

House Bill 3658

Sponsored by Representative MANNIX

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**. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: The Act changes when the court must appoint a lawyer for some people in matters involving children. (Flesch Readability Score: 65.1).

Modifies provisions regarding the appointment of counsel for parents or children in juvenile dependency proceedings and contested adoption proceedings. Directs the court to appoint counsel for parents in juvenile dependency proceedings, including proceedings for termination of parental rights, only if facts found in the dependency proceeding may effect a criminal proceeding. Directs the court to appoint counsel for a child in a juvenile dependency proceeding only if the child was allegedly abused. Directs the court to appoint counsel for parents in contested adoption proceedings, including certain proceedings to determine parentage, only if facts found in the adoption proceeding may effect a criminal proceeding.

A BILL FOR AN ACT

1
2 Relating to court-appointed counsel; creating new provisions; amending ORS 109.322, 109.323,
3 109.324, 109.326, 109.330, 419B.195, 419B.205, 419B.208, 419B.371, 419B.532, 419B.639, 419B.647
4 and 419B.914; and repealing ORS 419B.518.

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

COURT-APPOINTED COUNSEL IN DEPENDENCY PROCEEDINGS

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7
8
9 **SECTION 1.** ORS 419B.195 is amended to read:

10 419B.195. (1) If the child, ward, parent or guardian requests counsel for the child or ward **in a**
11 **proceeding under this chapter in which it has been alleged that the child or ward has been**
12 **subjected to abuse, as defined in ORS 419B.005**, but is without sufficient financial means to em-
13 ploy suitable counsel possessing skills and experience commensurate with the nature of the petition
14 and the complexity of the case, the court may appoint suitable counsel to represent the child or
15 ward at state expense if the child or ward is determined to be financially eligible under the policies,
16 procedures, standards and guidelines of the Oregon Public Defense Commission. [*Whenever requested*
17 *to do so, the court shall appoint counsel to represent the child or ward in a case filed pursuant to ORS*
18 *419B.100.*] The court may not substitute one appointed counsel for another except pursuant to the
19 policies, procedures, standards and guidelines of the Oregon Public Defense Commission.

20 (2) Upon presentation of the order of appointment under this section by the attorney for the
21 child or ward, any agency, hospital, school organization, division or department of the state, doctor,
22 nurse or other health care provider, psychologist, psychiatrist, police department or mental health
23 clinic shall permit the attorney to inspect and copy any records of the child or ward involved in the
24 case, without the consent of the child or ward or parents. This subsection does not apply to records
25 of a police agency relating to an ongoing investigation prior to charging.

26 **SECTION 2.** ORS 419B.205 is amended to read:

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 419B.205. (1) Counsel shall be appointed for the parent or legal guardian **of a child or ward**
 2 whenever the nature of the proceedings **under this chapter** and due process so require, and when
 3 the parent or legal guardian has been determined by the court to be eligible to receive appointed
 4 counsel under the standard in ORS 135.050 or the policies, procedures, standards and guidelines
 5 adopted under ORS 151.216.

6 (2) In deciding whether to appoint counsel under this section, the court shall consider the fol-
 7 lowing factors:

8 [(a) *The duration and degree of invasiveness of the interference with the parent-child relationship*
 9 *that possibly could result from the proceeding;*]

10 [(b)] (a) The complexity of the issues and evidence;

11 [(c)] (b) The nature of allegations and evidence contested by the parent or legal guardian; and

12 [(d)] (c) The effect the facts found or the disposition in the proceeding may have on later
 13 **criminal** proceedings or events[, *including but not limited to termination of parental rights or criminal*
 14 *proceedings*].

15 [(2)] (3) The court may not substitute one appointed counsel for another except pursuant to the
 16 policies, procedures, standards and guidelines adopted under ORS 151.216.

17 **SECTION 3.** ORS 419B.208 is amended to read:

18 419B.208. Appointment of counsel for [*the*] a child, ward [*or*], parent **or legal guardian under**
 19 **ORS 419B.195 or 419B.205** is subject to ORS 135.055, 151.216 and 151.219.

20 **SECTION 4.** ORS 419B.371 is amended to read:

21 419B.371. (1) As used in this section:

22 (a) “Community guardian” means a child-caring agency licensed, certified or otherwise author-
 23 ized under ORS 418.205 to 418.327 that is filing a motion for appointment as guardian of a ward
 24 under ORS 419B.366.

25 (b) “Community guardianship” means a guardianship granted under ORS 419B.366 to a commu-
 26 nity guardian.

27 (2) The court may appoint a community guardian and establish a community guardianship of a
 28 ward under ORS 419B.366 when, in addition to the requirements of ORS 419B.366:

29 (a) The ward is 16 years of age or older;

30 (b) The ward has spent three or more years in substitute care;

31 (c) The proposed community guardian has provided care or services to the ward under ORS
 32 418.205 to 418.327 in the 12 months immediately preceding the filing of the motion for community
 33 guardianship;

34 (d) Except for another planned permanent living arrangement, there is no other appropriate
 35 permanency plan for the ward under ORS 419B.476 (5);

36 (e) The proposed community guardianship would include planning and guidance for the ward’s
 37 transition to successful adulthood, including needs and goals related to crisis intervention, housing,
 38 physical and mental health, education, employment, community connections and supportive re-
 39 lationships; **and**

40 (f) The ward gives informed consent to the establishment of the community guardianship[: *and*]

41 [*(g) The ward has access to court-appointed counsel under ORS 419B.195*].

