Chapter 419B — Juvenile Code: Dependency

2001 EDITION

REPORTING OF CHILD ABUSE

JUVENILE COURT

(Generally)

(Protective Custody)

419B.005 Definitions. As used in ORS 418.747, 418.748, 418.749 and 419B.005 to 419B.050, unless the context requires otherwise:

(1)(a) "Abuse" means:

(A) Any assault, as defined in ORS chapter 163, of a child and any physical injury to a child which has been caused by other than accidental means, including any injury which appears to be at variance with the explanation given of the injury.

(B) Any mental injury to a child, which shall include only observable and substantial impairment of the child's mental or psychological ability to function caused by cruelty to the child, with due regard to the culture of the child.

(C) Rape of a child, which includes but is not limited to rape, sodomy, unlawful sexual penetration and incest, as those acts are defined in ORS chapter 163.

(D) Sexual abuse, as defined in ORS chapter 163.

(E) Sexual exploitation, including but not limited to:

(i) Contributing to the sexual delinquency of a minor, as defined in ORS chapter 163, and any other conduct which allows, employs, authorizes, permits, induces or encourages a child to engage in the performing for people to observe or the photographing, filming, tape recording or other exhibition which, in whole or in part, depicts sexual conduct or contact, as defined in ORS 167.002 or described in ORS 163.665 and 163.670, sexual abuse involving a child or rape of a child, but not including any conduct which is part of any investigation conducted pursuant to ORS 419B.020 or which is designed to serve educational or other legitimate purposes; and

(ii) Allowing, permitting, encouraging or hiring a child to engage in prostitution, as defined in ORS chapter 167.

(F) Negligent treatment or maltreatment of a child, including but not limited to the failure to provide adequate food, clothing, shelter or medical care that is likely to endanger the health or welfare of the child.

(G) Threatened harm to a child, which means subjecting a child to a substantial risk of harm to the child's health or welfare.

(H) Buying or selling a person under 18 years of age as described in ORS 163.537.

(b) "Abuse" does not include reasonable discipline unless the discipline results in one of the conditions described in paragraph (a) of this subsection.

(2) "Child" means an unmarried person who is under 18 years of age.

(3) "Public or private official" means:

(a) Physician, including any intern or resident.

(b) Dentist.

(c) School employee.

(d) Licensed practical nurse or registered nurse.

(e) Employee of the Department of Human Services, State Commission on Children and Families, Child Care Division of the Employment Department, the Oregon Youth Authority, a county health department, a community mental health and developmental disabilities program, a county juvenile department, a licensed child-caring agency or an alcohol and drug treatment program.

(f) Peace officer.

(g) Psychologist.

(h) Member of the clergy.
(i) Licensed clinical social worker.
(j) Optometrist.
(k) Chiropractor.
(L) Certified provider of foster care, or an employee thereof.
(m) Attorney.
(n) Naturopathic physician.
(o) Licensed professional counselor.
(p) Licensed marriage and family therapist.
(q) Firefighter or emergency medical technician.
(r) A court appointed special advocate, as defined in ORS 419A.004.
(s) A child care provider registered or certified under ORS 657A.030 and 657A.250 to 657A.450.
(4) "Law enforcement agency" means:
(a) Any city or municipal police department.
(b) Any county sheriff's office.
(c) The Oregon State Police.
(d) A county juvenile department. [1993 c.546 §12; 1993 c.622 §1a; 1995 c.278 §50; 1995 c.766 §1; 1997 c.127 §1; 1997 c.561 §3; 1997 c.703 §3; 1997 c.873 §30; 1999 c.743 §22; 1999 c.954 §4; 2001 c.104 §148]

419B.007 Policy. The Legislative Assembly finds that for the purpose of facilitating the use of protective social services to prevent further abuse, safeguard and enhance the welfare of abused children, and preserve family life when consistent with the protection of the child by stabilizing the family and improving parental capacity, it is necessary and in the public interest to require mandatory reports and investigations of abuse of children and to encourage voluntary reports. [1993 c.546 §13]

419B.010 Duty of officials to report child abuse; exceptions; penalty. (1) Any public or private official having reasonable cause to believe that any child with whom the official comes in contact has suffered abuse or that any person with whom the official comes in contact has abused a child shall immediately report or cause a report to be made in the manner required in ORS 419B.015. Nothing contained in ORS 40.225 to 40.295 shall affect the duty to report imposed by this section, except that a psychiatrist, psychologist, member of the clergy or attorney shall not be required to report such information communicated by a person if the communication is privileged under ORS 40.225 to 40.295. An attorney is not required to make a report under this section by reason of information communicated to the attorney in the course of representing a client, if disclosure of the information would be detrimental to the client.
(2) Notwithstanding subsection (1) of this section, a report need not be made under this section if the public or private official acquires information relating to abuse by reason of a report made under this section, or by reason of a proceeding arising out of a report made under this section, and the public or private official reasonably believes that the information is already known by a law enforcement agency or the Department of Human Services.
(3) A person who violates subsection (1) of this section commits a Class A violation. Prosecution under this subsection shall be commenced at any time within 18 months after commission of the offense. [1993 c.546 §14; 1999 c.1051 §180; 2001 c.104 §149; 2001 c.904 §15]

419B.015 Report form and content; notice to law enforcement agencies and local office of Department of Human Services. A person making a report of child abuse, whether voluntarily or pursuant to ORS 419B.010, shall make an oral report by telephone or otherwise to the local office of the Department of Human Services, to the designee of the department or to a law enforcement agency within the county where the person making the report is located at the time of the contact. Such reports shall contain, if known, the names and addresses of the child and the parents of the child or other persons responsible for care of the child, the child's age, the nature and extent of the abuse, including any evidence of previous abuse, the explanation given for the abuse and any other information which the person making the report believes might be helpful in establishing the cause of the abuse and the identity of the perpetrator. When a report is received by the department, the department shall immediately notify a law enforcement agency within the county where the report was made. When a report is received by a designee of the department, the designee shall notify, according to the contract, either the department or a law enforcement agency within the county where the report was made. When a report is received by a law enforcement agency, the agency shall immediately notify the local office of the department within the county where the report was made. [1993 c.546 §15; 1993 c.734 §1a]

419B.020 Duty of department or law enforcement agency receiving report; investigation; notice to parents; physical examination; child's consent. (1) Upon receipt of an oral report of child abuse, the Department of Human Services or the law enforcement agency shall immediately:
(a) Cause an investigation to be made to determine the nature and cause of the abuse of the child; and
(b) Notify the Child Care Division if the alleged child abuse occurred in a child care facility as defined in ORS 657A.250.
(2) If the law enforcement agency conducting the investigation finds reasonable cause to believe that abuse has occurred, the law enforcement agency shall notify by oral report followed by written report the local office of the department. The

department shall provide protective social services of its own or of other available social agencies if necessary to prevent further abuses to the child or to safeguard the child's welfare.

(3) If a child is taken into protective custody by the department, the department shall promptly make reasonable efforts to ascertain the name and address of the child's parents or guardian.

(4)(a) If a child is taken into protective custody by the department or a law enforcement official, the department or law enforcement official shall, if possible, make reasonable efforts to advise the parents or guardian immediately, regardless of the time of day, that the child has been taken into custody, the reasons the child has been taken into custody and general information about the child's placement, and the telephone number of the local office of the department and any after-hours telephone numbers.

(b) Notice may be given by any means reasonably certain of notifying the parents or guardian, including but not limited to written, telephonic or in-person oral notification. If the initial notification is not in writing, the information required by paragraph (a) of this subsection also shall be provided to the parents or guardian in writing as soon as possible.

(c) The department also shall make a reasonable effort to notify the noncustodial parent of the information required by paragraph (a) of this subsection in a timely manner.

(d) If a child is taken into custody while under the care and supervision of a person or organization other than the parent, the department, if possible, shall immediately notify the person or organization that the child has been taken into protective custody.

(5) If a law enforcement officer or the department, when taking a child into protective custody, has reasonable cause to believe that the child has been affected by sexual abuse and rape of a child as defined in ORS 419B.005 (1)(a)(C) and that physical evidence of the abuse exists and is likely to disappear, the court may authorize a physical examination for the purposes of preserving evidence if the court finds that it is in the best interest of the child to have such an examination. Nothing in this section affects the authority of the department to consent to physical examinations of the child at other times.

(6) A minor child of 12 years of age or older may refuse to consent to the examination described in subsection (5) of this section. The examination shall be conducted by or under the supervision of a physician licensed under ORS chapter 677 or a nurse practitioner licensed under ORS chapter 678 and, whenever practicable, trained in conducting such examinations. [1993 c.546 §16; 1993 c.622 §7a; 1997 c.130 §13; 1997 c.703 §1; 1997 c.873 §33]

419B.025 Immunity of person making report in good faith. Anyone participating in good faith in the making of a report of child abuse and who has reasonable grounds for the making thereof shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed with respect to the making or content of such report. Any such participant shall have the same immunity with respect to participating in any judicial proceeding resulting from such report. [1993 c.546 §17]

419B.028 Photographing child during investigation; photographs as records. (1) In carrying out its duties under ORS 419B.020, any law enforcement agency or the Department of Human Services may photograph or cause to have photographed any child subject of the investigation for purposes of preserving evidence of the child's condition at the time of the investigation.

(2) For purposes of ORS 419B.035, photographs taken under authority of subsection (1) of this section shall be considered records. [1993 c.546 §18]

419B.030 Central registry of reports. (1) A central state registry shall be established and maintained by the Department of Human Services. The local offices of the department shall report to the state registry in writing when an investigation has shown reasonable cause to believe that a child's condition was the result of abuse even if the cause remains unknown. Each registry shall contain current information from reports catalogued both as to the name of the child and the name of the family.

(2) When the department provides specific case information from the central state registry, the department shall include a notice that the information does not necessarily reflect any subsequent proceedings that are not within the jurisdiction of the department. [1993 c.546 §19]

419B.035 Confidentiality of records; when available to others. (1) Notwithstanding the provisions of ORS 192.001 to 192.170, 192.210 to 192.505 and 192.610 to 192.990 relating to confidentiality and accessibility for public inspection of public records and public documents, reports and records compiled under the provisions of ORS 419B.010 to 419B.050 are confidential and are not accessible for public inspection. However, the Department of Human Services shall make records available to:

(a) Any law enforcement agency or a child abuse registry in any other state for the purpose of subsequent investigation of child abuse;

(b) Any physician, at the request of the physician, regarding any child brought to the physician or coming before the physician for examination, care or treatment;

(c) Attorneys of record for the child or child's parent or guardian in any juvenile court proceeding;

(d) Citizen review boards established by the Judicial Department for the purpose of periodically reviewing the status of children, youths and youth offenders under the jurisdiction of the juvenile court under ORS 419B.100 and 419C.005. Citizen review boards may make such records available to participants in case reviews;

(e) A court appointed special advocate in any juvenile court proceeding in which it is alleged that a child has been subjected to child abuse or neglect; and

(f) The Child Care Division for certifying, registering or otherwise regulating child care facilities.

(2) The Department of Human Services may make reports and records available to any person, administrative hearings officer, court, agency, organization or other entity when the department determines that such disclosure is necessary to administer its child welfare services and is in the best interests of the affected child, or that such disclosure is necessary to investigate, prevent or treat child abuse and neglect, to protect children from abuse and neglect or for research when the assistant director gives prior written approval. The department shall adopt rules setting forth the procedures by which it will make the disclosures authorized under this subsection and subsection (1) of this section. The names, addresses or other identifying information about the person who made the report shall not be disclosed pursuant to this subsection and subsection (1) of this section.

(3) Any record made available to a law enforcement agency in this state or to a physician in this state, as authorized by subsections (1) and (2) of this section, shall be kept confidential by the agency or physician. Any record or report disclosed by the department to other persons or entities pursuant to subsections (1) and (2) of this section shall be kept confidential.

(4) No officer or employee of the department or any person or entity to whom disclosure is made pursuant to subsections (1) and (2) of this section shall release any information not authorized by subsections (1) and (2) of this section.

(5) A person who violates subsection (3) or (4) of this section commits a Class A violation. [1993 c.546 §§20,20a; 1995 c.278 §51; 1997 c.328 §8; 1999 c.1051 §181]

419B.040 Certain privileges not grounds for excluding evidence in court proceedings on child abuse. (1) In the case of abuse of a child, the privileges created in ORS 40.230 to 40.255, including the psychotherapist-patient privilege, the physician-patient privilege, the privileges extended to nurses, to staff members of schools and to registered clinical social workers and the husband-wife privilege, shall not be a ground for excluding evidence regarding a child's abuse, or the cause thereof, in any judicial proceeding resulting from a report made pursuant to ORS 419B.010 to 419B.050.

(2) In any judicial proceedings resulting from a report made pursuant to ORS 419B.010 to 419B.050, either spouse shall be a competent and compellable witness against the other. [1993 c.546 §21]

419B.045 Investigation conducted on public school premises; notification; role of school personnel. If an investigation of a report of child abuse is conducted on public school premises, the school administrator shall first be notified that the investigation is to take place, unless the school administrator is a subject of the investigation. The school administrator or a school staff member designated by the administrator may, at the investigator's discretion, be present to facilitate the investigation. The Department of Human Services or the law enforcement agency making the investigation shall be advised of the child's handicapping conditions, if any, prior to any interview with the affected child. A school administrator or staff member is not authorized to reveal anything that transpires during an investigation in which the administrator or staff member participates nor shall the information become part of the child's school records. The school administrator or staff member may testify at any subsequent trial resulting from the investigation and may be interviewed by the respective litigants prior to any such trial. [1993 c.546 §22]

419B.050 Authority of health care provider to disclose information; immunity from liability. (1) Upon notice by either a law enforcement agency or the Department of Human Services that a child abuse investigation is being conducted under ORS 419B.020, a health care provider may permit the law enforcement agency or the department to inspect and copy medical records, including, but not limited to, prenatal and birth records, of the child involved in the investigation without the consent of the child, or the parent or guardian of the child. A health care provider who in good faith disclosed medical records under this section is not civilly or criminally liable for the disclosure.

(2)(a) As used in this section, "health care provider" means a person licensed by one of the following agencies, or any employee of a person licensed by one of the following agencies:

(A) State Board of Examiners for Speech-Language Pathology and Audiology;
(B) State Board of Chiropractic Examiners;
(C) State Board of Clinical Social Workers;
(D) Oregon Board of Licensed Professional Counselors and Therapists;
(E) Oregon Board of Dentistry;
(F) State Board of Denture Technology;
(G) Board of Examiners of Licensed Dietitians;
(H) State Board of Massage Therapists;
(I) State Mortuary and Cemetery Board;
(J) Board of Naturopathic Examiners;
(K) Oregon State Board of Nursing;
(L) Board of Examiners of Nursing Home Administrators;
(M) Oregon Board of Optometry;
(N) State Board of Pharmacy;
(O) Board of Medical Examiners;
(P) Occupational Therapy Licensing Board;
(Q) Physical Therapist Licensing Board;

(R) State Board of Psychologist Examiners; or
(S) Board of Radiologic Technology.
(b) For the purposes of this section, "health care provider" includes a health care facility as defined in ORS 442.015 and emergency medical technicians certified by the Department of Human Services. [1997 c.873 §27; 1999 c.537 §3; 2001 c.104 §150]

JUVENILE COURT

(Generally)

419B.090 Juvenile court; jurisdiction; policy. (1) The juvenile court is a court of record and exercises jurisdiction as a court of general and equitable jurisdiction and not as a court of limited or inferior jurisdiction. The juvenile court is called "The _____ Court of _____ County, Juvenile Department."
(2)(a) It is the policy of the State of Oregon to recognize that children are individuals who have legal rights. Among those rights are the right to:
(A) Permanency with a safe family;
(B) Freedom from physical, sexual or emotional abuse or exploitation; and
(C) Freedom from substantial neglect of basic needs.
(b) Parents and guardians have a duty to afford their children the rights listed in paragraph (a) of this subsection. Parents and guardians have a duty to remove any impediment to their ability to perform parental duties that afford these rights to their children. When a parent or guardian fails to fulfill these duties, the juvenile court may determine that it is in the best interests of the child to remove the child from the parent or guardian either temporarily or permanently.
(c) The provisions of this chapter shall be liberally construed to the end that a child coming within the jurisdiction of the court may receive such care, guidance, treatment and control as will lead to the child's welfare and the protection of the community.
(3) It is the policy of the State of Oregon to guard the liberty interest of parents protected by the Fourteenth Amendment to the United States Constitution and to protect the rights and interests of children, as provided in subsection (2) of this section. The provisions of this chapter shall be construed and applied in compliance with federal constitutional limitations on state action established by the United States Supreme Court with respect to interference with the rights of parents to direct the upbringing of their children, including, but not limited to:
(a) Guide the secular and religious education of their children;
(b) Make health care decisions for their children; and
(c) Discipline their children.
(4) It is the policy of the State of Oregon, in those cases not described as extreme conduct under ORS 419B.502, to offer appropriate reunification services to parents and guardians to allow them the opportunity to adjust their circumstances, conduct or conditions to make it possible for the child to safely return home within a reasonable time. Although there is a strong preference that children live in their own homes with their own families, the state recognizes that it is not always possible or in the best interests of the child or the public for children who have been abused or neglected to be reunited with their parents or guardians. In those cases, the State of Oregon has the obligation to create or provide an alternative, safe and permanent home for the child.
(5) The State of Oregon recognizes the value of the Indian Child Welfare Act, 25 U.S.C. 1901 to 1923, and hereby incorporates the policies of that Act. [1997 c.873 §2a; 1999 c.859 §22; 2001 c.686 §21]

419B.100 Jurisdiction; bases; Indian children. (1) Except as otherwise provided in subsection (6) of this section and ORS 107.726, the juvenile court has exclusive original jurisdiction in any case involving a person who is under 18 years of age and:
(a) Who is beyond the control of the person's parents, guardian or other person having custody of the person;
(b) Whose behavior is such as to endanger the welfare of the person or of others;
(c) Whose condition or circumstances are such as to endanger the welfare of the person or of others;
(d) Who is dependent for care and support on a public or private child-caring agency that needs the services of the court in planning for the best interest of the person;
(e) Whose parents or any other person or persons having custody of the person have:
(A) Abandoned the person;
(B) Failed to provide the person with the care or education required by law;
(C) Subjected the person to cruelty, depravity or unexplained physical injury; or
(D) Failed to provide the person with the care, guidance and protection necessary for the physical, mental or emotional well-being of the person;
(f) Who has run away from the home of the person; or
(g) Who has filed a petition for emancipation pursuant to ORS 419B.550 to 419B.558.
(2) The court shall have jurisdiction under subsection (1) of this section even though the child is receiving adequate care from the person having physical custody of the child.

