

House Bill 2104

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor Kate Brown for Department of Human Services)

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**.

Modifies definition of "current caretaker."

Grants juvenile court continuing wardship jurisdiction upon establishment of permanent or durable guardianship regardless of whether original bases for wardship jurisdiction continue to exist.

A BILL FOR AN ACT

1
2 Relating to wards; amending ORS 419A.004, 419B.328, 419B.365 and 419B.366.

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

4 **SECTION 1.** ORS 419A.004, as amended by section 26, chapter 14, Oregon Laws 2020 (first
5 special session), and sections 17a and 17b, chapter 19, Oregon Laws 2020 (first special session), is
6 amended to read:

7 419A.004. As used in this chapter and ORS chapters 419B and 419C, unless the context requires
8 otherwise:

9 (1) "Age-appropriate or developmentally appropriate activities" means:

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

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

17 (2) "Another planned permanent living arrangement" means an out-of-home placement for a ward
18 16 years of age or older that is consistent with the case plan and in the best interests of the ward
19 other than placement:

20 (a) By adoption;

21 (b) With a legal guardian; or

22 (c) With a fit and willing relative.

23 (3) "CASA Volunteer Program" means a program that is approved or sanctioned by a juvenile
24 court, has received accreditation from the National CASA Association and has entered into a con-
25 tract with the Oregon Department of Administrative Services under ORS 184.492 to recruit, train
26 and supervise volunteers to serve as court appointed special advocates.

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

29 (5) "Community service" has the meaning given that term in ORS 137.126.

30 (6) "Conflict of interest" means a person appointed to a local citizen review board who has a

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 personal or pecuniary interest in a case being reviewed by that board.

2 (7) "Counselor" means a juvenile department counselor or a county juvenile probation officer.

3 (8) "Court" means the juvenile court.

4 (9) "Court appointed special advocate" means a person in a CASA Volunteer Program who is
5 appointed by the court to act as a court appointed special advocate pursuant to ORS 419B.112.

6 (10) "Court facility" has the meaning given that term in ORS 166.360.

7 (11) "Current caretaker" means a foster parent:

8 (a) Who is currently caring for a ward who is in the legal custody of the Department of Human
9 Services and who has a permanency plan [*or concurrent permanent plan*] of adoption; and

10 (b) Who has cared for the ward, or at least one sibling of the ward, for at least 12 cumulative
11 months or for one-half of the ward's or sibling's life where the ward or sibling is younger than two
12 years of age, calculated cumulatively.

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

14 (13) "Detention" or "detention facility" means a facility established under ORS 419A.010 to
15 419A.020 and 419A.050 to 419A.063 for the detention of youths or youth offenders pursuant to a ju-
16 dicial commitment or order.

17 (14) "Director" means the director of a juvenile department established under ORS 419A.010 to
18 419A.020 and 419A.050 to 419A.063.

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

20 (16) "Indian child" has the meaning given that term in section 2, chapter 14, Oregon Laws 2020
21 (first special session).

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

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

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

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

29 (b) If the child is an Indian child, a man whose parentage has been established as described in
30 section 4, chapter 14, Oregon Laws 2020 (first special session).

31 (20) "Permanent foster care" means an out-of-home placement in which there is a long-term
32 contractual foster care agreement between the foster parents and the department that is approved
33 by the juvenile court and in which the foster parents commit to raise a ward in substitute care or
34 youth offender until the age of majority.

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

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

37 (23) "Qualified residential treatment program" means a program described in section 12b, chap-
38 ter 19, Oregon Laws 2020 (first special session).

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

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

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

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

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

7 (29) "Serious physical injury" means:

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

9 (b) A physical injury that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (34) "Surrogate" means a person appointed by the court to protect the right of the child, ward,
33 youth or youth offender to receive procedural safeguards with respect to the provision of free ap-
34 propriate public education.

35 (35) "Tribal court" has the meaning given that term in section 2, chapter 14, Oregon Laws 2020
36 (first special session).

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

43 (37) "Violent felony" means any offense that, if committed by an adult, would constitute a felony
44 and:

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

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

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

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

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

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

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

12 **SECTION 2.** ORS 419B.328 is amended to read:

13 419B.328. (1) The court shall make a child found to be within the jurisdiction of the court as
14 provided in ORS 419B.100 a ward of the court.

15 (2) The court’s wardship continues, and the ward is subject to the court’s jurisdiction, until one
16 of the following occurs:

17 (a) The court dismisses the petition concerning the ward;

18 (b) The court transfers jurisdiction over the ward as provided in ORS 419B.127, 419B.130 and
19 419B.132;

20 (c) The court enters an order terminating the wardship;

21 (d) A judgment of adoption of the ward is entered by a court of competent jurisdiction; or

22 (e) The ward becomes 21 years of age.

