

Enrolled
Senate Bill 865

Sponsored by Senator GELSNER BLOUIN; Senator MANNING JR

CHAPTER

AN ACT

Relating to children in substitute care; creating new provisions; amending ORS 109.270, 419B.192, 419B.402 and 419B.506; and declaring an emergency.

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

SECTION 1. Section 2 of this 2023 Act is added to and made a part of ORS chapter 419B.

SECTION 2. (1) If the Department of Human Services places a child or ward in substitute care, the department shall immediately begin searching for potential substitute care placements from among the relatives of the child or ward.

(2) If the department places a child or ward with a person who is not the child’s relative, when conducting the search under this section, the department shall provide written notification to the parents and any relative identified by the department as a potential placement resource or prospective adoptive parent that the nonrelative foster parent will have equal status or priority under ORS 109.270 and 419B.192 as a prospective adoptive parent if the nonrelative foster parent cares for the child or ward, or at least one sibling of the child or ward, for at least 12 cumulative months or, if the child, ward or sibling is younger than two years of age, for one-half of the child’s, ward’s or sibling’s life, calculated cumulatively.

SECTION 3. ORS 109.270 is amended to read:

109.270. (1) Rules adopted by the Department of Human Services for home studies and placement reports under ORS 109.276 (7) and (8) must, at a minimum, require the department to:

(a) Consider each prospective adoptive parent on the basis of the prospective adoptive parent’s ability to meet the individual needs of the child for safety, attachment and well-being;

(b) Safeguard a child’s rights under ORS 419B.090 (3) by *[considering a child’s relatives and current caretaker as having equal status and priority as prospective adoptive parents in the consideration of each of the relative’s and current caretaker’s respective abilities to meet the child’s individual needs for safety, attachment and well-being; and]*, **except as provided in ORS 419B.654 (2), considering the current caretaker and relatives to have equal status and priority as prospective adoptive parents under ORS 419B.192;**

(c) Give a child’s relatives and current caretaker a greater weight in the consideration of suitability as prospective adoptive parents as compared to the department’s consideration of other persons seeking to adopt a child who are not relatives or current caretakers[.]; **and**

(d) If an adoption is disrupted, consider any relative or current caretaker who was not initially selected by the department as the prospective adoptive parent as an adoptive resource.

(2) For purposes of this section, “current caretaker” has the meaning given that term in ORS 419A.004.

SECTION 4. ORS 419B.192 is amended to read:

419B.192. (1) **As used in this section:**

(a) **“Caregiver relationship” has the meaning given that term in ORS 419B.116.**

(b) **“Placement” includes adoptive placement of a child or ward, selection of a guardian for a child or ward or placement or continuation of placement of a child or ward in substitute care.**

[(1)] (2) 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, **with current caretakers** and **with** 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)] (3) 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)] (4) In attempting to place the child or ward pursuant to subsections [(1) and] (2) **and** (3) 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) The ability of the person being considered to maintain safe, long-term contact with siblings, relatives and caregivers known to the child or ward and others with whom the child or ward has developed an emotional attachment;

[(d)] (e) 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)] (f) 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)] (5) When the court is required to make findings regarding the department’s diligent efforts to place a child or ward with relatives, **current caretakers** or persons with a caregiver relationship under subsection [(1)] (2) of this section, and the court determines that, contrary to the placement decision of the department, placement with a relative, **current caretaker or caregiver** 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, **current caretaker or caregiver** is not in the best interest of the child.

[(5)] (6) Notwithstanding subsections [(1) to (4)] (2) **to** (5) of this section, in cases where there is reason to know, as described in ORS 419B.636, 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 ORS 419B.654.

(7) The department may not move a child or ward who is in substitute care for the sole purpose of preventing the establishment of a caregiver relationship or a current caretaker relationship.

SECTION 5. ORS 419B.402 is amended to read:

419B.402. (1) Pursuant to ORS 18.035, the court shall ensure that any order for support entered pursuant to ORS 419B.400 [shall be] is entered as a judgment. [and the court does not have the power to set aside, alter or modify the judgment, or any portion thereof, which provides for any payment of money, either for minor children or the support of a party, which has accrued prior to the filing of a motion to set aside, alter or modify the judgment.]

(2) If a motion is filed to set aside, alter or modify a judgment described in subsection (1) of this section, the court may not set aside, alter or modify the judgment, or any portion of the judgment, to the extent that the set-aside, alteration or modification would affect moneys that accrued prior to the date the motion is served on the nonmoving party if the moneys that accrued are for minor children or the support of a party.

(3)(a) Notwithstanding subsection (2) of this section, when a judgment is entered terminating or relinquishing a parent's parental rights, any child support arrears for that child owed to the State of Oregon by the parent are deemed satisfied as a matter of law.

(b) Nothing in subsection (2) of this section limits the authority of the court to deem satisfied any arrears under a judgment described in subsection (1) of this section owed to the State of Oregon by a parent.

SECTION 6. ORS 419B.506 is amended to read:

419B.506. The rights of the parent or parents may be terminated as provided in ORS 419B.500 if the court finds that the parent or parents have failed or neglected without reasonable and lawful cause to provide for the basic physical and psychological needs of the child or ward for six months prior to the filing of a petition. In determining such failure or neglect, the court shall disregard any incidental or minimal expressions of concern or support and shall consider but is not limited to one or more of the following:

(1) Failure to provide care [or pay a reasonable portion of substitute physical care and maintenance if custody is lodged with others].

(2) Failure to maintain regular visitation or other contact with the child or ward that was designed and implemented in a plan to reunite the child or ward with the parent.

(3) Failure to contact or communicate with the child or ward or with the custodian of the child or ward. In making this determination, the court may disregard incidental visitations, communications or contributions.

SECTION 7. (1) Section 2 of this 2023 Act and the amendments to ORS 109.270 and 419B.192 by sections 3 and 4 of this 2023 Act apply to any placement decision made on or after the effective date of this 2023 Act and to any appeal of a placement decision that is under consideration on the effective date of this 2023 Act.

(2) The amendments to ORS 419B.402 and 419B.506 by sections 5 and 6 of this 2023 Act apply to matters involving moneys for support that are unpaid or accruing before, on or after the effective date of this 2023 Act.

SECTION 8. This 2023 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2023 Act takes effect on its passage.

Passed by Senate April 17, 2023

Repassed by Senate June 15, 2023

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Lori L. Brocker, Secretary of Senate

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Rob Wagner, President of Senate

Passed by House May 25, 2023

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Dan Rayfield, Speaker of House

Received by Governor:

.....M.,....., 2023

Approved:

.....M.,....., 2023

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Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M.,....., 2023

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Secretary of State