42 (3) Informed consent of the ward under subsection (2)(f) of this section shall include:

43 (a) The ward’s written consent to information provided in writing to the ward by the court, the
 44 Department of Human Services or the proposed community guardian about the consequences of es-
 45 tablishment of a community guardianship, including any loss of benefits currently being received or

1 that may prospectively be provided to the ward if another permanency plan were ordered; and

2 (b) The ward's written acknowledgment that the ward cannot be placed in substitute care in the
3 legal custody of the Department of Human Services after reaching 18 years of age.

4 **SECTION 5.** ORS 419B.532 is amended to read:

5 419B.532. (1) As used in this section, "former parent" means a person who was previously the
6 legal parent of a ward and whose parental rights to the ward have been terminated.

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

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

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

11 (B) No legal action to achieve the adoption of the ward has been initiated under ORS 109.276
12 or 419B.529;

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

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

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

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

22 (4) The moving party shall provide a copy of the motion to reinstate parental rights to the for-
23 mer parent and shall notify the court, the parties and, if there is reason to know that the ward is
24 an Indian child, the tribe that a copy of the motion has been provided.

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

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

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

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

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

35 (D) Reinstatement of parental rights is in the ward's best interests.

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

38 (A) The ward's health, safety, permanency, age, maturity and ability to express the ward's pref-
39 erences;

40 (B) The reasons that the former parent's parental rights were terminated;

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

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

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

45 (d) The department shall establish by rule procedures for investigating the present fitness of the

1 former parent and for providing appropriate reunification services.

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

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

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

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

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

13 *[(9) In any proceeding under this section, the ward is entitled to have counsel appointed at state
14 expense if the ward is determined to be financially eligible under the policies, procedures, standards
15 and guidelines of the Oregon Public Defense Commission.]*

16 **SECTION 6.** ORS 419B.639 is amended to read:

17 419B.639. (1)(a) In an emergency proceeding, if there is reason to know that a child is an Indian
18 child and the nature of the emergency allows, the Department of Human Services must notify by
19 telephone, electronic mail, facsimile or other means of immediate communication any tribe of which
20 the child is or may be a member.

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

24 (2) Except as provided in subsection (1) of this section, if there is reason to know that a child
25 alleged to be within the court's jurisdiction under ORS chapter 109, 418, 419A or 419B is an Indian
26 child and notice is required, the party providing notice must:

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

28 (b) File a copy of each notice sent under this section with the court, together with any return
29 receipts or other proof of service.

30 (3) Notice under subsection (2) of this section must:

31 (a) Be sent to:

32 (A) Each tribe of which the child may be a member or of which the Indian child may be eligible
33 for membership;

34 (B) The child's parents;

35 (C) The child's Indian custodian, if applicable; and

36 (D) The appropriate United States Bureau of Indian Affairs Regional Director listed in 25 C.F.R.
37 23.11(b), if the identity or location of the child's parents, Indian custodian or tribe cannot be ascer-
38 tained.

39 (b) Be sent by registered or certified mail, return receipt requested.

40 (c) Be in clear and understandable language and include the following:

41 (A) The child's name, date of birth and place of birth;

42 (B) To the extent known, all names, including maiden, married and former names or aliases, of
43 the child's parents, the parents' birthplaces and tribal enrollment numbers;

44 (C) To the extent known, the names, dates of birth, places of birth and tribal enrollment infor-
45 mation of other direct lineal ancestors of the child;

1 (D) The name of each Indian tribe of which the child is a member or in which the Indian child
2 may be eligible for membership;

3 (E) If notice is required to be sent to the United States Bureau of Indian Affairs under para-
4 graph (a) of this subsection, to the extent known, information regarding the child's direct lineal
5 ancestors, an ancestral chart for each biological parent, and the child's tribal affiliations and blood
6 quantum;

7 (F) A copy of the petition or motion initiating the proceeding and, if a hearing has been sched-
8 uled, information on the date, time and location of the hearing;

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

10 (H) In a proceeding under ORS chapter 419B:

11 (i) A statement that the child's parent or Indian custodian has the right to participate in the
12 proceeding as a party to the proceeding under ORS 419B.875;

13 (ii) A statement that the child's tribe has the right to participate in the proceeding as a party
14 or in an advisory capacity under ORS 419B.875; **and**

15 *[(iii) A statement that if the court determines that the child's parent or Indian custodian is unable
16 to afford counsel, the parent or Indian custodian has the right to court-appointed counsel; and]*

17 *[(iv)]* (iii) A statement that the child's parent, Indian custodian or tribe has the right, upon re-
18 quest, to up to 20 additional days to prepare for the proceeding;

19 (I) In a proceeding under ORS 109.266 to 109.410, a statement that the child's tribe may inter-
20 vene in the proceeding;

21 (J) A statement that the child's parent, Indian custodian or tribe has the right to petition the
22 court to transfer the child custody proceeding to the tribal court;

23 (K) A statement describing the potential legal consequences of the proceeding on the future
24 parental and custodial rights of the parent or Indian custodian;

25 (L) The mailing addresses and telephone numbers of the court and contact information for all
26 parties to the proceeding and individuals notified under this section; and

27 (M) A statement that the information contained in the notice is confidential and that the notice
28 should not be shared with any person not needing the information to exercise rights under ORS
29 419B.600 to 419B.654.

30 (4) If there is a reason to know that the Indian child's parent or Indian custodian has limited
31 English proficiency and may not understand the contents of the notice under subsection (2) of this
32 section, the court must provide language access services as required by Title VI of the Civil Rights
33 Act of 1964 and other applicable federal and state laws. If the court is unable to secure translation
34 or interpretation support, the court shall contact or direct a party to contact the Indian child's tribe
35 or the local office of the United States Bureau of Indian Affairs for assistance identifying a qualified
36 translator or interpreter.