(3) The practice of a parent who chooses for the parent or the child of the parent treatment by prayer or spiritual means alone shall not be construed as a failure to provide physical care within the meaning of this chapter, but shall not prevent a court of competent jurisdiction from exercising that jurisdiction under subsection (1)(c) of this section.

(4) The provisions of subsection (1) of this section do not prevent a court of competent jurisdiction from entertaining a civil action or suit involving a child.

(5) The court shall have no further jurisdiction as provided in subsection (1) of this section after a minor has been emancipated pursuant to ORS 419B.550 to 419B.558.

(6)(a) An Indian tribe has exclusive jurisdiction over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of the tribe, except where the jurisdiction is otherwise vested in the state by existing federal law.

(b) Upon the petition of either parent, the Indian custodian or the Indian child's tribe, the juvenile court, absent good cause to the contrary and absent objection by either parent, shall transfer a proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, to the jurisdiction of the tribe.

(c) The juvenile court shall give full faith and credit to the public acts, records and judicial proceedings of an Indian tribe applicable to an Indian child custody proceeding to the same extent that the juvenile court gives full faith and credit to the public acts, records and judicial proceedings of any other entity. [1993 c.33 §53; 1993 c.546 §10; 1993 c.643 §5]

419B.110 Emergency medical care; court may authorize. Whether or not a petition has been filed, if a child requires emergency medical care, including surgery, and no parent is available or willing to consent to the care, a judge of the juvenile court may authorize the care. The judge may thereafter direct the filing of a new petition. [1993 c.546 §24]

419B.115 [1993 c.546 §25; 1997 c.479 §2; 1997 c.873 §21; 1999 c.859 §7; 2001 c.214 §1; 2001 c.622 §§39,39a; renumbered 419B.875 in 2001]

419B.116 Intervention; caregiver relationship. (1)(a) As used in this section, "caregiver relationship" means a relationship between a person and a child:

(A) That has existed:

(i) During the year preceding the initiation of the dependency proceeding;

(ii) For at least six months during the dependency proceeding; or

(iii) For half of the child's life if the child is less than six months of age;

(B) In which the person had physical custody of the child or resided in the same household as the child;

(C) In which the person provided the child on a daily basis with the love, nurturing and other necessities required to meet the child's psychological and physical needs; and

(D) On which the child depended to meet the child's needs.

(b) "Caregiver relationship" does not include a relationship between a child and a person who is the nonrelated foster parent of the child unless the relationship continued for a period exceeding 12 months.

(2) A person asserting that the person has a caregiver relationship with a child may file a motion for intervention in a juvenile dependency proceeding.

(3) Filing a motion under subsection (2) of this section is the sole means by which a person may intervene in a juvenile dependency proceeding. An order granting intervention under this section is exclusively for juvenile dependency proceedings and does not confer standing or rights of intervention in any other action. Intervention is not allowed in proceedings under ORS 419B.500.

(4) A motion for intervention must state:

(a) The person's relationship to the child and the person's involvement in the child's life;

(b) The reason that intervention is sought;

(c) How the person's intervention is in the best interests of the child and aids the court in carrying out the purposes of this chapter;

(d) Why the existing parties cannot adequately present the case; and

(e) What specific relief is being sought.

(5) A person moving to intervene in a case must prove by a preponderance of the evidence that:

(a) A caregiver relationship exists between the person and the child;

(b) The intervention is in the best interests of the child;

(c) Intervention aids the court in carrying out the purposes of this chapter;

(d) The reason for intervention and the specific relief sought are consistent with the best interests of the child; and

(e) The existing parties cannot adequately protect the best interests of the child without the intervention.

(6) If the court finds that the motion for intervention is well founded, the court may grant the intervention or may grant rights of limited participation.

(7)(a) A person granted intervention is a party to the case and, except as provided in paragraphs (b) and (c) of this subsection, may be granted such relief as the court determines to be appropriate and in the best interests of the child.

(b) At any time, a person granted intervention or a person with rights of limited participation may move to be considered a

temporary placement or visitation resource for the child.

(c) At any time after a court has determined at a permanency hearing that the permanent plan for the child should be something other than to return home, a person granted intervention may move to be considered the permanent placement resource for the child.

(8) The court may modify or set aside any order granting intervention or limited participation as provided in ORS 419B.420, 419B.423 and 419B.426. [2001 c.624 §3]

Note: 419B.420, 419B.423 and 419B.426 were repealed by section 57, chapter 622, Oregon Laws 2001. The text of 419B.116 was not amended by enactment of the Legislative Assembly to reflect the repeal. Editorial adjustment of 419B.116 for the repeal of 419B.420, 419B.423 and 419B.426 has not been made.

419B.117 Notice to parents or guardian of child; when given; contents. (1) At the first appearance by the parents or guardian of a child before the court, the court shall inform the parents or guardian verbally and provide a standard notice describing:

(a) The obligation of the parents or guardian to pay for compensation and reasonable expenses for counsel for the child, support of the child while the child is in the custody of a state-financed or state-supported residence and any other obligations to pay money that may arise as a result of the child being within the jurisdiction of the court;

(b) The assignment of support rights under ORS 419B.406;

(c) The right of the parents or guardian to appeal a decision on jurisdiction or disposition made by the court; and

(d) The time for filing an appeal of a decision by the court.

(2) The court shall prepare and provide the standard notice required under subsection (1) of this section.

(3) The court shall place a notation in the record of the case of the date that the parents or guardian were provided information under this section. [1997 c.748 §2]

419B.118 Venue. (1) Subject to the provisions of subsections (2), (3) and (4) of this section, a juvenile court proceeding shall commence in the county of wardship if, at the commencement of the proceeding, wardship exists as a result of proceedings under this chapter, or, in the absence of such wardship, in the county where the child resides.

(2) If the proceeding is based on allegations of jurisdiction under ORS 419B.100 (1)(a), (b) or (c), the proceeding may also commence in the county in which the alleged act or behavior took place.

(3) If the proceeding is based on allegations of jurisdiction under ORS 419B.100 (1)(b), (c), (d), (e) or (f), the proceedings may also commence in the county where the child is present when the proceeding begins.

(4) A termination of parent-child relationship proceeding may be commenced in the county where the child has been held previously to be within the jurisdiction of the court or where the child resides or is found unless the child is an Indian child subject to the Indian Child Welfare Act and the tribal court has assumed jurisdiction. [1993 c.33 §54; 1993 c.546 §26]

419B.121 Return of runaway children to another state. Notwithstanding ORS 419C.145, the court may order the detention of a child who resides in another state if the court finds probable cause to believe that the child has run away from home or from a placement. If a child is ordered detained under this section, the court shall make such orders as are necessary to cause the child to be immediately returned to the child's state of residence. [1993 c.33 §55]

419B.124 Transfer to juvenile court from another court. If during the pendency of a proceeding in any court other than a juvenile court it is ascertained that the age of the person who is the subject of the proceeding is such that the matter is within the exclusive jurisdiction of the juvenile court, it is the duty of the court in which the proceeding is pending forthwith to transfer the proceeding, together with all the papers, documents and testimony connected therewith, to the juvenile court of the county in which the proceeding is pending. [1993 c.33 §56]

419B.127 Transfer to court of county of child's residence. If a proceeding is initiated in a court of a county other than the county in which the child resides, that court, on its own motion or on the motion of a party made at any time prior to disposition, shall transfer the proceeding to the court of the county of the child's residence for such further proceeding as the receiving court finds proper. A like transfer may be made if the residence of the child changes during the proceeding, or if the child has been adjudicated within the jurisdiction of the court where the proceeding is initiated on grounds specified in ORS 419B.100 (1)(b) or (c) and other proceedings involving the child are pending in the county of the child's residence. Certified copies of the court records pertaining to the immediate proceeding shall accompany the case on transfer. [1993 c.33 §57]

419B.130 Delegation of jurisdiction by county of residence. Where a juvenile court proceeding is pending in a county other than the county in which the child resides and the case is transferable under ORS 419B.124 or 419B.127, the juvenile court of the county in which the child resides may authorize the court in which the case is pending to proceed with the case in either of the following ways where it will facilitate disposition of the case without adverse effect on the interests of the child:

(1) To hear, determine and dispose of the case in its entirety; or

(2) Prior to transferring the case, to conduct a hearing into the facts alleged to bring the child within the jurisdiction of the juvenile court, to determine the facts and to certify its findings to the juvenile court of the county in which the child resides.

[1993 c.33 §58]

419B.132 Delegation of jurisdiction among county juvenile courts. (1) Where a proceeding is pending in the juvenile court of any county, the juvenile court of that county may authorize the juvenile court of any other county to do one or both of the following, where it will facilitate the disposition of the case without adverse effect on the interests of the child:

(a) To conduct a hearing into the facts alleged to bring the child within the jurisdiction of the juvenile court, to determine the facts and to certify its findings to the court in which the case is pending.

(b) To assume jurisdiction over the case and administer protection supervision of the child, where the court in which the proceeding is pending:

(A) Finds that the child has moved to the other county or orders as part of its disposition of the proceeding that legal custody of the child be given to a person residing in the other county; and

(B) Is advised that the court of the other county will accept jurisdiction of the case. The cost of administering probation or protective supervision of the child shall be paid by the county accepting jurisdiction, unless the transferring and receiving counties otherwise agree. The cost of transporting the child shall be paid by the county transferring jurisdiction, unless the transferring and receiving counties otherwise agree.

(2) Where the juvenile court of one county is authorized by the juvenile court of another county to conduct a hearing into facts as provided in this section or ORS 419B.130, the facts so found and certified may be taken as established by the court of the county authorizing the hearing and, if adopted by written order of the latter court, form a part of its record in the case. [1993 c.33 §59]

419B.135 Transfer of case; transportation of child. If the child who is the subject of the proceeding is, at the time of a transfer or temporary transfer provided for in ORS 419B.127, 419B.130 and 419B.132, in detention or shelter care or for other reason needs transportation to the other county, the county in which the child resides shall make such order or provision for the transportation and safekeeping of the child as is appropriate in the circumstances, including an order directing any peace officer of the county in which the child resides to transfer the child in the manner directed. [1993 c.33 §60]

(Protective Custody)

419B.150 When protective custody authorized; disposition of runaway child taken into protective custody. (1) A child may be taken into protective custody by a peace officer, counselor, employee of the Department of Human Services or any other person authorized by the juvenile court of the county in which the child is found, in the following circumstances:

(a) When the child's condition or surroundings reasonably appear to be such as to jeopardize the child's welfare;

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

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

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

(b) Except as provided in paragraph (c) of this subsection, an order directing that a child be taken into protective custody under subsection (1) of this section shall contain written findings, including a brief description of the reasonable efforts or, if the Indian Child Welfare Act applies, active efforts to eliminate the need for protective custody of the child that the department has made and why protective custody is in the best interests of the child.

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

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

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

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

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

(c) Notwithstanding ORS 419B.165 and subsection (1) of this section, shall release the child to a shelter facility that has agreed to provide care and services to children who have run away from home and that has been designated by the juvenile court to provide such care and services if it reasonably appears that the child would not willingly remain at home if released to the child's parent or guardian. [1993 c.33 §61; 1993 c.546 §27; 1997 c.873 §10; 1999 c.691 §1; amendments by 1999 c.691 §2

repealed by 2001 c.484 §1; 2001 c.622 §§46,47; 2001 c.686 §§1,2]

419B.155 Protective custody not arrest. (1) Protective custody shall not be deemed an arrest so far as the child is concerned.

(2) A peace officer taking a child into protective custody has all the privileges and immunities of a peace officer making an arrest. [1993 c.33 §62; 1993 c.546 §28]

419B.157 Jurisdiction attaches at time of custody. Except as otherwise provided in ORS 419B.168, 419C.094 and 419C.103, the jurisdiction of the juvenile court of the county in which a child is taken into protective custody shall attach from the time the child is taken into custody. [1993 c.33 §63; 1993 c.546 §29]

419B.160 Place of detention; record; parental notice required. (1) No child shall be detained at any time in a police station, jail, prison or other place where adults are detained, except that a child may be detained in a police station for up to five hours when necessary to obtain the child's name, age, residence and other identifying information.

(2) All peace officers shall keep a record of children taken into protective custody and shall promptly notify the juvenile court or counselor of all children taken into protective custody.

(3) As soon as practicable after the child is taken into custody, the person taking the child into custody shall notify the child's parent, guardian or other person responsible for the child. The notice shall inform the parent, guardian or other person of the action taken and the time and place of the hearing. [1993 c.33 §64; 1993 c.320 §1; 1993 c.546 §30]

419B.165 Release of child taken into custody. The person taking the child into custody shall release the child to the custody of the child's parent or other responsible person in this state, except in the following cases:

(1) Where the court has issued an order directing that the child be taken into protective custody.

(2) Where the person taking the child into custody has probable cause to believe that the welfare of the child or others may be immediately endangered by the release of the child. [1993 c.33 §65; 1993 c.546 §31]

419B.168 Procedure when child is not released. (1) If a child taken into protective custody is not released as provided in ORS 419B.165 and the juvenile court for the county has not established the alternative procedure authorized in subsection (4) of this section, the person taking the child into custody shall, without unnecessary delay, do one of the following:

(a) Take the child before the court or a person appointed by the court to effect disposition under ORS 419B.165.

(b) Take the child to a place of detention or shelter care or a public or private agency designated by the court and as soon as possible thereafter notify the court that the child has been taken into custody.

(2) Where a child residing in some other county is taken into protective custody the child may be:

(a) Released to the child's parent or other responsible person in this state as provided in ORS 419B.165.

(b) Delivered to a peace officer or juvenile counselor in the county in which the child resides, if such delivery can be made without unnecessary delay. In such event, the person to whom the child is delivered shall assume protective custody of the child and shall proceed as provided in this chapter.

(3) Where a child is released or delivered as provided in subsection (2) of this section, the jurisdiction of the juvenile court of the county in which the child resides shall attach from the time the child is taken into custody.

(4) The juvenile court may establish, as an alternative to the provisions of subsection (1) of this section, that if a child taken into protective custody is not released as provided in ORS 419B.165, procedures shall be followed that comply with the following:

(a) The person taking the child into custody may communicate, by telecommunications or otherwise, with the person appointed by the court to effect disposition under ORS 419B.175.

