

# Senate Bill 1104

Sponsored by Senator BONHAM (at the request of Jason Gearhart)

## 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 says that a court shall order the return of a child taken into protective custody if the court finds that there is not clear and convincing evidence to support keeping the child from home. The Act also says that a DHS employee who does not return a child as ordered by the court has kidnapped the child. (Flesch Readability Score: 63.5).

Increases the standard of proof necessary to retain a child in protective custody after removal from the child's parent or guardian.

Expands the crime of kidnapping in the second degree to include circumstances when an employee of the Department of Human Services fails to comply with a court order to return a child taken into protective custody to the child's parent or guardian.

## A BILL FOR AN ACT

1  
2 Relating to accountability for child welfare employees; amending ORS 419B.305, 419B.310, 419B.325  
3 and 419B.476.

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

5 **SECTION 1.** ORS 419B.305 is amended to read:

6 419B.305. (1) Except as otherwise provided in this section, no later than [60] **15** days after a  
7 petition alleging that a child is within the jurisdiction of the court under ORS 419B.100 has been  
8 filed, the court shall hold a hearing on the petition and enter an order under ORS 419B.325 (1). Upon  
9 written order supported by factual findings of good cause, the court may continue a petition beyond  
10 [60] **15** days.

11 (2) At the commencement of the hearing, unless the court has entered an order finding that the  
12 child is an Indian child, the court shall inquire and make a finding, subject to the procedures under  
13 ORS 419B.636 (4), regarding whether there is reason to know that the child is an Indian child.

14 (3)(a) If the child is an Indian child and if the court found under ORS 419B.185 (5)(b)(B) that  
15 protective custody is necessary to prevent imminent physical damage or harm to the child, no later  
16 than [30] **15** days after the petition is filed, the court shall hold the hearing and enter the order  
17 described in subsection (1) of this section, unless:

18 (A) The child has been returned to the child's parent or Indian custodian;

19 (B) The court orders the child to be returned to the child's parent or Indian custodian;

20 (C) The court continues the protective order regarding the child for more than 30 days as pro-  
21 vided in ORS 419B.185 (5)(d); or

22 (D) The court grants the child's parent, Indian custodian or tribe an extension of time to prepare  
23 for participation in the hearing as provided in ORS 419B.639 (5).

24 (b) The court may not schedule a hearing on the petition, or enter an order on the petition,  
25 unless the inquiry and notice requirements under ORS 419B.636 (2) and 419B.639 (2) and all relevant  
26 timelines have been followed.

(4) No later than [30] **15** days after a petition alleging jurisdiction under ORS 419B.100 is filed,

**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 all parties shall comply with ORS 419B.881.

2 (5) When a person denies allegations in the petition, the court shall set the case for a hearing  
3 within the time limits prescribed by subsection (1) of this section. Upon written order supported by  
4 factual findings of good cause, the court may continue the hearing beyond the [60-day] **15-day** time  
5 limit.

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

9 **SECTION 2.** ORS 419B.310 is amended to read:

10 419B.310. (1) The hearing shall be held by the court without a jury and may be continued from  
11 time to time. During the hearing of a case filed pursuant to ORS 419B.100, the court, on its own  
12 motion or upon the motion of a party, may take testimony from any child appearing as a witness  
13 and may exclude the child's parents and other persons if the court finds such action would be likely  
14 to be in the best interests of the child. However, the court may not exclude the attorney for each  
15 party and the testimony shall be reported.

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

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

21 (A) By [*a preponderance of*] **clear and convincing** competent evidence; or

22 (B) If the child is an Indian child, by clear and convincing competent evidence.

23 (b) The evidence under paragraph (a)(B) of this section must:

24 (A) Include testimony of one or more qualified expert witnesses under ORS 419B.642, demon-  
25 strating that the Indian child's continued custody by the child's parent or custody by the child's  
26 Indian custodian is likely to result in serious emotional or physical damage to the Indian child; and

27 (B) Show a causal relationship between the particular conditions in the Indian child's home and  
28 the likelihood that the continued custody of the Indian child by the child's parent or custody by the  
29 child's Indian custodian will result in serious emotional or physical damage to the particular Indian  
30 child who is the subject of the child custody proceeding, as defined in ORS 419B.603. Evidence that  
31 shows the existence of community or family poverty, isolation, single parenthood, custodian age,  
32 crowded or inadequate housing, substance abuse or nonconforming social behavior does not, by it-  
33 self, establish a causal relationship as required by this paragraph.

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

36 (4) If the court finds under ORS 419B.305 (2), or at any time prior to the commencement of the  
37 hearing, that there is reason to know that the child is an Indian child, the jurisdictional require-  
38 ments of ORS 419B.305 and 419B.627 must be met before the court may assume jurisdiction of the  
39 case.

40 **SECTION 3.** ORS 419B.325 is amended to read:

41 419B.325. (1) At the termination of the hearing or hearings in the proceeding, the court shall  
42 enter an appropriate order directing the disposition to be made of the case.

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

1 (3) If the child is an Indian child, the court's order under this section must be in compliance  
2 with the placement preferences described in ORS 419B.654.