37 (5)(a) A hearing that requires notice under subsection (2) of this section may not be held until
38 at least 10 days after the latest of receipt of the notice by the Indian child's parent, Indian custodian
39 or tribe or, if applicable, the United States Bureau of Indian Affairs. Upon request, the court shall
40 grant the Indian child's parent, Indian custodian or tribe up to 20 additional days from the date upon
41 which notice was received by the parent, Indian custodian or tribe to prepare for participation in
42 the hearing.

43 (b) Nothing in this subsection prevents a court at an emergency proceeding before the expira-
44 tion of the waiting period described in paragraph (a) of this subsection from reviewing the removal
45 of an Indian child from the Indian child's parent or Indian custodian to determine whether the re-

1 moval or placement is no longer necessary to prevent imminent physical damage or harm to the
 2 Indian child.

3 **SECTION 7.** ORS 419B.647 is amended to read:

4 419B.647. (1) If there is reason to know that a child in a proceeding under ORS chapter 419B
 5 is an Indian child:

6 (a) The court [*shall*] **may** appoint counsel to represent the Indian child **if there is an allegation**
 7 **in the proceeding that the Indian child has been subjected to abuse, as defined in ORS**
 8 **419B.005.**

9 (b) If the Indian child’s parent or Indian custodian requests counsel to represent the parent or
 10 Indian custodian but is without sufficient financial means to employ suitable counsel possessing
 11 skills and experience commensurate with the nature of the petition and the complexity of the case,
 12 the court shall appoint suitable counsel to represent the Indian child’s parent or Indian custodian
 13 if the parent or Indian custodian is determined to be financially eligible under the policies, proce-
 14 dures, standards and guidelines of the Oregon Public Defense Commission.

15 (2) Upon presentation of the order of appointment under this section by the attorney for the
 16 Indian child, any agency, hospital, school organization, division or department of the state, doctor,
 17 nurse or other health care provider, psychologist, psychiatrist, police department or mental health
 18 clinic shall permit the attorney for the Indian child to inspect and copy any records of the Indian
 19 child involved in the case, without the consent of the Indian child or the Indian child’s parent or
 20 Indian custodian. This subsection does not apply to records of a police agency relating to an ongoing
 21 investigation prior to bringing charges.

22 **SECTION 8.** ORS 419B.518 is repealed.

23
 24 **COURT-APPOINTED COUNSEL IN ADOPTION PROCEEDINGS**

25
 26 **SECTION 9.** (1) **If a spouse under ORS 109.326 or a parent under ORS 109.330 requests**
 27 **the assistance of appointed counsel, the court shall appoint counsel for the spouse or parent**
 28 **if the nature of the proceedings and due process so require, and when the spouse or parent**
 29 **has been determined by the court to be eligible to receive appointed counsel under the**
 30 **standard in ORS 135.050 or policies, procedures, standards and guidelines adopted under ORS**
 31 **151.216.**

32 (2) **In deciding whether to appoint counsel under this section, the court shall consider the**
 33 **following factors:**

34 (a) **The complexity of the issues and evidence;**

35 (b) **The nature of allegations and evidence contested by the spouse or parent; and**

36 (c) **The effect the facts found or the disposition in the proceeding may have on later**
 37 **criminal proceedings or events.**

38 (3) **The court may not substitute one appointed counsel for another except pursuant to**
 39 **the policies, procedures, standards and guidelines adopted under ORS 151.216.**

40 **SECTION 10.** ORS 109.326 is amended to read:

41 109.326. (1) If the mother of a child was married at the time of the conception or birth of the
 42 child, and it has been determined pursuant to ORS 109.065 or 419B.609 or judicially determined that
 43 the mother’s spouse at such time or times was not the parent of the child, the spouse’s authorization
 44 or waiver is not required in adoption, juvenile court or other proceedings concerning the custody
 45 of the child.

1 (2)(a) If parentage of the child has not been determined, a determination of nonparentage may
 2 be made by any court having adoption, divorce or juvenile court jurisdiction.

3 (b) Except as provided in subsection [(11)] (10) of this section, the testimony or affidavit of the
 4 mother or the spouse or another person with knowledge of the facts filed in the proceeding consti-
 5 tutes competent evidence before the court making the determination.

6 (c) The provisions of this section relating to Indian children do not apply if the determination
 7 of nonparentage is being made by a court having divorce jurisdiction or jurisdiction to decide cus-
 8 tody between unmarried parents.

9 (3) Before the court may make the determination of nonparentage, the petitioner shall:

10 (a) Conduct the inquiry described in ORS 419B.636 (2) to determine whether the petitioner has
 11 reason to know that the child is an Indian child; and

12 (b) Serve on the spouse a summons and a true copy of a motion and order to show cause why
 13 a judgment of nonparentage should not be entered if:

14 (A) There has been a determination by any court of competent jurisdiction that the spouse is
 15 the parent of the child;

16 (B) The child resided with the spouse at any time since the child's birth;

17 (C) The spouse repeatedly has contributed or tried to contribute to the support of the child; or

18 (D) The petitioner has reason to know that the child is an Indian child.

19 (4) When the petitioner is required to serve the spouse with a summons and a motion and order
 20 to show cause under subsection (3) of this section:

21 (a) Service must be made in the manner provided in ORCP 7 D and E, except as provided in
 22 subsection (7) of this section. Service of the summons and the motion and order to show cause must
 23 be proved as required in ORCP 7 F. The summons and the motion and order to show cause need not
 24 contain the names of the adoptive parents.

