

House Bill 4148

Sponsored by Representative SANCHEZ, Senators HANSELL, ROBLAN, Representative LEWIS (Presession filed.)

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**.

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

A BILL FOR AN ACT

1
2 Relating to Indian children; creating new provisions; and amending ORS 350.300, 418.627, 419A.004,
3 419A.116, 419A.252, 419B.090, 419B.100, 419B.118, 419B.150, 419B.171, 419B.185, 419B.192,
4 419B.305, 419B.310, 419B.325, 419B.331, 419B.337, 419B.340, 419B.365, 419B.366, 419B.449,
5 419B.452, 419B.476, 419B.498, 419B.500, 419B.521, 419B.529, 419B.532, 419B.875, 419B.878 and
6 419B.923.

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

OREGON INDIAN CHILD WELFARE ACT

8
9
10
11 (Short Title)

12
13 **SECTION 1. Sections 1 to 20 of this 2020 Act may be cited as the Oregon Indian Child**
14 **Welfare Act.**

15
16 (Policy Regarding Indian Children)

17
18 **SECTION 2. The Legislative Assembly finds that in the Indian Child Welfare Act (25**
19 **U.S.C. 1901 et seq.), the United States Congress recognized the special legal status of Indian**
20 **tribes and their members. It is the policy of the State of Oregon to protect the health and**
21 **safety of Indian children and the stability and security of Indian tribes and families by pro-**
22 **moting practices designed to prevent the removal of Indian children from their families and,**
23 **if removal is necessary and lawful, to prioritize the placement of an Indian child with the**
24 **Indian child's extended family and tribal community. The State of Oregon recognizes the in-**
25 **herent jurisdiction of Indian tribes to make decisions regarding the custody of Indian chil-**
26 **dren. The State of Oregon also recognizes the importance of ensuring that Indian children**
27 **and Indian families receive appropriate services to obviate the need to remove an Indian**
28 **child from the Indian child's home and, if removal is necessary and lawful, to effect the**
29 **child's safe return home. The Oregon Indian Child Welfare Act creates additional safeguards**
30 **for Indian children to address disproportionate rates of removal, to improve the treatment**
31 **of and services provided to Indian children and Indian families in the child welfare system**

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 and to ensure that Indian children who must be removed are placed with Indian families,
2 communities and cultures.

3
4 (Definitions; Custody; Paternity;
5 Best Interests of Indian Child; Domicile)
6

7 **SECTION 3. Definitions.** As used in sections 1 to 20 of this 2020 Act:

8 (1) “Adoptive placement” means any action that may result in the permanent placement
9 of an Indian child for adoption, including any action resulting in a final decree of adoption.

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

13 (3)(a) “Extended family member” has the meaning given that term by the law or custom
14 of an Indian child’s tribe.

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

20 (4) “Foster care placement” means any action removing, or that could result in the re-
21 moval of, an Indian child from the child’s parent or Indian custodian for temporary place-
22 ment in a foster home or institution, including but not limited to the following:

23 (a) A jurisdictional hearing or an adjudicatory hearing under ORS 419B.100;

24 (b) The placement of the Indian child in the home of a guardian under ORS 419B.366;

25 (c) The placement of the Indian child out of the home for the commission of a status
26 offense under ORS chapter 419C; or

27 (d) Any other action that alters the legal relationship between the Indian child and the
28 Indian child’s parent, including a guardianship proceeding under ORS chapter 125, where
29 parental rights have not been terminated but where a parent or an Indian custodian cannot
30 regain custody of the Indian child or have state jurisdiction terminated upon verbal or
31 written request and without any formalities or contingencies.

32 (5) “Indian” means a person who is a member of an Indian tribe or who is an Alaska
33 Native and a member of a regional corporation as defined in section 7 of the Alaska Native
34 Claims Settlement Act (43 U.S.C. 1606).

35 (6) “Indian child” means any unmarried person who has not attained 18 years of age and:

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

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

39 (7) “Indian Child Welfare Act” means the federal Indian Child Welfare Act (25 U.S.C. 1901
40 et seq.).

41 (8) “Indian custodian” means an Indian, other than the Indian child’s parent, who has
42 legal custody, as described in section 4 of this 2020 Act, of the Indian child, or to whom
43 temporary physical care, custody and control has been transferred by the Indian child’s
44 parent.

45 (9) “Indian foster home” means a foster home, including a tribally licensed home, where

1 one or more of the licensed or approved foster parents is an Indian.

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

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

8 (12) "Parent" means:

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

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

12 (c) A father whose paternity has been acknowledged or established under section 5 of this
13 2020 Act.

14 (13) "Party" or "parties" means parties to a proceeding, as described in ORS 419B.875.

15 (14) "Pre-adoptive placement" means any action that may result in the temporary
16 placement of an Indian child in a foster home or institution after the termination of parental
17 rights but prior to or in lieu of adoptive placement.

18 (15) "Proceeding" means any action, other than an emergency proceeding, that may cul-
19minate in the termination of parental rights, a foster care placement, a pre-adoptive place-
20ment or an adoptive placement.

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

25 (17) "Status offense" means an act committed by a person under the age of 18 years that
26 is considered a violation solely as a result of the person's status as a minor.

27 (18) "Termination of parental rights" means any action that may result in the termi-
28 nation of the parent-child relationship and any placement in a permanent guardianship under
29 ORS 419B.365.

30 (19) "Tribal court" means a court with jurisdiction over child custody proceedings and
31 that is either a Court of Indian Offenses, a court established and operated under the code
32 or custom of an Indian tribe or any other administrative body of a tribe that is vested with
33 authority over child custody proceedings.

34 (20)(a) "Voluntary proceeding" means a proceeding that a parent or an Indian custodian
35 has consented to.

36 (b) "Voluntary proceeding" does not include:

37 (A) A termination of parental rights, including when an Indian child is not returned to
38 the parent at the conclusion of any voluntary placement agreement; or

39 (B) Any other proceeding in which a parent or an Indian custodian consents to the pro-
40 ceeding under threat of removal of the Indian child by a state court or agency or other
41 threats by a private adoptive or other agency.

42 **SECTION 4. Custody of Indian child.** (1) A parent or Indian custodian has custody of an
43 Indian child under sections 1 to 20 of this 2020 Act if the parent or Indian custodian has
44 physical custody or legal custody of the Indian child under any applicable tribal law, tribal
45 custom or state law.

1 (2) A parent or Indian custodian has continued custody of an Indian child if the parent
2 or Indian custodian currently has, or previously had, custody of the Indian child.

3 (3) For the purposes of this section, the following individuals are presumed to have con-
4 tinued custody of an Indian child:

5 (a) The Indian child's biological mother;

6 (b) A man who is married to the Indian child's biological mother; and

7 (c) A man whose paternity has been acknowledged or established as described in section
8 5 of this 2020 Act.

9 **SECTION 5. Paternity.** In addition to the methods for establishing parentage under ORS
10 109.065, a man's paternity may be acknowledged or established for the purposes of sections
11 1 to 20 of this 2020 Act if the man's paternity has been:

12 (1) Established under tribal law;

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

14 (3) Openly proclaimed to the court by the man, the Indian child's family, the Department
15 of Human Services or an adoption agency.

16 **SECTION 6. Best interests of Indian child.** When making a determination regarding the
17 best interests of an Indian child under sections 1 to 20 of this 2020 Act, the Indian Child
18 Welfare Act or any regulations or rules regarding the Indian Child Welfare Act or sections
19 1 to 20 of this 2020 Act, the juvenile court shall, in consultation with the Indian child's tribe,
20 consider the following relevant factors:

21 (1) The protection of the safety, well-being, development and stability of the Indian child;

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

23 (3) The prioritization of placement of the Indian child in accordance with the placement
24 preferences under section 20 of this 2020 Act;

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

28 (5) The importance to the child of the Indian tribe's ability to maintain the tribe's ex-
29 istence and integrity in promotion of the stability and security of Indian children and fami-
30 lies.

31 **SECTION 7. Domicile.** For the purposes of sections 1 to 20 of this 2020 Act:

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

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

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

37 (b) The Indian child's Indian custodian; or

38 (c) The Indian child's guardian.

39
40 (Jurisdiction; Transfer)

41
42 **SECTION 8. Determination of domicile and residence; records.** (1) In any proceeding un-
43 der ORS chapter 419B involving an Indian child, the juvenile court must determine the resi-
44 dence and domicile of the Indian child and whether the Indian child is a ward of tribal court.

45 (2)(a) The juvenile court shall communicate with any tribal courts to the extent neces-

1 sary to make a determination under subsection (1) of this section, and shall, if applicable,
 2 coordinate with a tribal court to facilitate the tribal court’s assumption of jurisdiction.

3 (b) The juvenile court shall:

4 (A) Allow the parties to participate in any communications under this subsection with a
 5 tribal court or, if a party is unable to participate in a communication, provide the party with
 6 an opportunity to present facts and legal arguments supporting the party’s position before
 7 the juvenile court makes a decision regarding jurisdiction;

8 (B) Create records of any communications under this section;

9 (C) Promptly notify the parties of each communication; and

10 (D) Provide the parties with access to the record of the communication.

11 (3) Notwithstanding subsection (2) of this section, communications between the juvenile
 12 court and a tribal court regarding schedules, calendars, court records and similar matters
 13 may occur without informing the parties or creating a record of the communications.

14 (4) As used in this section “record” means information that is inscribed on a tangible
 15 medium or that is stored in an electronic or other medium and is retrievable in perceivable
 16 form.

17 **SECTION 9. Jurisdiction.** (1) Except as provided in subsection (2) of this section and
 18 notwithstanding Public Law 83-280, an Indian child’s tribe has exclusive jurisdiction over any
 19 proceeding under ORS chapter 419B involving the Indian child if:

20 (a) The Indian child resides or is domiciled within the reservation of the tribe; or

21 (b) The Indian child is a ward of a tribal court of the tribe.

22 (2) The juvenile court has jurisdiction over a proceeding described in subsection (1) of
 23 this section if:

24 (a) The tribe has consented orally on the record or in writing to the juvenile court’s
 25 concurrent jurisdiction;

26 (b) The juvenile court is exercising emergency jurisdiction in compliance with ORS
 27 419B.150, 419B.152 or 419B.185 or other relevant Oregon law; or

28 (c) The tribe has not entered into an applicable state-tribal Indian child welfare agree-
 29 ment.

30 (3) The juvenile court has jurisdiction, as provided in ORS 419B.100 (1), over a proceeding
 31 involving an Indian child if:

32 (a) The Indian child does not reside or is not domiciled within the reservation of the In-
 33 dian child’s tribe; and

34 (b) The Indian child is not a ward of the tribal court.

35 (4) The Indian child’s tribe has jurisdiction over a proceeding described in subsection (3)
 36 of this section if the juvenile court has transferred jurisdiction to the Indian tribe as pro-
 37 vided in section 10 of this 2020 Act.

38 **SECTION 10. Petition to transfer jurisdiction; objection.** (1) At any point in a proceeding
 39 in which the juvenile court has jurisdiction under ORS 419B.100 (1), an Indian child’s parent,
 40 Indian custodian or tribe may petition the court to transfer jurisdiction of the proceeding
 41 to the tribal court of the Indian child’s tribe. No later than three days after filing the
 42 transfer petition, the petitioner shall deliver or mail to the parties a copy of the petition and
 43 notice of the time set for filing objections to the petition.

44 (2) Any party may, within the time fixed for the filing, file in the proceeding objections
 45 to the transfer petition. An objecting party must provide notice and a copy of the objection

1 to the other parties. Objections under this subsection must specify the particulars of the
 2 objections, including:

3 (a) That the tribe has declined the transfer of jurisdiction;

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

5 or

6 (c) That good cause exists to deny the transfer of jurisdiction.

7 (3) Upon receipt of a transfer petition, the juvenile court shall contact the tribal court
 8 and request a timely response to the petition, orally on the record or in writing, regarding
 9 whether the tribe intends to decline the transfer of jurisdiction.

10 (4) If a party objects to the transfer petition for good cause, the court shall fix the time
 11 for hearing on objections to the petition.

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

13 (A) The tribe declines the transfer of jurisdiction;

14 (B) The Indian child's parent objects to the transfer of jurisdiction; or

15 (C) The court finds, after hearing, that good cause exists to deny the transfer of juris-
 16 diction.

17 (b) Notwithstanding paragraph (a)(B) of this subsection, the objection of an Indian child's
 18 parent does not preclude the transfer of jurisdiction if:

19 (A) The objecting parent's parental rights are later terminated or the objecting parent
 20 dies; and

21 (B) The Indian child's remaining parent, Indian custodian or tribe files a new transfer
 22 petition subsequent to the termination of the objecting parent's parental rights or the death
 23 of the objecting parent.

24 (c) In determining whether good cause exists to deny the transfer petition, the juvenile
 25 court may not consider:

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

27 (B) Whether there have been prior proceedings involving the Indian child for which no
 28 transfer petition was filed;

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

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

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

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

34 (6) The juvenile court shall give deference to a transfer petition made by a tribe.

35 (7) If the juvenile court denies a transfer of jurisdiction under this section, the court
 36 shall document the basis for its denial in a written order.

