31 tective custody under subsection (7) of this section.

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

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

4 **(c) If a child is taken into protective custody under this subsection, the Department of**
 5 **Human Services shall promptly provide the person having legal custody of the child with a**
 6 **clear and concise explanation of the reasons that the child was taken into protective custody**
 7 **and the expected remedial steps that the person will need to take before the child can be**
 8 **returned.**

9 (5) A person authorized to take a child into protective custody shall apply for a protective cus-
 10 tody order, as described in subsection (7) of this section, by submitting a declaration based on in-
 11 formation and belief that sets forth with particularity:

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

13 (A) Protect the child from abuse;

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

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

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

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

20 **(c) The expected remedial steps that the person having legal custody of the child will**
 21 **need to take before the child can be returned.**

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

24 (b) At the applicant's request, instead of the declaration described in subsection (5) of this sec-
 25 tion, the judge may take an oral statement under oath. If the applicant makes the oral statement to
 26 the judge out of court, the applicant shall record the oral statement and retain a copy of the re-
 27 cording. The recording constitutes a declaration for the purposes of subsection (5) of this section.

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

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

31 (A) Protect the child from abuse;

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

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

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

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

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

39 (8) When the court issues a protective custody order under subsection (7) of this section, the
 40 court may transmit the signed order to the applicant by a form of electronic communication ap-
 41 proved by the court that delivers a complete printable image of the signed order. The court shall
 42 file the original order in the court record.

43 **SECTION 2.** ORS 419B.171, as amended by section 30, chapter 14, Oregon Laws 2020 (first
 44 special session), is amended to read:

45 419B.171. (1) Except where the child is taken into protective custody pursuant to an order of the

1 court, the person taking the child into protective custody shall promptly file with the court or a
2 counselor a brief written report stating all of the following:

3 (a) The child's name, age and address.

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

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

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

8 (e) If the child is not taken to court, the placement of the child.

9 (f) If the child was not released, the reason why the child was not released **and the expected**
10 **remedial steps that the person having legal custody of the child will need to take before the**
11 **child can be returned.**

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

13 (h) Efforts to determine whether there is reason to know that the child is an Indian child, as
14 required under section 15, chapter 14, Oregon Laws 2020 (first special session), and the results of
15 those efforts.

16 (i) **That the person taking the child into protective custody provided the person having**
17 **legal custody of the child with a clear and concise explanation of the reasons that the child**
18 **was taken into protective custody and the expected remedial steps that the person will need**
19 **to take before the child can be returned.**

20 (2) If there is reason to know that the child is an Indian child, the report under subsection (1)
21 of this section must also include:

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

23 (b) Confirmation that notification about the emergency proceeding under section 16 (1), chapter
24 14, Oregon Laws 2020 (first special session), has been provided;

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

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

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

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

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

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

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

41 **SECTION 3.** ORS 419B.185, as amended by section 31, chapter 14, Oregon Laws 2020 (first
42 special session), is amended to read:

43 419B.185. (1) When a child or ward is taken, or is about to be taken, into protective custody
44 pursuant to ORS 419B.150, 419B.152, 419B.160, 419B.165, 419B.168 or 419B.171 and placed in shelter
45 care, a parent, child or ward shall be given the opportunity to present evidence to the court at the

1 hearings specified in ORS 419B.183, and at any subsequent review hearing, that the child or ward
2 can be returned home without further danger of suffering physical injury or emotional harm, en-
3 dangering or harming others, or not remaining within the reach of the court process prior to adju-
4 dication. At the hearing:

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

6 (A) Whether there is reason to know, as described in section 15, chapter 14, Oregon Laws 2020
7 (first special session), that the child or ward is an Indian child; and

8 (B) Whether the Department of Human Services has made reasonable efforts or, if there is rea-
9 son to know as described in section 15, chapter 14, Oregon Laws 2020 (first special session), the
10 child or ward is an Indian child, active efforts pursuant to section 18, chapter 14, Oregon Laws 2020
11 (first special session), to prevent or eliminate the need for removal of the child or ward from the
12 home and to make it possible for the child or ward to safely return home. When the court finds that
13 no services were provided but that reasonable services would not have eliminated the need for
14 protective custody, the court shall consider the department to have made reasonable efforts or, if
15 there is reason to know that the child or ward is an Indian child, active efforts to prevent or elim-
16 inate the need for protective custody. The court shall include in the written findings a brief de-
17 scription of the preventive and reunification efforts made by the department.

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

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

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

26 (e) The court shall make a written finding in every order of removal that describes:

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

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

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

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

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

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

44 **(b) The expected remedial steps that the department told the person having legal custody**
45 **of the child needed to be taken before the child could be returned and the progress that the**

1 **person made toward completing those steps;**

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

3 [(c)] (d) Why protective custody is in the best interests of the child or ward; and

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

6 (3)(a) The court may not enter an order taking a child or ward into protective custody under
7 this section unless the department provides documentation that the department has made inquiries
8 as required under section 15, chapter 14, Oregon Laws 2020 (first special session), to determine
9 whether there is reason to know the child or ward is an Indian child.

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

13 (A) That the department has complied with the notice requirements under section 16, chapter
14 14, Oregon Laws 2020 (first special session);

15 (B) That removal of the child or ward is in the best interest, as described in section 5, chapter
16 14, Oregon Laws 2020 (first special session), of the child or ward; and

17 (C) That a preponderance of the evidence indicates that protective custody is necessary to pre-
18 vent imminent physical damage or harm to the child.

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

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

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

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

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

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

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

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

39 **SECTION 4. (1) The amendments to ORS 419B.150, 419B.171 and 419B.185 by sections 1
40 to 3 of this 2021 Act become operative 90 days after the effective date of this 2021 Act.**

41 **(2) The Department of Human Services may adopt rules and take any other action before
42 the operative date specified in subsection (1) of this section that is necessary to enable the
43 department, on or after the operative date specified in subsection (1) of this section, to
44 undertake and exercise all of the duties, functions and powers conferred on the department
45 by the amendments to ORS 419B.150, 419B.171 and 419B.185 by sections 1 to 3 of this 2021**

1 **Act.**

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