25 (b) If the petitioner has reason to know that the child is an Indian child, the petitioner shall
 26 serve copies of the motion, together with the notice of proceeding required under ORS 419B.639 (3),
 27 on:

28 (A) Each tribe of which the child may be a member or in which the Indian child may be eligible
 29 for membership;

30 (B) The child's parents;

31 (C) The child's Indian custodian, if applicable; and

32 (D) The appropriate United States Bureau of Indian Affairs Regional Director listed in 25 C.F.R.
 33 23.11(b), if the identity or location of the child's parents, Indian custodian or tribe cannot be ascer-
 34 tained.

35 (c) The petitioner shall file a declaration of compliance under penalty of perjury made in the
 36 manner described by ORCP 1 E, that includes:

37 (A) A statement and documentation, as described by the Department of Human Services by rule,
 38 of the efforts described in ORS 419B.636 (2) that the petitioner made to determine whether there is
 39 reason to know that the child is an Indian child; and

40 (B) If the petitioner has reason to know that the child is an Indian child:

41 (i) A statement describing the efforts the petitioner made, as required under ORS 109.302 (2)(c),
 42 to prevent the break up of the family or to reunite the family; and

43 (ii) A copy of each notice of proceeding the petitioner served as required under paragraph (b)
 44 of this subsection, together with any return receipts or other proof of service.

45 (5) The inquiry required under subsection (3)(a) of this section and notice required under sub-

1 section (4)(a) of this section may be combined with the inquiry and notice required under ORS
2 109.285 or 109.385 if the motion and order to show cause is filed concurrently with the petition for
3 adoption or readoption under ORS 109.285 or 109.385.

4 (6) A summons under subsection (3) of this section must contain:

5 (a) A statement that if the spouse fails to file a written answer to the motion and order to show
6 cause within the time provided, the court, without further notice and in the spouse's absence, may
7 take any action that is authorized by law, including but not limited to entering a judgment of non-
8 parentage on the date the answer is required or on a future date.

9 (b) A statement that:

10 (A) The spouse must file with the court a written answer to the motion and order to show cause
11 within 30 days after the date on which the spouse is served with the summons or, if service of the
12 summons is made by publication or posting under ORCP 7 D(6), within 30 days from the date of last
13 publication or posting.

14 (B) In the answer, the spouse must inform the court and the petitioner of the spouse's telephone
15 number or contact telephone number and the spouse's current residence, mailing or contact address
16 in the same state as the spouse's home. The answer may be in substantially the following form:

17 _____

18
19 IN THE CIRCUIT COURT OF
20 THE STATE OF OREGON
21 FOR THE COUNTY OF _____

22 _____,)
23 Petitioner,) NO. _____
24)
25) ANSWER
26 and)
27)
28 _____,)
29 Respondent.)

30 [] I consent to the entry of a judgment of nonparentage.

31 [] I do not consent to the entry of a judgment of nonparentage. The court should not enter a
32 judgment of nonparentage for the following reasons:

33 _____

34 _____

35 _____

36 _____

37 _____

38 _____

39 _____

40 _____

41 _____

42 _____

43 _____

44 Signature _____

45 DATE: _____

1 ADDRESS OR CONTACT ADDRESS:

2 _____
3 _____

4 TELEPHONE OR CONTACT TELEPHONE:

5 _____
6 _____

7
8 (c) A notice that, if the spouse answers the motion and order to show cause, the court:

9 (A) Will schedule a hearing to address the motion and order to show cause and, if appropriate,
10 the adoption petition;

11 (B) Will order the spouse to appear personally; and

12 (C) May schedule other hearings related to the petition and may order the spouse to appear
13 personally.

14 (d) A notice that the spouse has the right to be represented by an attorney. The notice must
15 be in substantially the following form:

16 _____

17
18 You have a right to be represented by an attorney. If you wish to be represented by an attorney,
19 please retain one as soon as possible to represent you in this proceeding. If you meet the state's
20 financial guidelines, you are entitled to have an attorney appointed for you at state expense. To
21 request appointment of an attorney to represent you at state expense, you must contact the circuit
22 court immediately. Phone _____ for further information.

23 _____

24
25 (e) A statement that the spouse has the responsibility to maintain contact with the spouse's at-
26 torney and to keep the attorney advised of the spouse's whereabouts.

27 (7) A spouse who is served with a summons and a motion and order to show cause under this
28 section shall file with the court a written answer to the motion and order to show cause within 30
29 days after the date on which the spouse is served with the summons or, if service is made by pub-
30 lication or posting under ORCP 7 D(6), within 30 days from the date of last publication or posting.
31 In the answer, the spouse shall inform the court and the petitioner of the spouse's telephone number
32 or contact telephone number and current address, as defined in ORS 25.011. The answer may be in
33 substantially the form described in subsection (6) of this section.

34 *[(8) If the spouse requests the assistance of appointed counsel and the court determines that the*
35 *spouse is financially eligible, the court shall appoint an attorney to represent the spouse at state ex-*
36 *penditure. Appointment of counsel under this subsection is subject to ORS 135.055, 151.216 and 151.219.*
37 *The court may not substitute one appointed counsel for another except pursuant to the policies, proce-*
38 *dures, standards and guidelines adopted under ORS 151.216.]*

39 [(9)] (8) If the spouse files an answer as required under subsection (7) of this section, the court,
40 by oral order made on the record or by written order provided to the spouse in person or mailed
41 to the spouse at the address provided by the spouse, shall:

42 (a) Inform the spouse of the time, place and purpose of the next hearing or hearings related to
43 the motion and order to show cause or the adoption petition;

44 (b) Require the spouse to appear personally at the next hearing or hearings related to the mo-
45 tion and order to show cause or the adoption petition; and

1 (c) Inform the spouse that, if the spouse fails to appear as ordered for any hearing related to
 2 the motion and order to show cause or the adoption petition, the court, without further notice and
 3 in the spouse's absence, may take any action that is authorized by law, including but not limited to
 4 entering a judgment of nonparentage on the date specified in the order or on a future date, without
 5 the consent of the spouse.