37 **SECTION 11. Transfer.** Upon determining that an Indian tribe has jurisdiction over a
 38 proceeding under section 9 (1) or (4) of this 2020 Act, the juvenile court shall expeditiously:

39 (1) Notify the tribal court of the pending dismissal of the proceeding;

40 (2) If the tribal court accepts the transfer, dismiss the proceeding;

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

43 (4) Direct the Department of Human Services to:

44 (a) Coordinate with the tribal court and the Indian child's tribe to ensure that the
 45 transfer of the proceeding and the transfer of custody of the Indian child is accomplished

1 with minimal disruption of services to the Indian child and the Indian child's family.

2 (b) Provide the Indian child's tribe with documentation related to the Indian child's el-
3 igibility for state and federal assistance and information related to the Indian child's social
4 history, treatment diagnosis and services and other relevant case and service related data.

5
6 (Inquiry; Notice)
7

8 **SECTION 12. Emergency inquiry; inquiry; reason to know child is Indian child.** (1) In an
9 emergency proceeding, when the nature of the emergency allows, the person taking the child
10 into protective custody shall make a good faith effort to determine whether there is reason
11 to know that the child is an Indian child and to contact by telephone, electronic mail, fac-
12 simile or other means of immediate communication any tribe of which the child may be a
13 member to determine the child's affiliation.

14 (2) Except as provided in subsection (1) of this section, whenever a person is required to
15 determine whether there is reason to know that a child is an Indian child, the person shall
16 consult with, at a minimum, the following individuals or entities to determine if the child is
17 an Indian child:

18 (a) The child;

19 (b) The child's parent or parents;

20 (c) Any person having custody of the child or with whom the child resides;

21 (d) Extended family members of the child;

22 (e) Any other person who may reasonably be expected to have information regarding the
23 child's membership or eligibility for membership in an Indian tribe; and

24 (f) Any Indian tribe in which the child may be a member or may be eligible for mem-
25 bership.

26 (3)(a) At the commencement of any hearing in which the court is required to inquire
27 whether a child is an Indian child, the court shall ask, on the record, each participant
28 whether the participant knows or has reason to know that the child is an Indian child.

29 (b) If no participant in the proceeding knows or has reason to know that the child is an
30 Indian child, the court shall instruct each party to inform the court immediately if the party
31 later receives information that provides reason to know the child is an Indian child.

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

33 (a) Any participant in the proceeding, officer of the court involved in the proceeding,
34 Indian tribe, Indian organization or agency informs the court that the child is an Indian
35 child;

36 (b) Any participant in the proceeding, officer of the court involved in the proceeding,
37 Indian tribe, Indian organization or agency informs the court that it has discovered infor-
38 mation indicating that the child is an Indian child;

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

40 (d) The court is informed that the domicile or residence of the child, the child's parent
41 or the child's Indian custodian is on a reservation or in an Alaska Native village;

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

43 (f) The court is informed that the child or the child's parent possesses an identification
44 card or other record indicating membership in an Indian tribe;

45 (g) Testimony or documents presented to the court indicate in any way that the child

1 may be an Indian child; or

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

4 (5) If the court has reason to know the child is an Indian child but the court does not
5 have sufficient evidence to determine that the child is or is not an Indian child, the court
6 must:

7 (a) Treat the child as an Indian child unless the court determines, on the record, that
8 the child does not meet the definition of an Indian child; and

9 (b) Require the Department of Human Services or other party to submit a report, dec-
10 laration or testimony on the record that the department or other party used due diligence
11 to identify and work with all of the tribes of which there is reason to know the child may
12 be a member or be eligible for membership to verify whether:

13 (A) The child is a member; or

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

15 **SECTION 13. Emergency notification; formal notice.** (1)(a) In an emergency proceeding,
16 if there is reason to know that a child is an Indian child and the nature of the emergency
17 allows, the Department of Human Services must notify by telephone, electronic mail, fac-
18 simile or other means of immediate communication any tribe of which the child is or may
19 be a member.

20 (b) Notification under this subsection must include the basis for the child's removal, the
21 time, date and place of the initial hearing and a statement that the tribe, as a party to the
22 proceeding under ORS 419B.875, has the right to participate in the proceeding.

23 (2) Except as provided in subsection (1) of this section, if there is reason to know a child
24 is an Indian child and notice is required, the party providing notice must:

25 (a) Promptly send notice of the proceeding as described in subsection (3) of this section;
26 and

27 (b) File an original or a copy of each notice sent under this section with the court, to-
28 gether with any return receipts or other proof of service.

29 (3)(a) Notice under subsection (2) of this section must be sent to:

30 (A) Each tribe where the child may be a member or eligible for membership;

31 (B) The child's parents; and

32 (C) If applicable, the child's Indian custodian.

33 (b) If the identity or location of the child's parents, Indian custodian or tribe cannot be
34 ascertained, the notice shall be sent to the appropriate United States Bureau of Indian Af-
35 fairs Regional Director listed in 25 C.F.R. 23.11(b).

36 (c) The notice must be sent by registered or certified mail, return receipt requested.

37 (d) The notice must be in clear and understandable language and include the following:

38 (A) The child's name, birth date and birthplace;

39 (B) All names known, including maiden, married and former names or aliases, of the
40 parents, the parents' birthplaces and tribal enrollment numbers, if known;

41 (C) The names, birth dates, birthplaces and tribal enrollment information of other direct
42 lineal ancestors of the child;

43 (D) The name of each Indian tribe in which the child is a member or may be eligible for
44 membership if a biological parent is a member;

45 (E) If notice is required to be sent to the United States Bureau of Indian Affairs under

1 paragraph (b) of this subsection, to the extent known, information regarding the child's di-
 2 rect lineal ancestors, an ancestral chart for each biological parent, and the child's tribal af-
 3 filiations and blood quantum;

4 (F) A copy of the petition by which the proceeding was initiated and, if a hearing has been
 5 scheduled, information on the date, time and location of the hearing;

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

7 (H) A statement that the child's parent or Indian custodian has the right to intervene
 8 at any point in the proceeding;

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

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

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

16 (L) A statement describing the potential legal consequences of the proceeding on the fu-
 17 ture parental and custodial rights of the parent or Indian custodian;

18 (M) The mailing addresses and telephone numbers of the court and information related
 19 to all parties to the proceeding and individuals notified under this section; and

20 (N) A statement that the information contained in the notice is confidential and that the
 21 notice should not be shared with any person not needing the information to exercise rights
 22 under sections 1 to 20 of this 2020 Act.

23 (4) If there is a reason to know that a parent or Indian custodian possesses limited
 24 English proficiency and may not understand the contents of the notice, the court must pro-
 25 vide language access services as required by Title VI of the Civil Rights Act of 1964 and other
 26 federal and state laws. If the court is unable to secure translation or interpretation support,
 27 the court shall contact or direct a party to contact the Indian child's tribe or the local office
 28 of the United States Bureau of Indian Affairs for assistance identifying a qualified translator
 29 or interpreter.

30 (5)(a) No hearing requiring notice under subsection (2) of this section may be held until
 31 at least 10 days after the later of receipt of the notice by the Indian child's parent, Indian
 32 custodian or tribe or, if applicable, the Secretary of the Bureau of Indian Affairs. Upon re-
 33 quest, the court shall grant the Indian child's parent, Indian custodian or tribe up to 20 ad-
 34 ditional days from the date upon which notice was received by the parent, Indian custodian
 35 or tribe to prepare for participation in the hearing.

36 (b) Nothing in this subsection prevents a court from reviewing a removal of an Indian
 37 child from the Indian child's parent or Indian custodian at an emergency proceeding before
 38 the expiration of the waiting period described in paragraph (a) of this subsection to deter-
 39 mine the appropriateness of the removal and potential return of the child.

40
 41 (Hearing Procedure)

42
 43 **SECTION 14. Qualified expert witness.** (1) At any hearing where there is reason to know
 44 a child is an Indian child and a qualified expert witness is required, at least one qualified
 45 expert witness must testify regarding:

1 (a) Whether the Indian child's continued custody by the Indian child's parent or Indian
2 custodian is likely to result in serious emotional or physical damage to the Indian child; and

3 (b) The prevailing social and cultural standards of the Indian child's tribe.

4 (2) A person is a qualified expert witness under this section if the Indian child's tribe has
5 designated the person as being qualified to testify to the prevailing social and cultural stan-
6 dards of the tribe.

7 (3) If the Indian child's tribe has not identified an expert witness, the following individ-
8 uals, in order of priority, may testify as a qualified expert witness:

9 (a) A member of the Indian child's tribe or other person of the tribe's choice who is re-
10 cognized by the tribe as knowledgeable regarding tribal customs regarding family organiza-
11 tion or child rearing practices;

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

15 (c) Any person having substantial experience in the delivery of child and family services
16 to Indians and knowledge of prevailing social and cultural standards and child rearing prac-
17 tices in Indian tribes with cultural similarities to the child's tribe.

18 (4) In addition to testimony from a qualified expert witness, the court may hear supple-
19 mental testimony regarding subsection (1) of this section from a professional person having
20 substantial education and experience in the area of the person's specialty.

21 (5) No petitioning party, its employees or an employee of the Department of Human
22 Services may serve as a qualified expert witness or supplemental expert witness under this
23 section.

24 **SECTION 15. Active efforts.** (1) As used in this section, "active efforts" means efforts
25 that are affirmative, active, thorough, timely and intended to maintain or reunite an Indian
26 child with the Indian child's family.

27 (2) If there a reason to know that a child is an Indian child and active efforts are re-
28 quired, the court must determine whether active efforts have been made to prevent the
29 breakup of the family or to reunite the family.

30 (3) Active efforts must:

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

32 (b) Include assisting the Indian child's parent or parents or Indian custodian through the
33 steps of a case plan and with accessing or developing the resources necessary to satisfy the
34 case plan;

35 (c) Include providing assistance in a manner consistent with the prevailing social and
36 cultural conditions and way of life of the Indian child's tribe;

37 (d) Be conducted in partnership with the Indian child and the Indian child's parents, ex-
38 tended family members, Indian custodians and tribe; and

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

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

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

43 (b) Identifying appropriate services and helping the Indian child's parents overcome bar-
44 riers to reunification, including actively assisting the parents in obtaining the identified
45 services;

1 (c) Identifying, notifying and inviting representatives of the Indian child's tribe to par-
2 ticipate in providing support and services to the Indian child's family and in family team
3 meetings, permanency planning, resolution of placement issues, reviews or other case man-
4 agement related meetings;

5 (d) Conducting or causing to be conducted a diligent search for the Indian child's ex-
6 tended family members, contacting and consulting with the Indian child's extended family
7 members and adult relatives to provide family structure and support for the Indian child and
8 the Indian child's parents;

9 (e) Offering and employing culturally appropriate family preservation strategies and fa-
10 cilitating the use of remedial and rehabilitative services provided by the Indian child's tribe;

11 (f) Taking steps to keep the Indian child and the Indian child's siblings together whenever
12 possible;

13 (g) Supporting regular visits with the Indian child's parents or Indian custodians in the
14 most natural setting possible as well as trial home visits during any period of removal, con-
15 sistent with the need to ensure the health, safety and welfare of the Indian child;

16 (h) Identifying community resources, including housing, financial assistance, employment
17 training, transportation, mental health, health care, substance abuse prevention and treat-
18 ment, parent training, transportation and peer support services and actively assisting the
19 Indian child's parents or, when appropriate, the Indian child's extended family, in utilizing
20 and accessing those resources;

21 (i) Monitoring progress and participation in services;

22 (j) Considering alternative options to address the needs of the Indian child's parents and,
23 where appropriate, the Indian child's extended family, if the services are not available; and

24 (k) Providing post-reunification services and monitoring.

25 **SECTION 16. Parties to proceeding; right to appear.** (1) As provided in ORS 419B.875, an
26 Indian child's Indian custodian or tribe is a party to any proceeding involving the Indian
27 child.

28 (2) Notwithstanding ORS 9.160 and 9.320, a tribe may be represented by any individual,
29 regardless of whether the individual is licensed to practice law, in any proceeding involving
30 an Indian child.

31 (3) An attorney who is not barred from practicing law in this state may appear in any
32 proceeding involving an Indian child without associating with local counsel if the attorney
33 establishes to the satisfaction of the Oregon State Bar that:

34 (a) The attorney seeks to appear in a court in this state for the limited purpose of par-
35 ticipating in a proceeding under ORS chapter 419B subject to the provisions of sections 1 to
36 20 of this 2020 Act;

37 (b) The attorney represents an Indian child's tribe, parent or Indian custodian; and

38 (c) The Indian child's tribe has affirmed the Indian child's membership or eligibility for
39 membership under tribal law.

40 (4) If available, the court shall allow alternative methods of participation for any party
41 to a proceeding involving an Indian child, including participation by telephone,
42 videoconferencing or other participation methods.

43 (5) Notwithstanding subsection (1) of this section, an Indian custodian or tribe may notify
44 the court, orally on the record or in writing, that the Indian custodian or tribe withdraws
45 as a party to the proceeding.

