

Requested by Senator GELSER

**PROPOSED AMENDMENTS TO
A-ENGROSSED HOUSE BILL 2102**

1 In line 2 of the printed A-engrossed bill, after “Services;” delete the rest
2 of the line and delete line 3 and insert “creating new provisions; amending
3 ORS 419B.150, 419B.185 and 419B.337; and declaring an emergency.”.

4 Delete lines 5 through 11 and insert:

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“STAFFING PROPOSAL

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8 **“SECTION 1. No later than December 31, 2022, the Department of**
9 **Human Services shall report to the interim committees of the Legis-**
10 **lative Assembly related to human services a comprehensive proposal**
11 **for department staffing that is adaptable to achieve customer service**
12 **obligations, program outcomes and policy goals.**

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14

“COURT ORDERS FOR REMOVALS

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16 **“SECTION 2. ORS 419B.337 is amended to read:**

17 **“419B.337. (1)(a) When the court determines it would be in the best in-**
18 **terest and for the welfare of a ward, the court may place the ward in the**
19 **legal custody of the Department of Human Services for care, placement and**
20 **supervision.**

21 **“(b) Notwithstanding ORS 419B.373 (1) and except as provided in**

1 **ORS 419B.150 (3), the department shall apply for a protective custody**
2 **order under ORS 419B.150 before removing a ward from the ward’s**
3 **home or in-home placement with the ward’s parent.**

4 “(c) When the court enters an order removing a ward from the ward’s
5 home **or in-home placement** or an order continuing care, the court shall
6 make a written finding as to whether:

7 “[a] (A) Removal of the ward from the ward’s home **or in-home**
8 **placement** or continuation of care is in the best interest and for the welfare
9 of the ward;

10 “[b] (B) Reasonable efforts, considering the circumstances of the ward
11 and parent, have been made to prevent or eliminate the need for removal of
12 the ward from the home **or in-home placement** or to make it possible for
13 the ward to safely return home. In making this finding, the court shall con-
14 sider the ward’s health and safety the paramount concerns; and

15 “[c] (C) Diligent efforts have been made to place the ward pursuant to
16 ORS 419B.192.

17 “(2) The court may specify the particular type of care, supervision or
18 services to be provided by the Department of Human Services to wards
19 placed in the department’s custody and to the parents or guardians of the
20 wards, but the actual planning and provision of such care, supervision or
21 services is the responsibility of the department. The department may place
22 the ward in a child care center authorized to accept the ward.

23 “(3) The court may make an order regarding visitation by the ward’s
24 parents or siblings. The Department of Human Services is responsible for
25 developing and implementing a visitation plan consistent with the court’s
26 order.

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

30 “(5) If the ward has been placed in the custody of the Department of

1 Human Services, the court shall make no commitment directly to any resi-
2 dential facility, but shall cause the ward to be delivered into the custody of
3 the department at the time and place fixed by rules of the department. A
4 ward so committed may not be placed in a Department of Corrections insti-
5 tution.

6 “(6) Commitment of a ward to the Department of Human Services con-
7 tinues until dismissed by the court or until the ward becomes 21 years of age.

8 “(7) A court may dismiss commitment of a ward to the Department of
9 Human Services if:

10 “(a)(A) Dismissal is appropriate because the ward has been safely reunited
11 with a parent or because a safe alternative to reunification has been imple-
12 mented for the ward; and

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

15 “(i) The department has provided case planning pursuant to ORS 419B.343
16 that addresses the ward’s needs and goals for a transition to successful
17 adulthood, including needs and goals relating to housing, physical and men-
18 tal health, education, employment, community connections and supportive
19 relationships;

20 “(ii) The department has provided appropriate services pursuant to the
21 case plan;

22 “(iii) The department has involved the ward in the development of the
23 case plan and in the provision of appropriate services; and

24 “(iv) The ward has safe and stable housing and is unlikely to become
25 homeless as a result of dismissal of commitment of the ward to the depart-
26 ment; or

27 “(b) The ward has been committed to the custody of the Oregon Youth
28 Authority.

29 **“SECTION 3.** ORS 419B.150, as amended by section 29, chapter 14,
30 Oregon Laws 2020 (first special session), is amended to read:

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

2 “(a) ‘Abuse’ has the meaning given that term in ORS 419B.005.

3 “(b) ‘Reasonable cause’ means a subjectively and objectively reasonable
4 belief, given all of the circumstances and based on specific and articulable
5 facts.

6 “(c) ‘Severe harm’ means:

7 “(A) Life-threatening damage; or

8 “(B) Significant or acute injury to a person’s physical, sexual or psycho-
9 logical functioning.

10 “(2) The following persons are authorized to take a child **or ward** into
11 protective custody under this section:

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

13 “(b) A counselor; or

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

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

20 “(b) If there is reason to know the child **or ward** is an Indian child, the
21 emergency notification requirements of section 16 (1), chapter 14, Oregon
22 Laws 2020 (first special session), must be met prior to taking the child **or**
23 **ward** into protective custody.

24 “(4)(a) Except as provided in paragraph (b) of this subsection, a child **or**
25 **ward** may be taken into protective custody without a court order only when
26 there is reasonable cause to believe that:

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

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

30 “(C) There is an imminent threat that the [*child’s*] parent or guardian

1 **of the child or ward** will cause the child **or ward** to be beyond the reach
2 of the juvenile court before the court can order that the child **or ward** be
3 taken into protective custody under subsection (7) of this section.