6 [(10)(a)] (9)(a) Upon receiving the petitioner's declaration of compliance under subsection (4)(c)
 7 of this section, the court shall review the petitioner's statements and documentation and order that
 8 the adoption may proceed if the court finds that the petitioner satisfied the inquiry requirements
 9 under ORS 419B.636 (2) and, if applicable, the notice requirements under ORS 419B.639 (2).

10 (b) If the court finds that the petitioner failed to satisfy the inquiry or, if applicable, notice re-
 11 quirements under ORS 419B.636 (2) and 419B.639 (2), or if the documentation is insufficient for the
 12 court to make those findings, the court shall direct the petitioner to cure the inquiry or notice de-
 13 ficiency and file an amended declaration of compliance. The court shall order the petitioner to ap-
 14 pear and show cause why the court should not deny the motion and order to show cause if the
 15 petitioner fails to file the amended declaration of compliance within a reasonable amount of time.

16 [(11)(a)] (10)(a) If a spouse fails to file a written answer as required in subsection (7) of this
 17 section or fails to appear for a hearing related to the motion and order to show cause or the petition
 18 as directed by court order under this section, the court, without further notice to the spouse and
 19 in the spouse's absence, may take any action that is authorized by law, including but not limited to
 20 entering a judgment of nonparentage.

21 (b) Notwithstanding paragraph (a) of this subsection, the court may not enter a judgment of
 22 nonparentage unless the court finds that the petitioner complied with the inquiry requirements un-
 23 der ORS 419B.636 (2).

24 [(12)] (11) If the child is an Indian child:

25 (a) The court may not enter a judgment of nonparentage with the consent of the spouse unless:

26 (A) The consent clearly sets out the conditions to the consent, if any;

27 (B) Prior to the execution of the consent, the court explains to the spouse, on the record in
 28 detail and in the language of the spouse, [*the spouse's right to legal counsel,*] the terms and conse-
 29 quences of the consent and that the spouse may withdraw the consent at any time prior to the entry
 30 of a judgment of adoption or readoption under ORS 109.350;

31 (C) The spouse executes the consent in person before the court not less than 10 days following
 32 the date of the Indian child's birth; and

33 (D) After the spouse executes the consent, the court certifies that the court provided the ex-
 34 planation in the manner required under subparagraph (B) of this paragraph and that the spouse fully
 35 understood the explanation.

36 (b) Notwithstanding subsection [(9) or (11)] (8) or (10) of this section, the court may not enter
 37 a judgment of nonparentage without the consent of the spouse unless:

38 (A) The court has offered to order mediation through the Department of Human Services, or, if
 39 there is mutual party agreement to private mediation and to the party assumption of costs, through
 40 other mediation services, between the petitioner, spouse, Indian child's tribe and, if applicable, the
 41 proposed adoptive placement;

42 (B) If requested by the tribe, an agreement is in place that requires the petitioner or, if appli-
 43 cable, the proposed adoptive placement to maintain connection between the Indian child and the
 44 Indian child's tribe; and

45 (C) The court finds that:

1 (i) The petitioner complied with the notice requirements as required under ORS 419B.639 (2);

2 (ii) Despite petitioner's active efforts, evidence, including the testimony of one or more qualified
 3 expert witnesses under ORS 419B.642, establishes beyond a reasonable doubt that the continued
 4 custody of the Indian child by the spouse is likely to result in serious emotional or physical damage
 5 to the Indian child and that the petitioner's active efforts under ORS 419B.645 to reunite the Indian
 6 family did not eliminate the necessity for termination of the spouse's parental rights based on seri-
 7 ous emotional or physical damage to the Indian child; and

8 (iii) That the adoptive placement complies with the placement preferences under ORS 419B.654
 9 (2) or, if not, a finding upon the petitioner's motion under ORS 419B.654 (3) that good cause exists
 10 for placement contrary to the placement preferences in ORS 419B.654 (2).

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

18 [(13)] (12) There shall be sufficient proof to enable the court to grant the relief sought without
 19 notice to the spouse if:

20 (a) The affidavit of the mother of the child, of the spouse or of another person with knowledge
 21 of the facts filed in the proceeding states or the court finds from other competent evidence:

22 (A) That the mother of the child was not cohabiting with the mother's spouse at the time of
 23 conception of the child and that the spouse is not the parent of the child;

24 (B) That the spouse has not been judicially determined to be the parent of the child;

25 (C) That the child has not resided with the spouse; and

26 (D) That the spouse has not contributed or tried to contribute to the support of the child; and

27 (b) The court finds by clear and convincing evidence, after due diligence on the part of the
 28 petitioner, that the child is not an Indian child.

29 [(14)] (13) Notwithstanding ORS 109.070 (1)(a), service of a summons and a motion and order to
 30 show cause on the spouse under subsection (3) of this section is not required and the spouse's con-
 31 sent, authorization or waiver is not required in adoption proceedings concerning the child unless the
 32 child is an Indian child or the spouse has met the requirements of subsection (3)(b)(A), (B) or (C)
 33 of this section.

34 [(15)] (14) A spouse who was not cohabiting with the mother at the time of the child's con-
 35 ception has the primary responsibility to protect the spouse's rights.

36 [(16)] (15) Nothing in this section shall be used to set aside an act of a permanent nature, in-
 37 cluding but not limited to adoption, unless the parent establishes, within one year or, if the child is
 38 an Indian child, four years after the entry of the order or general judgment, as defined in ORS
 39 18.005, fraud on the part of the petitioner with respect to the matters specified in subsection
 40 [(13)(a)] (12)(a) of this section.

