

**Enrolled**  
**Senate Bill 208**

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CHAPTER .....

AN ACT

Relating to termination of guardianships for wards; creating new provisions; and amending ORS 419B.328, 419B.365 and 419B.368.

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

**SECTION 1.** ORS 419B.328 is amended to read:

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

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

- (a) The court dismisses the petition concerning the ward;
- (b) The court transfers jurisdiction over the ward as provided in ORS 419B.127, 419B.130, 419B.132 or 419B.633;
- (c) The court enters an order terminating the wardship;
- (d) A judgment of adoption of the ward is entered by a court of competent jurisdiction; or
- (e) The ward becomes 21 years of age.

**(3) Notwithstanding subsection (2) of this section, if a permanent guardianship has been established under ORS 419B.365, the court’s wardship continues, and the ward is subject to the court’s jurisdiction, until:**

**(a) The court vacates the guardianship under ORS 419B.368 and subsequently enters an order terminating the wardship; or**

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

**SECTION 2.** ORS 419B.365 is amended to read:

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

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

(3) Upon the filing of a motion to establish guardianship under this section, the court shall make a finding, subject to the procedures under ORS 419B.636 (4), regarding whether there is reason to know that the child is an Indian child.

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

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

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

(5)(a) Notwithstanding subsection (4) of this section, the court may grant the permanent guardianship of an Indian child only:

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

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

(C) If after inquiry as required under ORS 419B.636 (2) and notice as required under ORS 419B.639 (2), and in addition to any other findings required for the termination of parental rights under ORS 419B.500 to 419B.524, the court finds:

(i) That evidence, including the testimony of one or more qualified expert witnesses under ORS 419B.642, establishes beyond a reasonable doubt that the continued custody of the Indian child by the child's parent or custody by the child's Indian custodian is likely to result in serious emotional or physical damage to the Indian child;

(ii) That active efforts under ORS 419B.645 to reunite the Indian family did not eliminate the necessity for permanent guardianship based on serious emotional or physical damage to the Indian child; and

(iii) That the placement of the Indian child complies with the placement preferences described in ORS 419B.654 (1).

(b) The evidence under paragraph (a) of this subsection must show a causal relationship between the particular conditions in the Indian child's home and the likelihood that custody or continued custody of the Indian child will result in serious emotional or physical damage to the particular Indian child who is the subject of the child custody proceeding, as defined in ORS 419B.603. Evidence that shows the existence of community or family poverty, isolation, single parenthood, custodian age, crowded or inadequate housing, substance abuse or nonconforming social behavior does not, by itself, establish a causal relationship as required by this paragraph.

(c) As used in this subsection, "custody" and "continued custody" have the meanings described in ORS 419B.606.

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

**SECTION 3.** ORS 419B.368 is amended to read:

419B.368. (1) The court, on its own motion or upon the motion of a party and after such hearing as the court may direct, may review, modify or vacate a guardianship order.

(2) The court may modify a guardianship order if the court determines to do so would be in the ward's best interests.

(3) The court may vacate a guardianship order, return the ward to the custody of a parent and make any other order the court is authorized to make under this chapter if the court determines that:

(a) It is in the ward's best interests to vacate the guardianship;

(b) The conditions and circumstances giving rise to the establishment of the guardianship have been ameliorated; and

(c) The parent is presently able and willing to adequately care for the ward.

(4) The court may vacate a guardianship order after determining that the guardian is no longer willing or able to fulfill the duties of a guardian. Upon vacating a guardianship order under this subsection, the court shall conduct a hearing:

(a) Within 14 days, make written findings required in ORS 419B.185 (2) and (3)(d) and (e) and make any order directing disposition of the ward that the court is authorized to make under this chapter; and

(b) Pursuant to ORS 419B.476 within 90 days.

(5) In determining whether it is in the ward's best interests to modify or vacate a guardianship, the court shall consider, but is not limited to considering:

(a) The ward's emotional and developmental needs;

(b) The ward's need to maintain existing attachments and relationships and to form attachments and relationships, including those with the birth family;

(c) The ward's health and safety; and

(d) The ward's wishes.

(6) In addition to service required under ORS 419B.851[,]:

(a) A party filing a motion to vacate a guardianship shall serve the motion upon the Department of Human Services.

**(b) A party filing a motion to terminate wardship under ORS 419B.328 shall serve the motion upon the department.**

(7) Notwithstanding subsection (1) of this section, a parent may not move the court to vacate a guardianship once a guardianship is granted under ORS 419B.365.

(8) If a guardianship is established under ORS 419B.366 and 419B.371, the court shall conduct a court review not later than 60 days before the ward reaches 18 years of age. At the hearing, the court shall inform the ward that after reaching 18 years of age the ward may not be placed in substitute care in the legal custody of the department [of Human Services].

**SECTION 4. The amendments to ORS 419B.328, 419B.365 and 419B.368 by sections 1 to 3 of this 2023 Act apply to motions to terminate wardship, and motions to vacate guardianship, filed on or after the effective date of this 2023 Act.**

Passed by Senate March 7, 2023

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Lori L. Brocker, Secretary of Senate

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Rob Wagner, President of Senate

Passed by House May 11, 2023

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Dan Rayfield, Speaker of House

Received by Governor:

.....M.,....., 2023

Approved:

.....M.,....., 2023

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Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M.,....., 2023

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Secretary of State