4 “(b) If there is reason to know that the child **or ward** is an Indian child,
5 the child **or ward** may be taken into protective custody without a court or-
6 der only when it is necessary to prevent imminent physical damage or harm
7 to the child **or ward**.

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

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

14 “(A) Protect the child **or ward** from abuse;

15 “(B) Prevent the child **or ward** from inflicting harm on self or others;

16 “(C) Ensure that the child **or ward** remains within the reach of the ju-
17 venile court to protect the child **or ward** from abuse or to prevent the child
18 **or ward** from inflicting harm on self or others; or

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

22 “(b) Why protective custody is in the best interests of the child **or**
23 **ward**.

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

26 “(b) At the applicant’s request, instead of the declaration described in
27 subsection (5) of this section, the judge may take an oral statement under
28 oath. If the applicant makes the oral statement to the judge out of court, the
29 applicant shall record the oral statement and retain a copy of the recording.
30 The recording constitutes a declaration for the purposes of subsection (5) of

1 this section.

2 “(7) The juvenile court may order that a child **or ward** be taken into
3 protective custody if, after reviewing the declaration described in subsection
4 (5) of this section, the court determines that:

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

7 “(A) Protect the child **or ward** from abuse;

8 “(B) Prevent the child **or ward** from inflicting harm on self or others;

9 “(C) Ensure that the child **or ward** remains within the reach of the ju-
10 venile court to protect the child **or ward** from abuse or prevent the child
11 **or ward** from inflicting harm on self or others;

12 “(D) Ensure the safety of a child **or ward** who has run away from home;
13 or

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

17 “(b) Protective custody is in the best interests of the child **or ward**.

18 “(8) When the court issues a protective custody order under subsection
19 (7) of this section, the court may transmit the signed order to the applicant
20 by a form of electronic communication approved by the court that delivers
21 a complete printable image of the signed order. The court shall file the ori-
22 ginal order in the court record.

23 **“SECTION 4.** ORS 419B.185, as amended by section 31, chapter 14,
24 Oregon Laws 2020 (first special session), is amended to read:

25 “419B.185. (1) When a child or ward is taken, or is about to be taken, into
26 protective custody pursuant to ORS 419B.150, 419B.152, 419B.160, 419B.165,
27 419B.168 or 419B.171 and placed in shelter care **or substitute care**, a parent,
28 child or ward shall be given the opportunity to present evidence to the court
29 at the hearings specified in ORS 419B.183, and at any subsequent review
30 hearing, that the child or ward can be returned home without further danger

1 of suffering physical injury or emotional harm, endangering or harming
2 others, or not remaining within the reach of the court process prior to ad-
3 judication. At the hearing:

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

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

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

21 “(b) In determining whether a child or ward shall be removed or contin-
22 ued out of home, the court shall consider whether the provision of reasonable
23 services can prevent or eliminate the need to separate the family.

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

30 “(d) The court shall determine whether the child or ward is an Indian

1 child.

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

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

6 “(B) If the court determines under paragraph (d) of this subsection that
7 the child or ward is an Indian child, why the Indian child’s removal or con-
8 tinuation in care is necessary to prevent imminent physical damage or harm
9 to the Indian child.

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

15 “(g) The court may receive testimony, reports and other evidence without
16 regard to whether the evidence is admissible under ORS 40.010 to 40.210 and
17 40.310 to 40.585 if the evidence is relevant to the determinations and findings
18 required under this section. As used in this paragraph, ‘relevant evidence’
19 has the meaning given that term in ORS 40.150.

20 “(2) To aid the court in making the written findings required by sub-
21 section (1)(a), (e) or (f) of this section, the department shall present written
22 documentation to the court outlining:

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

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

27 “(c) Why protective custody is in the best interests of the child or ward;
28 and

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

1 to the Indian child.

2 “(3)(a) The court may not enter an order taking a child or ward into
3 protective custody under this section unless the department provides doc-
4 umentation that the department has made inquiries as required under section
5 15, chapter 14, Oregon Laws 2020 (first special session), to determine whether
6 there is reason to know the child or ward is an Indian child.

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

10 “(A) That the department has complied with the notice requirements un-
11 der section 16, chapter 14, Oregon Laws 2020 (first special session);

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

15 “(C) That a preponderance of the evidence indicates that protective cus-
16 tody is necessary to prevent imminent physical damage or harm to the child.

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

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

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

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

1 days unless the court:

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

4 “(B) Determines that restoring the Indian child to the Indian child’s par-
5 ent or Indian custodian would subject the Indian child to imminent physical
6 damage or harm;

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

9 “(D) Has been unable to set the case for a hearing on the petition show-
10 ing the child or ward to be within the court’s jurisdiction under ORS
11 419B.100 for a reason other than scheduling or availability of counsel and
12 the reason has been documented in writing on the record.

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14

“CAPTIONS

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16 **“SECTION 5. The unit captions used in this 2021 Act are provided
17 only for the convenience of the reader and do not become part of the
18 statutory law of this state or express any legislative intent in the
19 enactment of this 2021 Act.**

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21

“EFFECTIVE DATE

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23 **“SECTION 6. This 2021 Act being necessary for the immediate
24 preservation of the public peace, health and safety, an emergency is
25 declared to exist, and this 2021 Act takes effect on its passage.”.**

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