

D R A F T

SUMMARY

Declares Oregon policy regarding Indian children. Modifies Oregon child welfare laws regarding Indian children to reconcile with provisions of federal Indian Child Welfare Act.

A BILL FOR AN ACT

1
2 Relating to Indian children; creating new provisions; and amending ORS
3 350.300, 418.312, 418.595, 418.627, 419A.004, 419A.116, 419A.252, 419B.090,
4 419B.100, 419B.118, 419B.150, 419B.171, 419B.185, 419B.192, 419B.305,
5 419B.310, 419B.325, 419B.331, 419B.340, 419B.365, 419B.366, 419B.367,
6 419B.368, 419B.449, 419B.452, 419B.476, 419B.498, 419B.500, 419B.517,
7 419B.521, 419B.529, 419B.532, 419B.875, 419B.878, 419B.890, 419B.918 and
8 419B.923.

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

11 Whereas Congress, working with tribal nations, tribal leadership and ad-
12 vocates for Indian children, passed the Indian Child Welfare Act (25 U.S.C.
13 1901 et seq.) in 1978 to stop the removal of Indian children from their homes,
14 families and communities; and

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

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

20 Whereas despite requirements under the Indian Child Welfare Act, appli-

1 cation of the Indian Child Welfare Act in Oregon courts is inconsistent; and
2 Whereas clearly addressing in state law the coordination between and
3 respective roles of the state and tribes regarding the provision of child wel-
4 fare services to Indian children will provide uniform and consistent direction
5 to state courts, tribes and practitioners to prevent unlawful removals of In-
6 dian children from their families and promote the stable placement of Indian
7 children in loving, permanent homes that are connected to family and cul-
8 ture; now, therefore,

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

10 **OREGON INDIAN CHILD WELFARE**
11 **(Policy Regarding Indian Children)**
12

13 **SECTION 1. The Legislative Assembly finds that the United States**
14 **Congress recognizes the special legal status of Indian tribes and their**
15 **members. It is the policy of the State of Oregon to protect the health**
16 **and safety of Indian children and the stability and security of Indian**
17 **tribes and families by promoting practices designed to prevent the re-**
18 **moval of Indian children from their families and, if removal is neces-**
19 **sary and lawful, to prioritize the placement of an Indian child with the**
20 **Indian child's extended family and tribal community. The state re-**
21 **cognizes the inherent jurisdiction of Indian tribes to make decisions**
22 **regarding the custody of Indian children. The state also recognizes the**
23 **importance of ensuring that Indian children and Indian families re-**
24 **ceive appropriate services to obviate the need to remove an Indian**
25 **child from the Indian child's home and, if removal is necessary and**
26 **lawful, to effect the child's safe return home. Sections 1 to 23 of this**
27 **2020 special session Act create additional safeguards for Indian chil-**
28 **dren to address disproportionate rates of removal, to improve the**
29 **treatment of and services provided to Indian children and Indian**
30 **families in the child welfare system and to ensure that Indian children**
31 **who must be removed are placed with Indian families, communities**

1 and cultures.

2

3

(Definitions; Custody; Parentage;

4

Best Interests of Indian Child; Domicile;

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Indian Child's Tribe)

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7

SECTION 2. Definitions. As used in sections 1 to 23 of this 2020

8

special session Act, unless the context provides otherwise:

9

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

13

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

15

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

21

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

25

(4) "Indian child" means any unmarried person who has not at-
26 tained 18 years of age and:

27

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

28

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

30

(5) "Indian custodian" means an Indian, other than the Indian
31 child's parent, who has custody, as described in section 3 (1) of this

1 2020 special session Act, of the Indian child, or to whom temporary
2 physical care, custody and control has been transferred by the Indian
3 child's parent.

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

9 (7) "Juvenile court" has the meaning given that term in ORS
10 419A.004.

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

13 (9) "Parent" means:

14 (a) A biological parent of an Indian child;

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

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

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

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

26 (12) "Tribal court" means a court with jurisdiction over child cus-
27 tody proceedings and that is either a Court of Indian Offenses, a court
28 established and operated under the code or custom of an Indian tribe
29 or any other administrative body of a tribe that is vested with au-
30 thority over child custody proceedings.

31 SECTION 3. Custody of Indian child. (1) An individual has custody

1 of an Indian child under sections 1 to 23 of this 2020 special session
2 Act if the individual has physical custody or legal custody of the In-
3 dian child under any applicable tribal law, tribal custom or state law.

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

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

10 (a) The Indian child's biological mother.

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

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

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

19 (1) Established under tribal law;

20 (2) Recognized in accordance with tribal custom; or

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

24 **SECTION 5. Best interests of Indian child.** When making a deter-
25 mination regarding the best interests of an Indian child under sections
26 1 to 23 of this 2020 special session Act, ORS chapter 419B, the Indian
27 Child Welfare Act (25 U.S.C. 1901 et seq.) or any regulations or rules
28 regarding sections 1 to 23 of this 2020 special session Act or the Indian
29 Child Welfare Act, the juvenile court shall, in consultation with the
30 Indian child's tribe, consider the following relevant factors:

31 (1) The protection of the safety, well-being, development and sta-

1 **bility of the Indian child;**

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

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

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

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

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

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

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

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

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

24 **(c) The Indian child's guardian.**

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

29 **(2) In any proceeding under ORS chapter 419B where there is reason**
30 **to know the child is an Indian child and the department reasonably**
31 **believes that the Indian child is eligible for enrollment in a tribe, the**

1 department shall notify the Indian child's parent of the parent's right
2 to object to the department's assistance under subsection (1) of this
3 section.

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

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

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

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

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

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

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

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

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

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

30 (d) The interests asserted by each tribe;

31 (e) Whether a tribe has previously adjudicated a case involving the

1 **Indian child; and**

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

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

10

11

(Jurisdiction; Transfer)

12

13 **SECTION 9. Determination of domicile and residence. In any pro-**
14 **ceeding under ORS chapter 419B involving an Indian child, the juvenile**
15 **court must determine the residence and domicile of the Indian child**
16 **and whether the Indian child is a ward of tribal court. The juvenile**
17 **court shall communicate with any tribal courts to the extent neces-**
18 **sary to make a determination under this section.**

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

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

26 **(2) The purposes of a tribal-state agreement are to promote the**
27 **continued existence and integrity of the Indian tribe as a political en-**
28 **tity and to protect the vital interests of Indian children in securing**
29 **and maintaining political, cultural and social relationships with their**
30 **tribe.**

31 **(3) A tribal-state agreement may include, but is not limited to,**

1 **agreements regarding default jurisdiction over cases in which the state**
2 **courts and tribal courts have concurrent jurisdiction, the transfer of**
3 **cases between state courts and tribal courts, the assessment, removal,**
4 **placement and custody of Indian children and any other child welfare**
5 **services provided to Indian children.**

6 **(4) A tribal-state agreement must:**

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

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

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

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

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

28 **(a) The Indian child is a ward of a tribal court of the tribe; or**

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

31 **(3)(a) An Indian tribe subject to Public Law 83-280 may limit the**

1 juvenile court's exercise of jurisdiction under ORS 419B.100 (1) over
2 an Indian child by entering into a tribal-state agreement described in
3 section 10 of this 2020 special session Act.

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

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

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

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

15 (B) The juvenile court shall:

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

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

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

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

27 (C) Communications between the juvenile court and a tribal court
28 regarding calendars, court records and similar matters may occur
29 without informing the parties or creating a record of the communi-
30 cations.

31 (D) As used in this paragraph, "record" means information that is

1 inscribed on a tangible medium or that is stored in an electronic or
2 other medium and is retrievable in perceivable form.

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

6 SECTION 13. Motion to transfer to tribal court; objection. (1) Ex-
7 cept as provided in subsection (5) of this section, the juvenile court
8 shall transfer a proceeding under ORS chapter 419B involving an In-
9 dian child if, at any time during the proceeding, the Indian child's
10 parent, Indian custodian or tribe petitions the court to transfer the
11 proceeding to the tribal court.

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

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

17 (a) That the Indian child's tribe has declined the transfer;

18 (b) That one or both of the Indian child's parents object to the
19 transfer; or

20 (c) That good cause exists to deny the transfer.

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

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

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

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

31 (A) Whether the proceeding is at an advanced stage;

1 (B) Whether there has been a prior proceeding involving the Indian
2 child in which a transfer motion was not filed;

3 (C) Whether the transfer could affect the placement of the Indian
4 child;

5 (D) The Indian child's cultural connections with the tribe or the
6 tribe's reservation;

7 (E) The socioeconomic conditions of the Indian child's tribe or any
8 negative perception of tribal or United States Bureau of Indian Affairs'
9 social services or judicial systems; or

10 (F) Whether the transfer serves the best interests of the Indian
11 child.

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

13 (A) The tribe declines the transfer orally on the record or in writ-
14 ing;

15 (B) The Indian child's parent objects to the transfer; or

16 (C) The court finds by clear and convincing evidence, after hearing,
17 that good cause exists to deny the transfer.

18 (b) Notwithstanding paragraph (a)(B) of this subsection, the ob-
19 jection of the Indian child's parent does not preclude the transfer if:

20 (A) The objecting parent dies or the objecting parent's parental
21 rights are terminated and have not been reinstated under ORS
22 419B.532; and

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

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

29 SECTION 14. Transfer. Upon granting a transfer motion under
30 section 13 of this 2020 special session Act, the juvenile court shall ex-
31 peditiously:

1 (1) Notify the tribal court of the pending dismissal of the proceed-
2 ing;

3 (2) Transfer all information regarding the proceeding, including but
4 not limited to pleadings and court records, to the tribal court;

5 (3) Direct the Department of Human Services to:

6 (a) Coordinate with the tribal court and the Indian child's tribe to
7 ensure that the transfer of the proceeding and the transfer of custody
8 of the Indian child is accomplished with minimal disruption of services
9 to the Indian child and the Indian child's family; and

10 (b) Provide the Indian child's tribe with documentation related to
11 the Indian child's eligibility for state and federal assistance and in-
12 formation related to the Indian child's social history, treatment diag-
13 nosis and services and other relevant case and service related data;
14 and

15 (4) Dismiss the proceeding upon confirmation from the tribal court
16 that the tribal court received the transferred information.

