

# House Bill 4009

Sponsored by Representative SANCHEZ; Representatives GREENLICK, SOLLMAN, STARK (Pre-session filed.)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Heightens standard for taking child into protective custody without court order.

Permits application for protective custody order by affidavit, declaration or sworn oral statement.

Permits submission of affidavit or declaration by electronic transmission.

Permits reinstatement of parental rights under certain circumstances.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to juvenile dependency proceedings; creating new provisions; amending ORS 419B.150,  
3 419B.524 and 419B.875; and declaring an emergency.

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

5 **SECTION 1.** ORS 419B.150 is amended to read:

6 419B.150. (1) A child may be taken into protective custody by a peace officer, counselor, em-  
7 ployee of the Department of Human Services or any other person authorized by the juvenile court  
8 of the county in which the child is found, in the following circumstances:

9 (a) When [*the child's condition or surroundings reasonably appear to be such as to jeopardize the*  
10 *child's welfare*] **there is reasonable cause to believe that the child is likely to experience seri-**  
11 **ous bodily harm in the time that would be required to obtain a protective custody order;**

12 (b) When the juvenile court, by order indorsed on the summons as provided in ORS 419B.839 or  
13 otherwise, has ordered that the child be taken into protective custody; or

14 (c) When it reasonably appears that the child has run away from home.

15 (2)(a) Before issuing an order under subsection (1)(b) of this section, the court shall review an  
16 affidavit [*sworn*] **or declaration based** on information and belief provided by a peace officer, coun-  
17 selor or employee of the department or other person authorized by the juvenile court that sets forth  
18 with particularity [*the facts and circumstances on which the request for protective custody is based,*  
19 *why protective custody is in the best interests of the child and the reasonable efforts or, if the Indian*  
20 *Child Welfare Act applies, active efforts made by the department to eliminate the need for protective*  
21 *custody of the child.*]:

22 **(A) Why protective custody is necessary to prevent the child from suffering physical in-**  
23 **jury or emotional harm, endangering or harming others or not remaining within the reach**  
24 **of the court process prior to adjudication;**

25 **(B) The reasonable efforts or, if the Indian Child Welfare Act applies, active efforts made**  
26 **by the department to eliminate the need for protective custody of the child; and**

27 **(C) Why protective custody is in the best interests of the child.**

28 **(b) An affidavit or declaration described in paragraph (a) of this subsection may be sent**  
29 **to the court by facsimile transmission or any similar electronic transmission that delivers**

**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 **a complete printable image of the affidavit or declaration.**

2 (c) **Instead of the written affidavit or declaration described in paragraph (a) of this sub-**  
 3 **section, the court may take an oral statement under oath. The oral statement shall be re-**  
 4 **corded and a copy of the recording submitted to the court. In such cases, the court shall**  
 5 **certify that the recording of the sworn oral statement is a true recording of the oral state-**  
 6 **ment under oath and shall retain the recording as part of the record of proceedings for the**  
 7 **issuance of an order under subsection (1)(b) of this section. The recording shall constitute**  
 8 **an affidavit for the purposes of this subsection.**

9 [(b)] (d) Except as provided in paragraph [(c)] (e) of this subsection, an order directing that a  
 10 child be taken into protective custody under subsection (1)(b) of this section shall contain written  
 11 findings, including a brief description of:

12 (A) **Why protective custody is necessary to prevent the child from suffering physical in-**  
 13 **jury or emotional harm, endangering or harming others or not remaining within the reach**  
 14 **of the court process prior to adjudication;**

15 (B) The reasonable efforts or, if the Indian Child Welfare Act applies, active efforts to eliminate  
 16 the need for protective custody of the child that the department has made; and

17 (C) Why protective custody is in the best interests of the child.

18 [(c)] (e) The court may issue an order even though no services have been provided if the court  
 19 makes written findings that no existing services could eliminate the need for protective custody of  
 20 the child and that protective custody is in the best interests of the child.

21 (3) When a child is taken into protective custody as a runaway under subsection (1)(c) of this  
 22 section, the peace officer or other person who takes the child into custody:

23 (a)(A) Shall release the child without unnecessary delay to the custody of the child’s parent or  
 24 guardian or to a shelter facility that has agreed to provide care and services to children who have  
 25 run away from home and that has been designated by the juvenile court to provide such care and  
 26 services; or

27 (B) Shall follow the procedures described in ORS 419B.160, 419B.165, 419B.168 and 419B.171;

28 (b) Shall, if possible, determine the preferences of the child and the child’s parent or guardian  
 29 as to whether the best interests of the child are better served by placement in a shelter facility that  
 30 has agreed to provide care and services to children who have run away from home and that has  
 31 been designated by the juvenile court to provide such care and services or by release to the child’s  
 32 parent or guardian; and

33 (c) Notwithstanding ORS 419B.165 and subsection (1) of this section, shall release the child to  
 34 a shelter facility that has agreed to provide care and services to children who have run away from  
 35 home and that has been designated by the juvenile court to provide such care and services if it  
 36 reasonably appears that the child would not willingly remain at home if released to the child’s  
 37 parent or guardian.