41 [(17)] (16) If the child is an Indian child, the child's tribe or Indian custodian may intervene at
 42 any time as a matter of right.

43 **SECTION 11.** ORS 109.330 is amended to read:

44 109.330. (1)(a) In the cases provided for in ORS 109.302, 109.322, 109.323 and 109.324, when a
 45 parent does not consent to the adoption of the child, the petitioner shall:

1 (A) Conduct the inquiry described in ORS 419B.636 (2) to determine whether the petitioner has
2 reason to know that the child is an Indian child; and

3 (B) Serve the parent with a summons and a true copy of a motion and order to show cause why
4 the proposed adoption should not be ordered without the parent's consent.

5 (b) Except as provided in subsection (3) of this section, service of the summons and the motion
6 and order to show cause must be made in the manner provided in ORCP 7 D and E. Service must
7 be proved as required in ORCP 7 F. The summons and the motion and order to show cause need not
8 contain the names of the adoptive parents.

9 (c) If the petitioner has reason to know that the child is an Indian child, in addition to the
10 service required under paragraph (b) of this subsection, the petitioner shall serve by registered or
11 certified mail, return receipt requested, copies of the motion and order to show cause, together with
12 the notice of proceeding in the form required under ORS 419B.639 (3)(c), on:

13 (A) Each tribe of which the child may be a member or in which the Indian child may be eligible
14 for membership;

15 (B) The child's parents;

16 (C) The child's Indian custodian, if applicable; and

17 (D) The appropriate United States Bureau of Indian Affairs Regional Director listed in 25 C.F.R.
18 23.11(b), if the identity or location of the child's parents, Indian custodian or tribe cannot be ascer-
19 tained.

20 (d) The petitioner shall file a declaration of compliance under penalty of perjury, made in the
21 manner described by ORCP 1 E, that includes:

22 (A) A statement and documentation, as described by the Department of Human Services by rule,
23 of the efforts described in ORS 419B.636 (2) that the petitioner made to determine whether there is
24 reason to know that the child is an Indian child; and

25 (B) If the petitioner has reason to know that the child is an Indian child:

26 (i) A statement describing the efforts the petitioner made, as required under ORS 109.302 (2)(c),
27 to prevent the break up of the family or to reunite the family; and

28 (ii) A copy of each notice of proceeding the petitioner served as required under paragraph (c)
29 of this subsection, together with any return receipts or other proof of service.

30 (2) A summons under this section must contain:

31 (a) A statement that an adoption petition has been filed and that, if the parent fails to file a
32 written answer to the motion and order to show cause within the time provided, the court, without
33 further notice and in the parent's absence, may take any action that is authorized by law, including
34 but not limited to entering a judgment of adoption of the child if the court determines, on the date
35 the answer is required or on a future date, that:

36 (A) Consent of the parent is not required;

37 (B) The adoption is in the best interests of the child; and

38 (C) If the child is an Indian child, the nonconsenting parent's continued custody of the Indian
39 child is likely to result in serious emotional or physical damage to the child.

40 (b) A statement that:

41 (A) The parent must file with the court a written answer to the motion and order to show cause
42 within 30 days after the date on which the parent is served with the summons or, if service is made
43 by publication or posting under ORCP 7 D(6), within 30 days from the date of last publication or
44 posting.

45 (B) In the answer, the parent must inform the court and the petitioner of the parent's telephone

1 number or contact telephone number and the parent's current residence, mailing or contact address
2 in the same state as the parent's home. The answer may be in substantially the following form:

3 _____
4

5 IN THE CIRCUIT COURT OF
6 THE STATE OF OREGON
7 FOR THE COUNTY OF _____

8 _____,)
9 Petitioner,) NO. _____

10)
11) ANSWER

12 and)
13)

14 _____,)
15 Respondent.)

16 [] I consent to the proposed adoption.

17 [] I do not consent to the proposed adoption. The court should not order the proposed adoption
18 without my consent for the following reasons:

19 _____

20

21 _____

22

23 _____

24

25 _____

26

27 _____

28

29 _____

30 Signature

31 DATE: _____

32 ADDRESS OR CONTACT ADDRESS:

33 _____

34 _____

35 TELEPHONE OR CONTACT TELEPHONE:

36 _____

37 _____

38

39 (c) A notice that, if the parent answers the motion and order to show cause, the court:

40 (A) Will schedule a hearing to address the motion and order to show cause and, if appropriate,
41 the adoption petition;

42 (B) Will order the parent to appear personally; and

43 (C) May schedule other hearings related to the petition and may order the parent to appear
44 personally.

45 (d) A notice that the parent has the right to be represented by an attorney. The notice must be

1 in substantially the following form:
 2 _____
 3

4 You have a right to be represented by an attorney. If you wish to be represented by an attorney,
 5 please retain one as soon as possible to represent you in this proceeding. If you meet the state's
 6 financial guidelines, you are entitled to have an attorney appointed for you at state expense. To
 7 request appointment of an attorney to represent you at state expense, you must contact the circuit
 8 court immediately. Phone _____ for further information.
 9 _____

10
 11 (e) A statement that the parent has the responsibility to maintain contact with the parent's at-
 12 torney and to keep the attorney advised of the parent's whereabouts.

