

HB 2849-8
(LC 821)
4/16/19 (LAS/ps)

Requested by HOUSE COMMITTEE ON JUDICIARY (at the request of Representative Tawna Sanchez)

**PROPOSED AMENDMENTS TO
HOUSE BILL 2849**

1 On page 1 of the printed bill, line 2, after the semicolon delete the rest
2 of the line and insert “creating new provisions; and amending ORS 418.937,
3 419B.021, 419B.023, 419B.055, 419B.100, 419B.121, 419B.150, 419B.185 and
4 419C.156.”.

5 Delete lines 4 through 30 and delete page 2.

6 On page 3, delete lines 1 through 24 and insert:

7 **“SECTION 1. Section 2 of this 2019 Act is added to and made a part
8 of ORS chapter 419B.**

9 **“SECTION 2. (1) If it reasonably appears that a child is a runaway,
10 the child may be taken into protective custody by a peace officer,
11 counselor, employee of the Department of Human Services or any
12 other person authorized by the juvenile court of the county in which
13 the child is found.**

14 **“(2) When a child is taken into protective custody as a runaway
15 under subsection (1) of this section, the peace officer or other person
16 who takes the child into custody:**

17 **“(a)(A) Shall release the child without unnecessary delay to the
18 custody of the child’s parent or guardian or to a shelter facility that
19 has agreed to provide care and services to runaway children and that
20 has been designated by the juvenile court to provide such care and
21 services; or**

1 **“(B) Shall follow the procedures described in ORS 419B.160, 419B.165,**
2 **419B.168 and 419B.171;**

3 **“(b) Shall, if possible, determine the preferences of the child and**
4 **the child’s parent or guardian as to whether the best interests of the**
5 **child are better served by placement in a shelter facility that has**
6 **agreed to provide care and services to runaway children and that has**
7 **been designated by the juvenile court to provide such care and services**
8 **or by release to the child’s parent or guardian; and**

9 **“(c) Notwithstanding ORS 419B.165 and subsection (1) of this sec-**
10 **tion, shall release the child to a shelter facility that has agreed to**
11 **provide care and services to runaway children and that has been des-**
12 **ignated by the juvenile court to provide such care and services if it**
13 **reasonably appears that the child would not willingly remain at home**
14 **if released to the child’s parent or guardian.**

15 **“SECTION 3. ORS 419B.150 is amended to read:**

16 **“419B.150. [(1) A child may be taken into protective custody by a peace of-**
17 **ficer, counselor, employee of the Department of Human Services or any other**
18 **person authorized by the juvenile court of the county in which the child is**
19 **found, in the following circumstances:]**

20 **“[(a) When the child’s condition or surroundings reasonably appear to be**
21 **such as to jeopardize the child’s welfare;]**

22 **“[(b) When the juvenile court, by order indorsed on the summons as pro-**
23 **vided in ORS 419B.839 or otherwise, has ordered that the child be taken into**
24 **protective custody; or]**

25 **“[(c) When it reasonably appears that the child has run away from home.]**

26 **“[(2)(a) Before issuing an order under subsection (1)(b) of this section, the**
27 **court shall review an affidavit sworn on information and belief provided by a**
28 **peace officer, counselor or employee of the department or other person author-**
29 **ized by the juvenile court that sets forth with particularity the facts and cir-**
30 **cumstances on which the request for protective custody is based, why protective**

1 *custody is in the best interests of the child and the reasonable efforts or, if the*
2 *Indian Child Welfare Act applies, active efforts made by the department to*
3 *eliminate the need for protective custody of the child.]*

4 *“(b) Except as provided in paragraph (c) of this subsection, an order di-*
5 *recting that a child be taken into protective custody under subsection (1) of this*
6 *section shall contain written findings, including a brief description of the*
7 *reasonable efforts or, if the Indian Child Welfare Act applies, active efforts to*
8 *eliminate the need for protective custody of the child that the department has*
9 *made and why protective custody is in the best interests of the child.]*

10 *“(c) The court may issue an order even though no services have been pro-*
11 *vided if the court makes written findings that no existing services could elim-*
12 *inate the need for protective custody of the child and that protective custody*
13 *is in the best interests of the child.]*

14 *“(3) When a child is taken into protective custody as a runaway under*
15 *subsection (1) of this section, the peace officer or other person who takes the*
16 *child into custody:]*