(b) After interviewing the person taking the child into custody and obtaining such other information as is considered necessary, the person appointed by the court under ORS 419B.175 to effect disposition may exercise the authority granted under that section and shall, in such case, direct that the person taking the child into custody release the child or deliver the child in accordance with such direction.

(c) The person taking the child into custody shall comply with the direction of the person appointed by the court to effect disposition. [1993 c.33 §66; 1993 c.546 §32]

419B.171 Report required when child is taken into custody. Except where the child is taken into custody pursuant to an order of the court, the person taking the child into custody shall promptly file with the court or a counselor a brief written report stating all of the following:

(1) The child's name, age and address.

(2) The name and address of the person having legal or physical custody of the child.

(3) Efforts to notify the person having legal or physical custody of the child and the results of those efforts.

(4) Reasons for and circumstances under which the child was taken into protective custody.

(5) If the child is not taken to court, the placement of the child.

(6) If the child was not released, the reason why the child was not released.

(7) If the child is not taken to court, why the type of placement was chosen.

(8) Efforts to determine whether the child or the parents have any Indian heritage and the results of those efforts. If the child is an Indian child, the placement of the child shall be according to the preferences and criteria set out in the Indian Child Welfare Act. [1993 c.33 §67; 1993 c.546 §33]

419B.175 Initial disposition of child taken into custody. (1) This subsection establishes the authority and procedures that apply to a person designated by a court to effect disposition of a child taken into protective custody or brought before the court under ORS 419B.160, 419B.165, 419B.168 or 419B.171. The person shall, when the person has taken custody of a child or has authority to effect disposition of a child taken into custody:

(a) Release the child to the custody of a parent, guardian or other responsible person;

(b) Release the child on the child's own recognizance when appropriate;

(c) Subject to ORS 419B.121 or 419B.180, place the child in shelter care or detention. The child shall be placed in shelter care rather than detention, unless the person has probable cause to believe that the court will be able to detain the child under ORS 419B.121; or

(d) Pursuant to order of the court made after the filing of a petition, hold, retain or place the child in shelter care subject to further order.

(2) If the child is released under subsection (1)(a) of this section, the person releasing the child shall inform the juvenile court. [1993 c.33 §69; 1993 c.546 §35]

(Shelter Hearings)

419B.180 Shelter and detention facilities. The juvenile court of each county shall designate the place or places in which children are to be placed in detention or shelter care when taken into protective custody. If the county is adjacent to another state, the court may designate a place or places in the adjoining state where children, pursuant to an agreement between such place or places and the juvenile department of the county, may be placed in detention when taken into custody. A county juvenile department shall not enter into an agreement with an out-of-state place for detention of juveniles, as provided in this section, unless the place or places conform to standards of this state for such a place and unless the agreement includes a provision that the place be subject to inspection by officers of this state under ORS 419A.061. [1993 c.33 §68; 1993 c.546 §34]

419B.183 Speedy hearing required. No child shall be held in detention or shelter care more than 24 hours, excluding Saturdays, Sundays and judicial holidays, except on order of the court made pursuant to a hearing. [1993 c.33 §70]

419B.185 Evidentiary hearing. (1) When the child is taken, or is about to be taken, into protective custody pursuant to ORS 419B.160, 419B.165, 419B.168 and 419B.171 and placed in detention or shelter care, a parent or child shall be given the opportunity to present evidence to the court at the hearings specified in ORS 419B.183, and at any subsequent review hearing, that the child can be returned home without further danger of suffering physical injury or emotional harm, endangering or harming others, or not remaining within the reach of the court process prior to adjudication. At the hearing:

(a) The court shall make written findings as to whether the Department of Human Services has made reasonable efforts or, if the Indian Child Welfare Act applies, active efforts to prevent or eliminate the need for removal of the child from the home and to make it possible for the child to safely return home. When the court finds that no services were provided but that reasonable services would not have eliminated the need for protective custody, the court shall consider the department to have made reasonable efforts or, if the Indian Child Welfare Act applies, active efforts to prevent or eliminate the need for protective custody. The court shall include in the written findings a brief description of what preventive and reunification efforts were made by the department.

(b) In determining whether a child shall be removed or continued out of home, the court shall consider whether the provision of reasonable services can prevent or eliminate the need to separate the family.

(c) In determining whether the department has made reasonable efforts or, if the Indian Child Welfare Act applies, active efforts to prevent or eliminate the need for removal of the child from the home and to make it possible for the child to safely return home, the court shall consider the child's health and safety the paramount concerns.

(d) The court shall make a written finding in every order of removal that describes why it is in the best interests of the child that the child be removed from the home or continued in care.

(e) The court shall determine whether the child is an Indian child as defined in ORS 419A.004 or in the applicable State-Tribal Indian Child Welfare Agreement.

(2) To aid the court in making the written findings required by subsection (1)(a) and (d) of this section, the department shall present written documentation to the court outlining the reasonable or active efforts made to prevent taking the child into protective custody and to provide services to make it possible for the child to safely return home and why protective custody is in the best interests of the child. [1993 c.33 §71; 1993 c.295 §5; 1993 c.546 §123; 1997 c.873 §19; 1999 c.859 §8; 2001 c.686 §3]

419B.190 [1993 c.295 §2; 1997 c.863 §3; 1999 c.65 §1; 2001 c.622 §37; renumbered 419B.845 in 2001]

(Placement of Child)

419B.192 Placement of child; preference given to relatives and certain other persons. (1) If the court finds that a child is in need of placement or continuation in substitute care, there shall be a preference given to placement with relatives and persons who have a child-parent relationship with the child as defined in ORS 109.119. The Department of Human Services shall make reasonable efforts to place the child with such persons and shall report to the court what efforts were made to effectuate such a placement.

(2) In attempting to place the child pursuant to subsection (1) of this section, the department shall consider, but not be limited to, the following:

(a) The ability of the person being considered to provide safety for the child, including a willingness to cooperate with any restrictions placed on contact between the child and others, and to prevent anyone from influencing the child in regard to the allegations of the case;

(b) The ability of the person being considered to support the efforts of the department to implement the permanent plan for the child;

(c) The ability of the person being considered to meet the child's physical, emotional and educational needs; and

(d) Which person has the closest existing personal relationship with the child if more than one person requests to have the child placed with them pursuant to this section.

(3) Notwithstanding subsections (1) and (2) of this section, in cases where the Indian Child Welfare Act applies, the placement preferences of the Indian Child Welfare Act shall be followed. [1997 c.479 §4; 1999 c.569 §9]

(Court-Appointed Counsel)

419B.195 When counsel to be appointed for child. (1) If the child, the parent or guardian requests counsel for the child but is without sufficient financial means to employ suitable counsel possessing skills and experience commensurate with the nature of the petition and the complexity of the case, the court may appoint suitable counsel to represent the child. Whenever requested to do so, the court shall appoint counsel to represent the child in every case filed pursuant to ORS 419B.100.

(2) Upon presentation of the order of appointment under this section by the attorney for the child, any agency, hospital, school organization, division or department of the state, doctor, nurse or other health care provider, psychologist, psychiatrist, police department or mental health clinic shall permit the attorney to inspect and copy any records of the child or children involved in the case, without the consent of the child or children or parents. This subsection does not apply to records of a police agency relating to an ongoing investigation prior to charging. [1993 c.33 §72; 1993 c.234 §1; 1993 c.546 §38]

Note: The amendments to 419B.195 by section 43, chapter 962, Oregon Laws 2001, become operative October 1, 2003. See section 15, chapter 962, Oregon Laws 2001. The text that is operative on and after October 1, 2003, is set forth for the user's convenience.

419B.195. (1) If the child, the parent or guardian requests counsel for the child but is without sufficient financial means to employ suitable counsel possessing skills and experience commensurate with the nature of the petition and the complexity of the case, the court may appoint suitable counsel to represent the child at state expense if the child is determined to be financially eligible under rules of the Public Defense Services Commission. Whenever requested to do so, the court shall appoint counsel to represent the child in a case filed pursuant to ORS 419B.100.

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

419B.198 Responsibility for payment of compensation to court-appointed counsel for child. (1) Where the court appoints counsel to represent the child, it may require the parent, if able, or guardian of the estate, if the estate is able, to pay to the State Court Indigent Defense Account in the General Fund in full or in part the administrative costs of determining the ability of the parents or estate to pay for legal services and the costs of the legal and other services that are related to the provision of appointed counsel.

(2) The test of the parent's or estate's ability to pay costs under subsection (1) of this section shall be the same test as applied to appointment of counsel for defendants under ORS 135.050. If counsel is provided at state expense, the court shall apply this test in accordance with the rules of the State Court Administrator adopted under ORS 151.487.

(3) If counsel is provided at state expense, the court shall determine the amount the parents or estate shall be required to pay for the costs of administrative, legal and other services related to the provision of appointed counsel in the same manner as this amount is determined under ORS 151.487.

(4) The court's order of payment shall be enforceable in the same manner as an order of support under ORS 419B.408. [1993 c.33 §73; 1997 c.761 §6]

Note: The amendments to 419B.198 by section 44, chapter 962, Oregon Laws 2001, become operative October 1, 2003. See section 15, chapter 962, Oregon Laws 2001. The text that is operative on and after October 1, 2003, is set forth for the user's

convenience.

419B.198. (1) When the court appoints counsel to represent a child, it may order the parent, if able, or guardian of the estate, if the estate is able, to pay to the Public Defense Services Account in the General Fund, through the clerk of the court, in full or in part the administrative costs of determining the ability of the parents or estate to pay for legal services and the costs of the legal and other services that are related to the provision of appointed counsel.

(2) The test of the parent's or estate's ability to pay costs under subsection (1) of this section is the same test as applied to appointment of counsel for defendants under ORS 135.050 or under the rules adopted under ORS 151.216. If counsel is provided at state expense, the court shall apply this test in accordance with the guidelines adopted by the Public Defense Services Commission under ORS 151.485.

(3) If counsel is provided at state expense, the court shall determine the amount the parents or estate is required to pay for the costs of administrative, legal and other services related to the provision of appointed counsel in the same manner as this amount is determined under ORS 151.487.

(4) The court's order of payment is enforceable in the same manner as an order of support under ORS 419B.408.

419B.201 Compensation for court-appointed counsel for child under ORS 135.055. Where the court appoints counsel for the child and the child, parent or guardian is without sufficient financial means to employ counsel, the compensation for counsel and reasonable expenses of investigation, preparation and presentation paid or incurred shall be allowed and paid as provided in ORS 135.055. [1993 c.33 §74]

Note: The amendments to 419B.201 by section 45, chapter 962, Oregon Laws 2001, become operative October 1, 2003. See section 15, chapter 962, Oregon Laws 2001. The text that is operative on and after October 1, 2003, is set forth for the user's convenience.

419B.201. When the court appoints counsel for the child and the child is determined to be entitled to, and financially eligible for, appointment of counsel at state expense, and the parent or guardian is without sufficient financial means to employ counsel, the compensation for counsel and reasonable expenses of investigation, preparation and presentation paid or incurred shall be allowed and paid as provided in ORS 135.055.

419B.205 When counsel to be appointed for parent or legal guardian. Counsel shall be appointed for the parent or legal guardian whenever the nature of the proceedings and due process so require, and when the parent or legal guardian has been determined by the court eligible to receive court-appointed counsel under the standard in ORS 135.050. In deciding whether to appoint counsel under this section, the court shall consider the following factors:

(1) The duration and degree of invasiveness of the interference with the parent-child relationship that possibly could result from the proceeding;

(2) The complexity of the issues and evidence;

(3) The nature of allegations and evidence contested by the parent or legal guardian; and

(4) The effect the facts found or the disposition in the proceeding may have on later proceedings or events, including but not limited to termination of parental rights or criminal proceedings. [1993 c.33 §75]

Note: The amendments to 419B.205 by section 46, chapter 962, Oregon Laws 2001, become operative October 1, 2003. See section 15, chapter 962, Oregon Laws 2001. The text that is operative on and after October 1, 2003, is set forth for the user's convenience.

419B.205. Counsel shall be appointed for the parent or legal guardian whenever the nature of the proceedings and due process so require, and when the parent or legal guardian has been determined by the court to be eligible to receive appointed counsel under the standard in ORS 135.050 or the rules adopted under ORS 151.216. In deciding whether to appoint counsel under this section, the court shall consider the following factors:

(1) The duration and degree of invasiveness of the interference with the parent-child relationship that possibly could result from the proceeding;

(2) The complexity of the issues and evidence;

(3) The nature of allegations and evidence contested by the parent or legal guardian; and

(4) The effect the facts found or the disposition in the proceeding may have on later proceedings or events, including but not limited to termination of parental rights or criminal proceedings.

419B.208 Other law applicable to appointment of counsel. Appointment of counsel for the child or parent is subject to ORS 135.055, 151.430 to 151.480 and applicable contracts entered into by the State Court Administrator under ORS 151.460. [1993 c.33 §76]

Note: The amendments to 419B.208 by section 47, chapter 962, Oregon Laws 2001, become operative October 1, 2003. See section 15, chapter 962, Oregon Laws 2001. The text that is operative on and after October 1, 2003, is set forth for the user's convenience.

419B.208. Appointment of counsel for the child or parent is subject to ORS 135.055, 151.216 and 151.219.

(Educational Surrogate)

419B.220 Preliminary evaluation; appointment of surrogate. (1) As a part of the investigation, before making a child a ward of the court, a preliminary evaluation shall also be conducted to determine if the child may be eligible for special education as provided in ORS chapter 343. This preliminary evaluation of disabling conditions shall not constitute a final determination of the child's eligibility for special education but shall be used as the basis for appointing a surrogate to protect the child's due process rights pursuant to ORS chapter 343.

(2) The court shall appoint a surrogate for a child when that child is made a ward of the court if the court finds that the child may be eligible for special education programs because of a disabling condition as provided in ORS chapter 343. This finding of probable eligibility shall be based on the preliminary evaluation conducted pursuant to subsection (1) of this section. [1993 c.33 §77]

419B.223 Duties and tenure of surrogate. A person that is appointed surrogate for a dependent child has the duty and authority to protect the due process rights of the child with respect to the provision of free appropriate public education. A surrogate appointed by the court shall immediately apply to the attending school district for an evaluation of the child's eligibility for special education and shall participate in the development of the child's educational plan as provided in ORS chapter 343. The duties and responsibilities of the surrogate shall continue until whichever of the following occurs first:

(1) The child is 21 years of age;

(2) The child is determined to be no longer eligible for special education; or

(3) The juvenile court terminates wardship of the child and determines that the child's parent or guardian is both known and available to protect the special educational rights of the child. [1993 c.33 §78]

419B.230 [1993 c.33 §85; 1993 c.546 §39; repealed by 2001 c.622 §57]

419B.233 [1993 c.33 §87; repealed by 2001 c.622 §57]

419B.236 [1993 c.33 §88; repealed by 2001 c.622 §57]

419B.239 [1993 c.33 §89; 1993 c.546 §40; repealed by 2001 c.622 §57]

419B.242 [1993 c.33 §90; 1993 c.546 §41; repealed by 2001 c.622 §57]

419B.245 [1993 c.33 §91; 2001 c.622 §38; renumbered 419B.872 in 2001]

419B.260 [1993 c.546 §43 (enacted in lieu of 1993 c.33 §92); 1997 c.707 §31; 1997 c.873 §12; 1999 c.302 §1; 2001 c.622 §36; renumbered 419B.806 in 2001]

419B.265 [1993 c.33 §93; 1993 c.546 §44; 1995 c.273 §21; repealed by 2001 c.622 §57]

419B.268 [1993 c.33 §94; 1993 c.295 §3; 1993 c.546 §45; repealed by 2001 c.622 §57]

419B.271 [1993 c.33 §95; 1993 c.295 §4; 1993 c.546 §46; 1995 c.273 §22; repealed by 2001 c.622 §57]

419B.274 [1993 c.33 §96; repealed by 2001 c.622 §57]

419B.277 [1993 c.33 §97; 1993 c.546 §47; repealed by 2001 c.622 §57]

419B.280 [1993 c.33 §98; renumbered 419B.827 in 2001]

419B.282 [1993 c.33 §99; 2001 c.622 §48; renumbered 419B.842 in 2001]

419B.285 [1993 c.33 §100; 1993 c.546 §48; 2001 c.622 §41; renumbered 419B.914 in 2001]

419B.300 [1993 c.546 §50; 2001 c.622 §40; renumbered 419B.881 in 2001]

(Hearings)

419B.305 When hearing must be held; continuation. (1) Except as otherwise provided in this section, no later than 60 days after a petition alleging that a child is within the jurisdiction of the court under ORS 419B.100 has been filed, the court shall hold a hearing on the petition and enter an order under ORS 419B.325 (1). Upon written order supported by factual findings of good cause, the court may continue a petition beyond 60 days.