17
18 (Inquiry; Notice)
19

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

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

1 **the child is an Indian child, including by consulting with:**

2 **(a) The child;**

3 **(b) The child's parent or parents;**

4 **(c) Any person having custody of the child or with whom the child**
5 **resides;**

6 **(d) Extended family members of the child;**

7 **(e) Any other person who may reasonably be expected to have in-**
8 **formation regarding the child's membership or eligibility for mem-**
9 **bership in an Indian tribe; and**

10 **(f) Any Indian tribe of which the child may be a member or of**
11 **which the child may be eligible for membership.**

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

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

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

22 **(a) Any individual present in the proceeding, officer of the court**
23 **involved in the proceeding, Indian tribe, Indian organization or agency**
24 **informs the court that the child is an Indian child;**

25 **(b) Any individual present in the proceeding, officer of the court**
26 **involved in the proceeding, Indian tribe, Indian organization or agency**
27 **informs the court that information has been discovered indicating that**
28 **the child is an Indian child;**

29 **(c) The child indicates to the court that the child is an Indian child;**

30 **(d) The court is informed that the domicile or residence of the**
31 **child, the child's parent or the child's Indian custodian is on a reser-**

1 vation or in an Alaska Native village;

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

4 (f) The court is informed that the child or the child's parent pos-
5 sesses an identification card or other record indicating membership in
6 an Indian tribe;

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

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

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

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

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

22 (A) The child is a member; or

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

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

31 (b) Notification under this subsection must include the basis for the

1 **child's removal, the time, date and place of the initial hearing and a**
2 **statement that the tribe, as a party to the proceeding under ORS**
3 **419B.875, has the right to participate in the proceeding.**

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

7 **(a) Promptly send notice of the proceeding as described in sub-**
8 **section (3) of this section; and**

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

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

13 **(a) Be sent to:**

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

16 **(B) The child's parents;**

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

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

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

22 **(c) Be in clear and understandable language and include the fol-**
23 **lowing:**

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

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

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

31 **(D) The name of each Indian tribe in which the child is a member**

1 or of which the Indian child may be eligible for membership;

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

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

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

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

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

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

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

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

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

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

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

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

14 (5)(a) No hearing requiring notice under subsection (2) of this sec-
15 tion may be held until at least 10 days after the later of receipt of the
16 notice by the Indian child’s parent, Indian custodian or tribe or, if
17 applicable, the United States Bureau of Indian Affairs. Upon request,
18 the court shall grant the Indian child’s parent, Indian custodian or
19 tribe up to 20 additional days from the date upon which notice was
20 received by the parent, Indian custodian or tribe to prepare for par-
21 ticipation in the hearing.

22 (b) Nothing in this subsection prevents a court from reviewing a
23 removal of an Indian child from the Indian child’s parent or Indian
24 custodian at an emergency proceeding before the expiration of the
25 waiting period described in paragraph (a) of this subsection to deter-
26 mine the appropriateness of the removal and potential return of the
27 child.

28
29 (Hearing Procedure)

30
31 SECTION 17. Qualified expert witness. (1) In any proceeding under

1 **ORS chapter 419B that requires the testimony of a qualified expert**
2 **witness, the petitioner shall contact the Indian child's tribe and re-**
3 **quest that the tribe identify one or more individuals meeting the cri-**
4 **teria described in subsection (3) or (4) of this section. The petitioner**
5 **may also request the assistance of the United States Bureau of Indian**
6 **Affairs in locating individuals meeting the criteria described in sub-**
7 **section (3) or (4) of this section. The petitioner shall file a declaration**
8 **with the court describing the efforts the petitioner made under this**
9 **subsection to identify a qualified expert witness.**

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

14 **(a) Whether the Indian child's continued custody by the Indian**
15 **child's parent or Indian custodian is likely to result in serious emo-**
16 **tional or physical damage to the Indian child; and**

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

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

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

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

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

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

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

10 (6) No petitioning party, employees of the petitioning party or an
11 employee of the Department of Human Services may serve as a quali-
12 fied expert witness or a professional under this section.

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

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

21 (3) Active efforts require a higher standard of conduct than rea-
22 sonable efforts.

23 (4) Active efforts must:

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

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

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

31 (d) Be conducted in partnership with the Indian child and the In-

1 **dian child's parents, extended family members, Indian custodians and**
2 **tribe; and**

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

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

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

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

11 **(c) Identifying, notifying and inviting representatives of the Indian**
12 **child's tribe to participate in providing support and services to the**
13 **Indian child's family and in family team meetings, permanency plan-**
14 **ning, resolution of placement issues, reviews or other case manage-**
15 **ment related meetings;**

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

21 **(e) Offering and employing culturally appropriate family preserva-**
22 **tion strategies and facilitating the use of remedial and rehabilitative**
23 **services provided by the Indian child's tribe;**

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

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

30 **(h) Identifying community resources, including housing, financial**
31 **assistance, employment training, transportation, mental health,**

1 health care, substance abuse prevention and treatment, parent train-
2 ing, transportation and peer support services and actively assisting the
3 Indian child's parents or, when appropriate, the Indian child's ex-
4 tended family members, in utilizing and accessing those resources;

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

8 (j) Considering alternative options to address the needs of the In-
9 dian child's parents and, where appropriate, the Indian child's ex-
10 tended family members, if the services as described in paragraphs (b),
11 (c), (e) and (h) of this subsection are not available;

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

14 (L) Any other efforts that are appropriate to the Indian child's cir-
15 cumstances.

16 **SECTION 19. Right to appear.** (1) Notwithstanding ORS 9.160 and
17 9.320, a tribe that is a party to a proceeding under ORS 419B.875
18 (1)(a)(H) may be represented by any individual, regardless of whether
19 the individual is licensed to practice law.

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

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

27 (b) The attorney represents an Indian child's parent, Indian custo-
28 dian or tribe; and

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

31 (3) Notwithstanding ORS 419B.875 (1)(a)(H), an Indian custodian or

1 tribe may notify the court, orally on the record or in writing, that the
2 Indian custodian or tribe withdraws as a party to the proceeding.

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

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

6 (b) If the Indian child's parent or Indian custodian requests counsel
7 to represent the parent or Indian custodian but is without sufficient
8 financial means to employ suitable counsel possessing skills and ex-
9 perience commensurate with the nature of the petition and the com-
10 plexity of the case, the court shall appoint suitable counsel to
11 represent the Indian child's parent or Indian custodian if the parent
12 or Indian custodian is determined to be financially eligible under the
13 policies, procedures, standards and guidelines of the Public Defense
14 Services Commission.

15 (2) Upon presentation of the order of appointment under this sec-
16 tion by the attorney for the Indian child, any agency, hospital, school
17 organization, division or department of the state, doctor, nurse or
18 other health care provider, psychologist, psychiatrist, police depart-
19 ment or mental health clinic shall permit the attorney for the Indian
20 child to inspect and copy any records of the Indian child involved in
21 the case, without the consent of the Indian child or the Indian child's
22 parent or Indian custodian. This subsection does not apply to records
23 of a police agency relating to an ongoing investigation prior to bring-
24 ing charges.

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

31 **SECTION 22. Improper placements or terminations of parental**

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

5 (a) An Indian child who is or was under the jurisdiction of the ju-
6 venile court under ORS chapter 419B;

7 (b) The Indian child's parent or Indian custodian from whose cus-
8 tody such child was removed; or

9 (c) The Indian child's tribe.

10 (2)(a) The court shall invalidate the placement of an Indian child,
11 the guardianship of an Indian child or the termination of parental
12 rights involving an Indian child if the court determines that any pro-
13 vision of sections 12, 13, 16 (2), (3)(a) or (b), (5)(a), 20 (1) or 21 of this
14 2020 special session Act, ORS 418.312 or, where required, section 17 (2),
15 18 or 23 of this 2020 special session Act has been violated.

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

21 (3)(a) If any party to a proceeding under ORS chapter 419B involv-
22 ing an Indian child asserts or the court has reason to believe that the
23 Indian child may have been improperly retained following a visit or
24 temporary relinquishment of custody or improperly removed, the
25 court shall expeditiously determine whether the Indian child was im-
26 properly retained or improperly removed.

27 (b) If the court finds that the Indian child was improperly retained
28 or improperly removed, the court shall terminate the proceeding and
29 order the Department of Human Services to immediately return the
30 Indian child to the Indian child's parent or Indian custodian, unless
31 the court determines by clear and convincing evidence that doing so

1 would subject the Indian child to substantial and immediate danger
2 or a threat of substantial and immediate danger.

3
4 (Preferred Placement)

5
6 **SECTION 23. Placement preferences.** (1) If there is reason to know
7 that a child is an Indian child and the child is in need of placement
8 or continuation in substitute care, as defined in ORS 419A.004, except
9 as provided in subsection (4) of this section the child must be placed
10 in the least restrictive setting that:

11 (a) Most closely approximates a family, taking into consideration
12 sibling attachment;

13 (b) Allows the Indian child's special needs, if any, to be met;

14 (c) Is in reasonable proximity to the Indian child's home, extended
15 family or siblings; and

16 (d)(A) Is in accordance with the order of preference established by
17 the Indian child's tribe; or

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

20 (i) A member of the Indian child's extended family;

21 (ii) A foster home licensed, approved or specified by the Indian
22 child's tribe;

23 (iii) A foster home licensed or approved by a licensing authority in
24 this state and in which one or more of the licensed or approved foster
25 parents is an Indian; or

26 (iv) An institution for children that has a program suitable to meet
27 the Indian child's needs and is approved by an Indian tribe or operated
28 by an Indian organization.

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

1 (a) In accordance with the order of preference established by the
2 Indian child's tribe; or

3 (b) If the Indian child's tribe has not established guardianship
4 placement preferences, according to the following order of preference:

5 (A) With a member of the Indian child's extended family;

6 (B) With other members of the Indian child's tribe; or

7 (C) With other Indian families.