17 *“(a)(A) Shall release the child without unnecessary delay to the custody*
18 *of the child’s parent or guardian or to a shelter facility that has agreed to*
19 *provide care and services to children who have run away from home and that*
20 *has been designated by the juvenile court to provide such care and services;*
21 *or]*

22 *“(B) Shall follow the procedures described in ORS 419B.160, 419B.165,*
23 *419B.168 and 419B.171;]*

24 *“(b) Shall, if possible, determine the preferences of the child and the*
25 *child’s parent or guardian as to whether the best interests of the child are*
26 *better served by placement in a shelter facility that has agreed to provide care*
27 *and services to children who have run away from home and that has been*
28 *designated by the juvenile court to provide such care and services or by release*
29 *to the child’s parent or guardian; and]*

30 *“(c) Notwithstanding ORS 419B.165 and subsection (1) of this section,*

1 *shall release the child to a shelter facility that has agreed to provide care and*
2 *services to children who have run away from home and that has been desig-*
3 *nated by the juvenile court to provide such care and services if it reasonably*
4 *appears that the child would not willingly remain at home if released to the*
5 *child's parent or guardian.]*

6 **“(1) As used in this section:**

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

8 **“(b) ‘Reasonable cause’ means a subjectively and objectively rea-**
9 **sonable belief, given all of the circumstances and based on specific and**
10 **articulable facts.**

11 **“(c) ‘Severe harm’ means:**

12 **“(A) Life-threatening damage; or**

13 **“(B) Significant or acute injury to a person’s physical, sexual or**
14 **psychological functioning.**

15 **“(2) The following persons are authorized to take a child into pro-**
16 **TECTIVE custody under this section:**

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

18 **“(b) A counselor; or**

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

20 **“(3)(a) Except as provided in paragraph (b) of this subsection, a**
21 **child may be taken into protective custody without a court order only**
22 **when 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**
25 **others;**

26 **“(C) There is an imminent threat that the child’s parent or guard-**
27 **ian will cause the child to be beyond the reach of the juvenile court**
28 **before the department can complete assessment of an abuse allegation**
29 **involving the child; or**

30 **“(D) There is an imminent threat that the child’s parent or guard-**

1 **ian will cause the child to be beyond the reach of the juvenile court**
2 **before the court can order that the child be taken into protective**
3 **custody under subsection (6) of this section.**

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

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

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

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

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

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

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

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

23 **“(5)(a) The applicant under subsection (4) of this section shall de-**
24 **liver the declaration described in subsection (4) of this section to the**
25 **juvenile court.**

26 **“(b) At the applicant’s request, instead of the declaration described**
27 **in subsection (4) of this section, the judge may take an oral statement**
28 **under oath. If the applicant makes the oral statement to the judge out**
29 **of court, the applicant shall record the oral statement and retain a**
30 **copy of the recording. The recording constitutes a declaration for the**

1 **purposes of subsection (4) of this section.**

2 **“(6) The juvenile court may order that a child be taken into pro-**
3 **ective custody if, after reviewing the declaration described in sub-**
4 **section (4) of this section, the court determines that:**

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

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

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

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

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

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

16 **“(b) Protective custody is in the best interests of the child.**

17 **“(7) When the court issues a protective custody order under sub-**
18 **section (6) of this section, the court may transmit the signed order to**
19 **the applicant by a form of electronic communication approved by the**
20 **court that delivers a complete printable image of the signed order. The**
21 **court shall file the original order in the court record.**

22 **“SECTION 4. ORS 418.937 is amended to read:**

23 **“418.937. When making any placement decision involving a refugee child**
24 **under ORS 419B.150, 419C.080 or 419C.088 or section 2 of this 2019 Act, the**
25 **Department of Human Services and the juvenile court shall consider that**
26 **child’s culture and tradition. Unless shown to be inappropriate and incon-**
27 **sistent with the best interests of the child, the department and juvenile court**
28 **shall place the child with the following in order of preference:**

29 **“(1) Natural parents.**

30 **“(2) Extended family members.**

1 “(3) Members of the same cultural heritage.

2 “(4) Persons with knowledge and appreciation of the cultural heritage of
3 the child.”.