38 **SECTION 2. Section 3 of this 2018 Act is added to and made a part of ORS chapter 419B.**

39 **SECTION 3. (1) As used in this section, “former parent” means a person who was previ-**  
 40 **ously the legal parent of a ward and whose parental rights to the ward have been terminated.**

41 **(2)(a) The Department of Human Services, a ward or a former parent may file a motion**  
 42 **to reinstate the parental rights of the former parent if:**

43 **(A) The ward does not have a legal parent;**

44 **(B) No proceeding for the adoption of the ward is pending; and**

45 **(C) For a motion filed by a former parent, 12 months have passed since the termination**

1 order was entered or, in the event of an appeal, 180 days have passed since an appellate  
 2 judgment affirming the termination order was issued, whichever is later.

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

5 (3)(a) If a motion to reinstate parental rights does not state a prima facie case as to the  
 6 facts that must be proved under paragraph (b) of this subsection, the court may deny the  
 7 motion without a hearing.

8 (b) If the court holds a hearing on a motion to reinstate parental rights, the court shall  
 9 grant the motion if the moving party proves by clear and convincing evidence that:

10 (A) The former parent's conduct and conditions that led to the termination of parental  
 11 rights have been ameliorated;

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

13 (C) If the ward is 14 years of age or older, the ward consents to the reinstatement of  
 14 parental rights; and

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

16 (c) In determining whether reinstatement of parental rights is in the ward's best inter-  
 17 ests under paragraph (b) of this subsection, the court shall consider the ward's age, maturity  
 18 and ability to express the ward's preferences.

19 (4) After granting a motion to reinstate parental rights under subsection (3) of this sec-  
 20 tion, the court shall enter an order of reinstatement of parental rights that shall restore all  
 21 parental rights and duties of the former parent as to the ward.

22 (5) In any proceeding under this section:

23 (a) The ward is entitled to have counsel appointed at state expense if the ward is deter-  
 24 mined to be financially eligible under the policies, procedures, standards and guidelines of the  
 25 Public Defense Services Commission.

26 (b) The former parent is entitled to have counsel appointed at state expense if the former  
 27 parent is determined to be financially eligible under the policies, procedures, standards and  
 28 guidelines of the commission.

29 **SECTION 4.** ORS 419B.524 is amended to read:

30 419B.524. **Except as provided in section 3 of this 2018 Act**, unless there is an appeal from the  
 31 order terminating the rights of the parent or parents, the order permanently terminates all rights  
 32 of the parent or parents whose rights are terminated and the parent or parents have no standing  
 33 to appear as such in any legal proceeding concerning the ward.

34 **SECTION 5.** ORS 419B.875 is amended to read:

35 419B.875. (1)(a) Parties to proceedings in the juvenile court under ORS 419B.100 and 419B.500  
 36 **and section 3 of this 2018 Act** are:

37 (A) The child or ward;

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

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

42 (i) Residing with the child or ward;

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

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

45 (D) The state;

1 (E) The juvenile department;

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

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

5 (H) The tribe in cases subject to the Indian Child Welfare Act if the tribe has intervened pur-  
6 suant to the Indian Child Welfare Act.

7 (b) An intervenor who is granted intervention under ORS 419B.116 is a party to a proceeding  
8 under ORS 419B.100. An intervenor under this paragraph is not a party to a proceeding under ORS  
9 419B.500.

10 (c) **A former parent, as defined in section 3 of this 2018 Act, is a party to a proceeding**  
11 **under section 3 of this 2018 Act.**

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

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

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

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

18 (d) The right of appeal; and

19 (e) The right to request a hearing.

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

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

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

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

32 (6) If a foster parent, preadoptive parent or relative is currently providing care for a child or  
33 ward, the Department of Human Services shall give the foster parent, preadoptive parent or relative  
34 notice of a proceeding concerning the child or ward. A foster parent, preadoptive parent or relative  
35 providing care for a child or ward has the right to be heard at the proceeding. Except when allowed  
36 to intervene, the foster parent, preadoptive parent or relative providing care for the child or ward  
37 is not considered a party to the juvenile court proceeding solely because of notice and the right to  
38 be heard at the proceeding.

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

45 (b) If a grandparent of a child or ward is present at a hearing concerning the child or ward, and

1 the court informs the grandparent of the date and time of a future hearing, the department is not  
2 required to give notice of the future hearing to the grandparent.

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

5 (d) The court's orders or judgments entered in proceedings under ORS 419B.185, 419B.310,  
6 419B.325, 419B.449, 419B.476 and 419B.500 must include findings of the court as to whether the  
7 grandparent had notice of the hearing, attended the hearing and had an opportunity to be heard.

8 (e) Notwithstanding the provisions of this subsection, a grandparent is not a party to the juve-  
9 nile court proceeding unless the grandparent has been granted rights of intervention under ORS  
10 419B.116.

11 (f) As used in this subsection, "grandparent" means the legal parent of the child's or ward's le-  
12 gal parent, regardless of whether the parental rights of the child's or ward's legal parent have been  
13 terminated under ORS 419B.500 to 419B.524.

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

16 **SECTION 6. Section 3 of this 2018 Act and the amendments to ORS 419B.875 by section**  
17 **5 of this 2018 Act apply to proceedings to reinstate the parental rights of parents whose**  
18 **rights were terminated before, on or after the effective date of this 2018 Act.**

19 **SECTION 7. This 2018 Act being necessary for the immediate preservation of the public**  
20 **peace, health and safety, an emergency is declared to exist, and this 2018 Act takes effect**  
21 **on its passage.**

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