3 **(4)(a) The court shall order the release of the child to the child's parent or guardian from  
4 whom the child was removed if:**

5 **(A) The court determines that the facts alleged in the petition showing the child to be  
6 within the jurisdiction of the court are not established by clear and convincing competent  
7 evidence; or**

8 **(B) There is clear and convincing competent evidence that the circumstances or sur-  
9 roundings of the child are such that continuation of the child in the child's home or in the  
10 care or custody of the child's parent or legal guardian would not present an imminent danger  
11 to the child.**

12 **(b) If the court orders the release of the child under paragraph (a) of this section, the  
13 Department of Human Services shall return the child to the child's parent or guardian within  
14 48 hours from the time of the order, subject to any conditions the state can prove by clear  
15 and convincing competent evidence as necessary to protect the health, safety or welfare of  
16 the child.**

17 **(c) The failure of a department employee who is responsible for returning the child to  
18 do so constitutes kidnapping in the second degree under ORS 163.225.**

19 **SECTION 4.** ORS 419B.476 is amended to read:

20 419B.476. (1) A permanency hearing shall be conducted in the manner provided in ORS 418.312,  
21 419B.310, 419B.812 to 419B.839 and 419B.908, except that the court may receive testimony and re-  
22 ports as provided in ORS 419B.325.

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

24 (a) If the case plan at the time of the hearing is to reunify the family, determine whether the  
25 Department of Human Services has made reasonable efforts or, if the ward is an Indian child, active  
26 efforts as described in ORS 419B.645 to make it possible for the ward to safely return home and  
27 whether the parent has made sufficient progress to make it possible for the ward to safely return  
28 home. In making its determination, the court shall consider the ward's health and safety the para-  
29 mount concerns.

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

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

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

39 (e) If the child is an Indian child and the case plan at the time of the hearing is something other  
40 than to reunify the family, make a finding whether, after the department's consultation with the  
41 child's tribe, and, if the tribe appears at the hearing, the court's direct consultation with the tribe,  
42 tribal customary adoption, as described in ORS 419B.656, is an appropriate permanent placement for  
43 the child if reunification is unsuccessful.

44 (3) When the ward is 14 years of age or older, in addition to making the determination required  
45 by subsection (2) of this section, at a permanency hearing the court shall review the comprehensive

1 plan for the ward's transition to successful adulthood and determine and make findings as to:

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

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

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

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

6 (a) If the case plan changed during the period since the last review by a local citizen review  
7 board or court hearing and a plan to reunify the family was in effect for any part of that period,  
8 determine whether the department has made reasonable efforts or, if the ward is an Indian child,  
9 active efforts as described in ORS 419B.645 to make it possible for the ward to safely return home.  
10 In making its determination, the court shall consider the ward's health and safety the paramount  
11 concerns;

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

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

20 (d) Determine the adequacy and compliance with the case plan and the case progress report;

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

25 (f) Order the department to develop or expand the case plan or concurrent permanent plan and  
26 provide a case progress report to the court and other parties within 10 days after the permanency  
27 hearing;

28 (g) Order the department or agency to modify the care, placement and supervision of the ward;

29 (h) Order the local citizen review board to review the status of the ward prior to the next court  
30 hearing; or

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

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

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

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

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

41 (B) The ward will be placed for adoption, and a petition for termination of parental rights will  
42 be filed;

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

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

45 (E) If the ward is 16 years of age or older, the ward will be placed in another planned permanent

1 living arrangement.

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

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

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

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

15 (g) If the court determines that the permanency plan for the ward should be tribal customary  
 16 adoption, the court's determination of whether one of the circumstances in ORS 419B.498 (2) is ap-  
 17 plicable.

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

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

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

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

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

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

33 (j) If the ward is an Indian child, the tribal affiliation of the ward.

34 (k) If the ward is an Indian child and if the court determines that the permanency plan for the  
 35 ward should be something other than to reunify the family, the court's determination, by clear and  
 36 convincing evidence, that:

37 (A) Active efforts as described in ORS 419B.645 were provided to make it possible for the Indian  
 38 child to safely return home;

39 (B) Despite the efforts provided, continued removal of the Indian child is necessary to prevent  
 40 serious emotional or physical damage to the Indian child;

41 (C) The parent has not made sufficient progress to make it possible for the Indian child to safely  
 42 return home; and

43 (D) The new permanency plan complies with the placement preferences described in ORS  
 44 419B.654.

45 (L) If the ward has been placed in an interstate placement, the court's determination of whether

1 the interstate placement continues to be appropriate and in the best interests of the ward.

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

4 (7) If the child is an Indian child:

5 (a) The court shall follow the placement preferences described in ORS 419B.654.

6 (b) If the court finds that the department did not provide active efforts to make it possible for  
7 the Indian child to safely return home, the court may not, at that permanency hearing, change the  
8 permanency plan to something other than to reunify the family.

9 (c) If the court finds that the department did not provide active efforts to make it possible for  
10 the Indian child to return home, except as otherwise required under ORS 419B.470, the court may  
11 not set a date for a subsequent permanency hearing until the department has provided active efforts  
12 for the number of days that active efforts were not previously provided.

13 (d)(A) If the court determines that tribal customary adoption, as described in ORS 419B.656, is  
14 an appropriate permanent placement for the child, and the Indian child's tribe consents, the court  
15 shall request that the tribe file with the court a tribal customary adoption order or judgment evi-  
16 dencing that the tribal customary adoption has been completed. The tribe must file the tribal cus-  
17 tomary adoption order or judgment no less than 20 days prior to the date set by the court for  
18 hearing.

19 (B) Upon the tribe's request, the court may grant an extension of time to file the tribal cus-  
20 tomary adoption order or judgment, not to exceed 60 days.

21 (C) If the tribe does not file the tribal customary adoption order or judgment within the desig-  
22 nated time period, the court shall order a new permanency hearing to determine the best  
23 permanency plan for the child.

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

29 **(9) If the court orders the child to be returned home or orders the department to provide**  
30 **reasonable efforts to enable the child to be returned home, the department shall identify a**  
31 **department employee who will be responsible for returning the child or ensuring that rea-**  
32 **sonable efforts are made to enable the child to be returned home. The failure of the employee**  
33 **to return the child or to ensure the provision of reasonable efforts to enable the child to**  
34 **return home constitutes kidnapping in the second degree under ORS 163.225.**

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