(2) No later than 30 days after a petition alleging jurisdiction under ORS 419B.100 is filed all parties shall comply with ORS 419B.881.

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

(4) Upon expiration of any continuance granted by this section, the court shall give a petition filed under ORS 419B.100 that is beyond the time limit imposed by subsection (1) of this section the highest priority on the court docket. [1997 c.873 §18; 1999 c.859 §9; 2001 c.622 §53]

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

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

(3) The facts alleged in the petition showing the child to be within the jurisdiction of the court as provided in ORS 419B.100 (1), unless admitted, must be established by a preponderance of competent evidence. [1993 c.33 §101; 1993 c.546 §51; 2001 c.622 §54]

419B.315 [1993 c.546 §53; 2001 c.622 §55; renumbered 419B.884 in 2001]

419B.317 [1993 c.33 §102; repealed by 2001 c.622 §57]

419B.320 [1993 c.33 §103; 2001 c.104 §151; 2001 c.338 §1; renumbered 419B.908 in 2001]

(Disposition)

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

(2) For the purpose of determining proper disposition of the child, testimony, reports or other material relating to the child's mental, physical and social history and prognosis may be received by the court without regard to their competency or relevancy under the rules of evidence. [1993 c.33 §104]

419B.328 Ward of the court; duration of wardship. (1) A child found to be within the jurisdiction of the court as provided in ORS 419B.100, may be made a ward of the court.

(2) The court's wardship over a child found to be within the jurisdiction of the court as provided in ORS 419B.100 continues, and the child is subject to the court's jurisdiction, until one of the following occurs:

(a) The court dismisses the petition concerning the child;

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

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

(d) A decree of adoption of the child is entered by a court of competent jurisdiction; or

(e) The child becomes 21 years of age. [1993 c.33 §105; 1995 c.422 §70]

419B.331 When protective supervision authorized; conditions that may be imposed. Where a child has been found to be within its jurisdiction, and when the court determines it would be in the best interest and welfare of the child, the court may place the child under protective supervision. The court may direct that the child remain in the legal custody of the child's parents or other person with whom the child is living, or the court may direct that the child be placed in the legal custody of some relative or some person maintaining a foster home approved by the court, or in a child care center or a youth care center authorized to accept the child. The court may specify particular requirements to be observed during the protective supervision consistent with recognized juvenile court practice, including but not limited to restrictions on visitation by the child's parents, restrictions on the child's associates, occupation and activities, restrictions on and requirements to be observed by the person having the child's legal custody, and requirements for visitation by and consultation with a juvenile counselor or other suitable counselor. [1993 c.33 §106]

419B.334 Placement out of state. Where a child has been found to be within its jurisdiction, and when the court determines it would be in the best interest and welfare of the child, the court may, if there is an interstate compact or agreement or an informal arrangement with another state permitting the child to reside in another state while under protective supervision, or to be placed in an institution or with an agency in another state, place the child under protective supervision in such other state. [1993 c.33 §107]

419B.337 Commitment to custody of Department of Human Services. (1) When a child has been found to be within its

jurisdiction, and when the court determines it would be in the best interest and for the welfare of the child, the court may place the child in the legal custody of the Department of Human Services for care, placement and supervision. When the court enters an order removing a child from the child's home or an order continuing care, the court shall make a written finding as to whether:

(a) Removal of the child from the child's home or continuation of care is in the best interest and for the welfare of the child; and

(b) Reasonable efforts, considering the circumstances of the child and parent, have been made to prevent or eliminate the need for removal of the child from the home or to make it possible for the child to safely return home. In making this finding, the court shall consider the child's health and safety the paramount concerns.

(2) The court may specify the particular type of care, supervision or services to be provided by the department to children placed in the department's custody and to the parents or guardians of such children, but the actual planning and provision of such care, supervision or services shall be the responsibility of the department. The department may place the child in a child care center authorized to accept the child.

(3) Uniform commitment blanks, in a form approved by the Director of Human Services, shall be used by all courts for placing children in the legal custody of the department.

(4) If the child has been placed in the custody of the department, the court shall make no commitment directly to any residential facility, but shall cause the child to be delivered into the custody of the department at the time and place fixed by rules of the department. No child so committed shall be placed in a Department of Corrections institution. [1993 c.33 §108; 1993 c.546 §129; 1999 c.859 §10]

419B.340 Reasonable or active efforts determination. (1) If the court awards custody to the Department of Human Services, the disposition order shall include a determination whether the department has made reasonable efforts or, if the Indian Child Welfare Act applies, active efforts to prevent or eliminate the need for removal of the child from the home. If the child has been removed prior to the entry of the order, the order shall also include a determination whether the department has made reasonable or active efforts to make it possible for the child to safely return home. In making the determination under this subsection, the court shall consider the child's health and safety the paramount concerns.

(2) In support of its determination whether reasonable or active efforts have been made by the department, the court shall enter a brief description of what preventive and reunification efforts were made and why further efforts could or could not have prevented or shortened the separation of the family.

(3) Where the first contact with the family has occurred during an emergency in which the child could not remain without jeopardy at home even with reasonable services being provided, the department shall be considered to have made reasonable or active efforts to prevent or eliminate the need for removal.

(4) Where the court finds that preventive or reunification efforts have not been reasonable or active, but further preventive or reunification efforts could not permit the child to remain without jeopardy at home, the court may authorize or continue the removal of the child.

(5) If a court determines that one of the following circumstances exist, the juvenile court may make a finding that the department is not required to make reasonable efforts to make it possible for the child to safely return home:

(a) Aggravated circumstances including, but not limited to, the following:

(A) The parent by abuse or neglect has caused the death of any child;

(B) The parent has attempted, solicited or conspired, as described in ORS 161.405, 161.435 or 161.450 or under comparable laws of any jurisdiction, to cause the death of any child;

(C) The parent by abuse or neglect has caused serious physical injury to any child;

(D) The parent has subjected any child to rape, sodomy or sexual abuse;

(E) The parent has subjected any child to intentional starvation or torture;

(F) The parent has abandoned the child as described in ORS 419B.100 (1)(e); or

(G) The parent has unlawfully caused the death of the other parent of the child;

(b) The parent has been convicted in any jurisdiction of one of the following crimes:

(A) Murder of another child of the parent, which murder would have been an offense under 18 U.S.C. 1111(a);

(B) Manslaughter in any degree of another child of the parent, which manslaughter would have been an offense under 18 U.S.C. 1112(a);

(C) Aiding, abetting, attempting, conspiring or soliciting to commit an offense described in subparagraph (A) or (B) of this paragraph; or

(D) Felony assault that results in serious physical injury to the child or another child of the parent; or

(c) The parent's rights to another child have been terminated involuntarily.

(6) If, pursuant to a determination under subsection (5) of this section, the juvenile court makes a finding that the department is not required to make reasonable efforts to prevent or eliminate the need for removal of the child from the home or to make it possible for the child to safely return home, and the department determines that it will not make such efforts, the court shall conduct a permanency hearing as provided in ORS 419B.470 no later than 30 days after the judicial finding under subsection (5) of this section.

(7) Where an Indian child is involved, the department must satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have

proven unsuccessful. No foster care placement may be ordered in a proceeding in the absence of a determination, supported by clear and convincing evidence, including the testimony of expert witnesses, that the continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical injury to the Indian child. [1993 c.33 §109; 1993 c.546 §124; 1999 c.859 §11; 2001 c.686 §14]

419B.343 Recommendations of committing court; case planning; plan contents. (1) To ensure effective planning for children, the Department of Human Services shall take into consideration recommendations and information provided by the committing court before placement in any facility. The department shall ensure that the case planning in any case:

(a) For the reunification of the family bears a rational relationship to the jurisdictional findings that brought the child within the court's jurisdiction under ORS 419B.100;

(b) Incorporates the perspective of the child and the family and, whenever possible, allows the family to assist in designing its own service programs, based on an assessment of the family's needs and the family's solutions and resources for change; and

(c) Is integrated with other agencies in cooperation with the caseworkers.

(2) Except in cases when the plan is something other than to reunify the family, the department shall include in the case plan:

(a) Appropriate services to allow the parent the opportunity to adjust the parent's circumstances, conduct or conditions to make it possible for the child to safely return home within a reasonable time; and

(b) A concurrent permanent plan to be implemented if the parent is unable or unwilling to adjust the parent's circumstances, conduct or conditions in such a way as to make it possible for the child to safely return home within a reasonable time. [1993 c.33 §110; 1995 c.770 §1; 1997 c.873 §13; 1999 c.859 §12; 2001 c.686 §15]

419B.346 Medical planning. Whenever a child who is in need of medical care or other special treatment by reason of physical or mental condition is placed in the custody of the Department of Human Services by the juvenile court, the department shall prepare a plan for care or treatment within 14 days after assuming custody of the child. The court may indicate in general terms the type of care which it regards as initially appropriate. A copy of the plan, including a time schedule for its implementation, shall be sent to the juvenile court which committed the child to the department. The court may at any time request regular progress reports on implementation of the plan. The department shall notify the court when the plan is implemented, and shall report to the court concerning the progress of the child annually thereafter. If the plan is subsequently revised, the department shall notify the court of the revisions and the reasons therefor. [1993 c.33 §111]

419B.349 Court authority to review placement. Commitment of a child to the Department of Human Services does not terminate the court's continuing jurisdiction to protect the rights of the child or the child's parents or guardians. Notwithstanding ORS 419B.337 (4), if upon review of a placement of a child made by the department the court determines that the placement is not in the best interest of the child, the court may direct the department to place the child in foster care, residential care, group care or some other specific type of residential placement, but unless otherwise required by law, the court may not direct a specific placement. The actual planning and placement of the child is the responsibility of the department. Nothing in this section affects any contractual right of a private agency to refuse or terminate a placement. [1993 c.33 §112; 1997 c.497 §1; 1997 c.764 §1]

419B.350 [1997 c.873 §15; 1999 c.859 §13; repealed by 2001 c.686 §25]

419B.352 Hospitalization; mental health examination. The court may direct that the child be examined or treated by a physician, psychiatrist or psychologist, or receive other special care or treatment in a hospital or other suitable facility. If the court determines that mental health examination and treatment should be provided by services delivered through the Department of Human Services, the department shall determine the appropriate placement or services in consultation with the court and other affected agencies. If an affected agency objects to the type of placement or services, the court shall determine the appropriate type of placement or service. During the examination or treatment of the child, the department may, if appropriate, be appointed guardian of the child. [1993 c.33 §113; 2001 c.900 §123]

(Permanent Guardianship)

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

(2) Except as otherwise provided in this section, the juvenile court shall hear the permanent guardianship case and follow the procedures in ORS chapter 125.

(3) The court shall appoint as a guardian a suitable person who has petitioned the court to be appointed permanent guardian

of the child and who has standing under ORS 419B.875.

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

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

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

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

(6) A person appointed permanent guardian has the duties and authority of a guardian appointed under ORS chapter 125. The annual report requirement in ORS 125.325 applies to a permanent guardianship granted under this section.

(7) Upon its own motion or that of a parent, the child or the guardian, the court granting the guardianship may at any time enter orders regarding contact, parenting time and child support when the orders are appropriate and in the best interest of the child. The court may modify or enforce the orders only if the party seeking modification or enforcement has participated or attempted to participate, in good faith, in mediation to resolve the dispute that is the basis of the modification or enforcement motion. The participation or attempted participation in mediation must have occurred prior to filing the motion for modification or enforcement. The court may require a person filing a motion under this subsection to pay a reasonable filing fee.

(8) A parent may not petition the court to terminate a guardianship once the guardianship is granted under this section. [1997 c.873 §3; 1999 c.59 §119; 1999 c.859 §23]

(Legal Custodian of Child)

419B.370 Guardianship as incident of custody. (1) When the court grants legal custody to the Department of Human Services, it may also grant guardianship of the child to the department, to remain in effect solely while the child remains in the legal custody of the department.

(2) In all other cases, the court may grant guardianship of the child to a private institution or agency to which the child is committed or to some suitable person or entity if it appears necessary to do so in the interests of the child.

(3) Unless guardianship is granted as provided in subsection (1) or (2) of this section, the court as an incident of its wardship over the child shall have the duties and authority of the guardian as provided in ORS 419B.376 and 419B.379. [1993 c.33 §114; 1993 c.367 §3]

419B.373 Duties and authority of legal custodian. A person, agency or institution having legal custody of a child has the following duties and authority:

(1) To have physical custody and control of the child.

(2) To supply the child with food, clothing, shelter and incidental necessaries.

(3) To provide the child with care, education and discipline.

(4) To authorize ordinary medical, dental, psychiatric, psychological, hygienic or other remedial care and treatment for the child, and, in an emergency where the child's safety appears urgently to require it, to authorize surgery or other extraordinary care.

(5) To make such reports and to supply such information to the court as the court may from time to time require.

(6) To apply for any social security benefits or public assistance to which the child is otherwise entitled and to use the benefits or assistance to pay for the care of the child. [1993 c.33 §115; 1993 c.367 §1]

(Guardian)

419B.376 Duties and authority of guardian. A person, agency or institution having guardianship of a child by reason of appointment by the court has the duties and authority of a guardian of the child, including but not limited to the following:

(1) To authorize surgery for the child, but this authority does not prevent the person having legal custody of the child from acting under ORS 419B.373 (4).

(2) To authorize the child to enlist in the Armed Forces of the United States.

(3) To consent to the child's marriage.

(4) When the child has been committed under ORS 419B.527, to consent to the adoption of the child.

(5) To make other decisions concerning the child of substantial legal significance.

(6) To make such reports and to supply such information to the court as the court may from time to time require. [1993 c.33 §116]

419B.379 Guardian is not conservator. A person appointed guardian of the child by the court is guardian only and not a conservator of the estate of the child, unless that person is appointed conservator of the child's estate in a protective proceeding as provided in ORS chapter 125. [1993 c.33 §117; 1995 c.664 §94]

(Authority Over Parents)

419B.385 Parent or guardian as party. A parent or legal guardian of any child found to be within the jurisdiction of the court as provided in ORS 419B.100, if such parent or guardian was served with summons under ORS 419B.812 to 419B.839

prior to the adjudication, shall be subject to the jurisdiction of the court for purposes of this section. The court may order the parent or guardian to assist the court in any reasonable manner in providing appropriate education or counseling for the child. [1993 c.33 §118; 2001 c.622 §49]

419B.387 Parent participation in treatment or training. If the court finds in an evidentiary hearing that treatment or training is needed by a parent to correct the circumstances that brought the child within the jurisdiction of the court or to prepare the parent to resume the care of the child, the court may order the parent to participate in the treatment or training if the participation is in the child's best interests. [1993 c.546 §55 (enacted in lieu of 1993 c.33 §§119 and 120)]

419B.389 Inability of parent to comply with order of court. A parent who believes or claims that financial, health or other problems will prevent or delay the parent's compliance with an order of the court must inform the court of the relevant circumstances as soon as reasonably possible and, if appropriate, seek relief from the order under ORS 419B.420. [2001 c.360 §3]

Note: 419B.420 was repealed by section 57, chapter 622, Oregon Laws 2001. The text of 419B.389 was not amended by enactment of the Legislative Assembly to reflect the repeal. Editorial adjustment of 419B.389 for the repeal of 419B.420 has not been made.