4 In line 25, delete “2” and insert “5”.

5 On page 4, delete lines 42 through 45 and delete pages 5 through 9 and
6 insert:

7 **“SECTION 6.** ORS 419B.021 is amended to read:

8 “419B.021. (1) Except as provided in subsection (2) of this section, the
9 following persons must possess a bachelor’s, master’s or doctoral degree from
10 an accredited institution of higher education:

11 “(a) A person who conducts an investigation under ORS 419B.020; and

12 “(b) A person who makes the following determinations:

13 “(A) That a child must be taken into protective custody under ORS
14 419B.150 **or section 2 of this 2019 Act**; and

15 “(B) That the child should not be released to the child’s parent or other
16 responsible person under ORS 419B.165 (2).

17 “(2) Subsection (1) of this section does not apply to:

18 “(a) A person who was employed or otherwise engaged by the Department
19 of Human Services for the purpose of conducting investigations or making
20 determinations before January 1, 2012, provided the person’s employment or
21 engagement for these purposes has been continuous and uninterrupted.

22 “(b) A law enforcement official as that term is defined in ORS 147.005.

23 **“SECTION 7.** ORS 419B.055 is amended to read:

24 “419B.055. (1) The Attorney General may bring an action in a circuit
25 court for a citation or a stalking protective order under ORS 30.866 or
26 163.730 to 163.750 on behalf of an employee of the Department of Human
27 Services who, because of being involved in the conduct described in sub-
28 section (3) of this section, is the subject of repeated and unwanted contact
29 by another person that causes alarm or coercion to the employee. The At-
30 torney General’s responsibility under this subsection is limited to circum-

1 stances in which an employee of the department submits a written request
2 to the Attorney General that:

3 “(a) Has been approved in writing by the Director of Human Services or
4 the director’s designee;

5 “(b) Sets forth sufficient facts and evidence, the truth of which has been
6 affirmed by the employee; and

7 “(c) Based solely upon the opinion of the Attorney General, is an action
8 that is likely to succeed.

9 “(2) The action brought under this section may not include a request for:

10 “(a) Special and general damages, including damages for emotional dis-
11 tress;

12 “(b) Economic or noneconomic damages;

13 “(c) Punitive damages; or

14 “(d) Attorney fees and costs.

15 “(3) Departmental employees on whose behalf the citation or stalking
16 protective order may be obtained under subsection (1) of this section include
17 employees who:

18 “(a) Conduct a child abuse investigation under ORS 419B.020;

19 “(b) Make a determination that a child must be taken into protective
20 custody under ORS 419B.150 **or section 2 of this 2019 Act**;

21 “(c) Make a determination that a child should not be released to the
22 child’s parent or other responsible person under ORS 419B.165 (2); and

23 “(d) Are involved in developing a case plan or making a placement deci-
24 sion for a child in the legal custody of the department.

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

26 “419B.100. (1) Except as otherwise provided in subsection (5) of this sec-
27 tion and ORS 107.726, the juvenile court has exclusive original jurisdiction
28 in any case involving a person who is under 18 years of age and:

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

1 “(b) Whose behavior is such as to endanger the welfare of the person or
2 of others;

3 “(c) Whose condition or circumstances are such as to endanger the wel-
4 fare of the person or of others;

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

8 “(e) Whose parents or any other person or persons having custody of the
9 person have:

10 “(A) Abandoned the person;

11 “(B) Failed to provide the person with the care or education required by
12 law;

13 “(C) Subjected the person to cruelty, depravity or unexplained physical
14 injury; or

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

17 “(f) Who [*has run away from the home of the person*] **is a runaway**;

18 “(g) Who has filed a petition for emancipation pursuant to ORS 419B.550
19 to 419B.558; or

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

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

24 “(3) The provisions of subsection (1) of this section do not prevent a court
25 of competent jurisdiction from entertaining a civil action or suit involving
26 a child.

27 “(4) The court does not have further jurisdiction as provided in subsection
28 (1) of this section after a minor has been emancipated pursuant to ORS
29 419B.550 to 419B.558.

30 “(5)(a) An Indian tribe has exclusive jurisdiction over any child custody

1 proceeding involving an Indian child who resides or is domiciled within the
2 reservation of the tribe, except where the jurisdiction is otherwise vested in
3 the state by existing federal law.