1 (ii) A foster home that is licensed, approved or specified by the Indian child's tribe;

2 (iii) An Indian foster home licensed or approved by an authorized non-Indian licensing
3 authority; or

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

6 (2) If the juvenile court finds that an Indian child who is a child or ward is in need of a
7 guardianship or adoptive placement, preference must be given to placement of the Indian
8 child in accordance with the order of preference established by the Indian child's tribe. If the
9 Indian child's tribe has not established guardianship or adoptive placement preferences, then
10 the Indian child shall be placed according to the following preference, in order of priority:

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

12 (b) With other members of the Indian child's tribe; or

13 (c) With other Indian families.

14 (3)(a) If any party objects to placement of an Indian child according to the placement
15 preferences under subsection (1) or (2) of this section, the party may file an objection with
16 the court, detailing the reasons the party asserts that good cause exists for placement con-
17 trary to the statutory placement preferences. No later than three days after filing the ob-
18 jection, the objecting party shall deliver or mail to the other parties a copy of the objection
19 and a notice of the time set for replies to the objection.

20 (b) Upon the filing of the objection, the juvenile court shall fix the time for hearing on
21 the objections to placement.

22 (c) If, after a hearing on the objection, the juvenile court determines that the objecting
23 party has established, by clear and convincing evidence, that there is good cause to depart
24 from the placement preferences under this section, the court may authorize placement of
25 the Indian child in an alternative placement.

26 (d) The court's determination under paragraph (c) of this subsection:

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 through the statu-
30 tory placement preferences;

31 (iii) Any extraordinary physical, mental or emotional needs of the Indian child that re-
32 quire specialized treatment services if, despite active efforts, those services are unavailable
33 in the community where families who meet the placement preferences under subsection (1)
34 or (2) of this section reside; or

35 (iv) The availability, as determined by the prevailing social and cultural standards of the
36 Indian community in which the Indian child's parent or extended family resides or with
37 which the Indian child's parent or extended family members maintain social and cultural
38 ties, of any suitable placement meeting the statutory preference criteria.

39 (B) May be informed by but not determined by:

40 (i) The placement request of a parent of the Indian child, if the parent has reviewed the
41 placement options, if any, that comply with the placement preferences under this section;

42 (ii) The ordinary bonding or attachment between the Indian child and the alternative
43 placement; or

44 (iii) The distance of the alternative placement from the Indian child's parent and the
45 Indian child's tribe.

1 (C) May not be based on the socioeconomic conditions of the Indian child’s tribe or any
2 perception of the tribal or United States Bureau of Indian Affairs social services or judicial
3 systems.

4
5 ALIGNMENT OF
6 OREGON INDIAN CHILD WELFARE ACT
7 WITH OREGON JUVENILE CODE

8
9 (Policy)

10
11 **SECTION 21.** ORS 418.627 is amended to read:

12 418.627. *[(1) The Legislative Assembly finds that in the Indian Child Welfare Act, Public Law*
13 *95-608, the United States Congress recognized the special legal status of Indian tribes and their mem-*
14 *bers. This section implements the federal policy of protecting Indian cultures by insuring the placement*
15 *of Indian children within Indian families or communities, and that as a consequence, the State of*
16 *Oregon should take the actions provided in subsections (2) to (4) of this section.]*

17 [(2)] (1) A person providing a foster home to an American Indian child shall be eligible for
18 payments under ORS 418.625 to 418.645 regardless of the relationship by blood or marriage that the
19 person has to the child where the child’s placement in the foster home is pursuant to the Indian
20 Child Welfare Act (25 U.S.C. 1901 et seq.).

21 [(3)] (2) Certification of a foster home described in subsection [(2)] (1) of this section shall be
22 pursuant to standards set out in an agreement between the Department of Human Services and the
23 tribe of which the child is a member or, if there is no such agreement, certification shall be pursuant
24 to standards adopted by a federally recognized Indian tribe.

25 [(4)] (3) If subsection [(2) or (3)] (1) or (2) of this section is found to be unconstitutional for any
26 reason, then the entire section shall be null and void.

27 **SECTION 22.** ORS 419B.090 is amended to read:

28 419B.090. (1) The juvenile court is a court of record and exercises jurisdiction as a court of
29 general and equitable jurisdiction and not as a court of limited or inferior jurisdiction. The juvenile
30 court is called “The _____ Court of _____ County, Juvenile Department.”

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

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

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

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

44 (3) It is the policy of the State of Oregon to safeguard and promote each child’s right to safety,
45 stability and well-being and to safeguard and promote each child’s relationships with parents, sib-

1 lings, grandparents, other relatives and adults with whom a child develops healthy emotional at-
 2 tachments.

3 (4) It is the policy of the State of Oregon to guard the liberty interest of parents protected by
 4 the Fourteenth Amendment to the United States Constitution and to protect the rights and interests
 5 of children, as provided in subsection (2) of this section. The provisions of this chapter shall be
 6 construed and applied in compliance with federal constitutional limitations on state action estab-
 7 lished by the United States Supreme Court with respect to interference with the rights of parents
 8 to direct the upbringing of their children, including, but not limited to, the right to:

- 9 (a) Guide the secular and religious education of their children;
- 10 (b) Make health care decisions for their children; and
- 11 (c) Discipline their children.

12 (5) It is the policy of the State of Oregon, in those cases not described as extreme conduct under
 13 ORS 419B.502, to offer appropriate reunification services to parents and guardians to allow them the
 14 opportunity to adjust their circumstances, conduct or conditions to make it possible for the child to
 15 safely return home within a reasonable time. The state shall provide to parents and guardians with
 16 disabilities opportunities to benefit from or participate in reunification services that are equal to
 17 those extended to individuals without disabilities. The state shall provide aids, benefits and services
 18 different from those provided to parents and guardians without disabilities, when necessary to en-
 19 sure that parents and guardians with disabilities are provided with an equal opportunity under this
 20 subsection. Although there is a strong preference that children live in their own homes with their
 21 own families, the state recognizes that it is not always possible or in the best interests of the child
 22 or the public for children who have been abused or neglected to be reunited with their parents or
 23 guardians. In those cases, the State of Oregon has the obligation to create or provide an alternative,
 24 safe and permanent home for the child.

25 (6) The State of Oregon recognizes the value of the **federal** Indian Child Welfare Act (**25 U.S.C.**
 26 **1901 et seq.**) and hereby incorporates the policies of that Act **and the policies of the Oregon In-**
 27 **dian Child Welfare Act under section 2 of this 2020 Act.**

28
 29 **(Definitions)**

30
 31 **SECTION 23.** ORS 419A.004 is amended to read:

32 419A.004. As used in this chapter and ORS chapters 419B and 419C, unless the context requires
 33 otherwise:

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

35 (a) Activities or items that are generally accepted as suitable for children of the same chrono-
 36 logical age or level of maturity or that are determined to be developmentally appropriate for a child,
 37 based on the development of cognitive, emotional, physical and behavioral capacities that are typical
 38 for an age or age group; and

39 (b) In the case of a specific child, activities or items that are suitable for the child based on the
 40 developmental stages attained by the child with respect to the cognitive, emotional, physical and
 41 behavioral capacities of the child.

42 (2) “Another planned permanent living arrangement” means an out-of-home placement for a ward
 43 16 years of age or older that is consistent with the case plan and in the best interests of the ward
 44 other than placement:

45 (a) By adoption;

- 1 (b) With a legal guardian; or
 2 (c) With a fit and willing relative.
- 3 (3) “CASA Volunteer Program” means a program that is approved or sanctioned by a juvenile
 4 court, has received accreditation from the National CASA Association and has entered into a con-
 5 tract with the Oregon Department of Administrative Services under ORS 184.492 to recruit, train
 6 and supervise volunteers to serve as court appointed special advocates.
- 7 (4) “Child care center” means a residential facility for wards or youth offenders that is licensed,
 8 certified or otherwise authorized as a child-caring agency as that term is defined in ORS 418.205.
- 9 (5) “Community service” has the meaning given that term in ORS 137.126.
- 10 (6) “Conflict of interest” means a person appointed to a local citizen review board who has a
 11 personal or pecuniary interest in a case being reviewed by that board.
- 12 (7) “Counselor” means a juvenile department counselor or a county juvenile probation officer.
- 13 (8) “Court” means the juvenile court.
- 14 (9) “Court appointed special advocate” means a person in a CASA Volunteer Program who is
 15 appointed by the court to act as a court appointed special advocate pursuant to ORS 419B.112.
- 16 (10) “Court facility” has the meaning given that term in ORS 166.360.
- 17 (11) “Current caretaker” means a foster parent:
- 18 (a) Who is currently caring for a ward who is in the legal custody of the Department of Human
 19 Services and who has a permanency plan or concurrent permanent plan of adoption; and
 20 (b) Who has cared for the ward, or at least one sibling of the ward, for at least 12 cumulative
 21 months or for one-half of the ward’s or sibling’s life where the ward or sibling is younger than two
 22 years of age, calculated cumulatively.
- 23 (12) “Department” means the Department of Human Services.
- 24 (13) “Detention” or “detention facility” means a facility established under ORS 419A.010 to
 25 419A.020 and 419A.050 to 419A.063 for the detention of youths or youth offenders pursuant to a ju-
 26 dicial commitment or order.
- 27 (14) “Director” means the director of a juvenile department established under ORS 419A.010 to
 28 419A.020 and 419A.050 to 419A.063.
- 29 (15) “Guardian” means guardian of the person and not guardian of the estate.
- 30 (16) “Indian child” [*means any unmarried person less than 18 years of age who is:*]
 31 [(a) A member of an Indian tribe; or]
 32 [(b) Eligible for membership in an Indian tribe and is the biological child of a member of an Indian
 33 tribe.] **has the meaning given that term in section 3 of this 2020 Act.**
- 34 (17) “Juvenile court” means the court having jurisdiction of juvenile matters in the several
 35 counties of this state.
- 36 (18) “Local citizen review board” means the board specified by ORS 419A.090 and 419A.092.
- 37 (19) “Parent” means the biological or adoptive mother and the legal parent of the child, ward,
 38 youth or youth offender. As used in this subsection, “legal parent” means:
- 39 (a) A person who has adopted the child, ward, youth or youth offender or whose parentage has
 40 been established or declared under ORS 25.501 to 25.556 or 109.065 or by a juvenile court; and
 41 (b) In cases in which [*the Indian Child Welfare Act applies*] **sections 1 to 20 of this 2020 Act**
 42 **apply**, a man [*who is a father under applicable tribal law*] **whose paternity has been established**
 43 **as described in section 5 of this 2020 Act.**
- 44 (20) “Permanent foster care” means an out-of-home placement in which there is a long-term
 45 contractual foster care agreement between the foster parents and the department that is approved

1 by the juvenile court and in which the foster parents commit to raise a ward in substitute care or
 2 youth offender until the age of majority.

3 (21) "Public building" has the meaning given that term in ORS 166.360.

4 (22) "Proctor foster home" has the meaning given that term in ORS 418.205.

5 (23) "Qualified residential treatment program" means a program described in ORS 419B.356.

6 (24) "Reasonable and prudent parent standard" means the standard, characterized by careful and
 7 sensible parental decisions that maintain the health, safety and best interests of a child or ward
 8 while encouraging the emotional and developmental growth of the child or ward, that a substitute
 9 care provider shall use when determining whether to allow a child or ward in substitute care to
 10 participate in extracurricular, enrichment, cultural and social activities.

11 (25) "Reasonable time" means a period of time that is reasonable given a child or ward's emo-
 12 tional and developmental needs and ability to form and maintain lasting attachments.

13 (26) "Records" means any information in written form, pictures, photographs, charts, graphs,
 14 recordings or documents pertaining to a case.

15 (27) "Resides" or "residence," when used in reference to the residence of a child, ward, youth
 16 or youth offender, means the place where the child, ward, youth or youth offender is actually living
 17 or the jurisdiction in which wardship or jurisdiction has been established.

18 (28) "Restitution" has the meaning given that term in ORS 137.103.

19 (29) "Serious physical injury" means:

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

21 (b) A physical injury that:

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

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

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

25 (30) "Shelter care" means a home or other facility suitable for the safekeeping of a child, ward,
 26 youth or youth offender who is taken into temporary custody pending investigation and disposition.

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

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

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

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

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

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

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

37 (B) A family home that the court has approved as a ward's permanent placement, when a
 38 child-caring agency as defined in ORS 418.205 has been appointed guardian of the ward and when
 39 the ward's care is entirely privately financed;

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

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

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

44 (34) "Surrogate" means a person appointed by the court to protect the right of the child, ward,
 45 youth or youth offender to receive procedural safeguards with respect to the provision of free ap-

1 appropriate public education.

2 (35) “Tribal court” [means a court with jurisdiction over child custody proceedings and that is
 3 either a Court of Indian Offenses, a court established and operated under the code of custom of an
 4 Indian tribe or any other administrative body of a tribe that is vested with authority over child custody
 5 proceedings] **has the meaning given that term in section 3 of this 2020 Act.**

6 (36) “Victim” means any person determined by the district attorney, the juvenile department or
 7 the court to have suffered direct financial, psychological or physical harm as a result of the act that
 8 has brought the youth or youth offender before the juvenile court. When the victim is a minor,
 9 “victim” includes the legal guardian of the minor. The youth or youth offender may not be consid-
 10 ered the victim. When the victim of the crime cannot be determined, the people of Oregon, as re-
 11 presented by the district attorney, are considered the victims.