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

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

18 (b) Upon the filing of an objection to a motion under this sub-
19 section, the juvenile court shall fix the time for hearing on the ob-
20 jections.

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

25 (d) The court's determination under paragraph (c) of this sub-
26 section:

27 (A) Must be in writing and be based on:

28 (i) The preferences of the Indian child;

29 (ii) The presence of a sibling attachment that cannot be maintained
30 through placement consistent with the placement preferences estab-
31 lished by subsection (1) or (2) of this section;

1 (iii) Any extraordinary physical, mental or emotional needs of the
2 Indian child that require specialized treatment services if, despite ac-
3 tive efforts, those services are unavailable in the community where
4 families who meet the placement preferences under subsection (1) or
5 (2) of this section reside; or

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

12 (B) May be informed by but not determined by the placement re-
13 quest of a parent of the Indian child, if the parent has reviewed the
14 placement options, if any, that comply with the placement preferences
15 under this section.

16 (C) May not be based on:

17 (i) The socioeconomic conditions of the Indian child's tribe;

18 (ii) Any perception of the tribal or United States Bureau of Indian
19 Affairs social services or judicial systems;

20 (iii) The distance between a placement meeting the placement
21 preferences under this section that is located on or near a reservation
22 and the Indian child's parent; or

23 (iv) The ordinary bonding or attachment between the Indian child
24 and a nonpreferred placement arising from time spent in the nonpre-
25 ferred placement.

26
27 **INDIAN CHILD WELFARE**
28 **IN EXISTING OREGON JUVENILE CODE**
29 **(Policy)**
30

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

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

8 [(2)] (1) A person providing a foster home to an American Indian child
9 shall be eligible for payments under ORS 418.625 to 418.645 regardless of the
10 relationship by blood or marriage that the person has to the child where the
11 child's placement in the foster home is pursuant to the Indian Child Welfare
12 Act (25 U.S.C. 1901 et seq.).

13 [(3)] (2) Certification of a foster home described in subsection [(2)] (1) of
14 this section shall be pursuant to standards set out in an agreement between
15 the Department of Human Services and the tribe of which the child is a
16 member or, if there is no such agreement, certification shall be pursuant to
17 standards adopted by a federally recognized Indian tribe.

18 [(4)] (3) If subsection [(2) or (3)] (1) or (2) of this section is found to be
19 unconstitutional for any reason, then the entire section shall be null and
20 void.

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

22 419B.090. (1) The juvenile court is a court of record and exercises juris-
23 diction as a court of general and equitable jurisdiction and not as a court
24 of limited or inferior jurisdiction. The juvenile court is called "The
25 _____ Court of _____ County, Juvenile Department."

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

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

31 (b) Parents and guardians have a duty to afford their children the rights

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

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

11 (3) It is the policy of the State of Oregon to safeguard and promote each
12 child's right to safety, stability and well-being and to safeguard and promote
13 each child's relationships with parents, siblings, grandparents, other rela-
14 tives and adults with whom a child develops healthy emotional attachments.

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

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

26 (5) It is the policy of the State of Oregon, in those cases not described
27 as extreme conduct under ORS 419B.502, to offer appropriate reunification
28 services to parents and guardians to allow them the opportunity to adjust
29 their circumstances, conduct or conditions to make it possible for the child
30 to safely return home within a reasonable time. The state shall provide to
31 parents and guardians with disabilities opportunities to benefit from or par-

1 ticipate in reunification services that are equal to those extended to indi-
2 viduals without disabilities. The state shall provide aids, benefits and
3 services different from those provided to parents and guardians without dis-
4 abilities, when necessary to ensure that parents and guardians with disabil-
5 ities are provided with an equal opportunity under this subsection. Although
6 there is a strong preference that children live in their own homes with their
7 own families, the state recognizes that it is not always possible or in the best
8 interests of the child or the public for children who have been abused or
9 neglected to be reunited with their parents or guardians. In those cases, the
10 State of Oregon has the obligation to create or provide an alternative, safe
11 and permanent home for the child.

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

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

19

20

(Definitions)

21

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

23 419A.004. As used in this chapter and ORS chapters 419B and 419C, unless
24 the context requires otherwise:

25 (1) “Age-appropriate or developmentally appropriate activities” means:

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

31 (b) In the case of a specific child, activities or items that are suitable for

1 the child based on the developmental stages attained by the child with re-
2 spect to the cognitive, emotional, physical and behavioral capacities of the
3 child.

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

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

10 (3) “CASA Volunteer Program” means a program that is approved or
11 sanctioned by a juvenile court, has received accreditation from the National
12 CASA Association and has entered into a contract with the Oregon Depart-
13 ment of Administrative Services under ORS 184.492 to recruit, train and su-
14 pervise volunteers to serve as court appointed special advocates.

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

18 (5) “Community service” has the meaning given that term in ORS 137.126.

19 (6) “Conflict of interest” means a person appointed to a local citizen re-
20 view board who has a personal or pecuniary interest in a case being reviewed
21 by that board.

22 (7) “Counselor” means a juvenile department counselor or a county juve-
23 nile probation officer.

24 (8) “Court” means the juvenile court.

25 (9) “Court appointed special advocate” means a person in a CASA Vol-
26 unteer Program who is appointed by the court to act as a court appointed
27 special advocate pursuant to ORS 419B.112.

28 (10) “Court facility” has the meaning given that term in ORS 166.360.

29 (11) “Current caretaker” means a foster parent:

- 30 (a) Who is currently caring for a ward who is in the legal custody of the
31 Department of Human Services and who has a permanency plan or concur-

1 rent permanent plan of adoption; and

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

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

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

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

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

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

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

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

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

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

23 (18) "Local citizen review board" means the board specified by ORS
24 419A.090 and 419A.092.

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

28 (a) A person who has adopted the child, ward, youth or youth offender
29 or whose parentage has been established or declared under ORS 25.501 to
30 25.556 or 109.065 or by a juvenile court; and

31 (b) *[In cases in which the Indian Child Welfare Act applies, a man who*

1 *is a father under applicable tribal law.] If the child is an Indian child, a*
2 **man whose parentage has been established as described in section 4**
3 **of this 2020 special session Act.**

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

9 (21) “Public building” has the meaning given that term in ORS 166.360.

10 (22) “Proctor foster home” has the meaning given that term in ORS
11 418.205.

12 (23) “Qualified residential treatment program” means a program described
13 in ORS 419B.356.

14 (24) “Reasonable and prudent parent standard” means the standard,
15 characterized by careful and sensible parental decisions that maintain the
16 health, safety and best interests of a child or ward while encouraging the
17 emotional and developmental growth of the child or ward, that a substitute
18 care provider shall use when determining whether to allow a child or ward
19 in substitute care to participate in extracurricular, enrichment, cultural and
20 social activities.

21 (25) “Reasonable time” means a period of time that is reasonable given a
22 child or ward’s emotional and developmental needs and ability to form and
23 maintain lasting attachments.

24 (26) “Records” means any information in written form, pictures, photo-
25 graphs, charts, graphs, recordings or documents pertaining to a case.

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

30 (28) “Restitution” has the meaning given that term in ORS 137.103.

31 (29) “Serious physical injury” means:

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

2 (b) A physical injury that:

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

5 (B) Results in substantial and recurring pain; or

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

7 (30) "Shelter care" means a home or other facility suitable for the safe-
8 keeping of a child, ward, youth or youth offender who is taken into tempo-
9 rary custody pending investigation and disposition.

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

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

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

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

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

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

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

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

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

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

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

1 (34) “Surrogate” means a person appointed by the court to protect the
2 right of the child, ward, youth or youth offender to receive procedural safe-
3 guards with respect to the provision of free appropriate public education.

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

10 (36) “Victim” means any person determined by the district attorney, the
11 juvenile department or the court to have suffered direct financial, psycho-
12 logical or physical harm as a result of the act that has brought the youth
13 or youth offender before the juvenile court. When the victim is a minor,
14 “victim” includes the legal guardian of the minor. The youth or youth
15 offender may not be considered the victim. When the victim of the crime
16 cannot be determined, the people of Oregon, as represented by the district
17 attorney, are considered the victims.

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

- 20 (a) Involves actual or threatened serious physical injury to a victim; or
21 (b) Is a sexual offense. As used in this paragraph, “sexual offense” has the
22 meaning given the term “sex crime” in ORS 163A.005.

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

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

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

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

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

5
6 **(Jurisdiction)**
7

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

9 419B.100. (1) Except as otherwise provided in subsection (5) of this section
10 and ORS 107.726, the juvenile court has exclusive original jurisdiction in any
11 case involving a person who is under 18 years of age and:

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

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

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

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

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

23 (A) Abandoned the person;

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

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

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

30 (f) Who is a runaway;

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

1 to 419B.558; or

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

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

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

9 (4) The court does not have further jurisdiction as provided in subsection
10 (1) of this section after a minor has been emancipated pursuant to ORS
11 419B.550 to 419B.558.

12 [(5)(a)] **(5)** *[An Indian tribe has exclusive]* **Except as provided in section**
13 **12 of this 2020 special session Act**, jurisdiction over any child custody
14 proceeding involving an Indian child **is determined as provided in section**
15 **12 of this 2020 special session Act.** *[who resides or is domiciled within the*
16 *reservation of the tribe, except where the jurisdiction is otherwise vested in the*
17 *state by existing federal law.]*

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

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

29

30

(Parties to Proceedings)

31

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

2 419B.875. (1)(a) Parties to proceedings in the juvenile court under ORS
3 419B.100 and 419B.500 are:

4 (A) The child or ward;

5 (B) The parents or guardian of the child or ward;

6 (C) A putative father of the child or ward who has demonstrated a direct
7 and significant commitment to the child or ward by assuming, or attempting
8 to assume, responsibilities normally associated with parenthood, including
9 but not limited to:

10 (i) Residing with the child or ward;

11 (ii) Contributing to the financial support of the child or ward; or

12 (iii) Establishing psychological ties with the child or ward;

13 (D) The state;

14 (E) The juvenile department;

15 (F) A court appointed special advocate, if appointed;

16 (G) The Department of Human Services or other child-caring agency if the
17 agency has temporary custody of the child or ward; and

18 (H) [*The tribe*] In cases [*subject to the Indian Child Welfare Act if the*
19 *tribe has intervened pursuant to the Indian Child Welfare Act*] **where there**
20 **is reason to know, as described in section 15 of this 2020 special session**
21 **Act, that a child involved is an Indian child:**

22 (i) **The Indian child's tribe; and**

23 (ii) **The Indian child's Indian custodian.**

24 (b) An intervenor who is granted intervention under ORS 419B.116 is a
25 party to a proceeding under ORS 419B.100. An intervenor under this para-
26 graph is not a party to a proceeding under ORS 419B.500.