4 “(b) Upon the petition of either parent, the Indian custodian or the Indian
5 child’s tribe, the juvenile court, absent good cause to the contrary and absent
6 objection by either parent, shall transfer a proceeding for the foster care
7 placement of, or termination of parental rights to, an Indian child not
8 domiciled or residing within the reservation of the Indian child’s tribe, to
9 the jurisdiction of the tribe.

10 “(c) The juvenile court shall give full faith and credit to the public acts,
11 records and judicial proceedings of an Indian tribe applicable to an Indian
12 child custody proceeding to the same extent that the juvenile court gives full
13 faith and credit to the public acts, records and judicial proceedings of any
14 other entity.

15 **“SECTION 9.** ORS 419B.121 is amended to read:

16 “419B.121. Notwithstanding ORS 419C.145, the court may order the de-
17 tention of a child who resides in another state if the court finds probable
18 cause to believe that the child [*has run away from home or from a*
19 *placement*] **is a runaway**. If a child is ordered detained under this section,
20 the court shall make such orders as are necessary to cause the child to be
21 immediately returned to the child’s state of residence.

22 **“SECTION 10.** ORS 419B.185 is amended to read:

23 “419B.185. (1) When a child or ward is taken, or is about to be taken, into
24 protective custody pursuant to ORS 419B.150, 419B.160, 419B.165, 419B.168
25 and 419B.171 **or section 2 of this 2019 Act** and placed in detention or shel-
26 ter care, a parent, child or ward shall be given the opportunity to present
27 evidence to the court at the hearings specified in ORS 419B.183, and at any
28 subsequent review hearing, that the child or ward can be returned home
29 without further danger of suffering physical injury or emotional harm, en-
30 dangering or harming others, or not remaining within the reach of the court

1 process prior to adjudication. At the hearing:

2 “(a) The court shall make written findings as to whether the Department
3 of Human Services has made reasonable efforts or, if the Indian Child Wel-
4 fare Act applies, active efforts to prevent or eliminate the need for removal
5 of the child or ward from the home and to make it possible for the child or
6 ward to safely return home. When the court finds that no services were
7 provided but that reasonable services would not have eliminated the need for
8 protective custody, the court shall consider the department to have made
9 reasonable efforts or, if the Indian Child Welfare Act applies, active efforts
10 to prevent or eliminate the need for protective custody. The court shall in-
11 clude in the written findings a brief description of the preventive and reu-
12 nification efforts made by the department.

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

16 “(c) In determining whether the department has made reasonable efforts
17 or, if the Indian Child Welfare Act applies, active efforts to prevent or
18 eliminate the need for removal of the child or ward from the home and to
19 make it possible for the child or ward to safely return home, the court shall
20 consider the child or ward’s health and safety the paramount concerns.

21 “(d) The court shall make a written finding in every order of removal that
22 describes why it is in the best interests of the child or ward that the child
23 or ward be removed from the home or continued in care.

24 “(e) When the court determines that a child or ward shall be removed
25 from the home or continued in care, the court shall make written findings
26 whether the department made diligent efforts pursuant to ORS 419B.192. The
27 court shall include in its written findings a brief description of the efforts
28 made by the department.

29 “(f) The court shall determine whether the child or ward is an Indian
30 child as defined in ORS 419A.004 or in the applicable State-Tribal Indian

1 Child Welfare Agreement.

2 “(g) The court may receive testimony, reports and other evidence without
3 regard to whether the evidence is admissible under ORS 40.010 to 40.210 and
4 40.310 to 40.585 if the evidence is relevant to the determinations and findings
5 required under this section. As used in this paragraph, ‘relevant evidence’
6 has the meaning given that term in ORS 40.150.

7 “(2) To aid the court in making the written findings required by sub-
8 section (1)(a), (d) and (e) of this section, the department shall present written
9 documentation to the court outlining:

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

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

14 “(c) Why protective custody is in the best interests of the child or ward.

15 **“SECTION 11.** ORS 419C.156 is amended to read:

16 “419C.156. Notwithstanding ORS 419C.145 (1) and (2), the court may order
17 the detention of a youth who resides in another state if the court makes
18 written findings that there is probable cause to believe that the youth [*has*
19 *run away from home or from a placement*] **is a runaway** and that describe
20 why it is in the best interests of the youth to be placed in detention. If a
21 youth is ordered detained under this section, the court shall make such or-
22 ders as are necessary to cause the youth to be immediately returned to the
23 youth’s state of residence.”.

24