23 **(3) If a guardian has been appointed for a ward under ORS 419B.365 or 419B.366, the court**
24 **may not enter an order terminating the wardship under subsection (2)(c) of this section un-**
25 **til:**

26 **(a) The court vacates the guardianship under ORS 419B.368; or**

27 **(b) The ward becomes 21 years of age.**

28 **SECTION 3.** ORS 419B.365, as amended by section 43, chapter 14, Oregon Laws 2020 (first
29 special session), is amended to read:

30 419B.365. (1) At any time following establishment of jurisdiction and wardship under ORS
31 419B.100, but prior to filing of a petition under ORS 419B.500, or after dismissal of a petition filed
32 under ORS 419B.500 if it fails to result in termination of the parent’s rights, a party, or person
33 granted rights of limited participation for the purpose of filing a guardianship petition, may file, and
34 the court may hear, a petition for permanent guardianship. If the Department of Human Services
35 chooses not to participate in a proceeding initiated by an intervenor under ORS 419B.875, the state
36 is not foreclosed from filing a subsequent action should the intervenor’s petition be denied.

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

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

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

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

44 (4)(a) Notwithstanding subsection (3) of this section, if an Indian child is involved, the court may
45 grant the permanent guardianship of the Indian child only:

1 (A) If the court has offered the parties the opportunity to participate in mediation as required
2 under ORS 419B.517;

3 (B) If requested by the tribe, an agreement is in place that requires the proposed guardian to
4 maintain connection between the Indian child and the Indian child’s tribe; and

5 (C) If after inquiry as required under section 15, chapter 14, Oregon Laws 2020 (first special
6 session), and notice as required under section 16, chapter 14, Oregon Laws 2020 (first special ses-
7 sion), and in addition to any other findings required for the termination of parental rights under
8 ORS 419B.500 to 419B.524, the court finds:

9 (i) That evidence, including the testimony of one or more qualified expert witnesses under sec-
10 tion 17, chapter 14, Oregon Laws 2020 (first special session), establishes beyond a reasonable doubt
11 that the Indian child’s continued custody by the child’s parent or custody by the child’s Indian
12 custodian is likely to result in serious emotional or physical damage to the Indian child;

13 (ii) That active efforts under section 18, chapter 14, Oregon Laws 2020 (first special session), to
14 reunite the Indian family did not eliminate the necessity for permanent guardianship based on seri-
15 ous emotional or physical damage to the Indian child; and

16 (iii) That the placement of the Indian child complies with the placement preferences described
17 in section 23, chapter 14, Oregon Laws 2020 (first special session).

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

25 (c) As used in this subsection, “custody” and “continued custody” have the meanings described
26 in section 3, chapter 14, Oregon Laws 2020 (first special session).

27 (5) [*Unless vacated under ORS 419B.368,*] A guardianship established under this section contin-
28 ues [*as long as the ward is subject to the court’s jurisdiction as provided in ORS 419B.328*] **unless**
29 **vacated under ORS 419B.368 or the ward becomes 21 years of age.**

30 **SECTION 4.** ORS 419B.366, as amended by section 44, chapter 14, Oregon Laws 2020 (first
31 special session), is amended to read:

32 419B.366. (1) A party, or a person granted rights of limited participation for the purpose of filing
33 a guardianship motion, may file a motion to establish a guardianship. The motion must be in writing
34 and state with particularity the factual and legal grounds for the motion.

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

37 (3)(a) If there is reason to know, as described in section 15, chapter 14, Oregon Laws 2020 (first
38 special session), an Indian child is involved, the court may grant the guardianship of the Indian child
39 only:

40 (A) If the court has offered the parties the opportunity to participate in mediation as required
41 under ORS 419B.517;

42 (B) If requested by the tribe, an agreement is in place that requires the proposed guardian to
43 maintain connection between the Indian child and the Indian child’s tribe; and

44 (C) If after inquiry as required under section 15, chapter 14, Oregon Laws 2020 (first special
45 session), and notice as required under section 16, chapter 14, Oregon Laws 2020 (first special ses-

1 sion), the court finds:

2 (i) Clear and convincing evidence, including the testimony of one or more qualified expert wit-
 3 nesses under section 17, chapter 14, Oregon Laws 2020 (first special session), that the Indian child’s
 4 continued custody by the child’s parent or custody by the child’s Indian custodian is likely to result
 5 in serious emotional or physical damage to the Indian child;

6 (ii) That active efforts under section 18, chapter 14, Oregon Laws 2020 (first special session), to
 7 reunite the Indian family did not eliminate the necessity for guardianship based on serious emotional
 8 or physical damage to the Indian child; and

9 (iii) That the placement of the Indian child complies with the placement preferences as described
 10 in section 23, chapter 14, Oregon Laws 2020 (first special session).

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

18 (c) As used in this subsection, “custody” and “continued custody” have the meanings described
 19 in section 3, chapter 14, Oregon Laws 2020 (first special session).

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

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

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

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

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

28 (d) Guardianship is in the ward’s best interests. In determining whether guardianship is in the
 29 ward’s best interests, the court shall consider the ward’s wishes.

30 (6) [*Unless vacated pursuant to ORS 419B.368,*] A guardianship established under this section
 31 continues [*as long as the ward is subject to the court’s jurisdiction as provided in ORS 419B.328*]
 32 **unless vacated pursuant to ORS 419B.368 or the ward becomes 21 years of age.**