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

28 (a) The right to notice of the proceeding and copies of the petitions, an-
29 swers, motions and other papers;

30 (b) The right to appear with counsel and, except for intervenors under
31 subsection (1)(b) of this section, to have counsel appointed as otherwise

1 provided by law;

2 (c) The right to call witnesses, cross-examine witnesses and participate
3 in hearings;

4 (d) The right of appeal; and

5 (e) The right to request a hearing.

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

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

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

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

20 (6) If a foster parent, preadoptive parent or relative is currently providing
21 care for a child or ward, the Department of Human Services shall give the
22 foster parent, preadoptive parent or relative notice of a proceeding concern-
23 ing the child or ward. A foster parent, preadoptive parent or relative pro-
24 viding care for a child or ward has the right to be heard at the proceeding.
25 Except when allowed to intervene, the foster parent, preadoptive parent or
26 relative providing care for the child or ward is not considered a party to the
27 juvenile court proceeding solely because of notice and the right to be heard
28 at the proceeding.

29 (7)(a) The Department of Human Services shall make diligent efforts to
30 identify and obtain contact information for the grandparents of a child or
31 ward committed to the department's custody. Except as provided in para-

1 graph (b) of this subsection, when the department knows the identity of and
2 has contact information for a grandparent, the department shall give the
3 grandparent notice of a hearing concerning the child or ward. Upon a
4 showing of good cause, the court may relieve the department of its respon-
5 sibility to provide notice under this paragraph.

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

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

12 (d) The court's orders or judgments entered in proceedings under ORS
13 419B.185, 419B.310, 419B.325, 419B.449, 419B.476 and 419B.500 must include
14 findings of the court as to whether the grandparent had notice of the hear-
15 ing, attended the hearing and had an opportunity to be heard.

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

19 (f) As used in this subsection, "grandparent" means the legal parent of
20 the child's or ward's legal parent, regardless of whether the parental rights
21 of the child's or ward's legal parent have been terminated under ORS
22 419B.500 to 419B.524.

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

25

26 **(Protective Custody; Placement)**

27

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

29 419B.150. (1) As used in this section:

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

31 (b) "Reasonable cause" means a subjectively and objectively reasonable

1 belief, given all of the circumstances and based on specific and articulable
2 facts.

3 (c) "Severe harm" means:

4 (A) Life-threatening damage; or

5 (B) Significant or acute injury to a person's physical, sexual or psycho-
6 logical functioning.

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

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

10 (b) A counselor; or

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

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

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

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

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

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

25 or

26 (C) There is an imminent threat that the child's parent or guardian will
27 cause the child to be beyond the reach of the juvenile court before the court
28 can order that the child be taken into protective custody under subsection
29 [(6)] **(7)** of this section.

30 (b) If there is reason to know that the child is an Indian child, the child
31 may be taken into protective custody without a court order only when it is

1 necessary to prevent imminent physical damage or harm to the child.

2 [(4)] (5) A person authorized to take a child into protective custody shall
3 apply for a protective custody order, as described in subsection [(6)] (7) of
4 this section, by submitting a declaration based on information and belief that
5 sets forth with particularity:

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

8 (A) Protect the child from abuse;

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

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

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

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

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

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

25 [(6)] (7) The juvenile court may order that a child be taken into protective
26 custody if, after reviewing the declaration described in subsection [(4)] (5)
27 of this section, the court determines that:

28 (a) Protective custody is necessary and the least restrictive means avail-
29 able to:

30 (A) Protect the child from abuse;

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

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

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

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

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

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

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

14 419B.171. (1) Except where the child is taken into protective custody
15 pursuant to an order of the court, the person taking the child into protective
16 custody shall promptly file with the court or a counselor a brief written re-
17 port stating all of the following:

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

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

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

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

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

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

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

30 [(8)] (h) Efforts to determine whether [*the child or the parents have any*
31 *Indian heritage*] **there is reason to know that the child is an Indian**

1 **child, as required under section 15 of this 2020 special session Act, and**
2 **the results of those efforts.**

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

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

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

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

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

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

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

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

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

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

1 **parent or Indian custodian.**

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

3 419B.185. (1) When a child or ward is taken, or is about to be taken, into
4 protective custody pursuant to ORS 419B.150, **419B.152**, 419B.160, 419B.165,
5 419B.168 [*and*] **or** 419B.171 [*or ORS 419B.152*] and placed in shelter care, a
6 parent, child or ward shall be given the opportunity to present evidence to
7 the court at the hearings specified in ORS 419B.183, and at any subsequent
8 review hearing, that the child or ward can be returned home without further
9 danger of suffering physical injury or emotional harm, endangering or
10 harming others, or not remaining within the reach of the court process prior
11 to adjudication. At the hearing:

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

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

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

30 (b) In determining whether a child or ward shall be removed or continued
31 out of home, the court shall consider whether the provision of reasonable

1 services can prevent or eliminate the need to separate the family.

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

8 **(d) The court shall determine whether the child or ward is an In-**
9 **dian child.**

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

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

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

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

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

26 (g) The court may receive testimony, reports and other evidence without
27 regard to whether the evidence is admissible under ORS 40.010 to 40.210 and
28 40.310 to 40.585 if the evidence is relevant to the determinations and findings
29 required under this section. As used in this paragraph, "relevant evidence"
30 has the meaning given that term in ORS 40.150.

31 (2) To aid the court in making the written findings required by subsection

1 (1)(a), [(d) and] (e) **or (f)** of this section, the department shall present written
2 documentation to the court outlining:

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

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

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

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

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

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

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

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

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

29 **(c)(A) If there is reason to know the child or ward is an Indian child**
30 **and the court enters a protective custody order under this section, the**
31 **order must direct the department to immediately notify the court if**

1 **new information indicates that the emergency necessitating the pro-**
2 **TECTIVE custody of the Indian child has changed.**

3 **(B) Whenever the court receives notice from the department that**
4 **the emergency necessitating the protective custody of the Indian child**
5 **has changed, the court shall promptly hold a hearing under this sec-**
6 **tion to determine whether protective custody continues to be neces-**
7 **sary.**

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

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

15 **(A) Has set the case for a hearing on the petition asserting de-**
16 **pendency jurisdiction;**

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

20 **(C) Despite diligent efforts, has been unable to transfer the pro-**
21 **ceeding to the jurisdiction of the Indian child's tribe; or**

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

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

27 **419B.192. (1) If the court finds that a child or ward is in need of place-**
28 **ment or continuation in substitute care, there shall be a preference given to**
29 **placement of the child or ward with relatives and persons who have a**
30 **caregiver relationship with the child or ward as defined in ORS 419B.116.**
31 **The Department of Human Services shall make diligent efforts to place the**

1 child or ward with such persons and shall report to the court the efforts
2 made by the department to effectuate that placement.

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

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

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

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

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

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

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

29 (4) When the court is required to make findings regarding the
30 department's diligent efforts to place a child or ward with relatives or per-
31 sons with a caregiver relationship under subsection (1) of this section, and

1 the court determines that, contrary to the placement decision of the depart-
 2 ment, placement with a relative is not in the best interest of the child or
 3 ward under ORS 419B.349, the court shall make written findings setting forth
 4 the reasons why the court finds that placement of the child or ward with an
 5 available relative is not in the best interest of the child.

6 (5) Notwithstanding subsections (1) to [(3)] (4) of this section, in cases
 7 where [*the Indian Child Welfare Act applies, the placement preferences of the*
 8 *Indian Child Welfare Act shall be followed*] **there is reason to know, as**
 9 **described in section 15 of this 2020 special session Act, the child or**
 10 **ward is an Indian child, the department shall make diligent efforts to**
 11 **place the child or ward according to the placement preferences de-**
 12 **scribed in section 23 of this 2020 special session Act.**

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

14 419B.340. (1) If the court awards custody to the Department of Human
 15 Services, the court shall include in the disposition order a determination
 16 whether the department has made reasonable efforts or, if the [*Indian Child*
 17 *Welfare Act applies*] **ward is an Indian child**, active efforts, **as described**
 18 **in section 18 of this 2020 special session Act**, to prevent or eliminate the
 19 need for removal of the ward from the home. If the ward has been removed
 20 prior to the entry of the order, the order shall also include a determination
 21 whether the department has made reasonable or active efforts to make it
 22 possible for the ward to safely return home. In making the determination
 23 under this subsection, the court shall consider the ward's health and safety
 24 the paramount concerns.

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

30 (3) When the first contact with the family has occurred during an emer-
 31 gency in which the ward could not remain without jeopardy at home even

1 with reasonable services being provided, the department shall be considered
2 to have made reasonable or active efforts to prevent or eliminate the need
3 for removal.

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

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

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

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

14 (B) The parent has attempted, solicited or conspired, as described in ORS
15 161.405, 161.435 or 161.450 or under comparable laws of any jurisdiction, to
16 cause the death of any child;

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

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

20 (E) The parent has subjected any child to intentional starvation or tor-
21 ture;

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

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

26 (b) The parent has been convicted in any jurisdiction of one of the fol-
27 lowing crimes:

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

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

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

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

5 (c) The parent's rights to another child have been terminated involuntar-
6 ily.