13 (3) A parent who is served with a summons and a motion and order to show cause under this
 14 section shall file with the court a written answer to the motion and order to show cause within 30
 15 days after the date on which the parent is served with the summons or, if service is made by pub-
 16 lication or posting under ORCP 7 D(6), within 30 days from the date of last publication or posting.
 17 In the answer, the parent shall inform the court and the petitioner of the parent's telephone number
 18 or contact telephone number and current address, as defined in ORS 25.011. The answer may be in
 19 substantially the form described in subsection (2) of this section.

20 *[(4) If the parent requests the assistance of appointed counsel and the court determines that the*
 21 *parent is financially eligible, the court shall appoint an attorney to represent the parent at state ex-*
 22 *penditure. Appointment of counsel under this subsection is subject to ORS 135.055, 151.216 and 151.219.*
 23 *The court may not substitute one appointed counsel for another except pursuant to the policies, proce-*
 24 *dures, standards and guidelines adopted under ORS 151.216.]*

25 ~~[(5)(a)]~~ **(4)(a)** Upon receiving the petitioner's declaration of compliance under subsection (1)(d)
 26 of this section, the court shall order that the motion and order to show cause may proceed if the
 27 court finds that the petitioner satisfied the inquiry requirements under ORS 419B.636 (2) and, if ap-
 28 plicable, the notice requirements under ORS 419B.639 (2).

29 (b) If the court finds that the petitioner failed to satisfy the inquiry or, if applicable, notice re-
 30 quirements under ORS 419B.636 (2) and 419B.639 (2), or if the documentation is insufficient for the
 31 court to make those findings, the court shall direct the petitioner to cure the inquiry or notice de-
 32 ficiency and file an amended declaration of compliance. The court shall order the petitioner to ap-
 33 pear and show cause why the court should not deny the motion and order to show cause if the
 34 petitioner fails to file the amended declaration of compliance within a reasonable amount of time.

35 (c) If the court finds, subject to the procedures under ORS 419B.636 (4), that there is reason to
 36 know the child is an Indian child, the court shall offer to order mediation through the Department
 37 of Human Services, or if there is mutual party agreement to private mediation and to the party as-
 38 sumption of costs, through other mediation services, between the Indian child's parents, the Indian
 39 child's tribe and the proposed adoptive placement.

40 ~~[(6)(a)]~~ **(5)(a)** If the parent files an answer as required under subsection (3) of this section, the
 41 court, by oral order made on the record or by written order provided to the parent in person or
 42 mailed to the parent at the address provided by the parent, shall:

43 (A) Inform the parent of the time, place and purpose of the next hearing or hearings related to
 44 the motion and order to show cause or the adoption petition;

45 (B) Require the parent to appear personally at the next hearing or hearings related to the mo-

1 tion and order to show cause or the adoption petition; and

2 (C) Inform the parent that, if the parent fails to appear as ordered for any hearing related to
 3 the motion and order to show cause or the adoption petition, the court, without further notice and
 4 in the parent's absence, may take any action that is authorized by law, including but not limited to
 5 entering a judgment of adoption of the child on the date specified in the order or on a future date,
 6 without the consent of the parent.

7 (b) If the parent's answer indicates the parent's consent to the adoption, the court may not ac-
 8 cept the consent unless the consent meets the requirements under ORS 109.301 or, if the child is
 9 an Indian child, ORS 109.302.

10 [(7)] (6) If a parent fails to file a written answer as required in subsection (3) of this section or
 11 fails to appear for a hearing related to the motion and order to show cause or the petition as di-
 12 rected by court order under this section, the court, without further notice to the parent and in the
 13 parent's absence, may take any action that is authorized by law, including but not limited to enter-
 14 ing a judgment of adoption of the child without the consent of the parent if the court finds:

15 (a) On the date the answer is required or on a future date, the action to be in the child's best
 16 interests; and

17 (b) That the petitioner complied with the inquiry requirements under ORS 419B.636 (2) to de-
 18 termine whether there is reason to know that the child is an Indian child.

19 [(8)(a)] (7)(a) Notwithstanding subsection [(7)] (6) of this section or ORS 109.322, 109.323 or
 20 109.324, the court may not enter a judgment of adoption of an Indian child without the consent of
 21 the parent unless:

22 (A) The court has offered the parties the opportunity to participate in mediation as required
 23 under subsection [(5)(c)] (4)(c) of this section;

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

26 (C) The court determines that the petitioner complied with the notice requirements under ORS
 27 419B.639 (2);

28 (D) The court determines that evidence, including the testimony of one or more qualified expert
 29 witnesses under ORS 419B.642, establishes beyond a reasonable doubt that the continued custody
 30 of the Indian child by the nonconsenting parent is likely to result in serious emotional or physical
 31 damage to the child and that the petitioner's active efforts under ORS 419B.645 to reunite the Indian
 32 family did not eliminate the necessity for termination of the nonconsenting parent's parental rights
 33 based on serious emotional or physical damage to the Indian child; and

34 (E) The court finds that the adoptive placement complies with the placement preferences under
 35 ORS 419B.654 (2) or, if not, the court finds, upon the petitioner's motion under ORS 419B.654 (3),
 36 that good cause exists for placement contrary to the placement preferences in ORS 419B.654 (2).

37 (b) The evidence under paragraph (a)(E) of this subsection must show a causal relationship be-
 38 tween the particular conditions in the Indian child's home and the likelihood that the nonconsenting
 39 parent's continued custody of the Indian child will result in serious emotional or physical damage
 40 to the Indian child who is the subject of the adoption proceeding. Evidence that shows the existence
 41 of community or family poverty, isolation, single parenthood, custodian age, crowded or inadequate
 42 housing, substance abuse or nonconforming social behavior does not, by itself, establish a causal
 43 relationship as required by this paragraph.