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

14 (a) Involves actual or threatened serious physical injury to a victim; or

15 (b) Is a sexual offense. As used in this paragraph, “sexual offense” has the meaning given the
 16 term “sex crime” in ORS 163A.005.

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

18 (39) “Young person” means a person who has been found responsible except for insanity under
 19 ORS 419C.411 and placed under the jurisdiction of the Psychiatric Security Review Board.

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

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

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

26
 27 **(Jurisdiction)**
 28

29 **SECTION 24.** ORS 419B.100 is amended to read:

30 419B.100. (1) Except as otherwise provided in subsection (5) of this section and ORS 107.726, the
 31 juvenile court has exclusive original jurisdiction in any case involving a person who is under 18
 32 years of age and:

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

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

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

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

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

41 (A) Abandoned the person;

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

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

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

- 1 (f) Who is a runaway;
- 2 (g) Who has filed a petition for emancipation pursuant to ORS 419B.550 to 419B.558; or
- 3 (h) Who is subject to an order entered under ORS 419C.411 (7)(a).

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

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

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

10 (5)[(a)] *[An Indian tribe has exclusive] Tribal* jurisdiction over any child custody proceeding in-
11 volving an Indian child **is determined as provided in section 9 of this 2020 Act** *[who resides or*
12 *is domiciled within the reservation of the tribe, except where the jurisdiction is otherwise vested in the*
13 *state by existing federal law].*

14 *[(b) Upon the petition of either parent, the Indian custodian or the Indian child’s tribe, the juvenile*
15 *court, absent good cause to the contrary and absent objection by either parent, shall transfer a pro-*
16 *ceeding for the foster care placement of, or termination of parental rights to, an Indian child not*
17 *domiciled or residing within the reservation of the Indian child’s tribe, to the jurisdiction of the*
18 *tribe.]*

19 *[(c) The juvenile court shall give full faith and credit to the public acts, records and judicial pro-*
20 *ceedings of an Indian tribe applicable to an Indian child custody proceeding to the same extent that*
21 *the juvenile court gives full faith and credit to the public acts, records and judicial proceedings of any*
22 *other entity.]*

23
24 **(Protective Custody; Placement)**

25
26 **SECTION 25.** ORS 419B.150 is amended to read:

27 419B.150. (1) As used in this section:

28 (a) “Abuse” has the meaning given that term in ORS 419B.005.

29 (b) “Reasonable cause” means a subjectively and objectively reasonable belief, given all of the
30 circumstances and based on specific and articulable facts.

31 (c) “Severe harm” means:

32 (A) Life-threatening damage; or

33 (B) Significant or acute injury to a person’s physical, sexual or psychological functioning.

34 (2) The following persons are authorized to take a child into protective custody under this sec-
35 tion:

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

37 (b) A counselor; or

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

39 **(3)(a) Prior to taking a child into protective custody under this section, the person taking**
40 **the child into protective custody shall determine whether there is reason to know the child**
41 **is an Indian child, as provided in section 12 of this 2020 Act.**

42 **(b) If there is reason to know the child is an Indian child, the requirements of section**
43 **13 (1) of this 2020 Act must be met prior to taking the child into protective custody.**

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

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

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

3 (C) There is an imminent threat that the child's parent or guardian will cause the child to be
 4 beyond the reach of the juvenile court before the court can order that the child be taken into pro-
 5 tective custody under subsection [(6)] (7) of this section.

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

9 [(4)] (5) A person authorized to take a child into protective custody shall apply for a protective
 10 custody order, as described in subsection [(6)] (7) of this section, by submitting a declaration based
 11 on information and belief that sets forth with particularity:

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

13 (A) Protect the child from abuse;

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

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

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

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

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

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

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

29 (a) Protective custody is necessary and the least restrictive means available to:

30 (A) Protect the child from abuse;

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

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

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

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

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

38 [(7)] (8) When the court issues a protective custody order under subsection [(6)] (7) of this sec-
 39 tion, the court may transmit the signed order to the applicant by a form of electronic communication
 40 approved by the court that delivers a complete printable image of the signed order. The court shall
 41 file the original order in the court record.

42 **SECTION 26.** ORS 419B.171 is amended to read:

43 419B.171. (1) Except where the child is taken into protective custody pursuant to an order of
 44 the court, the person taking the child into protective custody shall promptly file with the court or
 45 a counselor a brief written report stating all of the following:

- 1 [(1)] (a) The child’s name, age and address.
- 2 [(2)] (b) The name and address of the person having legal or physical custody of the child.
- 3 [(3)] (c) Efforts to notify the person having legal or physical custody of the child and the results
- 4 of those efforts.
- 5 [(4)] (d) Reasons for and circumstances under which the child was taken into protective custody.
- 6 [(5)] (e) If the child is not taken to court, the placement of the child.
- 7 [(6)] (f) If the child was not released, the reason why the child was not released.
- 8 [(7)] (g) If the child is not taken to court, why the type of placement was chosen.
- 9 [(8)] (h) Efforts to determine whether *[the child or the parents have any Indian heritage]* **there**
- 10 **is reason to know that the child is an Indian child, as required under section 12 of this 2020**
- 11 **Act**, and the results of those efforts.

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

- 15 (a) **The name and address of the Indian child’s parents and, if any, Indian custodians;**
- 16 (b) **The steps taken to provide notice under section 13 (1) of this 2020 Act about the**
- 17 **emergency proceeding to the Indian child’s tribe;**
- 18 (c) **If the Indian child’s parents or Indian custodians are unknown, a detailed explanation**
- 19 **of what efforts have been made to locate and contact them, including contact with the ap-**
- 20 **propriate United States Bureau of Indian Affairs Regional Director;**
- 21 (d) **The tribal affiliation of the Indian child and the Indian child’s parents or Indian**
- 22 **custodians;**
- 23 (e) **The residence and the domicile of the Indian child;**
- 24 (f) **If either the residence of the domicile of the Indian child is believed to be on a res-**
- 25 **ervation or in an Alaska Native village, the name of the tribe affiliated with that reservation**
- 26 **or village;**
- 27 (g) **A specific and detailed account of the circumstances that led the person responsible**
- 28 **for the emergency removal of the Indian child to determine that the Indian child was at risk**
- 29 **of imminent physical damage or harm and to remove the Indian child;**
- 30 (h) **If the Indian child is believed to reside or be domiciled on a reservation, a statement**
- 31 **describing the efforts that were made and are being made to contact the tribe and transfer**
- 32 **the Indian child to the tribe’s jurisdiction; and**
- 33 (i) **A statement of the efforts that have been taken to assist the Indian child’s parents**
- 34 **or Indian custodians so the Indian child may remain in or safely be returned to the custody**
- 35 **of the Indian child’s parents or Indian custodians.**

36 **SECTION 27.** ORS 419B.185 is amended to read:

37 419B.185. (1) When a child or ward is taken, or is about to be taken, into protective custody
 38 pursuant to ORS 419B.150, **419B.152**, 419B.160, 419B.165, 419B.168 ~~[and]~~ **or** 419B.171 ~~[or ORS~~
 39 ~~419B.152]~~ and placed in shelter care, a parent, child or ward shall be given the opportunity to
 40 present evidence to the court at the hearings specified in ORS 419B.183, and at any subsequent re-
 41 view hearing, that the child or ward can be returned home without further danger of suffering
 42 physical injury or emotional harm, endangering or harming others, or not remaining within the
 43 reach of the court process prior to adjudication. At the hearing:

- 44 (a) The court shall make written findings as to:
- 45 **(A) Whether there is reason to know, as described in section 12 of this 2020 Act, that the**

1 **child is an Indian child; and**

2 (B) Whether the Department of Human Services has made reasonable efforts or, if [*the Indian*
 3 *Child Welfare Act applies*] **there is reason to know the child is an Indian child**, active efforts
 4 **pursuant to section 15 of this 2020 Act** to prevent or eliminate the need for removal of the child
 5 or ward from the home and to make it possible for the child or ward to safely return home. When
 6 the court finds that no services were provided but that reasonable services would not have elimi-
 7 nated the need for protective custody, the court shall consider the department to have made rea-
 8 sonable efforts or, if [*the Indian Child Welfare Act applies*] **there is reason to know that the child**
 9 **is an Indian child**, active efforts to prevent or eliminate the need for protective custody. The court
 10 shall include in the written findings a brief description of the preventive and reunification efforts
 11 made by the department.

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

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

20 **(d) The court shall determine whether the child or ward is an Indian child as defined in**
 21 **section 3 of this 2020 Act.**

22 [(d)] (e) The court shall make a written finding in every order of removal that describes why it
 23 is in the best interests of the child or ward that the child or ward be removed from the home or
 24 continued in care **or, if the court determines under paragraph (d) of this subsection that the**
 25 **child or ward is an Indian child, why the Indian child’s removal or continuation in care is**
 26 **necessary to prevent the risk of imminent physical damage or harm to the Indian child.**

27 [(e)] (f) When the court determines that a child or ward shall be removed from the home or
 28 continued in care, the court shall make written findings whether the department made diligent ef-
 29 forts pursuant to ORS 419B.192 **or, if the court determines the child or ward is an Indian child,**
 30 **section 20 of this 2020 Act.** The court shall include in its written findings a brief description of the
 31 efforts made by the department.

32 [(f) *The court shall determine whether the child or ward is an Indian child as defined in ORS*
 33 *419A.004 or in the applicable State-Tribal Indian Child Welfare Agreement.*]

34 (g) The court may receive testimony, reports and other evidence without regard to whether the
 35 evidence is admissible under ORS 40.010 to 40.210 and 40.310 to 40.585 if the evidence is relevant
 36 to the determinations and findings required under this section. As used in this paragraph, “relevant
 37 evidence” has the meaning given that term in ORS 40.150.

38 (2) To aid the court in making the written findings required by subsection (1)(a), [(d) and] (e)
 39 **or (f)** of this section, the department shall present written documentation to the court outlining:

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

42 (b) The efforts the department made pursuant to ORS 419B.192 **or, if there is reason to know**
 43 **the child or ward is an Indian child, section 20 of this 2020 Act;** and

44 (c) Why protective custody is in the best interests of the child or ward **or, if there is reason**
 45 **to know the child or ward is an Indian child, why protective custody is necessary to prevent**

1 the risk of imminent physical damage or harm to the Indian child.

2 (3)(a) The court may not enter an order taking a child or ward into protective custody
 3 under this section unless the department provides documentation that it has inquired as to
 4 the Indian status or tribal affiliation of the child or ward as required under section 12 of this
 5 2020 Act.

6 (b) If there is reason to know that the child is an Indian child, the court may not enter
 7 an order taking a child into protective custody unless:

8 (A) The court determines that the department has complied with the notice requirements
 9 under section 13 of this 2020 Act; and

10 (B) After holding a hearing, the court finds in writing that a preponderance of the evi-
 11 dence indicates that protective custody is necessary to prevent imminent physical damage
 12 or harm to the child.

13 (c)(A) If there is reason to know the child or ward is an Indian child and the court enters
 14 a protective custody order under this section, the order must direct the department to im-
 15 mediately notify the court if new information indicates that the emergency necessitating the
 16 protective custody of the Indian child has changed.

17 (B) Whenever the court receives notice from the department that the circumstances
 18 necessitating the protective custody of the Indian child have changed, the court shall
 19 promptly hold a hearing under this section to determine whether protective custody contin-
 20 ues to be necessary.

21 (C) The court shall immediately terminate the protective custody of an Indian child if the
 22 court determines that protective custody is no longer necessary to prevent imminent phys-
 23 ical damage or harm to the Indian child.

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

26 (A) Has commenced a hearing on the petition for protective custody;

27 (B) Determines that restoring the Indian child to a parent of the Indian child or the In-
 28 dian child's custodian would subject the Indian child to imminent physical damage or harm;

29 (C) Has been unable to transfer the proceeding to the jurisdiction of the Indian child's
 30 tribe; or

31 (D) Has been unable to commence a hearing on the petition for protective custody for a
 32 reason other than scheduling or availability of counsel and the reason has been documented
 33 in writing on the record.

34 **SECTION 28.** ORS 419B.192 is amended to read:

35 419B.192. (1) If the court finds that a child or ward is in need of placement or continuation in
 36 substitute care, there shall be a preference given to placement of the child or ward with relatives
 37 and persons who have a caregiver relationship with the child or ward as defined in ORS 419B.116.
 38 The Department of Human Services shall make diligent efforts to place the child or ward with such
 39 persons and shall report to the court the efforts made by the department to effectuate that place-
 40 ment.

41 (2) If a child or ward in need of placement or continuation in substitute care has a sibling also
 42 in need of placement or continuation in substitute care, the department shall make diligent efforts
 43 to place the siblings together and shall report to the court the efforts made by the department to
 44 carry out the placement, unless the court finds that placement of the siblings together is not in the
 45 best interests of the child or the ward or the child's or the ward's sibling.