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

14 *[(7) When an Indian child is involved, the department must satisfy the*
15 *court that active efforts have been made to provide remedial services and*
16 *rehabilitative programs designed to prevent the breakup of the Indian family*
17 *and that these efforts have proven unsuccessful. Foster care placement may not*
18 *be ordered in a proceeding in the absence of a determination, supported by*
19 *clear and convincing evidence, including the testimony of expert witnesses, that*
20 *the continued custody of the Indian child by the parent or Indian custodian*
21 *is likely to result in serious emotional or physical injury to the Indian*
22 *child.]*

23

24

(Hearings)

25

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

27 419B.305. (1) Except as otherwise provided in this section, no later than
28 60 days after a petition alleging that a child is within the jurisdiction of the
29 court under ORS 419B.100 has been filed, the court shall hold a hearing on
30 the petition and enter an order under ORS 419B.325 (1). Upon written order
31 supported by factual findings of good cause, the court may continue a peti-

1 tion beyond 60 days.

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

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

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

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

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

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

22 [(2)] **(3) No later than 30 days after a petition alleging jurisdiction under**
23 **ORS 419B.100 is filed, all parties shall comply with ORS 419B.881.**

24 [(3)] **(4) When a person denies allegations in the petition, the court shall**
25 **set the case for a hearing within the time limits prescribed by subsection (1)**
26 **of this section. Upon written order supported by factual findings of good**
27 **cause, the court may continue the hearing beyond the 60-day time limit.**

28 [(4)] **(5) Upon expiration of any continuance granted by this section, the**
29 **court shall give a petition filed under ORS 419B.100 that is beyond the time**
30 **limit imposed by subsection (1) of this section the highest priority on the**
31 **court docket.**

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

2 419B.310. (1) The hearing shall be held by the court without a jury and
3 may be continued from time to time. During the hearing of a case filed pur-
4 suant to ORS 419B.100, the court, on its own motion or upon the motion of
5 a party, may take testimony from any child appearing as a witness and may
6 exclude the child's parents and other persons if the court finds such action
7 would be likely to be in the best interests of the child. However, the court
8 [*shall*] **may** not exclude the attorney for each party and the testimony shall
9 be reported.

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

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

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

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

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

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

25 (B) **Show a causal relationship between the particular conditions in**
26 **the Indian child's home and the likelihood that the Indian child's**
27 **continued custody by the child's parent or custody by the child's In-**
28 **dian custodian will result in serious emotional or physical damage to**
29 **the particular Indian child who is the subject of the child custody**
30 **proceeding. Evidence that shows the existence of community or family**
31 **poverty, isolation, single parenthood, custodian age, crowded or inad-**

1 **equate housing, substance abuse or nonconforming social behavior**
2 **does not, by itself, establish a causal relationship as required by this**
3 **paragraph.**

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

7 **(4)(a) At any hearing of a case filed pursuant to ORS 419B.100, the**
8 **court shall determine whether there is reason to know under section**
9 **15 of this 2020 special session Act that the child is an Indian child.**

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

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

15 419B.325. (1) At the termination of the hearing or hearings in the pro-
16 ceeding, the court shall enter an appropriate order directing the disposition
17 to be made of the case.

18 (2) For the purpose of determining proper disposition of the ward, testi-
19 mony, reports or other material relating to the ward’s mental, physical and
20 social history and prognosis may be received by the court without regard to
21 their competency or relevancy under the rules of evidence.

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

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

27 419B.331. **Except as provided in sections 1 to 23 of this 2020 special**
28 **session Act,** when the court determines it would be in the best interest and
29 welfare of a ward, the court may place the ward under protective super-
30 vision. The court may direct that the ward remain in the legal custody of the
31 ward’s parents or other person with whom the ward is living, or the court

1 may direct that the ward be placed in the legal custody of some relative or
2 some person maintaining a foster home approved by the court, or in a child
3 care center or a youth care center authorized to accept the ward. The court
4 may specify particular requirements to be observed during the protective
5 supervision consistent with recognized juvenile court practice, including but
6 not limited to restrictions on visitation by the ward's parents, restrictions
7 on the ward's associates, occupation and activities, restrictions on and re-
8 quirements to be observed by the person having the ward's legal custody, and
9 requirements for visitation by and consultation with a juvenile counselor or
10 other suitable counselor.

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

12 419B.476. (1) A permanency hearing shall be conducted in the manner
13 provided in ORS 418.312, 419B.310, 419B.812 to 419B.839 and 419B.908, except
14 that the court may receive testimony and reports as provided in ORS
15 419B.325.

16 (2) At a permanency hearing the court shall:

17 (a) If the case plan at the time of the hearing is to reunify the family,
18 determine whether the Department of Human Services has made reasonable
19 efforts or, if [*the Indian Child Welfare Act applies*] **there is reason to know**
20 **as described in section 15 of this 2020 special session Act that the ward**
21 **is an Indian child**, active efforts **as described in section 18 of this 2020**
22 **special session Act** to make it possible for the ward to safely return home
23 and whether the parent has made sufficient progress to make it possible for
24 the ward to safely return home. In making its determination, the court shall
25 consider the ward's health and safety the paramount concerns.

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

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

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

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

11 (a) Whether the plan is adequate to ensure the ward's transition to suc-
12 cessful adulthood;

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

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

17 (4) At a permanency hearing the court may:

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

27 (b) If the case plan changed during the period since the last review by a
28 local citizen review board or court hearing and a plan other than to reunify
29 the family was in effect for any part of that period, determine whether the
30 department has made reasonable efforts to place the ward in a timely manner
31 in accordance with the plan, including, if appropriate, placement of the ward

1 through an interstate placement, and to complete the steps necessary to fi-
2 nalize the permanent placement;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (A) Why another planned permanent living arrangement is in the ward's
27 best interests and a compelling reason, that must be documented by the de-
28 partment, why it would not be in the best interests of the ward to be re-
29 turned home, placed for adoption, placed with a legal guardian or placed
30 with a fit and willing relative; and

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

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

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

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

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

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

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

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

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

25 **(D) The new permanency plan complies with the placement prefer-**
26 **ences described in section 23 of this 2020 special session Act.**

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

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

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

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

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

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

16 (8) Any final decision of the court made pursuant to the permanency
17 hearing is appealable under ORS 419A.200. On appeal of a final decision of
18 the court under this subsection, the court's finding, if any, under ORS
19 419B.340 (5) that the department is not required to make reasonable efforts
20 to make it possible for the ward to safely return home is an interlocutory
21 order to which a party may assign error.

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

23 419B.517. (1) The use of mediation shall be encouraged in cases involving:

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

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

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

1 **and the proposed guardian or, if the hearing is for the termination of**
2 **parental rights, the proposed adoptive placement.**

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

4 419B.878. When a court conducts a hearing, the court shall inquire, **as**
5 **described in section 15 of this 2020 special session Act**, whether a child
6 is an Indian child [*subject to the Indian Child Welfare Act*]. If the court
7 knows or has reason to know that an Indian child is involved, the court shall
8 enter an order requiring the Department of Human Services to [*notify the*
9 *Indian child's tribe of the pending proceedings and of the tribe's right to in-*
10 *tervene*] **comply with the inquiry and notice provisions of sections 15**
11 **and 16 of this 2020 special session Act** and shall enter an order that the
12 [*case be treated as an Indian Child Welfare Act case until such time as the*
13 *court determines that the case is not an Indian Child Welfare Act case*] **child**
14 **be treated as an Indian child until such time as the court determines**
15 **that the child is not an Indian child.**

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

17 419B.890. (1) After the proponent of the petition has completed the pres-
18 entation of evidence, any other party, without waiving the right to offer ev-
19 idence in the event the motion is not granted, may move for dismissal of any
20 or all of the allegations of the petition on the ground that upon the facts
21 and the law the proponent of the petition has failed to prove the allegations
22 or, if proven, the allegations do not constitute a legal basis for the relief
23 sought by the petition. The court may order dismissal of the petition or one
24 or more of the allegations of the petition, or the court may decline to render
25 any order until the close of all the evidence.

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

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

31 **(4) If there is reason to know that the child or ward is an Indian**

1 **child, prior to scheduling a settlement conference on jurisdiction,**
2 **guardianship under ORS 419B.365 or 419B.366 or termination of par-**
3 **ental rights under ORS 419B.500, the petitioner shall provide notice to**
4 **the Indian child's tribe pursuant to section 16 of this 2020 special ses-**
5 **sion Act. In addition, the court shall provide notice to the Indian**
6 **child's tribe that includes a description of the settlement process, the**
7 **procedure to schedule the settlement conference and the date that the**
8 **hearing will occur if settlement is not reached.**

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

10 419B.918. (1) Notwithstanding ORS 419B.815, 419B.816, 419B.819 and
11 419B.820, on timely written motion of a person showing good cause, a court
12 may permit the person, instead of appearing personally, to participate in any
13 hearing related to a petition alleging jurisdiction under ORS 419B.100, a
14 petition to establish a permanent guardianship under ORS 419B.365 or a pe-
15 tition seeking termination of parental rights under ORS 419B.500, 419B.502,
16 419B.504, 419B.506 or 419B.508 in any manner that complies with the re-
17 quirements of due process including, but not limited to, telephonic or other
18 electronic means.

19 (2) If a person who is summoned or ordered to appear under ORS 419B.815,
20 419B.816, 419B.819 or 419B.820 seeks to reschedule any hearing at which the
21 person is required to appear, the person must:

22 (a) Appear personally at the time specified in the summons or order to
23 request the change; or

24 (b) Include in the person's written motion requesting the change the
25 person's current mailing address, to which the court may send notice of the
26 new date for the hearing if the motion is granted.

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

29 (a) Permit a party from outside this state to provide information, testify
30 or otherwise participate in the proceeding in any manner the court desig-
31 nates, provided the party complies with subsection (1) of this section, if ap-

1 plicable;

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

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

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

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

12 **(c) If the moving party will not be providing testimony and if fa-**
13 **cilities are available that would permit the moving party to participate**
14 **remotely, the court shall allow the moving party to participate re-**
15 **motely.**

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

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

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

22 **(C) "Simultaneous electronic transmission" means television, tele-**
23 **phone or any other form of electronic communication transmission if**
24 **the form of transmission allows the court, the attorneys and the party**
25 **participating remotely to communicate with each other during the**
26 **proceeding.**

27

28

(Guardianships)

29

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

31 419B.365. (1) At any time following establishment of jurisdiction and

1 wardship under ORS 419B.100, but prior to filing of a petition under ORS
2 419B.500, or after dismissal of a petition filed under ORS 419B.500 if it fails
3 to result in termination of the parent's rights, a party, or person granted
4 rights of limited participation for the purpose of filing a guardianship peti-
5 tion, may file, and the court may hear, a petition for permanent
6 guardianship. If the Department of Human Services chooses not to partic-
7 ipate in a proceeding initiated by an intervenor under ORS 419B.875, the
8 state is not foreclosed from filing a subsequent action should the intervenor's
9 petition be denied.