44 [(9)] (8) If the child has no living parent and no guardian or next of kin in this state qualified
 45 to appear in behalf of the child, the court may order such notice, if any, to be given as the court

1 deems necessary or proper.

2 [(10)] (9) If the child is an Indian child, the child’s tribe or Indian custodian may intervene at
 3 any time as a matter of right.

4
 5 **CONFORMING AMENDMENTS**

6
 7 **SECTION 12.** ORS 109.322 is amended to read:

8 109.322. (1) If a parent has been adjudged to be a person with mental illness under ORS 426.130
 9 or a person with an intellectual disability who is in need of commitment for residential care, treat-
 10 ment and training under ORS 427.290, and remains so at the time of the adoption proceedings, or
 11 if a parent is imprisoned in a state or federal prison under a sentence for a term of not less than
 12 three years and has actually served three years, the petitioner, in accordance with ORS 109.330,
 13 shall serve on the parent, if the parent has not consented in writing to the adoption, a summons and
 14 a motion and order to show cause why the adoption of the child should not be ordered without the
 15 parent’s consent.

16 (2) In the case of a parent adjudged to be a person with mental illness under ORS 426.130 or a
 17 person with an intellectual disability who is in need of commitment for residential care, treatment
 18 and training under ORS 427.290, the petitioner shall also serve the summons and the motion and
 19 order to show cause upon the guardian of the parent. If the parent has no guardian, the court shall
 20 appoint a guardian ad litem to appear for the parent in the adoption proceedings.

21 (3) Upon hearing, except as provided in ORS 109.330 [(8)] (7) if the child is an Indian child, if
 22 the court finds that the adoption is in the best interests of the child, the consent of the parent who
 23 is imprisoned or adjudged to be a person with mental illness or an intellectual disability is not re-
 24 quired, and the court may proceed regardless of the objection of the parent.

25 (4) This section does not apply when consent is given in loco parentis under ORS 109.325 or
 26 109.327.

27 **SECTION 13.** ORS 109.323 is amended to read:

28 109.323. (1) If the legal custody of the child has been awarded in marital dissolution proceedings,
 29 except as provided in ORS 109.330 [(8)] (7) if the child is an Indian child, the written consent of the
 30 person to whom custody of the child has been awarded may be held sufficient by the court. However,
 31 unless the noncustodial parent consents to the adoption, the petitioner, in accordance with ORS
 32 109.330, shall serve on the noncustodial parent a summons and a motion and order to show cause
 33 why the proposed adoption should not be ordered without the noncustodial parent’s consent, and the
 34 objections of the noncustodial parent shall be heard if appearance is made.

35 (2) This section does not apply when consent is given in loco parentis under ORS 109.325 or
 36 109.327.

37 **SECTION 14.** ORS 109.324 is amended to read:

38 109.324. (1) If a parent is believed to have willfully deserted the child or neglected without just
 39 and sufficient cause to provide proper care and maintenance for the child for one year next pre-
 40 ceding the filing of the petition for adoption, and if the parent does not consent in writing to the
 41 adoption, the petitioner, in accordance with ORS 109.330, shall serve on the parent a summons and
 42 a motion and order to show cause why the adoption of the child should not be ordered without the
 43 parent’s consent.

44 (2) Upon hearing or when the parent has failed to file a written answer as required in ORS
 45 109.330 (3), except as provided in ORS 109.330 [(8)] (7) if the child is an Indian child, if the court

1 finds that the parent has willfully deserted the child or neglected without just and sufficient cause
2 to provide proper care and maintenance for the child for one year next preceding the filing of the
3 petition for adoption, the consent of the parent at the discretion of the court is not required and,
4 if the court determines that the parent's consent is not required, the court may proceed regardless
5 of the objection of the parent.

6 (3) In determining whether the parent has willfully deserted the child or neglected without just
7 and sufficient cause to provide proper care and maintenance for the child, the court may:

8 (a) Disregard incidental visitations, communications and contributions; and

9 (b) Consider, among other factors the court finds relevant, whether the custodial parent has
10 attempted, without good cause shown, to prevent or to impede contact between the child and the
11 parent whose parental rights would be terminated in an action under this section.

12 (4) This section does not apply when consent is given in loco parentis under ORS 109.325 or
13 109.327.

14 **SECTION 15.** ORS 419B.914 is amended to read:

15 419B.914. If the child or ward is before the court, the court has the power to proceed with the
16 case without service upon those entitled to service under ORS 419B.812 to 419B.839 if diligent ef-
17 forts have failed to reveal the identity or the whereabouts of the person, except that:

18 (1) No order entered pursuant to ORS 419B.500, 419B.502, 419B.504, 419B.506 and 419B.508 may
19 be entered unless ORS [419B.518,] 419B.521, 419B.524 and 419B.812 to 419B.839 are complied with.

20 (2) No order for support as provided in ORS 419B.400, 419B.402, 419B.404 and 419B.406 may be
21 entered against a person unless that person is served as provided in ORS 419B.812 to 419B.839.

22
23 **MISCELLANEOUS**

24
25 **SECTION 16.** The unit captions used in this 2025 Act are provided only for the conven-
26 ience of the reader and do not become part of the statutory law of this state or express any
27 legislative intent in the enactment of this 2025 Act.

28 **SECTION 17.** Section 9 of this 2025 Act and the amendments to ORS 109.322, 109.323,
29 109.324, 109.326, 109.330, 419B.195, 419B.205, 419B.208, 419B.371, 419B.532, 419B.639, 419B.647
30 and 419B.914 by sections 1 to 7 and 10 to 15 of this 2025 Act and the repeal of ORS 419B.518
31 by section 8 of this 2025 Act apply to appointments of counsel made on or after the effective
32 date of this 2025 Act.
33