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

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

7 (b) The ability of the person being considered to support the efforts of the department to im-
 8 plement the permanent plan for the child or ward;

9 (c) The ability of the person being considered to meet the child or ward’s physical, emotional
 10 and educational needs, including the child or ward’s need to continue in the same school or educa-
 11 tional placement;

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

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

16 (4) When the court is required to make findings regarding the department’s diligent efforts to
 17 place a child or ward with relatives or persons with a caregiver relationship under subsection (1)
 18 of this section, and the court determines that, contrary to the placement decision of the department,
 19 placement with a relative is not in the best interest of the child or ward under ORS 419B.349, the
 20 court shall make written findings setting forth the reasons why the court finds that placement of the
 21 child or ward with an available relative is not in the best interest of the child.

22 (5) Notwithstanding subsections (1) to [(3)] (4) of this section, in cases where [*the Indian Child*
 23 *Welfare Act applies, the placement preferences of the Indian Child Welfare Act shall be followed*] **there**
 24 **is reason to know the child or ward is an Indian child, the placement preferences under**
 25 **section 20 of this 2020 Act shall be followed.**

26 **SECTION 29.** ORS 419B.340 is amended to read:

27 419B.340. (1) If the court awards custody to the Department of Human Services, the court shall
 28 include in the disposition order a determination whether the department has made reasonable efforts
 29 or, if [*the Indian Child Welfare Act applies*] **the ward is an Indian child**, active efforts to prevent
 30 or eliminate the need for removal of the ward from the home. If the ward has been removed prior
 31 to the entry of the order, the order shall also include a determination whether the department has
 32 made reasonable or active efforts to make it possible for the ward to safely return home. In making
 33 the determination under this subsection, the court shall consider the ward’s health and safety the
 34 paramount concerns.

35 (2) In support of its determination whether reasonable or active efforts have been made by the
 36 department, the court shall enter a brief description of what preventive and reunification efforts
 37 were made and why further efforts could or could not have prevented or shortened the separation
 38 of the family.

39 (3) When the first contact with the family has occurred during an emergency in which the ward
 40 could not remain without jeopardy at home even with reasonable services being provided, the de-
 41 partment shall be considered to have made reasonable or active efforts to prevent or eliminate the
 42 need for removal.

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

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

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

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

6 (B) The parent has attempted, solicited or conspired, as described in ORS 161.405, 161.435 or
 7 161.450 or under comparable laws of any jurisdiction, to cause the death of any child;

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

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

10 (E) The parent has subjected any child to intentional starvation or torture;

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

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

13 (b) The parent has been convicted in any jurisdiction of one of the following crimes:

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

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

18 (C) Aiding, abetting, attempting, conspiring or soliciting to commit an offense described in sub-
 19 paragraph (A) or (B) of this paragraph; or

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

22 (c) The parent's rights to another child have been terminated involuntarily.

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

29 (7) When [*an Indian child is involved*] **the ward is an Indian child**, the department must satisfy
 30 the court that active efforts, **as described in section 15 of this 2020 Act**, have been made to pro-
 31 vide remedial services and rehabilitative programs designed to prevent the breakup of the Indian
 32 family and that these efforts have proven unsuccessful. Foster care placement may not be ordered
 33 in a proceeding in the absence of a determination, supported by clear and convincing evidence, in-
 34 cluding the testimony of [*expert witnesses*] **a qualified expert witness under section 14 of this**
 35 **2020 Act**, that the continued custody of the Indian child by the parent or Indian custodian is likely
 36 to result in serious emotional or physical injury to the Indian child.

37
 38 **(Hearings)**
 39

40 **SECTION 30.** ORS 419B.305 is amended to read:

41 419B.305. (1) Except as otherwise provided in this section, no later than 60 days **or, if there is**
 42 **reason to know as described in section 12 of this 2020 Act that the child is an Indian child,**
 43 **30 days** after a petition alleging that a child is within the jurisdiction of the court under ORS
 44 419B.100 has been filed, the court shall hold a hearing on the petition and enter an order under ORS
 45 419B.325 (1). Upon written order supported by factual findings of good cause, the court may continue

1 a petition beyond 60 days **or, if there is reason to know the child is an Indian child, 30 days.**

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

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

7 (4) Upon expiration of any continuance granted by this section, the court shall give a petition
8 filed under ORS 419B.100 that is beyond the time limit imposed by subsection (1) of this section the
9 highest priority on the court docket.

10 **SECTION 31.** ORS 419B.310 is amended to read:

11 419B.310. (1) *[The]* **A hearing described in ORS 419B.305** shall be held by the court without a
12 jury and may be continued from time to time. During the hearing of a case filed pursuant to ORS
13 419B.100, the court, on its own motion or upon the motion of a party, may take testimony from any
14 child appearing as a witness and may exclude the child's parents and other persons if the court finds
15 such action would be likely to be in the best interests of the child. However, the court *[shall]* **may**
16 not exclude the attorney for each party and the testimony shall be reported.

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

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

22 (a) By a preponderance of competent evidence; **or**

23 (b) **If there is reason to know the child is an Indian child, by clear and convincing evi-**
24 **dence.**

25 (4)(a) **At any hearing of a case filed pursuant to ORS 419B.100, the court shall determine**
26 **whether there is reason to know under section 12 of this 2020 Act that the child is an Indian**
27 **child.**

28 (b) **If there is reason to know that the child is an Indian child, the jurisdictional re-**
29 **quirements of section 9 of this 2020 Act must be met before the court may assume jurisdic-**
30 **tion of the case.**

31 **SECTION 32.** ORS 419B.325 is amended to read:

32 419B.325. (1) At the termination of the hearing or hearings in the proceeding, the court shall
33 enter an appropriate order directing the disposition to be made of the case.

34 (2) For the purpose of determining proper disposition of the ward, testimony, reports or other
35 material relating to the ward's mental, physical and social history and prognosis may be received
36 by the court without regard to their competency or relevancy under the rules of evidence.

37 (3) **If there is reason to know under section 12 of this 2020 Act that the ward is an Indian**
38 **child, the court's order under this section must be in compliance with the placement pref-**
39 **erences for Indian children under section 20 of this 2020 Act.**

40 **SECTION 33.** ORS 419B.331 is amended to read:

41 419B.331. **Except as provided in sections 1 to 20 of this 2020 Act,** when the court determines
42 it would be in the best interest and welfare of a ward, the court may place the ward under protec-
43 tive supervision. The court may direct that the ward remain in the legal custody of the ward's par-
44 ents or other person with whom the ward is living, or the court may direct that the ward be placed
45 in the legal custody of some relative or some person maintaining a foster home approved by the

1 court, or in a child care center or a youth care center authorized to accept the ward. The court
 2 may specify particular requirements to be observed during the protective supervision consistent with
 3 recognized juvenile court practice, including but not limited to restrictions on visitation by the
 4 ward's parents, restrictions on the ward's associates, occupation and activities, restrictions on and
 5 requirements to be observed by the person having the ward's legal custody, and requirements for
 6 visitation by and consultation with a juvenile counselor or other suitable counselor.

7 **SECTION 34.** ORS 419B.337 is amended to read:

8 419B.337. (1) When the court determines it would be in the best interest and for the welfare of
 9 a ward, the court may place the ward in the legal custody of the Department of Human Services for
 10 care, placement and supervision. When the court enters an order removing a ward from the ward's
 11 home or an order continuing care, the court shall make a written finding as to whether:

12 (a) Removal of the ward from the ward's home or continuation of care is in the best interest and
 13 for the welfare of the ward;

14 (b) Reasonable efforts, considering the circumstances of the ward and parent, have been made
 15 to prevent or eliminate the need for removal of the ward from the home or to make it possible for
 16 the ward to safely return home. In making this finding, the court shall consider the ward's health
 17 and safety the paramount concerns; and

18 (c) Diligent efforts have been made to place the ward pursuant to ORS 419B.192 **or, if there is**
 19 **reason to know as described in section 12 of this 2020 Act that the ward is an Indian child,**
 20 **section 20 of this 2020 Act.**

21 (2) The court may specify the particular type of care, supervision or services to be provided by
 22 the Department of Human Services to wards placed in the department's custody and to the parents
 23 or guardians of the wards, but the actual planning and provision of such care, supervision or ser-
 24 vices is the responsibility of the department. The department may place the ward in a child care
 25 center authorized to accept the ward.

26 (3) The court may make an order regarding visitation by the ward's parents or siblings. The
 27 Department of Human Services is responsible for developing and implementing a visitation plan
 28 consistent with the court's order.

29 (4) Uniform commitment blanks, in a form approved by the Director of Human Services, shall
 30 be used by all courts for placing wards in the legal custody of the Department of Human Services.

31 (5) If the ward has been placed in the custody of the Department of Human Services, the court
 32 shall make no commitment directly to any residential facility, but shall cause the ward to be deliv-
 33 ered into the custody of the department at the time and place fixed by rules of the department. A
 34 ward so committed may not be placed in a Department of Corrections institution.

35 (6) Commitment of a ward to the Department of Human Services continues until dismissed by
 36 the court or until the ward becomes 21 years of age.

37 (7) A court may dismiss commitment of a ward to the Department of Human Services if:

38 (a)(A) Dismissal is appropriate because the ward has been safely reunited with a parent or be-
 39 cause a safe alternative to reunification has been implemented for the ward; and

40 (B) The ward is at least 14 years of age but less than 21 years of age and the court finds that:

41 (i) The department has provided case planning pursuant to ORS 419B.343 that addresses the
 42 ward's needs and goals for a transition to successful adulthood, including needs and goals relating
 43 to housing, physical and mental health, education, employment, community connections and sup-
 44 portive relationships;

45 (ii) The department has provided appropriate services pursuant to the case plan;

1 (iii) The department has involved the ward in the development of the case plan and in the pro-
 2 vision of appropriate services; and

3 (iv) The ward has safe and stable housing and is unlikely to become homeless as a result of
 4 dismissal of commitment of the ward to the department; or

5 (b) The ward has been committed to the custody of the Oregon Youth Authority.

6 **(8) If there is reason to know that the ward is an Indian child, the court shall review the**
 7 **placement of the ward no less than every 30 days and make a determination whether the**
 8 **ward will continue in substitute care as required under ORS 419B.185.**

9 **SECTION 35.** ORS 419B.476 is amended to read:

10 419B.476. (1) A permanency hearing shall be conducted in the manner provided in ORS 418.312,
 11 419B.310, 419B.812 to 419B.839 and 419B.908, except that the court may receive testimony and re-
 12 ports as provided in ORS 419B.325.

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

14 (a) If the case plan at the time of the hearing is to reunify the family, determine whether the
 15 Department of Human Services has made reasonable efforts or, if [*the Indian Child Welfare Act ap-*
 16 *plies*] **there is reason to know as described in section 12 of this 2020 Act that the ward is an**
 17 **Indian child**, active efforts **as described in section 15 of this 2020 Act** to make it possible for the
 18 ward to safely return home and whether the parent has made sufficient progress to make it possible
 19 for the ward to safely return home. In making its determination, the court shall consider:

20 **(A) Except as provided in subparagraph (B) of this paragraph**, the ward's health and safety
 21 the paramount concerns.

22 **(B) If there is reason to know the ward is an Indian child, the court may not change the**
 23 **case plan to something other than to reunify the family unless the court determines, by clear**
 24 **and convincing evidence, that:**

25 **(i) Active efforts as described in section 15 of this 2020 Act were provided to make it**
 26 **possible for the Indian child to safely return home;**

27 **(ii) Those active efforts failed to eliminate the necessity for continued removal based on**
 28 **serious emotional or physical damage to the ward;**

29 **(iii) The parent has not made sufficient progress to make it possible for the Indian child**
 30 **to safely return home; and**

31 **(iv) The new permanency plan complies with the placement preferences for Indian chil-**
 32 **dren under section 20 of this 2020 Act.**

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

37 (c) If the case plan at the time of the hearing is something other than to reunify the family,
 38 determine whether the department has considered permanent placement options for the ward, in-
 39 cluding, if appropriate, whether the department has considered both permanent in-state placement
 40 options and permanent interstate placement options for the ward.

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

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

45 (a) Whether the plan is adequate to ensure the ward's transition to successful adulthood;

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

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

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

4 (a) If the case plan changed during the period since the last review by a local citizen review
 5 board or court hearing and a plan to reunify the family was in effect for any part of that period,
 6 determine whether the department has made reasonable efforts or, if [*the Indian Child Welfare Act*
 7 *applies*] **there is reason to know as described in section 12 of this 2020 Act that the ward is**
 8 **an Indian child**, active efforts **as described in section 15 of this 2020 Act** to make it possible for
 9 the ward to safely return home. In making its determination, the court shall consider the ward's
 10 health and safety the paramount concerns[;]. **If there is reason to know the ward is an Indian**
 11 **child and the court finds that active efforts were not provided to make it possible for the**
 12 **ward to safely return home, the court may not change the permanency plan to something**
 13 **other than to reunify the family. The court may not set a date for a new permanency hearing**
 14 **earlier than the passage of the number of days active efforts were not previously provided.**

15 (b) If the case plan changed during the period since the last review by a local citizen review
 16 board or court hearing and a plan other than to reunify the family was in effect for any part of that
 17 period, determine whether the department has made reasonable efforts to place the ward in a timely
 18 manner in accordance with the plan, including, if appropriate, placement of the ward through an
 19 interstate placement, and to complete the steps necessary to finalize the permanent placement[;].

