

House Bill 2141

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Attorney General Hardy Myers for Department of Justice)

SUMMARY

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

Permits Court of Appeals to summarily affirm judgments pertaining to juvenile matters and commitment for mental disabilities.

A BILL FOR AN ACT

1
2 Relating to summary affirmance on appeal; creating new provisions; and amending ORS 419A.200.

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

4 **SECTION 1.** ORS 419A.200 is amended to read:

5 419A.200. (1) Except as provided in ORS 419A.190, any person or entity, including, but not limited to, a party to a juvenile court proceeding under ORS 419B.875 (1) or 419C.285 (1), whose rights or duties are adversely affected by a judgment of the juvenile court may appeal therefrom. An appeal from a circuit court must be taken to the Court of Appeals, and an appeal from a county court must be taken to the circuit court.

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10 (2) If the proceeding is in the circuit court and no record of the proceedings was kept, the court, on motion made not later than 15 days after the entry of the court's judgment, shall grant a rehearing and shall direct that a record of the proceedings be kept. However, the court may not grant a rehearing in a case barred by ORS 419A.190 without the consent of the child, ward, youth or youth offender affected by such case. If a rehearing is held, the time for taking an appeal runs from the date of entry of the court's judgment after the rehearing.

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15 (3)(a) The appeal may be taken by causing a notice of appeal, in the form prescribed by ORS 19.250, to be served:

16 (A) On all parties who have appeared in the proceeding;

17 (B) On the trial court administrator or other person serving as clerk of the juvenile court; and

18 (C) On the juvenile court transcript coordinator, if a transcript is designated in connection with the appeal.

19 (b) The original of the notice with proof of service must be filed with:

20 (A) The Court of Appeals if the appeal is from a circuit court; or

21 (B) The circuit court if the appeal is from a county court.

22 (c) The notice must be filed not later than 30 days after the entry of the court's judgment. On appeal from the county court, the circuit court shall hear the matter de novo and its judgment is appealable to the Court of Appeals in the same manner as if the proceeding had been commenced in the circuit court.

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29 (4) The counsel in the proceeding from which the appeal is being taken shall file and serve those documents necessary to commence an appeal if the counsel is requested to do so by the party the counsel represents.

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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 (5)(a) Upon motion of a person, other than the state, entitled to appeal under subsection (1) of
 2 this section, the appellate court shall grant the person leave to file a notice of appeal after the time
 3 limits described in subsection (3) of this section if:

4 (A) The person shows a colorable claim of error in the proceeding from which the appeal is
 5 taken; and

6 (B) The person shows that the failure to file a timely notice of appeal is not personally attrib-
 7 utable to the person.

8 (b) A person other than the state is not entitled to relief under this subsection for failure to file
 9 timely notice of cross-appeal when the state appeals pursuant to ORS 419A.208.

10 (c) The request for leave to file a notice of appeal after the time limits prescribed in subsection
 11 (3) of this section must be filed no later than 90 days after entry of the judgment being appealed and
 12 must be accompanied by the notice of appeal sought to be filed. A request for leave under this
 13 subsection may be filed by mail and is deemed filed on the date of mailing if the request is mailed
 14 as provided in ORS 19.260.

15 (d) The court may not grant relief under this subsection unless the state has notice and oppor-
 16 tunity to respond to the person's request for relief.

17 (6) An appeal to the Court of Appeals must be conducted in the same manner as an appeal under
 18 ORS chapter 19 except that:

19 (a) The court shall advance the appeal on the court's docket in the same manner as appeals in
 20 criminal cases; *[and]*

21 (b) The court's scope of review is de novo on the record[.]; **and**

22 (c) **The court may summarily affirm the judgment on appeal, on its own motion or on the**
 23 **motion of the respondent, after submission of the appellant's brief, without submission of the**
 24 **respondent's brief and without oral argument, if the court finds that the appeal does not**
 25 **present a substantial question of law. Notwithstanding ORS 2.570, the Chief Judge of the**
 26 **Court of Appeals may deny a respondent's motion for summary affirmance under this para-**
 27 **graph or may grant the motion if the appellant does not oppose the motion. An order of**
 28 **summary affirmance or a dismissal of the appeal under this paragraph constitutes a decision**
 29 **upon the merits of the appeal.**

30 (7)(a) Except as provided in ORS 419A.208 (2), or when otherwise ordered by the appellate court,
 31 the filing of an appeal does not suspend an order or judgment of the juvenile court nor discharge
 32 the ward or youth offender from the custody of the person, institution or agency in whose custody
 33 the ward or youth offender may have been placed nor preclude the juvenile court after notice and
 34 hearing from entering such further orders relating to the ward or youth offender's custody pending
 35 final disposition of the appeal as it finds necessary by reason only of matters transpiring subsequent
 36 to the order or judgment appealed from. The trial court administrator shall immediately file certified
 37 copies of any such order or judgment with the Court of Appeals.

38 (b) Notwithstanding the filing of an appeal from a jurisdictional or dispositional judgment or an
 39 order entered pursuant to ORS 419B.449 or 419B.476, the juvenile court may proceed with the ad-
 40 judication of a petition seeking termination of the parental rights of a parent of the ward who is
 41 subject to the judgment from which the appeal is taken.

42 (c) The appeal of any judgment entered in a termination of parental rights proceeding under
 43 paragraph (b) of this subsection must be consolidated, if appropriate, with any pending appeal of an
 44 order or judgment entered under ORS 419B.325, 419B.449 or 419B.476. The consolidated appeal must
 45 be conducted and advanced on the court's docket in the same manner as termination of parental

1 rights cases.

2 (8) On appeal of a judgment or final order, the appellate court may review any interlocutory
3 order that:

4 (a) Involves the merits or necessarily affects the judgment or final order appealed from; and

5 (b) Was made after entry of the last appealable judgment or final order preceding entry of the
6 judgment or final order being appealed.

7 (9) The district attorney or Attorney General shall represent the state in the appeal.

8 **SECTION 2. In reviewing a judgment of commitment under ORS chapter 426 on appeal,**
9 **the Court of Appeals may summarily affirm the judgment on its own motion or on the mo-**
10 **tion of the respondent after submission of the appellant's brief, without submission of the**
11 **respondent's brief and without oral argument, if the court finds that the appeal does not**
12 **present a substantial question of law. Notwithstanding ORS 2.570, the Chief Judge of the**
13 **Court of Appeals may deny a respondent's motion for summary affirmance under this section**
14 **or may grant the motion if the appellant does not oppose the motion. An order of summary**
15 **affirmance or a dismissal of the appeal under this section constitutes a decision upon the**
16 **merits of the appeal.**

17 **SECTION 3. In reviewing a judgment of commitment under ORS chapter 427 on appeal,**
18 **the Court of Appeals may summarily affirm the judgment on its own motion or on the mo-**
19 **tion of the respondent after submission of the appellant's brief, without submission of the**
20 **respondent's brief and without oral argument, if the court finds that the appeal does not**
21 **present a substantial question of law. Notwithstanding ORS 2.570, the Chief Judge of the**
22 **Court of Appeals may deny a respondent's motion for summary affirmance under this section**
23 **or may grant the motion if the appellant does not oppose the motion. An order of summary**
24 **affirmance or a dismissal of the appeal under this section constitutes a decision upon the**
25 **merits of the appeal.**

26 **SECTION 4. This 2007 Act applies to appeals filed on or after January 1, 2008.**
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