(Support)

419B.400 Authority to order support; collection. The court may, after a hearing on the matter, require the parents or other person legally obligated to support a child found to be within the jurisdiction of the court to pay toward the child's support such amounts at such intervals as the court may direct, while the child is within the jurisdiction of the court even though the child is over 18 years of age as long as the child is a child attending school, as defined in ORS 107.108. The court, in determining the amount to be paid, shall use the scale and formula provided for in ORS 25.275 and 25.280. Unless otherwise ordered, the amounts so required to be paid shall be paid to the Department of Justice or the county clerk, whichever is appropriate, for transmission to the person, institution or agency having legal custody of the child. [1993 c.33 §121; 1997 c.704 §§46,60]

419B.402 Support order is final judgment. Any order for support entered pursuant to ORS 419B.400 is a final judgment as to any installment or payment of money which has accrued up to the time either party makes a motion to set aside, alter or modify the order, and the court does not have the power to set aside, alter or modify such order, or any portion thereof, which provides for any payment of money, either for minor children or the support of a party, which has accrued prior to the filing of such motion. [1993 c.33 §122]

419B.404 Support for child in state financed or supported institution. Any order for support entered pursuant to ORS 419B.400 for a child in the care and custody of the Department of Human Services may be made contingent upon the child residing in a state financed or supported residence, shelter or other facility or institution. A certificate signed by the Director of Human Services, the Administrator of the Division of Child Support or the administrator's authorized representative shall be sufficient to establish such periods of residence and to satisfy the order for periods of nonresidence. [1993 c.33 §123]

419B.406 Assignment of support order to state. When a child is in the legal custody of the Department of Human Services and such child is the beneficiary of an existing order of support in a decree of dissolution or other order and the department is required to provide financial assistance for the care and support of such child, the department shall be assignee of and subrogated to such child's proportionate share of any such support obligation including sums that have accrued whether or not the support order or decree provides for separate monthly amounts for the support of each of two or more children or a single monthly gross payment for the benefit of two or more children, up to the amount of assistance provided by the department. The assignment shall be as provided in ORS 418.042. [1993 c.33 §124; 1999 c.80 §76]

419B.408 Enforcement of support order. (1) An order of support entered pursuant to ORS 419B.400 may be enforced by execution or in the manner provided by law for the enforcement of a judgment granting an equitable remedy or by an order to withhold pursuant to ORS 25.372 to 25.427.

(2) No property of the child's parents, or either of them, or other person legally obligated to support the child is exempt from levy and sale or other process to enforce collection of the amounts ordered by the court to be paid toward the support of the child. [1993 c.33 §125; 1993 c.798 §31]

419B.420 [1993 c.33 §126; repealed by 2001 c.622 §57]

419B.423 [1993 c.33 §127; 1993 c.546 §125; repealed by 2001 c.622 §57]

419B.426 [1993 c.33 §128; repealed by 2001 c.622 §57]

(Reports by Guardians and Custodians)

419B.440 Circumstances requiring reports. Any public or private agency having guardianship or legal custody of a child pursuant to court order shall file reports on the child with the juvenile court which entered the original order concerning the child or, where no such order exists, with the juvenile court of the county of the child's residence in the following circumstances:

(1) Where the child has been placed with the agency as a result of a court order and prior to, or as soon as practicable after the agency places the child in any placement including, but not limited to, the child's home, shelter care, substitute care or a child care center, unless the court has previously received a report or treatment plan indicating the actual physical placement of the child;

(2) Where the child has been placed with the agency as the result of a court order and remains under agency care for six consecutive months from date of initial placement except for a child who has been committed to a state youth correction facility; or

(3) Where the child has been surrendered for adoption or the parents' rights have been terminated and the agency has not physically placed the child for adoption or initiated adoption proceedings within six months of receiving the child. [1993 c.33 §129]

419B.443 Time and content of reports. (1) The reports required by ORS 419B.440 (2) and (3) shall be filed by the agency at the end of the initial six-month period and no less frequently than each six months thereafter. The agency shall file reports more frequently if the court so orders. The reports shall include, but not be limited to:

(a) A description of the problems or offenses which necessitated the placement of the child with the agency;

(b) A description of the type and an analysis of the effectiveness of the care, treatment and supervision that the agency has provided for the child, together with a list of all placements made since the child has been in the guardianship or legal custody of an agency and the length of time the child has spent in each placement;

(c) A description of agency efforts to return the child to the parental home or find permanent placement for the child, including, where applicable, efforts to assist the parents in remedying factors which contributed to the removal of the child from the home;

(d) A proposed treatment plan or proposed continuation or modification of an existing treatment plan, including, where applicable, terms of visitation to be allowed and expected of parents and a description of efforts expected of the child and the parents to remedy factors which have prevented the child to safely return home within a reasonable time; and

(e) If continued substitute care is recommended, a proposed timetable for the child's return home or other permanent placement or a justification of why extended substitute care is necessary.

(2) Notwithstanding the requirements of subsection (1) of this section, reports following the initial report need not contain information contained in prior reports. [1993 c.33 §130; 2001 c.686 §22]

419B.446 Filing report with local citizen review board. Notwithstanding the requirements under ORS 419B.440 that reports be filed with the court, any report after the initial report that is required by ORS 419B.443 on a child whose case is being regularly reviewed by a local citizen review board shall be filed with that local citizen review board rather than the court. [1993 c.33 §131]

419B.449 Review hearing by court; findings. (1) Upon receiving any report required by ORS 419B.440 and 419B.443, the court may hold a hearing to review the child's condition and circumstances and to determine if the court should continue jurisdiction over the child or order modifications in the care, placement and supervision of the child. The court shall hold a hearing:

(a) In all cases under ORS 419B.440 (3) where the parents' rights have been terminated; or

(b) If requested by the child, the attorney for the child, if any, the parents or the public or private agency having guardianship or legal custody of the child within 30 days of receipt of the notice provided in ORS 419B.452.

(2) The hearing provided in subsection (1) of this section shall be conducted in the manner provided in ORS 419B.310, except that the court may receive testimony and reports as provided in ORS 419B.325. At the conclusion of the hearing, the court shall enter findings of fact if the decision is to continue the child in substitute care. Such findings shall specifically state:

(a) Why continued care is necessary as opposed to returning the child to the child's home or taking prompt action to secure another permanent placement; or

(b) The expected timetable for return or other permanent placement.

(3) In making the findings under subsection (2) of this section, the court shall consider the efforts made to develop the concurrent case plan, including, but not limited to, identification and selection of a suitable adoptive placement for the child when adoption is the concurrent case plan.

(4) In addition to findings of fact required by subsection (2) of this section, the court may order the Department of Human Services to consider additional information in developing the case plan or concurrent case plan.

(5) Any final decision of the court made pursuant to the hearing provided in subsection (1) of this section is appealable under ORS 419A.200. [1993 c.33 §132; 1999 c.568 §1; 2001 c.480 §8; 2001 c.910 §4]

419B.452 Distribution of report by court. Except where a child has been surrendered for adoption or the parents' rights have been terminated, the court shall send a copy of the report required by ORS 419B.440 to the parents of the child and shall notify the parents either that a hearing will be held or that the parents may request a hearing at which time they may ask for modifications in the care, treatment and supervision of the child. If the court finds that informing the parents of the identity and location of the foster parents of the child is not in the child's best interest, the court may order such information deleted from the report before sending the report to the parents. If an Indian child is involved, the court shall send a copy of the report to the Indian child's tribe as required by the notice requirements of the Indian Child Welfare Act. [1993 c.33 §133; 1993 c.546 §126]

(Child Surrendered for Adoption)

419B.460 Agency's responsibility. Where a child has been surrendered for adoption and the agency has not physically placed the child for adoption or initiated adoption proceedings within six months of receiving the child, the agency shall file a petition alleging that the child comes within the jurisdiction of the court. [1993 c.33 §134]

(Permanency Hearing)

419B.470 Permanency hearing; schedule. (1) The court shall conduct a permanency hearing within 30 days after a judicial finding is made under ORS 419B.340 (5) if, based upon that judicial finding, the Department of Human Services determines that it will not make reasonable efforts to reunify the family.

(2) In all other cases when the child is in substitute care, the court shall conduct a permanency hearing no later than 12 months after the child was found within the jurisdiction of the court under ORS 419B.100 or 14 months after the child was placed in substitute care, whichever is the earlier.

(3) If a child is removed from court sanctioned permanent foster care, the department shall request and the court shall conduct a permanency hearing within three months after the date of the change in placement.

(4) Unless good cause otherwise is shown, the court shall also conduct a permanency hearing at any time upon the request of the department, an agency directly responsible for care or placement of the child, parents whose parental rights have not been terminated, an attorney for the child, a court appointed special advocate, a citizen review board, a tribal court or upon its own motion. The court shall schedule the hearing as soon as possible after receiving a request.

(5) After the initial permanency hearing conducted under subsection (1) or (2) of this section or any permanency hearing conducted under subsection (3) or (4) of this section, the court shall conduct subsequent permanency hearings not less frequently than once every 12 months for as long as the child remains in substitute care.

(6) If a child returns to substitute care after a court's previously established jurisdiction over the child has been dismissed or terminated, a permanency hearing shall be conducted no later than 12 months after the child is found within the jurisdiction of the court on a newly filed petition or 14 months after the child's most recent placement in substitute care, whichever is the earlier. [1993 c.33 §135; 1993 c.546 §127; 1999 c.859 §14; 2001 c.686 §7]

419B.473 Notice; appearance. (1) The court may order that the child or any other person be present during the hearing.

(2) The court shall notify the parties listed in ORS 419B.470 and any other interested parties of the hearing. The notice shall state the time and place of the hearing. Upon request of the court, the Department of Human Services or other legal custodian of the child shall provide the court with information concerning the whereabouts and identity of such parties. [1993 c.33 §136]

419B.476 Conduct of hearing; court determinations; orders. (1) A permanency hearing shall be conducted in the manner provided in ORS 418.312, 419B.310, 419B.812 to 419B.839 and 419B.908, except that the court may receive testimony and reports as provided in ORS 419B.325.

(2) At a permanency hearing the court shall:

(a) If the case plan at the time of the hearing is to reunify the family, determine whether the Department of Human Services has made reasonable efforts or, if the Indian Child Welfare Act applies, active efforts to make it possible for the child to safely return home and whether the parent has made sufficient progress to make it possible for the child to safely return home. In making its determination, the court shall consider the child's health and safety the paramount concerns.

(b) If the case plan at the time of the hearing is something other than to reunify the family, determine whether the department has made reasonable efforts to place the child in a timely manner in accordance with the plan and to complete the steps necessary to finalize the permanent placement of the child.

(3) At a permanency hearing the court may:

(a) If the case plan changed during the period since the last review by a local citizen review board or court hearing and a plan to reunify the family was in effect for any part of that period, determine whether the department has made reasonable efforts or, if the Indian Child Welfare Act applies, active efforts to make it possible for the child to safely return home. In making its determination, the court shall consider the child's health and safety the paramount concerns;

(b) If the case plan changed during the period since the last review by a local citizen review board or court hearing and a plan other than to reunify the family was in effect for any part of that period, determine whether the department has made reasonable efforts to place the child in a timely manner in accordance with the plan and to complete the steps necessary to

finalize the permanent placement of the child;

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

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

(e) Review the efforts made by the department to develop the concurrent permanent plan, including but not limited to, identification and selection of a suitable adoptive placement for the child;

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

(g) Order the department or other agency directly responsible for the child to modify the care, placement and supervision of the child;

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

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

(4) The court shall enter an order within 20 days after the permanency hearing. In addition to any determinations or orders the court may make under subsection (3) of this section, the order shall include:

(a) The court's determination required under subsection (2) of this section, including a brief description of the efforts the department has made with regard to the case plan in effect at the time of the permanency hearing;

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

(A) The child will be returned to the parent;

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

(C) The child will be referred for establishment of legal guardianship; or

(D) The child will be placed in another planned permanent living arrangement;

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

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

(e) If the court determines that the permanency plan for the child should be establishment of a legal guardianship or placement with a fit and willing relative, the court's determination of why neither placement with parents nor adoption is appropriate;

(f) If the court determines that the permanency plan for the child should be a planned permanent living arrangement, the court's determination of a compelling reason, which must be documented by the department, why it would not be in the best interests of the child to be returned home, placed for adoption, placed with a legal guardian or placed with a fit and willing relative;

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

(h) If an Indian child is involved, the tribal affiliation of the child.

(5) If an Indian child is involved, the court shall follow the placement preference established by the Indian Child Welfare Act.

(6) Any final decision of the court made pursuant to the permanency hearing is appealable under ORS 419A.200. On appeal of a final decision of the court under this subsection, the court's finding, if any, under ORS 419B.340 (5) that the department is not required to make reasonable efforts to make it possible for the child to safely return home is an interlocutory order to which a party may assign error. [1993 c.33 §137; 1993 c.546 §128; 1999 c.568 §2; 1999 c.859 §15; 2001 c.480 §9; 2001 c.622 §50; 2001 c.686 §16; 2001 c.910 §5]

(Termination of Parental Rights)

419B.498 Termination of parental rights; petition by Department of Human Services; when required. (1) Except as provided in subsection (2) of this section, the Department of Human Services shall simultaneously file a petition to terminate the parental rights of a child's parents and identify, recruit, process and approve a qualified family for adoption if the child is in the custody of the department and:

(a) The child has been in substitute care under the responsibility of the department for 15 months of the most recent 22 months;

(b) A parent has been convicted of murder of another child of the parent, voluntary manslaughter of another child of the parent, aiding, abetting, attempting, conspiring or soliciting to commit murder or voluntary manslaughter of the child or of another child of the parent or felony assault that has resulted in serious physical injury to the child or to another child of the parent; or

(c) A court of competent jurisdiction has determined that the child is an abandoned child.

(2) The department shall file a petition to terminate the parental rights of a parent in the circumstances described in

subsection (1) of this section unless:

(a) The child is being cared for by a relative and that placement is intended to be permanent;

(b) There is a compelling reason, which is documented in the case plan, for determining that filing such a petition would not be in the best interests of the child. Such compelling reasons include, but are not limited to:

(A) The parent is successfully participating in services that will make it possible for the child to safely return home within a reasonable time as provided in ORS 419B.476 (4)(c);

(B) Another permanent plan is better suited to meet the health and safety needs of the child; or

(C) The court or local citizen review board in a prior hearing or review determined that while the case plan was to reunify the family the department did not make reasonable efforts or, if the Indian Child Welfare Act applies, active efforts to make it possible for the child to safely return home; or

(c) The department has not provided to the family of the child, consistent with the time period in the case plan, such services as the department deems necessary for the child to safely return home, if reasonable efforts to make it possible for the child to safely return home are required to be made with respect to the child. [1999 c.859 §21; 2001 c.686 §17]

419B.500 Termination of parental rights; generally. The parental rights of the parents of a child within the jurisdiction of the juvenile court as provided in ORS 419B.100 may be terminated as provided in this section and ORS 419B.502 to 419B.524, only upon a petition filed by the state or the child for the purpose of freeing the child for adoption if the court finds it is in the best interest of the child. If an Indian child is involved, the termination of parental rights must be in compliance with the Indian Child Welfare Act. The rights of one parent may be terminated without affecting the rights of the other parent. [1993 c.33 §138; 1993 c.546 §56; 1997 c.873 §6]

419B.502 Termination upon finding of extreme conduct. The rights of the parent or parents may be terminated as provided in ORS 419B.500 if the court finds that the parent or parents are unfit by reason of a single or recurrent incident of extreme conduct toward the child or another child. In such case, no efforts need to be made by available social agencies to help the parent adjust the conduct in order to make it possible for the child to safely return home within a reasonable amount of time. In determining extreme conduct, the court shall consider the following:

(1) Rape, sodomy or sex abuse of any child by the parent.

(2) Intentional starvation or torture of any child by the parent.

(3) Abuse or neglect by the parent of any child resulting in death or serious physical injury.

(4) Conduct by the parent to aid or abet another person who, by abuse or neglect, caused the death of any child.

(5) Conduct by the parent to attempt, solicit or conspire, as described in ORS 161.405, 161.435 or 161.450 or under comparable laws of any jurisdiction, to cause the death of any child.

(6) Previous involuntary terminations of the parent's rights to another child if the conditions giving rise to the previous action have not been ameliorated.

(7) Conduct by the parent that knowingly exposes any child of the parent to the storage or production of methamphetamines from precursors. In determining whether extreme conduct exists under this subsection, the court shall consider the extent of the child's exposure and the potential harm to the physical health of the child. [1993 c.33 §139; 1995 c.767 §1; 1997 c.873 §5; 1999 c.859 §16; 2001 c.575 §1; 2001 c.686 §23]

419B.504 Termination upon finding of unfitness. The rights of the parent or parents may be terminated as provided in ORS 419B.500 if the court finds that the parent or parents are unfit by reason of conduct or condition seriously detrimental to the child and integration of the child into the home of the parent or parents is improbable within a reasonable time due to conduct or conditions not likely to change. In determining such conduct and conditions, the court shall consider but is not limited to the following:

(1) Emotional illness, mental illness or mental deficiency of the parent of such nature and duration as to render the parent incapable of providing proper care for the child for extended periods of time.

(2) Conduct toward any child of an abusive, cruel or sexual nature.