20 (c) If the court determines that further efforts will make it possible for the ward to safely return
 21 home within a reasonable time, order that the parents participate in specific services for a specific
 22 period of time and make specific progress within that period of time[;].

23 (d) Determine the adequacy and compliance with the case plan and the case progress report[;].

24 (e) Review the efforts made by the department to develop the concurrent permanent plan, in-
 25 cluding but not limited to identification of appropriate permanent in-state placement options and
 26 appropriate permanent interstate placement options and, if adoption is the concurrent case plan,
 27 identification and selection of a suitable adoptive placement for the ward[;].

28 (f) Order the department to develop or expand the case plan or concurrent permanent plan and
 29 provide a case progress report to the court and other parties within 10 days after the permanency
 30 hearing[;].

31 (g) Order the department or agency to modify the care, placement and supervision of the
 32 ward[;].

33 (h) Order the local citizen review board to review the status of the ward prior to the next court
 34 hearing[; *or*].

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

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

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

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

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

45 (B) The ward will be placed for adoption, and a petition for termination of parental rights will

1 be filed;

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

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

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

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

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

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

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

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

21 (A) Why another planned permanent living arrangement is in the ward's best interests and a
22 compelling reason, that must be documented by the department, why it would not be in the best
23 interests of the ward to be returned home, placed for adoption, placed with a legal guardian or
24 placed with a fit and willing relative; and

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

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

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

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

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

35 (j) If the ward has been placed in an interstate placement, the court's determination of whether
36 the interstate placement continues to be appropriate and in the best interests of the ward.

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

39 (7) If **there is reason to know that** an Indian child is involved, the court shall follow the
40 placement preference [*established by the Indian Child Welfare Act*] **under section 20 of this 2020**
41 **Act.**

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

1 assign error.

2 **SECTION 36.** ORS 419B.878 is amended to read:

3 419B.878. When a court conducts a hearing, the court shall inquire, **as described in section**
 4 **12 of this 2020 Act**, whether a child is an Indian child [*subject to the Indian Child Welfare Act*]. If
 5 the court knows or has reason to know that an Indian child is involved, the court shall enter an
 6 order requiring the Department of Human Services to [*notify the Indian child's tribe of the pending*
 7 *proceedings and of the tribe's right to intervene*] **comply with the inquiry and notice provisions**
 8 **of sections 12 and 13 of this 2020 Act** and shall enter an order that the [*case be treated as an In-*
 9 *Indian Child Welfare Act case until such time as the court determines that the case is not an Indian*
 10 *Child Welfare Act case*] **child be treated as an Indian child until such time as the court deter-**
 11 **mines that the child is not an Indian child.**

12
 13 **(Guardianships)**

14
 15 **SECTION 37.** ORS 419B.365 is amended to read:

16 419B.365. (1) At any time following establishment of jurisdiction and wardship under ORS
 17 419B.100, but prior to filing of a petition under ORS 419B.500, or after dismissal of a petition filed
 18 under ORS 419B.500 if it fails to result in termination of the parent's rights, a party, or person
 19 granted rights of limited participation for the purpose of filing a guardianship petition, may file, and
 20 the court may hear, a petition for permanent guardianship. If the Department of Human Services
 21 chooses not to participate in a proceeding initiated by an intervenor under ORS 419B.875, the state
 22 is not foreclosed from filing a subsequent action should the intervenor's petition be denied.

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

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

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

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

30 (4)(a) **Notwithstanding subsection (3) of this section**, if an Indian child is involved, [*the per-*
 31 *manent guardianship must be in compliance with the Indian Child Welfare Act. Notwithstanding sub-*
 32 *section (3) of this section, the facts supporting any finding made to establish a permanent guardianship*
 33 *for an Indian child, including the finding that continued custody by the parents or Indian custodian*
 34 *would result in serious emotional or physical harm to the Indian child, must be established beyond a*
 35 *reasonable doubt.*] **the court may grant the permanent guardianship of the Indian child only**
 36 **if, after inquiry as required under section 12 of this 2020 Act and notice as required under**
 37 **section 13 of this 2020 Act, and in addition to any other findings required for the termination**
 38 **of parental rights under ORS 419B.500 to 419B.524, the court finds:**

39 **(A) That evidence, including the testimony of one or more qualified expert witnesses**
 40 **under section 14 of this 2020 Act, establishes beyond a reasonable doubt that the Indian**
 41 **child's continued custody by the child's parent or Indian custodian is likely to result in se-**
 42 **rious emotional or physical damage to the Indian child;**

43 **(B) That active efforts under section 15 of this 2020 Act to reunite the Indian family did**
 44 **not eliminate the necessity for permanent guardianship based on serious emotional or phys-**
 45 **ical damage to the Indian child; and**

1 (C) That the placement of the Indian child complies with the placement preferences for
 2 Indian children under section 20 of this 2020 Act.

3 (b) The evidence under paragraph (a) of this subsection must show a causal relationship
 4 between the particular conditions in the Indian child’s home and the likelihood that contin-
 5 ued custody of the Indian child will result in serious emotional or physical damage to the
 6 particular Indian child who is the subject of the child custody proceeding. In the absence of
 7 a causal relationship, evidence that shows only the existence of community or family pov-
 8 erty, isolation, single parenthood, custodian age, crowded or inadequate housing, substance
 9 abuse or nonconforming social behavior does not, by itself, constitute evidence beyond a
 10 reasonable doubt that continued custody is likely to result in serious emotional or physical
 11 damage to the Indian child.

12 (5) Unless vacated under ORS 419B.368, a guardianship established under this section continues
 13 as long as the ward is subject to the court’s jurisdiction as provided in ORS 419B.328.

14 **SECTION 38.** ORS 419B.366 is amended to read:

15 419B.366. (1) A party, or a person granted rights of limited participation for the purpose of filing
 16 a guardianship motion, may file a motion to establish a guardianship. The motion must be in writing
 17 and state with particularity the factual and legal grounds for the motion.

18 (2) Except as otherwise provided in subsection (3) of this section, the facts supporting any find-
 19 ing made or relief granted under this section must be established by a preponderance of evidence.

20 (3)(a) If **there is reason to know** an Indian child is involved, [*the guardianship must be in*
 21 *compliance with the Indian Child Welfare Act. The facts supporting any finding made to establish a*
 22 *guardianship for an Indian child, including the finding that continued custody by the parents or Indian*
 23 *custodian would result in serious emotional or physical harm to the Indian child, must be established*
 24 *by clear and convincing evidence.*] **the court may grant the guardianship of the Indian child only**
 25 **if, after inquiry as required under section 12 of this 2020 Act and notice as required under**
 26 **section 13 of this 2020 Act, the court finds:**

27 (A) **Clear and convincing evidence, including the testimony of one or more qualified ex-**
 28 **pert witnesses under section 14 of this 2020 Act, that the Indian child’s continued custody**
 29 **by the child’s parent or Indian custodian is likely to result in serious emotional or physical**
 30 **damage to the Indian child.**

31 (B) **That active efforts under section 15 of this 2020 Act to reunite the Indian family did**
 32 **not eliminate the necessity for guardianship based on serious emotional or physical damage**
 33 **to the Indian child; and**

34 (C) That the placement of the Indian child complies with the placement preferences for
 35 Indian children under section 20 of this 2020 Act.

36 (b) The evidence under paragraph (a) of this subsection must show a causal relationship
 37 between the particular conditions in the Indian child’s home and the likelihood that contin-
 38 ued custody of the Indian child will result in serious emotional or physical damage to the
 39 particular Indian child who is the subject of the child custody proceeding. In the absence of
 40 a causal relationship, evidence that shows only the existence of community or family pov-
 41 erty, isolation, single parenthood, custodian age, crowded or inadequate housing, substance
 42 abuse or nonconforming social behavior does not, by itself, constitute clear and convincing
 43 evidence that continued custody is likely to result in serious emotional or physical damage
 44 to the Indian child.

45 (4) In a proceeding under this section, the court may receive testimony and reports as provided

1 in ORS 419B.325.

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

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

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

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

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

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

12 **SECTION 39.** ORS 419B.449 is amended to read:

13 419B.449. (1) Upon receiving any report required by ORS 419B.440, the court may hold a hearing
14 to review the child or ward's condition and circumstances and to determine if the court should
15 continue jurisdiction and wardship or order modifications in the care, placement and supervision of
16 the child or ward. The court shall hold a hearing:

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

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

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

25 (d) Within 30 days after receipt of a report made under ORS 419B.440 (1)(b)(C); [*or*]

26 (e) Within 10 days after receipt of a report made under ORS 419B.440 (1)(c)[.]; **or**

27 **(f) If there is reason to know, as described in section 12 of this 2020 Act, that the child**
28 **or ward is an Indian child, within 30 days after receipt of a report required by ORS 419B.440.**

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

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

34 (a)(A) Why continued care is necessary as opposed to returning the child or ward home or tak-
35 ing prompt action to secure another permanent placement; and

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

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

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

43 (d) For a child or ward 14 years of age or older, whether the child or ward is progressing ade-
44 quately toward graduation from high school and, if not, the efforts that have been made by the
45 agency having custody or guardianship to assist the child or ward to graduate.

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

3 (A) The ward’s substitute care provider is following the reasonable and prudent parent standard;
4 and

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

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

13 [(a)] (A) Why it is necessary and in the best interests of the ward to continue the ward in the
14 legal custody of the department; and

15 [(b)] (B) The expected timetable for dismissal of the department’s legal custody of the ward and
16 termination of the wardship.

17 (b) **The court may not change the placement of a ward described in this subsection un-**
18 **less, after hearing on removal, the court finds in writing that the inquiry and notice re-**
19 **quirements under sections 12 and 13 of this 2020 Act have been met and, if there is reason**
20 **to know as described in section 12 of this 2020 Act that the ward is an Indian child, that the**
21 **new placement is in compliance with the placement preferences under section 20 of this 2020**
22 **Act.**

23 (5) In making the findings under subsection (2) of this section, the court shall consider the ef-
24 forts made to develop the concurrent case plan, including, but not limited to, identification of ap-
25 propriate permanent placement options for the child or ward both inside and outside this state and,
26 if adoption is the concurrent case plan, identification and selection of a suitable adoptive placement
27 for the child or ward.

28 (6) In addition to findings of fact required by subsection (2) of this section, the court may order
29 the department to consider additional information in developing the case plan or concurrent case
30 plan.

31 (7) Any final decision of the court made pursuant to the hearing provided in subsection (1) of
32 this section is appealable under ORS 419A.200.

33
34 (Adoptions)
35

36 **SECTION 40.** ORS 419B.498 is amended to read:

37 419B.498. (1) Except as provided in subsection (2) of this section, the Department of Human
38 Services shall simultaneously file a petition to terminate the parental rights of a child or ward’s
39 parents and identify, recruit, process and approve a qualified family for adoption if the child or ward
40 is in the custody of the department and:

41 (a) The child or ward has been in substitute care under the responsibility of the department for
42 15 months of the most recent 22 months;

43 (b) A parent has been convicted of murder of another child of the parent, voluntary
44 manslaughter of another child of the parent, aiding, abetting, attempting, conspiring or soliciting to
45 commit murder or voluntary manslaughter of the child or ward or of another child of the parent or

1 felony assault that has resulted in serious physical injury to the child or ward or to another child
 2 of the parent; or

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

5 (2) The department shall file a petition to terminate the parental rights of a parent in the cir-
 6 cumstances described in subsection (1) of this section unless:

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

9 (b) There is a compelling reason, which is documented in the case plan, for determining that
 10 filing such a petition would not be in the best interests of the child or ward. Such compelling rea-
 11 sons include, but are not limited to:

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

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

16 (C) The court or local citizen review board in a prior hearing or review determined that while
 17 the case plan was to reunify the family the department did not make reasonable efforts or, if the
 18 *[Indian Child Welfare Act applies]* **child or ward is an Indian child**, active efforts, **as described**
 19 **in section 15 of this 2020 Act**, to make it possible for the child or ward to safely return home; or

20 (c) The department has not provided to the family of the child or ward, consistent with the time
 21 period in the case plan, such services as the department deems necessary for the child or ward to
 22 safely return home, if reasonable efforts to make it possible for the child or ward to safely return
 23 home are required to be made with respect to the child or ward.

24 (3) No petition to terminate the parental rights of a child or ward’s parents pursuant to sub-
 25 section (1) of this section or pursuant to ORS 419B.500, 419B.502, 419B.504, 419B.506 or 419B.508
 26 may be filed until the court has determined that the permanency plan for the child or ward should
 27 be adoption after a permanency hearing pursuant to ORS 419B.476.

