

A-Engrossed
Senate Bill 229

Ordered by the Senate April 26
Including Senate Amendments dated April 26

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SUMMARY

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

Requires that in dependency proceeding in juvenile court, court give preference in placement of child or ward to person with caregiver relationship with child or ward. Clarifies definition of "caregiver relationship."

Provides that court may not substitute appointed counsel in termination of parental rights proceedings except pursuant to policies, procedures, standards and guidelines adopted by Public Defense Services Commission.

A BILL FOR AN ACT

1
2 Relating to juvenile dependency proceedings; creating new provisions; and amending ORS 419B.116,
3 419B.192 and 419B.518.

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

5 **SECTION 1.** ORS 419B.192 is amended to read:

6 419B.192. (1) If the court finds that a child or ward is in need of placement or continuation in
7 substitute care, there shall be a preference given to placement with relatives and persons who have
8 a [*child-parent*] **caregiver** relationship with the child or ward as defined in [*ORS 109.119*] **ORS**
9 **419B.116**. The Department of Human Services shall make reasonable efforts to place the child or
10 ward with such persons and shall report to the court what efforts were made to effectuate such a
11 placement.

12 (2) In attempting to place the child or ward pursuant to subsection (1) of this section, the de-
13 partment shall consider, but not be limited to, the following:

14 (a) The ability of the person being considered to provide safety for the child or ward, including
15 a willingness to cooperate with any restrictions placed on contact between the child or ward and
16 others, and to prevent 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 department to im-
19 plement the permanent plan for the child or ward;

20 (c) The ability of the person being considered to meet the child or ward's physical, emotional
21 and educational needs; and

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

24 (3) Notwithstanding subsections (1) and (2) of this section, in cases where the Indian Child
Welfare Act applies, the placement preferences of the Indian Child Welfare Act shall be followed.

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

1 **SECTION 2.** ORS 419B.116 is amended to read:

2 419B.116. (1)(a) As used in this section, “caregiver relationship” means a relationship between
3 a person and a child or ward:

4 (A) That has existed:

5 (i) *[During the year]* **For the 12 months immediately** preceding the initiation of the dependency
6 proceeding;

7 (ii) For at least six months during the dependency proceeding; or

8 (iii) For half of the child or ward’s life if the child or ward is less than six months of age;

9 (B) In which the person had physical custody of the child or ward or resided in the same
10 household as the child or ward;

11 (C) In which the person provided the child or ward on a daily basis with the love, nurturing and
12 other necessities required to meet the child or ward’s psychological and physical needs; and

13 (D) On which the child depended to meet the child or ward’s needs.

14 (b) “Caregiver relationship” does not include a relationship between a child or ward and a per-
15 son who is the nonrelated foster parent of the child or ward unless the relationship continued for
16 a period exceeding 12 months.

17 (2) A person asserting that the person has a caregiver relationship with a child or ward may file
18 a motion for intervention in a juvenile dependency proceeding.

19 (3) Filing a motion under subsection (2) of this section is the sole means by which a person may
20 become a party to a juvenile dependency proceeding as an intervenor. An order granting inter-
21 vention under this section is exclusively for juvenile dependency proceedings and does not confer
22 standing or rights of intervention in any other action. Intervention is not allowed in proceedings
23 under ORS 419B.500.

24 (4) A motion for intervention under subsection (2) of this section must state:

25 (a) The person’s relationship to the child or ward and the person’s involvement in the child or
26 ward’s life;

27 (b) The reason that intervention is sought;

28 (c) How the person’s intervention is in the best interests of the child or ward;

29 (d) Why the existing parties cannot adequately present the case; and

30 (e) What specific relief is being sought.

31 (5)(a) If a party wishes to oppose a motion for intervention, the party must file a written ob-
32 jection to the motion stating the grounds for the objection no later than 21 days after the motion
33 is filed. If no written objection is filed as provided in this paragraph, the court may grant the motion
34 without a hearing. Except as provided in paragraph (b) of this subsection, if a written objection is
35 filed as provided in this paragraph, the court shall hold a hearing on the motion.

36 (b) If a motion for intervention does not state a prima facie case as to the facts that must be
37 proved under paragraph (c) of this subsection, the court may deny the motion without a hearing.

38 (c) If the court holds a hearing on the motion for intervention, the court may grant the motion
39 for intervention if the person moving to intervene in the case proves by a preponderance of the
40 evidence that:

41 (A) A caregiver relationship exists between the person and the child or ward;

42 (B) The intervention is in the best interests of the child or ward;

43 (C) The reason for intervention and the specific relief sought are consistent with the best in-
44 terests of the child or ward; and

45 (D) The existing parties cannot adequately protect the best interests of the child or ward with-

1 out the intervention.

2 (6) A person granted intervention is a party to the case and, except as provided in subsection
3 (10) of this section, may be granted such relief as the court determines to be appropriate and in the
4 best interests of the child or ward.

5 (7) A person who is not a party under ORS 419B.875 may seek rights of limited participation
6 by filing a written motion for limited participation in a juvenile court proceeding. The motion must
7 state:

- 8 (a) The reason that limited participation is being sought;
- 9 (b) How the person's limited participation is in the best interests of the child or ward;
- 10 (c) Why the parties cannot adequately present the case; and
- 11 (d) The specific rights of limited participation that are being sought.

12 (8)(a) If a party wishes to oppose a motion filed under subsection (7) of this section, the party
13 must file a written objection to the motion stating the grounds for the objection no later than 21
14 days after the motion is filed. If no written objection is filed as provided in this paragraph, the court
15 may grant the motion without a hearing.

16 (b) If a motion seeking rights of limited participation does not state a prima facie case as to the
17 facts that must be proved under paragraph (c) of this subsection, the court may deny the motion
18 without a hearing.

19 (c) If the court holds a hearing on the motion seeking rights of limited participation, the court
20 may grant the motion if the person seeking rights of limited participation proves by a preponderance
21 of the evidence that:

- 22 (A) The person's limited participation is in the best interests of the child or ward;
- 23 (B) The reason for limited participation and the specific rights sought are consistent with the
24 best interests of the child or ward; and
- 25 (C) The parties cannot adequately present the case.

26 (9) If the court grants a motion under subsection (8) of this section, the court shall specify in
27 the order the rights of limited participation that are being granted.

28 (10)(a) At any time, a person granted intervention or a person granted rights of limited partic-
29 ipation may move to be considered a temporary placement or visitation resource for the child or
30 ward.

31 (b) At any time after a court has determined at a permanency hearing that the permanent plan
32 for the child or ward should be something other than to return home, a person granted intervention
33 may move to be considered the permanent placement resource for the child or ward.

34 (11) The court may modify or set aside any order granting intervention or rights of limited
35 participation as provided in ORS 419B.923.

36 **SECTION 3. The amendments to ORS 419B.192 by section 1 of this 2005 Act apply to pe-**
37 **titions filed on or after the effective date of this 2005 Act.**

38 **SECTION 4.** ORS 419B.518 is amended to read:

39 419B.518. (1) If the parents are determined to be financially eligible, and request the assistance
40 of appointed counsel, the court shall appoint an attorney to represent them at state expense. Ap-
41 pointment of counsel under this section is subject to ORS 135.055, 151.216 and 151.219.

42 (2) **The court may not substitute one appointed counsel for another except pursuant to**
43 **the policies, procedures, standards and guidelines adopted under ORS 151.216.**

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