(3) Addictive or habitual use of intoxicating liquors or controlled substances to the extent that parental ability has been substantially impaired.

(4) Physical neglect of the child.

(5) Lack of effort of the parent to adjust the circumstances of the parent, conduct, or conditions to make it possible for the child to safely return home within a reasonable time or failure of the parent to effect a lasting adjustment after reasonable efforts by available social agencies for such extended duration of time that it appears reasonable that no lasting adjustment can be effected.

(6) Criminal conduct that impairs the parent's ability to provide adequate care for the child. [1993 c.33 §140; 1997 c.873 §7; 2001 c.686 §24]

419B.506 Termination upon finding of neglect. The rights of the parent or parents may be terminated as provided in ORS 419B.500 if the court finds that the parent or parents have failed or neglected without reasonable and lawful cause to provide for the basic physical and psychological needs of the child for six months prior to the filing of a petition. In determining such failure or neglect, the court shall disregard any incidental or minimal expressions of concern or support and shall consider but

is not limited to one or more of the following:

(1) Failure to provide care or pay a reasonable portion of substitute physical care and maintenance if custody is lodged with others.

(2) Failure to maintain regular visitation or other contact with the child which was designed and implemented in a plan to reunite the child with the parent.

(3) Failure to contact or communicate with the child or with the custodian of the child. In making this determination, the court may disregard incidental visitations, communications or contributions. [1993 c.33 §141; 1997 c.873 §8]

419B.508 Termination upon finding of abandonment. The rights of the parent or parents may be terminated as provided in ORS 419B.500 if the court finds that the parent or parents have abandoned the child or the child was left under circumstances such that the identity of the parent or parents of the child was unknown and could not be ascertained, despite diligent searching, and the parent or parents have not come forward to claim the child within three months following the finding of the child. [1993 c.33 §142]

419B.515 [1993 c.33 §143; 1993 c.546 §57; repealed by 2001 c.622 §57]

419B.517 Mediation to be encouraged. The use of mediation in cases involving the termination of parental rights shall be encouraged. [1995 c.767 §4]

Note: 419B.517 was added to and made a part of ORS chapter 419B by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

419B.518 Appointment of counsel for parents. If the parents are determined to be indigent by the court, and request the assistance of appointed counsel, the court shall appoint an attorney to represent them at state expense. Appointment of counsel under this section is subject to ORS 135.055 and 151.430 to 151.480 and to applicable contracts entered into under ORS 151.460. [1993 c.33 §144]

Note: The amendments to 419B.518 by section 55, chapter 962, Oregon Laws 2001, become operative October 1, 2003. See section 15, chapter 962, Oregon Laws 2001. The text that is operative on and after October 1, 2003, is set forth for the user's convenience.

419B.518. If the parents are determined to be financially eligible, and request the assistance of appointed counsel, the court shall appoint an attorney to represent them at state expense. Appointment of counsel under this section is subject to ORS 135.055, 151.216 and 151.219.

419B.521 Conduct of termination hearing. (1) A hearing shall be held by the court on the question of terminating the rights of the parent or parents. No such hearing shall be held any earlier than 10 days after service or final publication of the summons. The facts on the basis of which the rights of the parents are terminated, unless admitted, must be established by clear and convincing evidence and a stenographic or other report authorized by ORS 8.340 shall be taken of the hearing.

(2) Not earlier than provided in subsection (1) of this section and not later than six months from the date on which summons for the petition to terminate parental rights is served, the court before which the petition is pending shall hold a hearing on the petition except for good cause shown. When determining whether or not to grant a continuance for good cause, the judge shall take into consideration the age of the child and the potential adverse effect delay may have on the child. The court shall make written findings when granting a continuance.

(3) The court, on its own motion or upon the motion of a party, may take testimony from any child appearing as a witness and may exclude the child's parents and other persons if the court finds such action would be likely to be in the best interests of the child. However, the court may not exclude the attorney for each party and any testimony taken under this subsection shall be recorded.

(4) Notwithstanding subsection (1) of this section, if an Indian child is involved, termination of parental rights must be supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that continued custody of the child is likely to result in serious emotional or physical harm to the child. [1993 c.33 §145; 1993 c.546 §58; 1995 c.767 §2; 1997 c.873 §9]

419B.524 Effect of termination order. Unless there is an appeal from the order terminating the rights of the parent or parents, the order permanently terminates all rights of the parent or parents whose rights are terminated and the parent or parents have no standing to appear as such in any legal proceeding concerning the child. [1993 c.33 §146]

419B.527 Disposition of child after termination. (1) After the entry of an order terminating the rights of the parent or parents of the child, the court may:

(a) Place the child in the legal custody and guardianship of a public or private institution or agency authorized to consent in loco parentis to the adoption of children. An order pursuant to this paragraph is a "permanent commitment" for the purposes of ORS 109.305, 109.309, 109.312 to 109.330 and 109.350 to 109.390; or

(b) Make any order directing disposition of the child which it is empowered to make under this chapter.

(2) If the rights of only one parent have been terminated, the authority to consent to the adoption of the child as provided in subsection (1)(a) of this section is effective only with respect to the parent whose rights have been terminated. [1993 c.33 §147]

419B.529 Authority of court to enter decree of adoption. (1) Notwithstanding ORS 109.309, a prospective adoptive parent is not required to file a petition for adoption when:

(a) A juvenile court that is a circuit court has entered an order of permanent commitment of a child to the Department of Human Services under ORS 419B.527 or the parent has signed and the department has accepted a release and surrender to the department and a certificate of irrevocability and waiver as provided in ORS 418.270 regarding the child;

(b) The department has completed a home study as defined in ORS 109.304 that finds the prospective parent is suitable to adopt the child and the department consents to the adoption of the child by the prospective parent;

(c) A home study and a placement report requesting the juvenile court to enter a decree of adoption have been filed in the juvenile court proceeding; and

(d) At the time the placement report is filed under paragraph (c) of this subsection, the prospective adoptive parent files the adoption report form required under ORS 109.400.

(2) Notwithstanding ORS 21.114, the clerk of the juvenile court may not charge or collect first appearance or hearing fees for a proceeding under this section.

(3) After the filing of the home study and the placement report requesting the court to enter a decree of adoption, the juvenile court that entered the order of permanent commitment may proceed as provided in ORS 109.307 and 109.350 and may enter a decree of adoption.

(4) Records of adoptions filed and established under this section shall be kept in accordance with, and are subject to, ORS 7.211. [1997 c.873 §24; 1999 c.859 §24]

419B.530 Representation by Attorney General. (1) Whenever a juvenile court has before it an action to terminate parental rights, the juvenile court or the Department of Human Services may request the services of the Attorney General.

(2) Whenever an action to terminate parental rights is before a juvenile court pursuant to ORS 419B.500, 419B.502, 419B.504, 419B.506 and 419B.508, the Attorney General shall have the same authority to assist the court as is granted to the district attorney under ORS 8.685. [1993 c.33 §148]

(Emancipation of Minor)

419B.550 Definitions for ORS 419B.550 to 419B.558. As used in ORS 419B.550 to 419B.558:

(1) “Domicile” of a minor means the legal residence or domicile of the custodial parent or guardian.

(2) “Emancipation” means conferral of certain rights of majority upon a minor, as enumerated in ORS 419B.552.

(3) “Minor” means a person under the age of 18 years.

(4) “Parent” means legal guardian or custodian, natural parent or adoptive parent if the minor has been legally adopted.

(5) Notwithstanding subsection (1) of this section, if a minor is subject to the jurisdiction of the juvenile court pursuant to ORS 419B.100 or 419C.005, the domicile of that minor shall be that of the court which has jurisdiction. [1993 c.546 §133]

419B.552 Application for emancipation decree; effect of decree. (1) A juvenile court, upon the written application of a minor who is domiciled within the jurisdiction of such court, is authorized to enter a decree of emancipation in the manner provided in ORS 419B.558. A decree of emancipation shall serve only to:

(a) Recognize the minor as an adult for the purposes of contracting and conveying, establishing a residence, suing and being sued, and recognize the minor as an adult for purposes of the criminal laws of this state.

(b) Terminate as to the parent and child relationship the provisions of ORS 109.010 until the child reaches the age of majority.

(c) Terminate as to the parent and child relationship the provisions of ORS 109.053, 109.100, 419B.373, 419B.400, 419B.402, 419B.404, 419B.406, 419B.408, 419C.550, 419C.590, 419C.592, 419C.595, 419C.597 and 419C.600.

(2) A decree of emancipation shall not affect any age qualification for purchasing alcoholic liquor, the requirements for obtaining a marriage license, nor the minor’s status under ORS 109.510. [1993 c.546 §134]

419B.555 Hearing; notice to parent; duty to advise minor of liabilities of emancipated person; filing fee. (1) The juvenile court shall conduct a preliminary hearing on the minor’s application for emancipation within 10 days of the date on which it is filed or as soon as possible thereafter. At the time of the preliminary hearing, the court may issue a temporary custody decree, stay any pending proceedings or enter any other temporary order appropriate to the circumstances. No action of the court pursuant to this subsection may be extended beyond the date set for a final hearing.

(2) The final hearing shall be held no later than 60 days or as soon as possible after the date on which the application is filed.

(3) Notice to the parent or parents of the applicant shall be made pursuant to ORS 419B.812 to 419B.839.

(4) At the preliminary hearing, the court shall advise the minor of the civil and criminal rights and civil and criminal

liabilities of an emancipated minor. This advice shall be recited in the decree of emancipation.

(5) The hearing mentioned in subsection (2) of this section may be waived by the minor and parent or parents.

(6) A uniform filing fee of $70 shall be charged and collected by the court for each application for emancipation. In addition, the court shall collect any other fees required by law. [1993 c.546 §135; 1997 c.801 §33; 2001 c.622 §51]

419B.558 Conditions for issuance of decree; copy to applicant; issuance of license or identification card by Department of Transportation; emancipated person subject to adult criminal jurisdiction. (1) The juvenile court in its discretion may enter a decree of emancipation where the minor is at least 16 years of age and the court finds that the best interests of the minor will be served by emancipation. In making its determination, the court shall take into consideration the following factors:

(a) Whether the parent of the minor consents to the proposed emancipation;

(b) Whether the minor has been living away from the family home and is substantially able to be self-maintained and self-supported without parental guidance and supervision; and

(c) Whether the minor can demonstrate to the satisfaction of the court that the minor is sufficiently mature and knowledgeable to manage the minor's affairs without parental assistance.

(2) Upon entry of a decree of emancipation by the court, the applicant shall be given a copy of the decree. The decree shall instruct that the applicant obtain an Oregon driver's license or an Oregon identification card through the Department of Transportation and that the Department of Transportation make a notation of the minor's emancipated status on the license or identification card.

(3) An emancipated minor shall be subject to the jurisdiction of the adult courts for all criminal offenses. [1993 c.546 §136]

JUVENILE COURT DEPENDENCY PROCEDURE

419B.800 Applicability of ORS 419B.800 to 419B.929. (1) ORS 419B.800 to 419B.929 govern procedure and practice in all juvenile court proceedings under this chapter. The Oregon Rules of Civil Procedure do not apply in these proceedings.

(2) ORS 419B.800 to 419B.929 apply to all proceedings under this chapter pending on or filed on or after January 1, 2002, except when, in the opinion of the court, application in a case pending on January 1, 2002, would not be feasible or would work an injustice.

(3) ORS 419B.800 to 419B.929 do not preclude a court in which they apply from regulating pleading, practice and procedure in any manner not inconsistent with ORS 419B.800 to 419B.929. [2001 c.622 §2]

419B.803 Jurisdiction. (1) A juvenile court having subject matter jurisdiction has jurisdiction over:

(a) A party, who has been served in the matter as provided in ORS 419B.812 to 419B.839 to the extent that prosecution of the action is not inconsistent with the Constitution of this state and the Constitution of the United States;

(b) A child under 12 years of age who is the subject of a petition filed pursuant to ORS 419B.100; and

(c) Any other party specified in ORS 419B.875 (1).

(2) Juvenile court jurisdiction is subject to ORS 109.701 to 109.834. [2001 c.622 §3]

419B.806 Consolidation; when required; procedures. (1) As used in this section, "consolidated" means that actions are heard before one judge of the circuit court to determine issues pending regarding a child or children.

(2) In any action filed in the juvenile court in which the legal or physical custody of a child is at issue and there is also pending, or adjudicated, a child custody, parenting time, visitation, restraining order, filiation or Family Abuse Prevention Act action involving the child in a domestic relations, filiation or guardianship proceeding, the matters shall be consolidated.

(3) Consolidation does not merge the procedural or substantive law of the individual actions. Parties to the individual consolidated actions do not have standing, solely by virtue of the consolidation, in every action subject to the order of consolidation. Parties must comply with provisions for intervention or participation in a particular action under the provisions of law applicable to that action.

(4) Upon entry of an order of consolidation, all pending issues pertaining to the actions subject to the order shall be heard together in juvenile court. The court shall hear the juvenile matters first unless the court finds that it is in the best interest of the child to proceed otherwise.

(5) A judge shall make and modify orders and findings in actions subject to the order of consolidation upon the filing of proper motions and notice as provided by law applicable to the actions. Any findings, orders or modifications must be consistent with the juvenile court orders, and persons who were parties to the juvenile court action may not relitigate issues in consolidated actions.

(6) The judge shall set out separately from orders entered under this chapter or ORS chapter 419C any orders or judgments made in other actions subject to the consolidation order. The trial court administrator shall file the orders and judgments in the appropriate actions subject to the consolidation order. An order or judgment in an individual juvenile court action is final if it finally disposes of the rights and duties of the parties to that action, without reference to whether the order or judgment disposes of the rights and duties of the parties to another action with which the action has been consolidated.

(7)(a) When the actions described in subsection (2) of this section exist in two or more judicial districts, the judges assigned to the actions shall confer to determine the appropriate judicial district in which to consolidate and hear the actions. The judges

shall confer not later than 10 judicial days after a court has received notice of the existence of an action in another judicial district.

(b) If the judges agree on the judicial district in which the actions should be consolidated, the judges shall take such action as is necessary to consolidate the actions in the circuit court of that district.

(c) If the judges do not agree on the judicial district in which the actions should be consolidated, the actions must be consolidated in the judicial district in which the juvenile action is filed or, if more than one juvenile action is pending, in the judicial district in which the first juvenile action was filed.

(8) Nothing in this section requires the consolidation of any administrative proceeding under ORS chapter 25 or 416 with a juvenile court or other action. [Formerly 419B.260]

419B.809 Petition; contents; form; dismissal. (1) Any person may file a petition in the juvenile court alleging that a child named therein is within the jurisdiction of the court under ORS 419B.100.

(2) The petition and all subsequent court documents in the proceeding must be entitled "In the matter of _____, a child." The petition must be in writing, signed by the petitioner or the petitioner's attorney and verified.

(3) When the petition is filed by a peace officer, district attorney, attorney general, juvenile department counselor, employee of the Department of Human Services or employee of the Oregon Youth Authority, the petition may be verified upon the information and belief of the petitioner. In all other cases, the petition must be based on the personal knowledge of the petitioner.

(4) The petition alleging jurisdiction must set forth in ordinary and concise language such of the following facts as are known and indicate any that are not known. The petition shall:

(a) Contain the name, age and residence of the child.

(b) Contain the facts that bring the child within the jurisdiction of the court, including sufficient information to put the parties on notice of the issues in the proceeding.

(c) Contain the name and residence of the child's parent and, in cases under ORS 419B.100, the names of persons with whom, and the places where, the child has resided for the previous five years.

(d) Indicate whether there is a proceeding involving the custody of the child pending in any court.

(e) Indicate whether a person other than a parent has or claims to have physical custody of the child and, if so, the name and residence of the person having physical custody of the child.

(f) Indicate whether the petitioner has participated in any capacity in any other proceeding concerning the custody of or parenting time or visitation with the child and, if so, the court, case number and date of any child custody determination.

(g) Indicate whether the petitioner knows of any proceeding that could affect the current proceeding and, if so, the court, case number and date of the proceeding.

(5) At any time after a petition is filed, the court may make an order providing for temporary custody of the child.

(6) The court, on motion of an interested party or on its own motion, may at any time direct that the petition be amended. If the amendment results in a substantial departure from the facts originally alleged, the court shall grant such continuance as the interests of justice may require.

(7) Prior to an adjudicatory hearing on the petition, the court may dismiss the petition provided that every party has had an opportunity to investigate and present a case supporting the petition or has waived the opportunity to investigate and the right to present a case. At or after an adjudicatory hearing, the court may dismiss the petition at any other stage of the proceedings.