28 **SECTION 41.** ORS 419B.500 is amended to read:

29 419B.500. The parental rights of the parents of a ward may be terminated as provided in this
 30 section and ORS 419B.502 to 419B.524, only upon a petition filed by the state or the ward for the
 31 purpose of freeing the ward for adoption if the court finds it is in the best interest of the ward **or,**
 32 **if there is reason to know as described in section 12 of this 2020 Act that the ward is an**
 33 **Indian child, that continued custody of the ward is likely to result in serious emotional or**
 34 **physical harm to the ward.** *[If an Indian child is involved, the termination of parental rights must*
 35 *be in compliance with the Indian Child Welfare Act.]* The rights of one parent may be terminated
 36 without affecting the rights of the other parent.

37 **SECTION 42.** ORS 419B.521 is amended to read:

38 419B.521. (1) The court shall hold a hearing on the question of terminating the rights of the
 39 parent or parents. The court may not hold the hearing any earlier than 10 days after service or final
 40 publication of the summons. The facts on the basis of which the rights of the parents are terminated,
 41 unless admitted, must be established by clear and convincing evidence and a stenographic or other
 42 report authorized by ORS 8.340 shall be taken of the hearing.

43 (2) Not earlier than provided in subsection (1) of this section and not later than six months from
 44 the date on which summons for the petition to terminate parental rights is served, the court before
 45 which the petition is pending shall hold a hearing on the petition except for good cause shown.

1 When determining whether or not to grant a continuance for good cause, the judge shall take into
 2 consideration the age of the child or ward and the potential adverse effect delay may have on the
 3 child or ward. The court shall make written findings when granting a continuance.

4 (3) The court, on its own motion or upon the motion of a party, may take testimony from any
 5 child appearing as a witness and may exclude the child’s parents and other persons if the court finds
 6 such action would be likely to be in the best interests of the child. However, the court may not
 7 exclude the attorney for each party and any testimony taken under this subsection shall be re-
 8 corded.

9 (4)(a) Notwithstanding subsection (1) of this section, if an Indian child is involved, [*termination*
 10 *of parental rights must be supported by evidence beyond a reasonable doubt, including testimony of*
 11 *qualified expert witnesses, that continued custody of the child is likely to result in serious emotional*
 12 *or physical harm to the child.*] **the court may not hold a hearing on the termination of parental**
 13 **rights unless after inquiry as required under section 12 of this 2020 Act and notice as re-**
 14 **quired under section 13 of this 2020 Act, and in addition to any other findings required under**
 15 **ORS 419B.500 to 419B.524, the court finds:**

16 (A) **That evidence, including the testimony of one or more qualified expert witnesses**
 17 **under section 14 of this 2020 Act, establishes beyond a reasonable doubt that the Indian**
 18 **child’s continued custody by the child’s parent or Indian custodian is likely to result in se-**
 19 **rious emotional or physical damage to the Indian child;**

20 (B) **That active efforts under section 15 of this 2020 Act to reunite the Indian family did**
 21 **not eliminate the necessity for termination based on serious emotional or physical damage**
 22 **to the Indian child; and**

23 (C) **That the prospective placement complies with the placement preferences for Indian**
 24 **children under section 20 of this 2020 Act.**

25 (b) **The evidence under paragraph (a) of this subsection must show a causal relationship**
 26 **between the particular conditions in the Indian child’s home and the likelihood that contin-**
 27 **ued custody of the Indian child will result in serious emotional or physical damage to the**
 28 **particular Indian child who is the subject of the child custody proceeding. In the absence of**
 29 **a causal relationship, evidence that shows only the existence of community or family pov-**
 30 **erty, isolation, single parenthood, custodian age, crowded or inadequate housing, substance**
 31 **abuse or nonconforming social behavior does not, by itself, constitute evidence beyond a**
 32 **reasonable doubt that continued custody is likely to result in serious emotional or physical**
 33 **damage to the Indian child.**

34 **SECTION 43.** ORS 419B.529 is amended to read:

35 419B.529. (1) Notwithstanding ORS 109.309, a prospective adoptive parent is not required to file
 36 a petition for adoption when:

37 (a) One of the following has occurred:

38 (A) A juvenile court that is a circuit court has entered an order of permanent commitment of
 39 a ward to the Department of Human Services under ORS 419B.527; or

40 (B) The parent has signed and the department has accepted a release and surrender to the de-
 41 partment, and the parent has signed[:]

42 [(i)] a certificate of irrevocability and waiver as provided in ORS 418.270 regarding a child[:]
 43 or]

44 [(ii)] *A certificate of waiver under the Indian Child Welfare Act regarding a child*[:];

45 (b) The department has completed a home study as defined in ORS 109.304 that finds the pro-

1 prospective parent is suitable to adopt the child or ward and the department consents to the adoption
 2 of the child or ward by the prospective parent;

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

5 (d) At the time the placement report is filed under paragraph (c) of this subsection, the pro-
 6 spective adoptive parent files the adoption report form required under ORS 109.400[.]; **and**

7 **(e) The child is not an Indian child.**

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

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

13 (4) After the filing of written evidence of a home study and the placement report requesting the
 14 court to enter a judgment of adoption, the juvenile court that entered the order of permanent com-
 15 mitment, or the juvenile court having jurisdiction over a ward for whom the department has ac-
 16 cepted a release and surrender and a certificate signed by the parent as provided in subsection
 17 (1)(a)(B) of this section, may proceed as provided in ORS 109.307 and 109.350 and may enter a
 18 judgment of adoption.

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

21 **SECTION 44.** ORS 419B.532 is amended to read:

22 419B.532. (1) As used in this section, “former parent” means a person who was previously the
 23 legal parent of a ward and whose parental rights to the ward have been terminated.

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

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

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

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

30 (C) At least 18 months have passed since entry of the judgment terminating the former parent’s
 31 parental rights to the ward or, in the event of an appeal, at least six months have passed since is-
 32 suance of an appellate judgment affirming the termination judgment, whichever is later; and

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

35 (b) If the ward is under 12 years of age at the time the motion to reinstate parental rights is
 36 filed, the court may allow the motion upon a showing of good cause.

37 (3) A motion to reinstate parental rights under this section must be in writing and state with
 38 particularity the factual and legal grounds for the motion.

39 (4) The moving party shall provide a copy of the motion to reinstate parental rights to the for-
 40 mer parent and shall notify the court, the parties and, if [*the Indian Child Welfare Act applies*] **there**
 41 **is reason to know as described in section 12 of this 2020 Act that the ward is an Indian**
 42 **child**, the tribe that a copy of the motion has been provided.

43 (5) If a motion to reinstate parental rights does not state a prima facie case as to the facts that
 44 must be proved under subsection (6) of this section, the court may deny the motion without a hear-
 45 ing.

1 (6)(a) If a motion to reinstate parental rights states a prima facie case as to the facts that must
 2 be proved under this subsection, the court shall hold a hearing on the merits of the motion. The
 3 court shall grant the motion if the moving party proves by clear and convincing evidence that:

4 (A) The former parent’s conduct and conditions that led to the termination of parental rights
 5 have been ameliorated and the former parent is presently fit;

6 (B) The former parent wishes to have parental rights reinstated;

7 (C) The ward consents to the reinstatement of parental rights; and

8 (D) Reinstatement of parental rights is in the ward’s best interests.

9 (b) In determining whether reinstatement of parental rights is in the ward’s best interests under
 10 paragraph (a) of this subsection, the court shall consider:

11 (A) The ward’s health, safety, permanency, age, maturity and ability to express the ward’s pref-
 12 erences;

13 (B) The reasons that the former parent’s parental rights were terminated;

14 (C) The former parent’s stated reasons for wishing to have parental rights reinstated; and

15 (D) The likely impact on the ward of the former parent’s past abuse or neglect.

16 (c) The moving party shall provide notice to the former parent of a hearing on the merits under
 17 paragraph (a) of this subsection.

18 (d) The department shall establish by rule procedures for investigating the present fitness of the
 19 former parent and for providing appropriate reunification services.

20 (7) If the court grants the motion to reinstate parental rights under subsection (6) of this sec-
 21 tion:

22 (a) The court shall enter an order reinstating parental rights that shall restore all parental
 23 rights and duties of the former parent as to the ward;

24 (b) The ward shall continue as a ward of the court for at least six months after entry of the
 25 order reinstating parental rights; and

26 (c) The court shall conduct a permanency hearing as provided in ORS 419B.470 within 60 days
 27 after entering the order under paragraph (a) of this subsection.

28 (8) An order reinstating parental rights under this section does not vacate or otherwise affect
 29 the validity of the original judgment terminating the parental rights of the former parent except to
 30 the extent that the order reinstates parental rights.

31 (9) In any proceeding under this section, the ward is entitled to have counsel appointed at state
 32 expense if the ward is determined to be financially eligible under the policies, procedures, standards
 33 and guidelines of the Public Defense Services Commission.

34
 35 **(Citizens Review Board)**

36
 37 **SECTION 45.** ORS 419A.116 is amended to read:

38 419A.116. (1) After reviewing each case, the local citizen review board shall make written
 39 findings and recommendations with respect to:

40 (a) Whether reasonable efforts were made prior to the placement, to prevent or eliminate the
 41 need for removal of the child or ward from the home;

42 (b) If the case plan at the time of the review is to reunify the family, whether the Department
 43 of Human Services has made reasonable efforts [*or, if the Indian Child Welfare Act applies, active*
 44 *efforts*] to make it possible for the child or ward to safely return home and whether the parent has
 45 made sufficient progress to make it possible for the child or ward to safely return home;

1 (c) If the case plan at the time of the review is something other than to reunify the family,
 2 whether the department has made reasonable efforts to place the child or ward in a timely manner
 3 in accordance with the case plan, including, if appropriate, placement of the child or ward through
 4 an interstate placement, and to complete the steps necessary to finalize the permanent placement
 5 of the child or ward;

6 (d) The continuing need for and appropriateness of the placement;

7 (e) Compliance with the case plan;

8 (f) The progress which has been made toward alleviating the need for placement;

9 (g) A likely date by which the child or ward may be returned home or placed for adoption;

10 (h) Other problems, solutions or alternatives the board determines should be explored;

11 (i) Whether the court should appoint an attorney or other person as special advocate to repre-
 12 sent or appear on behalf of the child or ward under ORS 419B.195; [and]

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

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

17 (B) The ward has regular, ongoing opportunities to engage in age-appropriate or developmentally
 18 appropriate activities, including consultation with the ward in an age-appropriate manner about the
 19 opportunities the ward has to participate in the activities[.];

20 **(k) Whether there is reason to know, as described in section 12 of this 2020 Act, that the**
 21 **child or ward is an Indian child; and**

22 **(L) If there is reason to know the child or ward is an Indian child:**

23 **(A) Whether the department made active efforts as described in section 15 of this 2020**
 24 **Act to prevent the breakup of the Indian family prior to the child's removal and whether**
 25 **those efforts did not eliminate the necessity for removal based on serious emotional or**
 26 **physical damage to the child;**

27 **(B) If the case plan at the time of the review is to reunify the family, whether the de-**
 28 **partment has provided active efforts to make it possible for the child to safely return home,**
 29 **whether active efforts have eliminated the necessity for continued removal based on serious**
 30 **emotional or physical damage to the child and whether the parent has made sufficient**
 31 **progress to make it possible for the child to return home; and**

32 **(C) If the case plan at the time of the review is something other than to reunify the**
 33 **family, whether the department has made active efforts to place the child in a timely manner**
 34 **in accordance with the placement preferences under section 20 of this 2020 Act.**

35 (2) The local citizen review board may, if the case plan has changed during the period since the
 36 last review by a local citizen review board or court hearing, make written findings and recommen-
 37 dations with respect to:

38 (a) Whether the Department of Human Services has made reasonable efforts or, if [*the Indian*
 39 *Child Welfare Act applies*] **there is reason to know as described section 12 of this 2020 Act that**
 40 **the child is an Indian child**, active efforts to make it possible for the child or ward to safely return
 41 home and whether the parent has made sufficient progress to make it possible for the child or ward
 42 to safely return home, if a plan to reunify the family was in effect for any part of the period since
 43 the last review or hearing; or

44 (b) Whether the department has made reasonable efforts to place the child or ward in a timely
 45 manner in accordance with the case plan, including, if appropriate, placement of the child or ward

1 through an interstate placement, and to complete the steps necessary to finalize the permanent
 2 placement of the child or ward, if a case plan other than to reunify the family was in effect for any
 3 part of the period since the last review or hearing.

4 (3) In determining whether the Department of Human Services has made reasonable efforts or,
 5 if [*the Indian Child Welfare Act applies*] **there is reason to know as described in section 12 of**
 6 **this 2020 Act that the child is an Indian child**, active efforts to make it possible for the child or
 7 ward to safely return home, the local citizen review board shall consider the child or ward’s health
 8 and safety the paramount concerns.

9 (4) No later than 10 days after receiving the findings and recommendations of the local citizen
 10 review board, a party adversely affected by the findings and recommendations may request judicial
 11 review.

12
 13 **CONFORMING AMENDMENTS**
 14

15 **SECTION 46.** ORS 350.300 is amended to read:

16 350.300. (1) Notwithstanding ORS 341.290, 352.105 or 353.050, a current foster child or former
 17 foster child under 25 years of age who is enrolled in courses totaling one or more credit hours at
 18 an institution of higher education as an undergraduate student shall have the amount of tuition and
 19 all fees levied against the student waived if attending an institution of higher education for purposes
 20 of pursuing an initial undergraduate degree.