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

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

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

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

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

26 **(A) If the court has offered the parties the opportunity to partic-**
27 **ipate in mediation as required under ORS 419B.517;**

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

31 **(C) If after inquiry as required under section 15 of this 2020 special**

1 session Act and notice as required under section 16 of this 2020 special
2 session Act, and in addition to any other findings required for the
3 termination of parental rights under ORS 419B.500 to 419B.524, the
4 court finds:

5 (i) That evidence, including the testimony of one or more qualified
6 expert witnesses under section 17 of this 2020 special session Act, es-
7 tablishes beyond a reasonable doubt that the Indian child’s continued
8 custody by the child’s parent or custody by the child’s Indian custo-
9 dian is likely to result in serious emotional or physical damage to the
10 Indian child;

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

15 (iii) That the placement of the Indian child complies with the
16 placement preferences described in section 23 of this 2020 special ses-
17 sion Act.

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

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

31 (5) Unless vacated under ORS 419B.368, a guardianship established under

1 this section continues as long as the ward is subject to the court's jurisdic-
2 tion as provided in ORS 419B.328.

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

4 419B.366. (1) A party, or a person granted rights of limited participation
5 for the purpose of filing a guardianship motion, may file a motion to estab-
6 lish a guardianship. The motion must be in writing and state with
7 particularity the factual and legal grounds for the motion.

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

11 (3)(a) **If there is reason to know, as described in section 15 of this**
12 **2020 special session Act**, an Indian child is involved, the [*guardianship*
13 *must be in compliance with the Indian Child Welfare Act. The facts support-*
14 *ing any finding made to establish a guardianship for an Indian child, in-*
15 *cluding the finding that continued custody by the parents or Indian custodian*
16 *would result in serious emotional or physical harm to the Indian child, must*
17 *be established by clear and convincing evidence.*] **court may grant the**
18 **guardianship of the Indian child only:**

19 (A) **If the court has offered the parties the opportunity to partic-**
20 **ipate in mediation as required under ORS 419B.517;**

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

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

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

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

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

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

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

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

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

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

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

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

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

1 ward's wishes.

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

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

6 419B.367. (1) Upon granting a motion for guardianship under ORS
7 419B.366 or upon granting a petition for guardianship under ORS 419B.365,
8 the court shall issue letters of guardianship to the guardian. As provided in
9 ORS 419A.255, a guardian may disclose letters of guardianship when neces-
10 sary to fulfill the duties of a guardian. Letters of guardianship must be in
11 substantially the following form:

12 _____
13 State of Oregon,)
14) LETTERS OF
15 County of _____) GUARDIANSHIP

16
17 BY THESE LETTERS OF GUARDIANSHIP be informed:
18 That on _____ (month) ____ (day), 2____, the _____ Court, _____
19 County, State of Oregon, appointed _____ (name of guardian) guardian
20 for _____ (name of ward) and that the named guardian has qualified and
21 has the authority and duties of guardian for the named ward including legal
22 custody of the ward, except as provided below.

23
24 IN TESTIMONY WHEREOF, I have subscribed my name and affixed the
25 seal of the court at my office on _____ (month) ____ (day), 2____.

26 (Seal)
27 _____, Clerk of the Court
28 By _____, Deputy

29 _____
30 **(2) If the ward is an Indian child and the court finds that an**
31 **agreement is in place between the Indian child's tribe and the guard-**

1 **ian that requires the guardian to maintain contact between the Indian**
2 **child and the Indian child’s tribe, the order must include the terms**
3 **of that agreement.**

4 [(2)] (3) In the order appointing the guardian, the court shall require the
5 guardian to file with the court a written report within 30 days after each
6 anniversary of appointment and may:

7 (a) Specify the frequency and nature of visitation or contact between
8 relatives, including siblings, and the ward, if the court determines that
9 visitation or contact is in the ward’s best interests;

10 (b) Enter an order for child support pursuant to ORS 419B.400 that com-
11 plies with ORS 25.275; and

12 (c) Make any other order to provide for the ward’s continuing safety and
13 well-being.

14 [(3)] (4) The report required under subsection [(2)] (3) of this section must:

15 (a) Contain a summary sheet that:

16 (A) Identifies the written report and includes the date of submission and
17 the name of the submitting person; and

18 (B) Is maintained as part of the record of the case under ORS 419A.255
19 (1);

20 (b) Be maintained in the supplemental confidential file under ORS
21 419A.255 (2); and

22 (c) Contain an affidavit attesting to the accuracy of the report or contain
23 a declaration under penalty of perjury immediately above the signature line
24 of the guardian as follows: “I hereby declare that the above statement is
25 true to the best of my knowledge and belief, and that I understand it is made
26 for use as evidence in court and is subject to penalty for perjury.”

27 [(4)(a)] (5)(a) Upon timely receipt of a report under subsection [(2)] (3)
28 of this section, the court shall review the report and maintain the report as
29 described in subsection [(3)] (4) of this section. The court may:

30 (A) Direct the local citizen review board to conduct a review;

31 (B) Subject to the availability of funds, appoint a court visitor and re-

1 quire the visitor to file a report with the court; or

2 (C) Conduct a court review.

3 (b) If the court does not receive a report under subsection [(2)] (3) of this
4 section in a timely manner, the court shall:

5 (A) Direct the local citizen review board to conduct a review;

6 (B) Subject to the availability of funds, appoint a court visitor and re-
7 quire the visitor to file a report with the court; or

8 (C) Conduct a court review.

9 [(5)] (6) Except as otherwise limited by the court, a person appointed
10 guardian has legal custody of the ward and the duties and authority of legal
11 custodian and guardian under ORS 419B.373 and 419B.376. A guardian is not
12 liable to third persons for acts of the ward solely by reason of being ap-
13 pointed guardian.

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

15 419B.449. (1) Upon receiving any report required by ORS 419B.440, the
16 court may hold a hearing to review the child or ward's condition and cir-
17 cumstances and to determine if the court should continue jurisdiction and
18 wardship or order modifications in the care, placement and supervision of the
19 child or ward. The court shall hold a hearing:

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

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

26 (c) Not later than six months after receipt of a report made under ORS
27 419B.440 (1)(a) on a ward who is in the legal custody of the Department of
28 Human Services pursuant to ORS 419B.337 but who is placed in the physical
29 custody of a parent or a person who was appointed the ward's legal guardian
30 prior to placement of the ward in the legal custody of the department;

31 (d) Within 30 days after receipt of a report made under ORS 419B.440

1 (1)(b)(C); or

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

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

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

11 (a)(A) Why continued care is necessary as opposed to returning the child
12 or ward home or taking prompt action to secure another permanent place-
13 ment; and

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

15 (b) Whether the agency having guardianship or legal custody of the child
16 or ward has made diligent efforts to place the child or ward pursuant to ORS
17 419B.192.

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

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

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

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

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

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

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

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

15 **(5) If there is reason to know, as described in section 15 of this 2020**
16 **special session Act, that the child or ward is an Indian child and the**
17 **child or ward is in the legal custody of the department but has been**
18 **placed in the physical custody of the parent or a person who was ap-**
19 **pointed the child's or ward's legal guardian prior to placement of the**
20 **child or ward in the legal custody of the department, the court may**
21 **order that the child or ward be placed in the physical custody of a**
22 **substitute care provider only after making all of the inquiry, notice**
23 **and findings required under ORS 419B.305 and 419B.310.**

24 [(5)] (6) In making the findings under subsection (2) of this section, the
25 court shall consider the efforts made to develop the concurrent case plan,
26 including, but not limited to, identification of appropriate permanent place-
27 ment options for the child or ward both inside and outside this state and, if
28 adoption is the concurrent case plan, identification and selection of a suit-
29 able adoptive placement for the child or ward.

30 **(7)(a) If there is reason to know, as described in section 15 of this**
31 **2020 special session Act, that the child or ward is an Indian child, the**

1 **findings of the court shall specifically state whether the department**
2 **has provided active efforts to reunify the Indian child with the Indian**
3 **child's parent or Indian custodian.**

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

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

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

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

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

18 (D) **Order the department to continue to foster relationships with**
19 **any individuals identified by the department as long-term placement**
20 **resources meeting the placement preferences under section 23 of this**
21 **2020 special session Act.**

22 [(6)] (8) **In addition to findings of fact required by subsection (2) of this**
23 **section, the court may order the department to consider additional informa-**
24 **tion in developing the case plan or concurrent case plan.**

25 [(7)] (9) **Any final decision of the court made pursuant to the hearing**
26 **provided in subsection (1) of this section is appealable under ORS 419A.200.**

27

28

(Adoptions)

29

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

31 **419B.498. (1) Except as provided in subsection (2) of this section, the De-**

1 department of Human Services shall simultaneously file a petition to terminate
2 the parental rights of a child or ward's parents and identify, recruit, process
3 and approve a qualified family for adoption if the child or ward is in the
4 custody of the department and:

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

7 (b) A parent has been convicted of murder of another child of the parent,
8 voluntary manslaughter of another child of the parent, aiding, abetting, at-
9 tempting, conspiring or soliciting to commit murder or voluntary
10 manslaughter of the child or ward or of another child of the parent or felony
11 assault that has resulted in serious physical injury to the child or ward or
12 to another child of the parent; or

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

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

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

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

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

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

30 (C) The court or local citizen review board in a prior hearing or review
31 determined that while the case plan was to reunify the family the department

1 did not make reasonable efforts or, if the [*Indian Child Welfare Act*
2 *applies*] **child or ward is an Indian child**, active efforts, **as described in**
3 **section 18 of this 2020 special session Act**, to make it possible for the
4 child or ward to safely return home; or

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

10 (3) No petition to terminate the parental rights of a child or ward's par-
11 ents pursuant to subsection (1) of this section or pursuant to ORS 419B.500,
12 419B.502, 419B.504, 419B.506 or 419B.508 may be filed until the court has de-
13 termined that the permanency plan for the child or ward should be adoption
14 after a permanency hearing pursuant to ORS 419B.476.