(8) The petition for jurisdiction must be in substantially the following form.

IN THE CIRCUIT COURT
OF THE STATE OF OREGON
FOR _____ COUNTY

In the Matter of	)	
	)	No.
	)	Petition No.
	)	
A Child.	)	PETITION

TO THE ABOVE-ENTITLED COURT:

Petitioner, whose name appears below, respectfully represents to the Court as follows:

1. The name, age and residence of the above-named child are as follows: (name); (age); (DOB); (resides at), _____, Oregon. (Alternative: The name and age of the above-named child are as follows: _____. The child's residence is provided in a sealed document because providing that information would jeopardize the health, safety or liberty of the child or of a party to the case. ORS 109.767.)
2. The child is within the jurisdiction of the Court by reason of the following facts:
   A. _____
   B. _____

3. Uniform Child Custody Jurisdiction and Enforcement Act information:
   A. Child(ren)'s present address: _____ (Alternative: The child's present address is provided in a sealed document because providing that information would jeopardize the health, safety or liberty of the child or of a party to the case. ORS 109.767.)
   B. Places the child(ren) has lived during the previous five years:
   _____
   _____
   C. Names and present addresses of persons with whom child(ren) has lived during that period:
   _____
   _____
   D. The petitioner has/has not participated as a party or witness or in any other capacity in any other proceeding concerning the custody of or parenting time or visitation with the child. Court, case number and date of any child custody determination:
   _____
   E. Petitioner knows/does not know of any proceeding that could affect the current proceeding. Court, case number and date of the proceeding:
   _____
F. Petitioner knows/does not know of any person who has physical custody of the child(ren) or claims rights of legal custody, physical custody, parenting time or visitation with the child(ren). Names and addresses of such persons:
   _____
4. The child resides in _____ County.
5. The name and present address of each parent is as follows:
   _____
6. The petition is not filed pursuant to the direction of this Court.

WHEREFORE, petitioner prays this Court to have an investigation made of the circumstances concerning the above-named child and to make such order or orders as are appropriate in the circumstances.

DATED:_____, 2___.

_____
Petitioner

STATE OF OREGON)
) ss.
County of _____)

I, _____, being first duly sworn, on oath or upon affirmation, depose and say that I am the petitioner in the above-entitled proceeding, that I have read the foregoing petition, know the contents thereof, and the same is true as I am informed and believe.

_____
Petitioner

SIGNED AND SWORN to before me on _____, 2___.

_____
SEAL (Alternate Verification)

STATE OF OREGON)
) ss.
County of _____)

I, _____, being first duly sworn, on oath or upon affirmation, depose and say that I am the petitioner in the above-entitled proceeding, that I have read the foregoing petition, know the contents thereof, and the same is true based on my personal knowledge of this matter.

_____
Petitioner

SIGNED AND SWORN to before me on _____, 2___.

_____
SEAL

[2001 c.622 §4]

419B.812 Issuance of summons. (1) As used in ORS 419B.815 and 419B.824, a "true copy" of a summons or petition means an exact and complete copy of the original summons or petition with a certificate upon the copy signed by an attorney of record or a party that indicates that the copy is exact and complete.

(2) As soon as practicable and no more than 30 days after a petition is filed under ORS 419B.809, the petitioner, the petitioner's attorney, the juvenile department, the district attorney, the attorney general or the Department of Human Services may issue as many original summonses as they may elect and deliver such summonses to a person authorized to serve summons under subsection (3) of this section. A summons may require appearance on a specific date or may require the filing of an admission or denial by a specific date.

(3) A summons may be served by any competent person 18 years of age or older who is a resident of the state where service is made or of this state.

(4) A summons and petition may be transmitted by telegraph or facsimile as provided in ORS 419B.848 (3). [2001 c.622 §5]

419B.815 Contents of summons. (1) A summons under ORS 419B.812 shall be entitled "In the matter of _____, a child" and must contain:

(a) The name of the person to be served, the address at which the summons and petition may be served and the post office address at which the papers may be served by mail.

(b) The date and time for the hearing on the petition, which must be fixed at a reasonable time, not less than 24 hours for a jurisdictional adjudication and not less than 10 days for a termination adjudication after the service or final publication of the summons. If the summons is posted, the purpose of the proceeding must be stated in the summons.

(c) A direction to the served person to personally appear before the court and, if the person has physical custody of the child, to bring the child before the court as directed in the summons.

(d) A notice that if the person named in the summons fails to appear at the time and place specified therein the court may proceed without the person and:

(A) If the petition seeks to establish jurisdiction over the child, that the court may take jurisdiction, and make such further orders and take such action as may be authorized by law.

(B) If the petition seeks termination of parental rights, a statement that the rights of the parent are proposed to be terminated in the proceeding, that the court may immediately terminate parental rights and make such further orders and take any other action that is authorized by law. The summons must contain a statement that the termination of parental rights hearing may not be held less than 10 days after service of the summons.

(C) If the petition seeks guardianship or any other disposition of the child, that the court may grant such disposition and make such further orders and take such action as may be authorized by law.

(e) A notice that the served person has a right to be represented by an attorney and, if the person is an indigent child in any proceeding or if the person is an indigent parent in a termination of parental rights proceeding, that the person has a right to have an attorney appointed at state expense or, if the person is an indigent parent or indigent guardian in any proceeding, the person may be entitled to have an attorney appointed at state expense.

(f) A notice that no later than 30 days after the petition is filed each person about whom allegations have been made shall admit or deny the allegations. The admission or denial may be made orally at the hearing or filed with the court in writing.

(g) If the petition alleges that the child has been physically or sexually abused, a notice that the court, at the hearing, may enter an order requiring the alleged perpetrator of the abuse to move from the household in which the child resides.

(h) A notice that the parent or other person legally obligated to support the child may be required to pay at some future date for all or a portion of the support of the child, including the cost of out-of-home placement, depending upon the ability of the parent or other person to pay support.

(2) The summons must be signed by the petitioner, petitioner's attorney or a representative of the juvenile department, the district attorney's office, the attorney general's office or the Department of Human Services and must be served with a true copy of the petition. [2001 c.622 §6]

Note: The amendments to 419B.815 by section 54, chapter 962, Oregon Laws 2001, become operative October 1, 2003. See section 15, chapter 962, Oregon Laws 2001. The text that is operative on and after October 1, 2003, is set forth for the user's convenience.

419B.815. (1) A summons under ORS 419B.812 shall be entitled "In the matter of _____, a child" and must contain:

(a) The name of the person to be served, the address at which the summons and petition may be served and the post office address at which the papers may be served by mail.

(b) The date and time for the hearing on the petition, which must be fixed at a reasonable time, not less than 24 hours for a jurisdictional adjudication and not less than 10 days for a termination adjudication after the service or final publication of the summons. If the summons is posted, the purpose of the proceeding must be stated in the summons.

(c) A direction to the served person to personally appear before the court and, if the person has physical custody of the child, to bring the child before the court as directed in the summons.

(d) A notice that if the person named in the summons fails to appear at the time and place specified therein the court may proceed without the person and:

(A) If the petition seeks to establish jurisdiction over the child, that the court may take jurisdiction, and make such further orders and take such action as may be authorized by law.

(B) If the petition seeks termination of parental rights, a statement that the rights of the parent are proposed to be terminated in the proceeding, that the court may immediately terminate parental rights and make such further orders and take any other action that is authorized by law. The summons must contain a statement that the termination of parental rights hearing may not be held less than 10 days after service of the summons.

(C) If the petition seeks guardianship or any other disposition of the child, that the court may grant such disposition and make such further orders and take such action as may be authorized by law.

(e) A notice that the served person has a right to be represented by an attorney and, if the person is a financially eligible child in any proceeding or if the person is a financially eligible parent in a termination of parental rights proceeding, that the person has a right to have an attorney appointed at state expense or, if the person is a financially eligible parent or financially eligible guardian in any proceeding, the person may be entitled to have an attorney appointed at state expense.

(f) A notice that no later than 30 days after the petition is filed each person about whom allegations have been made shall admit or deny the allegations. The admission or denial may be made orally at the hearing or filed with the court in writing.

(g) If the petition alleges that the child has been physically or sexually abused, a notice that the court, at the hearing, may enter an order requiring the alleged perpetrator of the abuse to move from the household in which the child resides.

(h) A notice that the parent or other person legally obligated to support the child may be required to pay at some future date for all or a portion of the support of the child, including the cost of out-of-home placement, depending upon the ability of the parent or other person to pay support.

(2) The summons must be signed by the petitioner, petitioner's attorney or a representative of the juvenile department, the district attorney's office, the attorney general's office or the Department of Human Services and must be served with a true copy of the petition.

419B.818 Form of summons. The summons for appearance must be in substantially the following form:

IN THE CIRCUIT COURT
OF THE STATE OF OREGON
FOR _____ COUNTY

In the Matter of	)	
	)	No.
	)	Petition No.
	)	
A Child.	)	SUMMONS

TO: Name and address

IN THE NAME OF THE STATE OF OREGON:
You are directed to appear before this Court at _____ (address), Courtroom #_____, _____, Oregon, on: the _____ day of _____, 2___ at ___ o'clock __.m. and at any subsequent court-ordered hearing.

NOTICE:
READ THESE PAPERS CAREFULLY!!

A petition has been filed, a copy of which is attached.

If you do not appear in Court, the Court may proceed without you. No later than 30 days from the date the petition is filed, each person about whom allegations have been made in the petition must admit or deny the allegations.

If the petition seeks to establish jurisdiction over the above-named child(ren), and you do not appear as directed above, or at any subsequent court-ordered hearing, the Court may immediately take jurisdiction of the child(ren), and make such orders and take such action as authorized by law including, but not limited to, establishing wardship over the child, entering an order restraining a person from having contact with the child(ren) and ordering the removal of the child(ren) from the legal and physical custody of the parent(s) or guardian(s).

If the petition seeks termination of your parental rights and you do not appear as directed above, the Court may immediately terminate your parental rights to the above-named child(ren) at the time of the above hearing and may make such further orders and take any other action that is authorized by law.

RIGHTS AND OBLIGATIONS

You have a right to be represented by an attorney. If you wish to be represented by an attorney, please retain one and have the attorney present at this hearing. If you cannot afford to hire an attorney and you meet the state's financial guidelines, you will be entitled to have an attorney appointed for you at state expense if you are the child or if you are the parent in a termination of parental rights case. If you are a parent or guardian in a nontermination case, you may also be entitled to have an attorney appointed for you at state expense in many cases. You must immediately contact the juvenile court to request an attorney. Phone _____ between the hours of 8 a.m. and 5 p.m. for further information. It is your responsibility to maintain contact with your attorney.

If you are a parent or legal guardian, you have the obligation to support your child(ren) or ward(s). You may be required to pay for compensation and reasonable expenses for the child(ren)'s attorney. You may be required to pay support for the child(ren) while the child(ren) is in state financed or state supported custody. You may be required to provide health insurance coverage for your child(ren) while the child(ren) is in state financed or state supported custody. You may be required to pay other costs that arise from the child(ren) being in the jurisdiction of the Court. If you are ordered to pay for the child(ren)'s support or there is an existing order of support from a divorce or other proceeding, that support order may be assigned to the Department of Human Services to apply to the costs of the child(ren)'s care.

By: (Name and Title)
Date Issued: _____

[2001 c.622 §7]

419B.821 Service of summons generally. The summons must be served, either inside or outside of the state, in a manner reasonably calculated under all the circumstances to apprise the person served of the existence and pendency of the juvenile proceeding and to afford the person a reasonable opportunity to appear. Service of summons may be made, subject to the restrictions and requirements of ORS 419B.824, by the following methods:

(1) Personal service of the summons and petition upon the person to be served;

(2) Substituted service by leaving a copy of the summons and petition at a person's dwelling house or usual place of abode;

(3) Office service by leaving the summons and petition with a person who is apparently in charge of an office; or

(4) Alternative service as ordered by the court under ORS 419B.824 (4). [2001 c.622 §8]

419B.824 Methods of serving summons. (1) Personal service may be made by delivery of a true copy of the summons and a true copy of the petition to the person to be served.

(2) Substituted service may be made by delivering a true copy of the summons and a true copy of the petition at the dwelling house or usual place of abode of the person to be served to any person 14 years of age or older residing in the dwelling house or usual place of abode. When substituted service is used, the person effecting service shall cause to be mailed a true copy of the summons and a true copy of the petition and a statement of the date, time, and place at which substituted service was made. The summons, petition and statement must be mailed by first class mail to the dwelling house or usual place of abode of the person who has been served as soon as is practicable after the substituted service was made. When the computation of a period of time is based on service of summons, substituted service is complete upon such mailing.

(3) If the person to be served maintains an office for conducting business, office service may be made by leaving a true copy of the summons and a true copy of the petition at the office during normal working hours with the person who is apparently in charge. When office service is used, the person effecting service shall cause to be mailed a true copy of the summons and a true copy of the petition and a statement of the date, time, and place at which office service was made. The summons, petition and statement must be mailed by first class mail to the person who has been served at the person's dwelling house or usual place of abode, place of business or such other place under the circumstances that is most reasonably calculated to apprise the person of the existence and pendency of the juvenile proceeding. The summons, petition and statement must be mailed as soon as is practicable after the office service was made. When the computation of a period of time is based on service of summons, office service is complete upon such mailing.

(4)(a) If any parent or guardian required to be summoned as provided in ORS 419B.812 to 419B.839 cannot be found within the state, the court may order alternative service of summons on the parent or guardian in any of the following methods or combination of methods that under the circumstances is most reasonably calculated to notify the parent or guardian of the existence and pendency of the action:

(A) If the address of the parent or guardian is known, by sending the parent or guardian a copy of the summons by registered or certified mail with a return receipt to be signed by the addressee only;

(B) By posting at specified locations; or

(C) By publication of summons pursuant to subsection (5) of this section.

(b) If alternative service is ordered the court shall specify a time for response.

(5)(a) On written motion and affidavit that service cannot be made by any method otherwise specified in this section, the court may order service by publication.

(b) In addition to the contents of a summons as described in ORS 419B.815, a published summons must also contain the date of first publication of the summons. If the names of one or both parents or the guardian are unknown, they may be

summoned as “The parent(s) or guardian of (naming or describing the child), found (stating the address or place where the child was found)”.

(c) An order for publication must direct that publication be made in a newspaper of general circulation in the county where the action is commenced or, if there is no such newspaper, in a newspaper to be designated as most likely to give notice to the person to be served. The summons must be published three times in successive calendar weeks. If the person effecting service knows of a specific location other than the county where the action is commenced where publication might reasonably result in actual notice to the person to be served, the person effecting service shall so state in the affidavit required by paragraph (a) of this subsection, and the court may order publication in a comparable manner at such location in addition to, or in lieu of, publication in the county where the action is commenced.

(d) If the court orders service by publication and the person effecting service knows or with reasonable diligence can ascertain the current address of the person to be served, the person effecting service shall mail a copy of the summons and the petition to the person being served at the address either by first class certified or registered mail with a return receipt requested or by express mail. If the person effecting service does not know and cannot upon diligent inquiry ascertain the current address of a person being served, a copy of the summons and the petition must be mailed by the methods specified in this paragraph to the person being served at that person’s last known address. If the person effecting service does not know, and cannot ascertain upon diligent inquiry, the current or last known address of the person being served, mailing of a copy of the summons and the petition is not required. [2001 c.622 §9]

419B.827 Responsibility for costs of service of summons and travel expenses of party summoned. The court may authorize payment of travel expenses of any party summoned. Except as provided in this section, responsibility for the payment of the cost of service of summons or other process on any party, and for payment of travel expenses so authorized, shall be borne by the party issuing the summons or requesting the court to issue the summons. When the Department of Human Services issues the summons or requests the court to issue the summons, responsibility for such payment shall be borne by the county. [Formerly 419B.280]

419B.830 Return of summons. The summons must be promptly returned to the clerk with whom the petition is filed with proof of service or mailing or with proof that the person to be served cannot be found. The summons may be returned by first class mail. [2001 c.622 §10]

419B.833 Proof of service of summons or mailing. (1) Except for service by publication, proof of service of summons or mailing must be made by:

(a) The certificate of the server if the summons is not served by a sheriff or a sheriff’s deputy. The certificate must indicate the time, place and manner of service, that the server is a competent person of at least 18 years of age and is a resident of the state of service or of this state and that the server reasonably believes that the person served is the identical one named in the summons. If the person served was not personally served, the server shall state in the certificate when, where and with whom a copy of the summons and petition was left or describe in detail the manner and circumstances of service. If the summons and petition were mailed, the certificate may be made by the person completing the mailing or the attorney for any party and must state the circumstances of mailing and have the return receipt attached.