21 (2) A student who is a current foster child or former foster child is entitled to waiver of tuition
 22 and all fees under subsection (1) of this section until the student has received the equivalent of four
 23 years of undergraduate education.

24 (3) As a condition of receiving a tuition waiver for an academic year, a current foster child or
 25 former foster child must complete and submit the Free Application for Federal Student Aid for that
 26 academic year.

27 (4) A waiver of tuition and all fees under subsection (1) of this section may be reduced by the
 28 amount of any federal aid scholarships or grants, an award from the Oregon Opportunity Grant
 29 program established under ORS 348.205 and any other aid received from the institution of higher
 30 education. For the purposes of this subsection, “federal aid scholarships or grants” does not include
 31 Chafee Education and Training Grant vouchers (P.L. 107-133).

32 (5) As used in this section:

33 (a) “Former foster child” means an individual who, for a total of six or more months while be-
 34 tween 14 and 21 years of age, was:

35 (A) A ward of the court pursuant to ORS 419B.100 (1)(b) to (e), in the legal custody of the De-
 36 partment of Human Services for out-of-home placement and not dismissed from care before reaching
 37 16 years of age; or

38 (B) An Indian child subject to [*the Indian Child Welfare Act (25 U.S.C. 1901 et seq.)*] **sections**
 39 **1 to 20 of this 2020 Act**, under the jurisdiction of a tribal court for out-of-home placement and not
 40 dismissed from care before reaching 16 years of age.

41 (b) “Institution of higher education” means:

42 (A) A public university listed in ORS 352.002;

43 (B) A community college operated under ORS chapter 341; or

44 (C) The Oregon Health and Science University.

45 **SECTION 47.** ORS 419A.252 is amended to read:

1 419A.252. As used in this section and ORS 419A.253, 419A.255 and 419A.256:

2 (1) "Person" means an individual, a public body as defined in ORS 174.109 or a tribe that [*has*
3 *intervened in*] **is a party to** a juvenile court proceeding pursuant to [*the Indian Child Welfare Act*
4 (*25 U.S.C. 1901 et seq.*)] **ORS 419B.875.**

5 (2) "Prospective appellate attorney" means an attorney designated by the office of public defense
6 services established under ORS 151.216 to potentially represent a child, ward, youth, youth offender,
7 or a parent or guardian of a child, ward, youth or youth offender, in a juvenile case when the case
8 has been referred to the office of public defense services for appeal.

9 (3) "Public defense provider" means an attorney or a law firm designated by the office of public
10 defense services established under ORS 151.216 to potentially represent a child, ward, youth, youth
11 offender or the parent or guardian of a child, ward, youth or youth offender in a juvenile court
12 proceeding.

13 (4) "Record of the case" or "record of each case," whether maintained in paper or electronic
14 form, includes but is not limited to the following and includes records filed in juvenile court pro-
15 ceedings commenced before January 1, 2014, when the records are substantially similar to the fol-
16 lowing:

17 (a) The summons and other process;

18 (b) Petitions;

19 (c) Papers in the nature of pleadings, answers, motions, affidavits and other papers that are filed
20 with the court, including supporting documentation;

21 (d) Local citizen review board findings and recommendations submitted under ORS 419A.118 or
22 419B.367;

23 (e) Guardianship report summaries filed with the court under ORS 419B.367;

24 (f) Orders and judgments of the court, including supporting documentation;

25 (g) Transcripts under ORS 419A.256;

26 (h) Exhibits and materials offered as exhibits whether or not received in evidence; and

27 (i) Other documents that become part of the record of the case by operation of law.

28 (5) "Supplemental confidential file," whether maintained in paper or electronic form, includes
29 reports and other material relating to the child, ward, youth or youth offender's history and
30 prognosis, including but not limited to reports filed under ORS 419B.440, and includes similar reports
31 and other materials filed in juvenile court proceedings commenced before January 1, 2014, that:

32 (a) Are not or do not become part of the record of the case; and

33 (b) Are not offered or received as evidence in the case.

34 **SECTION 48.** ORS 419B.118 is amended to read:

35 419B.118. (1) Subject to the provisions of subsections (2), (3) and (4) of this section, a juvenile
36 court proceeding shall commence in the county of wardship if, at the commencement of the pro-
37 ceeding, wardship exists as a result of proceedings under this chapter, or, in the absence of such
38 wardship, in the county where the child resides.

39 (2) If the proceeding is based on allegations of jurisdiction under ORS 419B.100 (1)(a), (b) or (c),
40 the proceeding may also commence in the county in which the alleged act or behavior took place.

41 (3) If the proceeding is based on allegations of jurisdiction under ORS 419B.100 (1)(b), (c), (d),
42 (e) or (f), the proceedings may also commence in the county where the child is present when the
43 proceeding begins.

44 (4) A termination of parent-child relationship proceeding may be commenced in the county of
45 wardship or where the child or ward resides or is found unless the child is an Indian child [*subject*

1 to the *Indian Child Welfare Act*] and the tribal court has assumed jurisdiction **under section 9 of**
 2 **this 2020 Act.**

3 **SECTION 49.** ORS 419B.452 is amended to read:

4 419B.452. Except when a child or ward has been surrendered for adoption or the parents' rights
 5 have been terminated, the court shall send a copy of the report required by ORS 419B.440 to the
 6 parents and shall notify the parents either that a hearing will be held or that the parents may re-
 7 quest a hearing at which time they may ask for modifications in the care, treatment and supervision
 8 of the child or ward. If the court finds that informing the parents of the identity and location of the
 9 foster parents of the child or ward is not in the best interest of the child or ward, the court may
 10 order such information deleted from the report before sending the report to the parents. If **there**
 11 **is reason to know that** an Indian child is involved, the court shall send a copy of the report to the
 12 Indian child's tribe as required by the notice requirements [*of the Indian Child Welfare Act*] **under**
 13 **section 13 of this 2020 Act.**

14 **SECTION 50.** ORS 419B.875 is amended to read:

15 419B.875. (1)(a) Parties to proceedings in the juvenile court under ORS 419B.100 and 419B.500
 16 are:

17 (A) The child or ward;

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

19 (C) A putative father of the child or ward who has demonstrated a direct and significant com-
 20 mitment to the child or ward by assuming, or attempting to assume, responsibilities normally asso-
 21 ciated with parenthood, including but not limited to:

22 (i) Residing with the child or ward;

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

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

25 (D) The state;

26 (E) The juvenile department;

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

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

30 (H) [*The tribe*] In cases [*subject to the Indian Child Welfare Act if the tribe has intervened pur-*
 31 *suant to the Indian Child Welfare Act*] **where there is reason to know, as described in section**
 32 **12 of this 2020 Act, that a child involved is an Indian child:**

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

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

35 (b) An intervenor who is granted intervention under ORS 419B.116 is a party to a proceeding
 36 under ORS 419B.100. An intervenor under this paragraph is not a party to a proceeding under ORS
 37 419B.500.

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

39 (a) The right to notice of the proceeding and copies of the petitions, answers, motions and other
 40 papers;

41 (b) The right to appear with counsel and, except for intervenors under subsection (1)(b) of this
 42 section, to have counsel appointed as otherwise provided by law;

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

44 (d) The right of appeal; and

45 (e) The right to request a hearing.

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

5 (4) If no appeal from the judgment or order is pending, a putative father whom a court of com-
 6 petent jurisdiction has found not to be the child or ward’s legal or biological parent or who has filed
 7 a petition for filiation that was dismissed is not a party under subsection (1) of this section.

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

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

13 (6) If a foster parent, preadoptive parent or relative is currently providing care for a child or
 14 ward, the Department of Human Services shall give the foster parent, preadoptive parent or relative
 15 notice of a proceeding concerning the child or ward. A foster parent, preadoptive parent or relative
 16 providing care for a child or ward has the right to be heard at the proceeding. Except when allowed
 17 to intervene, the foster parent, preadoptive parent or relative providing care for the child or ward
 18 is not considered a party to the juvenile court proceeding solely because of notice and the right to
 19 be heard at the proceeding.

20 (7)(a) The Department of Human Services shall make diligent efforts to identify and obtain
 21 contact information for the grandparents of a child or ward committed to the department’s custody.
 22 Except as provided in paragraph (b) of this subsection, when the department knows the identity of
 23 and has contact information for a grandparent, the department shall give the grandparent notice of
 24 a hearing concerning the child or ward. Upon a showing of good cause, the court may relieve the
 25 department of its responsibility to provide notice under this paragraph.

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

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

31 (d) The court’s orders or judgments entered in proceedings under ORS 419B.185, 419B.310,
 32 419B.325, 419B.449, 419B.476 and 419B.500 must include findings of the court as to whether the
 33 grandparent had notice of the hearing, attended the hearing and had an opportunity to be heard.

34 (e) Notwithstanding the provisions of this subsection, a grandparent is not a party to the juve-
 35 nile court proceeding unless the grandparent has been granted rights of intervention under ORS
 36 419B.116.

37 (f) As used in this subsection, “grandparent” means the legal parent of the child’s or ward’s le-
 38 gal parent, regardless of whether the parental rights of the child’s or ward’s legal parent have been
 39 terminated under ORS 419B.500 to 419B.524.

40 (8) Interpreters for parties and persons granted rights of limited participation shall be appointed
 41 in the manner specified by ORS 45.275 and 45.285.

42 **SECTION 51.** ORS 419B.923 is amended to read:

43 419B.923. (1) Except as otherwise provided in this section, on motion and such notice and
 44 hearing as the court may direct, the court may modify or set aside any order or judgment made by
 45 it. Reasons for modifying or setting aside an order or judgment include, but are not limited to:

1 (a) Clerical mistakes in judgments, orders or other parts of the record and errors in the order
 2 or judgment arising from oversight or omission. These mistakes and errors may be corrected by the
 3 court at any time on its own motion or on the motion of a party and after notice as the court orders
 4 to all parties who have appeared. During the pendency of an appeal, an order or judgment may be
 5 corrected as provided in subsection (7) of this section.

6 (b) Excusable neglect.

7 (c) Newly discovered evidence that by due diligence could not have been discovered in time to
 8 present it at the hearing from which the order or judgment issued.

9 (2) A motion to modify or set aside an order or judgment or request a new hearing must be
 10 accompanied by an affidavit that states with reasonable particularity the facts and legal basis for
 11 the motion.

12 (3) A motion to modify or set aside an order or judgment must be made within a reasonable time
 13 except no order or judgment pursuant to ORS 419B.527 may be set aside or modified during the
 14 pendency of a proceeding 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 hearing as provided in ORS
 17 419B.195, 419B.198, 419B.201, 419B.205, 419B.208, 419B.310, 419B.325 and 419B.893 must be provided
 18 in any case when the effect of modifying or setting aside the order or judgment will or may be to
 19 deprive a parent of the legal custody of the child or ward, to place the child or ward in an institu-
 20 tion or agency or to transfer the child or ward from one institution or agency to another. The pro-
 21 visions of this subsection do not apply to a parent whose rights have been terminated under ORS
 22 419B.500 to 419B.524 or whose child has been permanently committed by order or judgment of the
 23 court unless an appeal from the order or judgment is pending.

24 (5) When **there is reason to know that** an Indian child is involved, notice must be provided
 25 as required under *[the Indian Child Welfare Act]* **section 13 of this 2020 Act.**

26 (6) Except when the child or ward is an Indian child, notice and a hearing are not required when
 27 the effect of modifying or setting aside the order or judgment will be to transfer the child or ward
 28 from one foster home to another.

29 (7) A motion under subsection (1) of this section may be filed with and decided by the trial court
 30 during the time an appeal from a judgment is pending before an appellate court. The moving party
 31 shall serve a copy of the motion on the appellate court. The moving party shall file a copy of the
 32 trial court's order or judgment in the appellate court within seven days of the date of the trial court
 33 order or judgment. Any necessary modification of the appeal required by the court order or judg-
 34 ment must be pursuant to rule of the appellate court.

35 (8) This section does not limit the inherent power of a court to modify an order or judgment
 36 within a reasonable time or the power of a court to set aside an order or judgment for fraud upon
 37 the court.

38
 39 **MISCELLANEOUS**

40
 41 **SECTION 52. Full faith and credit. The juvenile court shall give full faith and credit to**
 42 **the public acts, records and judicial proceedings of an Indian tribe applicable to an Indian**
 43 **child custody proceeding.**

44 **SECTION 53. Conflict of laws. If any provision of sections 1 to 20 of this 2020 Act is found**
 45 **to contravene the federal Indian Child Welfare Act (25 U.S.C. 1901 et seq.), it shall not serve**

1 to render inoperative any remaining provisions of sections 1 to 20 of this 2020 Act that may
2 be held not to conflict with the federal Indian Child Welfare Act.

3 SECTION 54. Rules. The Department of Human Services and the Judicial Department
4 may adopt rules to implement sections 1 to 20 of this 2020 Act.

5 SECTION 55. Captions. The unit and section captions used in this 2020 Act are provided
6 only for the convenience of the reader and do not become part of the statutory law of this
7 state or express any legislative intent in the enactment of this 2020 Act.

8