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

16 419B.500. The parental rights of the parents of a ward may be terminated
17 as provided in this section and ORS 419B.502 to 419B.524, only upon a peti-
18 tion filed by the state or the ward for the purpose of freeing the ward for
19 adoption if the court finds it is in the best interest of the ward **or, if there**
20 **is reason to know as described in section 15 of this 2020 special session**
21 **Act that the ward is an Indian child, that continued custody of the**
22 **ward is likely to result in serious emotional or physical harm to the**
23 **ward.** [*If an Indian child is involved, the termination of parental rights must*
24 *be in compliance with the Indian Child Welfare Act.*] The rights of one parent
25 may be terminated without affecting the rights of the other parent.

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

27 419B.521. (1) The court shall hold a hearing on the question of terminat-
28 ing the rights of the parent or parents. The court may not hold the hearing
29 any earlier than 10 days after service or final publication of the summons.
30 The facts on the basis of which the rights of the parents are terminated,
31 unless admitted, must be established by clear and convincing evidence and

1 a stenographic or other report authorized by ORS 8.340 shall be taken of the
2 hearing.

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

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

17 [(4)] (4)(a) Notwithstanding subsection (1) of this section, if an Indian
18 child is involved, termination of parental rights must be supported by **com-**
19 **petent** evidence beyond a reasonable doubt, including testimony of qualified
20 expert witnesses, that continued custody of the child is likely to result in
21 serious emotional or physical harm to the child.

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

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

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

29 **(C) After inquiry as required under section 15 of this 2020 special**
30 **session Act and notice as required under section 16 of this 2020 special**
31 **session Act, and in addition to any other findings required under ORS**

1 **419B.500 to 419B.524, the court determines:**

2 (i) **That evidence, including the testimony of one or more qualified**
3 **expert witnesses under section 17 of this 2020 special session Act, es-**
4 **tablishes beyond a reasonable doubt that the Indian child’s continued**
5 **custody by the child’s parent or custody by the child’s Indian custo-**
6 **dian is likely to result in serious emotional or physical damage to the**
7 **Indian child; and**

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

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

21 (d) **As used in this subsection, “custody” and “continued custody”**
22 **have the meanings described in section 3 of this 2020 special session**
23 **Act.**

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

25 **419B.529. (1) Notwithstanding ORS 109.309, a prospective adoptive parent**
26 **is not required to file a petition for adoption when:**

27 (a) **One of the following has occurred:**

28 (A) **A juvenile court that is a circuit court has entered an order of per-**
29 **manent commitment of a ward to the Department of Human Services under**
30 **ORS 419B.527; or**

31 (B) **The parent has signed and the department has accepted a release and**

1 surrender to the department, and the parent has signed:

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

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

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

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

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

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

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

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

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

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

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

30 [(4)] **(4)(a)** After the filing of written evidence of a home study and the
31 placement report requesting the court to enter a judgment of adoption, the

1 juvenile court that entered the order of permanent commitment, or the ju-
2 venile court having jurisdiction over a ward for whom the department has
3 accepted a release and surrender and a certificate signed by the parent as
4 provided in subsection (1)(a)(B) of this section, may proceed as provided in
5 ORS 109.307 and 109.350 and may enter a judgment of adoption.

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

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

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

13 419B.532. (1) As used in this section, "former parent" means a person who
14 was previously the legal parent of a ward and whose parental rights to the
15 ward have been terminated.

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

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

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

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

23 (C) At least 18 months have passed since entry of the judgment termi-
24 nating the former parent's parental rights to the ward or, in the event of an
25 appeal, at least six months have passed since issuance of an appellate judg-
26 ment affirming the termination judgment, whichever is later; and

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

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

1 good cause.

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

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

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

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

17 (A) The former parent's conduct and conditions that led to the termi-
18 nation of parental rights have been ameliorated and the former parent is
19 presently fit;

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

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

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

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

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

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

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

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

1 neglect.

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

4 (d) The department shall establish by rule procedures for investigating the
5 present fitness of the former parent and for providing appropriate reunifica-
6 tion services.

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

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

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

13 (c) The court shall conduct a permanency hearing as provided in ORS
14 419B.470 within 60 days after entering the order under paragraph (a) of this
15 subsection.

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

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

24

25 **(Citizen Review Boards)**

26

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

28 419A.116. (1) After reviewing each case, the local citizen review board
29 shall make written findings and recommendations with respect to:

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

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

7 (c) If the case plan at the time of the review is something other than to
8 reunify the family, whether the department has made reasonable efforts to
9 place the child or ward in a timely manner in accordance with the case plan,
10 including, if appropriate, placement of the child or ward through an inter-
11 state placement, and to complete the steps necessary to finalize the perma-
12 nent placement of the child or ward;

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

14 (e) Compliance with the case plan;

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

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

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

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

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

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

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

1 ward has to participate in the activities[.];

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

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

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

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

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

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

30 (2) The local citizen review board may, if the case plan has changed dur-
31 ing the period since the last review by a local citizen review board or court

1 hearing, make written findings and recommendations with respect to:

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

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

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

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

25

26 **(Voluntary Placement)**

27

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

29 418.312. (1) The Department of Human Services may not require any par-
30 ent or legal guardian to transfer legal custody of a child in order to have
31 the child placed in a child-caring agency under ORS 418.205 to 418.327,

1 418.470, 418.475, 418.480 to 418.500, 418.950 to 418.970 and 418.992 to 418.998
2 in a foster home, group home or institutional child care setting, when the
3 sole reason for the placement is the need to obtain services for the child's
4 emotional, behavioral or mental disorder or developmental or physical disa-
5 bility. In all such cases, the child shall be placed pursuant to a voluntary
6 placement agreement. When a child is placed pursuant to a voluntary
7 placement agreement, the department shall have responsibility for the child's
8 placement and care.

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

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

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

18 **(A) The court finds that the Indian child's parent or Indian custo-**
19 **dian entered into the voluntary placement agreement without a threat**
20 **of removal by the Department of Human Services or an Oregon li-**
21 **censed adoption agency;**

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

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

25 **(D) The court has explained to the Indian child's parent or Indian**
26 **custodian the terms and consequences of the agreement, including**
27 **that if the Indian child remains in custody for more than 12 months,**
28 **the juvenile court will hold a permanency hearing which could even-**
29 **tually result in the termination of parental rights, and that the Indian**
30 **child's parent or Indian custodian may withdraw consent to the**
31 **agreement at any time prior to an entry of a final decree of termi-**

1 **nation of parental rights and have the child returned to the parent's**
2 **custody; and**

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

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

17 [(3)(a)] **(4)(a)** If a child remains in voluntary placement for more than 180
18 days, the juvenile court shall make a judicial determination, within the first
19 180 days of the placement, that the placement is in the best interests of the
20 child.

21 (b) If a child remains in voluntary placement for more than 12 months,
22 the juvenile court shall hold a permanency hearing as provided in ORS
23 419B.476 no later than 14 months after the child's original voluntary place-
24 ment, and not less frequently than once every 12 months thereafter during
25 the continuation of the child's original voluntary placement, to determine
26 the future status of the child.

27 [(4)] **(5)** As used in this section, "voluntary placement agreement" means
28 a binding, written agreement between the department and the parent or legal
29 guardian of a minor child that does not transfer legal custody to the de-
30 partment but that specifies, at a minimum, the legal status of the child and
31 the rights and obligations of the parent or legal guardian, the child and the

1 department while the child is in placement.

2

3

CONFORMING AMENDMENTS

4

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

6 350.300. (1) Notwithstanding ORS 341.290, 352.105 or 353.050, a current
7 foster child or former foster child under 25 years of age who is enrolled in
8 courses totaling one or more credit hours at an institution of higher educa-
9 tion as an undergraduate student shall have the amount of tuition and all
10 fees levied against the student waived if attending an institution of higher
11 education for purposes of pursuing an initial undergraduate degree.

12 (2) A student who is a current foster child or former foster child is enti-
13 tled to waiver of tuition and all fees under subsection (1) of this section until
14 the student has received the equivalent of four years of undergraduate edu-
15 cation.

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

19 (4) A waiver of tuition and all fees under subsection (1) of this section
20 may be reduced by the amount of any federal aid scholarships or grants, an
21 award from the Oregon Opportunity Grant program established under ORS
22 348.205 and any other aid received from the institution of higher education.
23 For the purposes of this subsection, “federal aid scholarships or grants” does
24 not include Chafee Education and Training Grant vouchers (P.L. 107-133).

25 (5) As used in this section:

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

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

31 (B) An Indian child subject to *[the Indian Child Welfare Act (25 U.S.C.*

1 1901 et seq.)] **sections 1 to 23 of this 2020 special session Act**, under the
2 jurisdiction of a tribal court for out-of-home placement and not dismissed
3 from care before reaching 16 years of age.

4 (b) “Institution of higher education” means:

5 (A) A public university listed in ORS 352.002;

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

7 (C) The Oregon Health and Science University.

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

9 418.595. (1) In considering what constitutes reasonable or active efforts
10 or whether reasonable or active efforts have been made under ORS 419B.185,
11 419B.337, 419B.340, 419B.470, 419B.476, 419B.498 [*and*] **or 419C.173 or section**
12 **18 of this 2020 special session Act**, the Department of Human Services and
13 the juvenile court shall consider whether placement of a child and referral
14 of a child and the child’s family to a Strengthening, Preserving and Reuni-
15 fying Families program is or was in the child’s best interests and the action
16 most likely to prevent or eliminate the need for removal of the child from
17 the child’s home or the action most likely to make it possible for the child
18 to safely return home.

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

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

30 419A.252. As used in this section and ORS 419A.253, 419A.255 and
31 419A.256:

1 (1) "Person" means an individual, a public body as defined in ORS 174.109
2 or a tribe that [*has intervened in*] **is a party to** a juvenile court proceeding
3 pursuant to [*the Indian Child Welfare Act (25 U.S.C. 1901 et seq.)*] **ORS**
4 **419B.875**.

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

10 (3) "Public defense provider" means an attorney or a law firm designated
11 by the office of public defense services established under ORS 151.216 to po-
12 tentially represent a child, ward, youth, youth offender or the parent or
13 guardian of a child, ward, youth or youth offender in a juvenile court pro-
14 ceeding.

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

19 (a) The summons and other process;

20 (b) Petitions;

21 (c) Papers in the nature of pleadings, answers, motions, affidavits and
22 other papers that are filed with the court, including supporting documenta-
23 tion;

24 (d) Local citizen review board findings and recommendations submitted
25 under ORS 419A.118 or 419B.367;

26 (e) Guardianship report summaries filed with the court under ORS
27 419B.367;

28 (f) Orders and judgments of the court, including supporting documenta-
29 tion;

30 (g) Transcripts under ORS 419A.256;

31 (h) Exhibits and materials offered as exhibits whether or not received in

1 evidence; and

2 (i) Other documents that become part of the record of the case by opera-
3 tion of law.

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

10 (a) Are not or do not become part of the record of the case; and

11 (b) Are not offered or received as evidence in the case.

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

13 419B.118. (1) Subject to the provisions of subsections (2), (3) and (4) of this
14 section, a juvenile court proceeding shall commence in the county of
15 wardship if, at the commencement of the proceeding, wardship exists as a
16 result of proceedings under this chapter, or, in the absence of such wardship,
17 in the county where the child resides.

18 (2) If the proceeding is based on allegations of jurisdiction under ORS
19 419B.100 (1)(a), (b) or (c), the proceeding may also commence in the county
20 in which the alleged act or behavior took place.

21 (3) If the proceeding is based on allegations of jurisdiction under ORS
22 419B.100 (1)(b), (c), (d), (e) or (f), the proceedings may also commence in the
23 county where the child is present when the proceeding begins.

24 (4) A termination of parent-child relationship proceeding may be com-
25 menced in the county of wardship or where the child or ward resides or is
26 found unless the child is an Indian child [*subject to the Indian Child Welfare*
27 *Act*] and the tribal court has assumed jurisdiction **under section 12 of this**
28 **2020 special session Act.**

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

30 419B.368. (1) The court, on its own motion or upon the motion of a party
31 and after such hearing as the court may direct, may review, modify or vacate

1 a guardianship order.

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

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

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

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

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

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

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

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

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

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

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

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

28 (d) The ward's wishes.

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

1 (7) Notwithstanding subsection (1) of this section, a parent may not move
2 the court to vacate a guardianship once a guardianship is granted under ORS
3 419B.365.

4 (8) If a guardianship is established under ORS 419B.366 and 419B.371, the
5 court shall conduct a court review not later than 60 days before the ward
6 reaches 18 years of age. At the hearing, the court shall inform the ward that
7 after reaching 18 years of age the ward may not be placed in substitute care
8 in the legal custody of the Department of Human Services.

9 **SECTION 59.** ORS 419B.452 is amended to read:

10 419B.452. Except when a child or ward has been surrendered for adoption
11 or the parents' rights have been terminated, the court shall send a copy of
12 the report required by ORS 419B.440 to the parents and shall notify the
13 parents either that a hearing will be held or that the parents may request
14 a hearing at which time they may ask for modifications in the care, treat-
15 ment and supervision of the child or ward. If the court finds that informing
16 the parents of the identity and location of the foster parents of the child or
17 ward is not in the best interest of the child or ward, the court may order
18 such information deleted from the report before sending the report to the
19 parents. If **there is reason to know, as described in section 15 of this**
20 **2020 special session Act, that** an Indian child is involved, the court shall
21 send a copy of the report to the Indian child's tribe as required by the notice
22 requirements [*of the Indian Child Welfare Act*] **under section 16 of this 2020**
23 **special session Act.**

24 **SECTION 60.** ORS 419B.923 is amended to read:

25 419B.923. (1) Except as otherwise provided in this section, on motion and
26 such notice and hearing as the court may direct, the court may modify or
27 set aside any order or judgment made by it. Reasons for modifying or setting
28 aside an order or judgment include, but are not limited to:

29 (a) Clerical mistakes in judgments, orders or other parts of the record and
30 errors in the order or judgment arising from oversight or omission. These
31 mistakes and errors may be corrected by the court at any time on its own

1 motion or on the motion of a party and after notice as the court orders to
2 all parties who have appeared. During the pendency of an appeal, an order
3 or judgment may be corrected as provided in subsection (7) of this section.

4 (b) Excusable neglect.

5 (c) Newly discovered evidence that by due diligence could not have been
6 discovered in time to present it at the hearing from which the order or
7 judgment issued.

8 (2) A motion to modify or set aside an order or judgment or request a new
9 hearing must be accompanied by an affidavit that states with reasonable
10 particularity the facts and legal basis for the motion.

11 (3) A motion to modify or set aside an order or judgment must be made
12 within a reasonable time except no order or judgment pursuant to ORS
13 419B.527 may be set aside or modified during the pendency of a proceeding
14 for the adoption of the ward, nor after a petition for adoption has been
15 granted.

16 (4) Except as provided in subsection (6) of this section, notice and a
17 hearing as provided in ORS 419B.195, 419B.198, 419B.201, 419B.205, 419B.208,
18 419B.310, 419B.325 and 419B.893 must be provided in any case when the effect
19 of modifying or setting aside the order or judgment will or may be to deprive
20 a parent of the legal custody of the child or ward, to place the child or ward
21 in an institution or agency or to transfer the child or ward from one insti-
22 tution or agency to another. The provisions of this subsection do not apply
23 to a parent whose rights have been terminated under ORS 419B.500 to
24 419B.524 or whose child has been permanently committed by order or judg-
25 ment of the court unless an appeal from the order or judgment is pending.

26 (5) When **there is reason to know, as described in section 15 of this**
27 **2020 special session Act, that** an Indian child is involved, notice must be
28 provided as required under [*the Indian Child Welfare Act*] **section 16 of this**
29 **2020 special session Act.**

30 (6) Except when the child or ward is an Indian child, notice and a hearing
31 are not required when the effect of modifying or setting aside the order or

1 judgment will be to transfer the child or ward from one foster home to an-
2 other.

3 (7) A motion under subsection (1) of this section may be filed with and
4 decided by the trial court during the time an appeal from a judgment is
5 pending before an appellate court. The moving party shall serve a copy of
6 the motion on the appellate court. The moving party shall file a copy of the
7 trial court's order or judgment in the appellate court within seven days of
8 the date of the trial court order or judgment. Any necessary modification of
9 the appeal required by the court order or judgment must be pursuant to rule
10 of the appellate court.

11 (8) This section does not limit the inherent power of a court to modify
12 an order or judgment within a reasonable time or the power of a court to
13 set aside an order or judgment for fraud upon the court.

14

15

MISCELLANEOUS

16

17 **SECTION 61. Reports. No later than September 15 of every even-**
18 **numbered year, the Department of Human Services and the Judicial**
19 **Department shall report to the interim committees of the Legislative**
20 **Assembly relating to children regarding:**

21 (1) **The number of Indian children involved in dependency pro-**
22 **ceedings during the prior two-year period.**

23 (2) **The average duration Indian children were in protective custody.**

24 (3) **The ratio of Indian children to non-Indian children in protective**
25 **custody.**

26 (4) **Which tribes the Indian children in protective custody were**
27 **members of or of which they were eligible for membership.**

28 (5) **The number of Indian children in foster care who are in each**
29 **of the placement preference categories described in section 23 of this**
30 **2020 special session Act and the number of those placements that have**
31 **Indian parents in the home.**

1 (6) The number of Indian children placed in adoptive homes in each
2 of the placement preference categories described in section 23 of this
3 2020 special session Act and the number of those placements that have
4 Indian parents in the home.

5 (7) The number of available placements and common barriers to
6 recruitment and retention of appropriate placements.

7 (8) The number of times the court determined that good cause ex-
8 isted to deviate from the statutory placement preferences under sec-
9 tion 23 of this 2020 special session Act.

10 (9) The number of cases that were transferred to tribal court under
11 section 14 of this 2020 special session Act.

12 (10) The number of times the court found good cause to decline to
13 transfer jurisdiction of a case to tribal court upon request and the
14 most common reasons the court found good cause to decline a transfer
15 petition.

16 (11) The efforts the Department of Human Services and the Judicial
17 Department have taken to ensure compliance with the provisions of
18 sections 1 to 23 of this 2020 special session Act and the amendments
19 to statutes by sections 24 to 60 of this 2020 special session Act.

20 SECTION 62. First report due. The report under section 61 of this
21 2020 special session Act is first due no later than September 15, 2022.

22 SECTION 63. Full faith and credit. The juvenile court shall give full
23 faith and credit to the public acts, records and judicial proceedings of
24 an Indian tribe applicable to an Indian child custody proceeding.

25 SECTION 64. Conflict of laws. If any provision of sections 1 to 23
26 of this 2020 special session Act or the amendments to statutes by
27 sections 24 to 60 of this 2020 special session Act is found to contravene
28 the Indian Child Welfare Act (25 U.S.C. 1901 et seq.), it shall not serve
29 to render inoperative any remaining provisions of sections 1 to 23 of
30 this 2020 special session Act or the amendments to statutes by sections
31 24 to 60 of this 2020 special session Act that may be held not to conflict

1 **with the Indian Child Welfare Act.**

2 **SECTION 65. Rules. The Department of Human Services and the**
3 **Judicial Department may adopt rules to implement sections 1 to 23 of**
4 **this 2020 special session Act.**

5 **SECTION 66. Captions. The unit and section captions used in this**
6 **2020 special session Act are provided only for the convenience of the**
7 **reader and do not become part of the statutory law of this state or**
8 **express any legislative intent in the enactment of this 2020 special**
9 **session Act.**

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