(b) The sheriff’s or sheriff’s deputy’s certificate of service if the summons is served by a sheriff or a sheriff’s deputy. The certificate must indicate the time, place and manner of service and, if the person served was not personally served, when, where and with whom a copy of the summons and petition was left or describe in detail the manner and circumstances of service. If the summons and petition were mailed, the certificate must state the circumstances of mailing and have the return receipt attached.

(2) Service by publication must be proved by an affidavit in substantially the following form:

AFFIDAVIT OF PUBLICATION

STATE OF OREGON)
) ss.
County of _____)

I, _____, being first duly sworn, depose and say that I am the _____ (here set forth the title or job description of the person making the affidavit), of the _____, a newspaper of general circulation published at _____ in the aforesaid county and state; that I know from my personal knowledge that the _____, a printed copy of which is hereto annexed, was published in the entire issue of said newspaper three times in the following issues: (here set forth dates of issues in which the same was published).

Subscribed and sworn to before me this _____ day of _____, 2___.

_____
Notary Public for Oregon
My commission expires: _____.

(3) The affidavit of service may be made and certified before a notary public or other official authorized to administer oaths by the United States, any state or territory of the United States or the District of Columbia. The notary public or official shall affix the notary's or official's official seal, if any, to the affidavit. The signature of the notary or other official, when attested by the affixing of the official seal of the person, is prima facie evidence of authority to make and certify the affidavit.

(4) A certificate or affidavit containing proof of service may be made upon the summons or as a separate document attached to the summons.

(5) In addition to the other ways specified in this section, proof of service may be made by a written acceptance of service by the person who was served.

(6) If summons has been properly served, failure to make or file a proper proof of service does not affect the validity of the service. [2001 c.622 §11]

419B.836 Effect of error in summons or service of summons. Failure to comply with provisions of ORS 419B.812, 419B.815, 419B.818 and 419B.839 relating to the form of summons, issuance of summons or who may serve summons does not affect the validity of service of summons or the existence of jurisdiction over the person if the court determines that the served person received actual notice of the substance and pendency of the action. The court may allow amendment to a summons or affidavit or certificate of service of summons. The court shall disregard any error in the content of summons that does not materially prejudice the substantive rights of the party to whom summons was issued. If service is made in any manner complying with ORS 419B.812 to 419B.839, the court shall also disregard any error in the service of summons that does not violate the due process rights of the party against whom summons was issued. [2001 c.622 §12]

419B.839 Required and discretionary summons. (1) Summons must be issued to be served on:

(a) The legal parents of the child without regard to who has legal or physical custody of the child;

(b) The legal guardian of the child; and

(c) A putative father of the child if he has provided or offered to provide for the physical, emotional, custodial or financial needs of the child in the previous six months or was prevented from doing so by the mother of the child.

(2) If the child is 12 years of age or older, summons must be issued to be served on the child.

(3) Summons must be issued to be served on the person who has physical custody of the child. The summons may require the person who has physical custody of the child to bring the child before the court at the time and place stated in the summons. If it appears to the court that the welfare of the child or of the public requires that the child immediately be taken into custody, the court may indorse an order on the summons directing the officer serving it to take the child into custody.

(4) Summons may be issued requiring the appearance of any person whose presence the court deems necessary. [2001 c.622 §13]

419B.842 When arrest warrant for summoned person authorized. (1) No person required to appear as provided in ORS 419B.812 to 419B.839 shall without reasonable cause fail to appear or, where directed in the summons, to bring the child before the court.

(2) If the summons cannot be served, if the person to whom the summons is directed fails to obey it or if it appears to the court that the summons will be ineffectual, the court may direct issuance of a warrant of arrest against the person summoned or against the child. [Formerly 419B.282]

419B.845 Restraining order when child abuse alleged. (1)(a) When a petition has been filed alleging that the child has been physically or sexually abused, the court may enter an order restraining the alleged perpetrator of the abuse from having contact with the child or attempting to contact the child and requiring the alleged perpetrator to move from the household in which the child resides. The court may issue a restraining order only if the court finds that:

(A) There is probable cause to believe the abuse occurred and that the person to be restrained committed the abuse; and

(B) The order is in the best interest of the child.

(b) Upon finding that to do so would aid in protecting the victim of the alleged abuse, the court may enter, in addition to a restraining order described in paragraph (a) of this subsection, other appropriate orders including, but not limited to, orders that control contact between the alleged abuser and other children in the household.

(c) The court shall include in an order entered under this subsection the following information about the person to be restrained:

(A) Name;

(B) Address;

(C) Age and birth date;

(D) Race;

(E) Sex;

(F) Height and weight; and

(G) Color of hair and eyes.

(d) The court may include in the order a provision that a peace officer accompany the restrained person to the household

when it is necessary for the restrained person to remove personal property.

(2) If the court enters an order under this section:

(a) The clerk of the court shall provide without charge the number of certified true copies of the petition and order necessary to effect service and shall have a true copy of the petition and order delivered to the sheriff or other person qualified to serve the order for service upon the person to be restrained; and

(b) The sheriff or other person qualified to serve the order shall serve the person to be restrained personally unless that person is present at the hearing. After accepting the order, if the sheriff or other person cannot complete service within 10 days, the sheriff or other person shall hold the order for future service and file a return to the clerk of the court showing that service was not completed.

(3) Within 30 days after an order is served under this section, the restrained person may file a written request with the court and receive a court hearing on any portion of the order. If the restrained person requests a hearing under this subsection:

(a) The clerk of the court shall notify the parties and, if the restrained person is not a party, the restrained person of the date and time of the hearing; and

(b) The court shall hold the hearing within 21 days after the request and may cancel or modify the order.

(4) Upon receipt of proof of service, when required, and a true copy of the order, the sheriff shall immediately enter the order into the Law Enforcement Data System maintained by the Department of State Police. Entry into the Law Enforcement Data System constitutes notice to all law enforcement agencies of the existence of the order. Law enforcement agencies shall establish procedures adequate to ensure that an officer at the scene of an alleged violation of the order may be informed of the existence and terms of the order. The order shall be fully enforceable in any county in this state.

(5) A restraining order issued pursuant to this section remains in effect for a period of one year or until the order is modified, amended or terminated by court order.

(6) A court that issued a restraining order under this section may renew the order for a period of up to one year if the court finds that there is probable cause to believe the renewal is in the best interest of the child. The court may renew the order on motion alleging facts supporting the required finding. If the renewal order is granted, subsections (2) and (3) of this section apply.

(7) If a restraining order issued pursuant to this section is terminated before its expiration date, the clerk of the court shall promptly deliver a true copy of the termination order to the sheriff. The sheriff shall promptly remove the original order from the Law Enforcement Data System.

(8) Pending a contempt hearing for alleged violation of a restraining order issued under this section, a person arrested and taken into custody pursuant to ORS 133.310 may be released as provided in ORS 135.230 to 135.290. Unless the order provides otherwise, the security amount for release shall be $5,000.

(9) When a restraining order entered under this section prohibits the restrained person from contacting the protected person in writing, the restrained person does not violate the restraining order by serving on the protected person a copy of a notice of appeal of the restraining order or any other document required by law to be served on the adverse party to an appeal if:

(a) Neither the restrained person nor the protected person is represented by counsel;

(b) The restrained person serves the document by mail; and

(c) The contents of the document are not intended to harass or intimidate the protected person. [Formerly 419B.190]

419B.848 Process generally. (1) All process authorized to be issued by any court or officer of the court runs in the name of the State of Oregon and must be signed by the officer issuing the process, and if the process is issued by a clerk of the court, the seal of office of the clerk must be affixed to the process. Summonses and subpoenas are not process.

(2) A civil process may be served or executed on Sunday or any legal holiday. No limitation or prohibition stated in ORS 1.060 applies to the service or execution of a civil process on a Sunday or legal holiday.

(3) An order in any case, and all other papers requiring service, may be transmitted by telegraph or facsimile for service in any place. The facsimile or telegraphic copy, as defined in ORS 165.840, of the order or paper transmitted may be served or executed by the officer or person to whom it is sent for that purpose and returned by the officer or person if any return is required in the same manner and with the same force and effect in all respects as if the copy were the original. The officer or person serving or executing the order or paper has the same authority and is subject to the same liabilities as if the copy were the original. The original, if an order, must be filed in the court from which it was issued and a certified copy of the order must be preserved in the office from which it was sent. The operator may use either the original or certified copy to transmit the order or paper.

(4) Proof of service or execution of process must be made as provided in ORS 419B.833. [2001 c.622 §14]

419B.851 Service of process; filing; proof of service. (1) Except as otherwise provided in ORS 419B.800 to 419B.929, every order, every petition and answer subsequent to the original petition, every written motion other than one that may be heard ex parte and every written request and similar paper must be served upon each of the parties.

(2)(a) Whenever under ORS 419B.800 to 419B.929 service is required or permitted to be made upon a party, and that party is represented by an attorney, the service must be made upon the attorney unless otherwise ordered by the court. Service upon the attorney or upon a party must be made by delivering a copy to the attorney or party, by mailing it to the attorney's or party's last known address or, if the party is represented by an attorney, by facsimile communication device as provided in subsection (5) of this section. As used in this paragraph, "delivery of a copy" means:

(A) Handing it to the person to be served;

(B) Leaving it at the person's office with the person's clerk or a person apparently in charge of the office or, if there is no one in charge, leaving it in a conspicuous place in the office; or

(C) If the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with a person who is over 14 years of age and who resides at the dwelling house or usual place of abode.

(b) A party who has appeared without providing an appropriate address for service may be served by placing a copy of the paper required to be served in the court file. Service by mail is complete upon mailing. Service of any notice or other paper to bring a party into contempt may only be upon such party personally.

(3) All papers required to be served upon a party under subsection (1) of this section must be filed with the court within a reasonable time after service. Except as otherwise provided in ORS 419B.812 to 419B.839 and 419B.845, proof of service of all papers required or permitted to be served may be by written acknowledgment of service, by an affidavit of the person making service or by a certificate of an attorney. Proof of service may be made upon the papers served or as a separate document attached to the papers. When service is made by facsimile communication device, proof of service must be made by an affidavit of the person making service or by a certificate of an attorney. The printed confirmation of receipt of the message generated by the facsimile machine must be attached to the affidavit or certificate.

(4) The filing of any papers with the court must be made by filing them with the clerk of the court or the person exercising the duties of that office. The clerk or the person exercising the duties of that office shall indorse the time of day, day of the month, month and year upon the paper. The clerk or person exercising the duties of that office is not required to receive any paper for filing unless:

(a) The contents of the paper are legible; and

(b) All of the following are legibly indorsed on the front of the paper:

(A) The name of the court;

(B) The title of the cause and the paper;

(C) The names of the parties; and

(D) If there is one, the name of the attorney for the parties requesting filing.

(5) Whenever under ORS 419B.800 to 419B.929 service is required or permitted to be made upon a party and that party is represented by an attorney, the service may be made upon the attorney by means of a facsimile if the attorney maintains such a device at the attorney's office and the device is operating at the time service is made. [2001 c.622 §15]

419B.854 Computing statutory time periods. (1) In computing any period of time prescribed or allowed by any applicable statute, by the local rules of any court or by order of court, the day of the act or event from which the designated period of time begins to run is not included. The last day of the period so computed is included, unless it is a Saturday or legal holiday, in which event the period runs until the end of the next day that is not a Saturday or a legal holiday. If the period of time relates to serving a public officer or filing a document at a public office and if the last day falls on a day when that particular office is closed before the end of or for all of the normal work day, the last day is excluded in computing the period of time, in which event the period runs until the close of office hours on the next day the office is open for business. When the period of time prescribed or allowed, without including the extra time allowed by subsection (2) of this section, is less than seven days, intermediate Saturdays and legal holidays are excluded in the computation. As used in this subsection, a "legal holiday" means a day described in ORS 187.010 or 187.020.

(2) Except for service of summons, whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served by mail, three days are added to the prescribed period. [2001 c.622 §16]

419B.857 Pleadings; construction. (1) All petitions, answers, motions and other papers must be liberally construed with a view of substantial justice between the parties.

(2) In every stage of an action, the court shall disregard an error or defect in a petition, answer, motion, other paper or proceeding that does not affect the substantial rights of the adverse party. [2001 c.622 §17]

419B.860 Motions. (1) An application for an order is a motion. Unless a motion is made in court, the motion must be in writing, state with particularity the factual and legal grounds for the motion and set forth the relief or order sought.

(2) ORS 419B.863 and 419B.866 and any local rules of any court applicable to captions, signing and other matters of form of petitions and answers apply to all motions and other papers provided for by ORS 419B.800 to 419B.929. [2001 c.622 §18]

419B.863 Pleadings; captions. (1) Every petition, answer, motion or other paper must contain a caption setting forth the name of the court, the title of the action and the register number of the case.

(2) When a party does not know the name of another party and alleges that lack of knowledge in a petition, answer, motion or other paper, the other party may be designated by any name. When the other party's true name is discovered, the process and all petitions, answers, motions, other papers and proceedings in the case may be amended by substituting the true name. [2001 c.622 §19]

419B.866 Signing pleadings required; effect of signing or not signing. (1) If a party is represented by an attorney, every

answer, motion and other paper of the party must be signed by an attorney of record who is an active member of the Oregon State Bar. If a party is not represented by an attorney, the party shall sign the petition, answer, motion or other paper and state the address of the party. Only petitions need be verified. Motions must be accompanied by an affidavit unless the parties agree otherwise.

(2) If a petition, answer, motion or other paper is not signed, it must be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant.

(3)(a) Except as otherwise provided in paragraph (d) of this subsection, by signing, filing or otherwise submitting an argument in support of a petition, answer, motion or other paper, an attorney or party makes the certifications to the court identified in paragraphs (b), (c) and (d) of this subsection and further certifies that the certifications are based on the person's reasonable knowledge, information and belief formed after the making of any inquiry that is reasonable under the circumstances.

(b) A party or attorney certifies that the petition, answer, motion or other paper is not being presented for any improper purpose including, but not limited to, harassing or causing unnecessary delay or needless increase in the cost of litigation.

(c) An attorney certifies that the claims and other legal positions taken in the petition, answer, motion or other paper are warranted by existing law or by a nonfrivolous argument for the extension, modification or reversal of existing law or the establishment of new law.

(d) A party or attorney certifies that the allegations and other factual assertions in the petition, answer, motion or other paper are supported by evidence. An allegation or other factual assertion that the party or attorney does not wish to certify is supported by evidence must be specifically identified. The party or attorney certifies that the party or attorney reasonably believes that an allegation or other factual assertion so identified will be supported by evidence after further investigation and discovery. [2001 c.622 §20]

419B.869 Responding to pleadings; time limit. (1) No later than 30 days after a petition alleging jurisdiction under ORS 419B.100 is filed, each party about whom allegations have been made shall admit or deny the allegations. Unless the court specifies how admissions or denials are to be made pursuant to ORS 419B.800, admissions and denials may be made orally in court or in writing.

(2) Allegations in a petition that are not admitted or denied are denied. [2001 c.622 §21]

419B.872 Amendment of pleadings. (1) A petition, answer, motion or other paper may be amended by a party within a reasonable time before an adjudication on the petition, answer, motion or other paper. Whenever an amended petition, answer, motion or other paper is filed, it shall be served upon all parties. When the interests of justice require additional time to prepare, due to the amendments to the petition, answer, motion or other paper, the court shall grant such additional time as is reasonable.

(2) The court, on motion of an interested party or on its own motion, may at any time direct that the petition be amended. If the amendment results in a substantial departure from the facts originally alleged, the court shall grant such continuance as the interests of justice may require. [Formerly 419B.245]

419B.875 Parties to proceedings; rights of limited participation; status of grandparents; interpreters. (1) Parties to proceedings in the juvenile court under ORS 419B.100 and, except as provided in paragraph (h) of this subsection, under ORS 419B.500 are:

(a) The minor child;

(b) The legal parents or guardian of the child;

(c) A putative father of the child if he has provided or offered to provide for the physical, emotional, custodial or financial needs of the child in the previous six months or was prevented from doing so by the mother of the child;

(d) The state;

(e) The juvenile department;

(f) A court appointed special advocate, if appointed;

(g) The Department of Human Services or other child-caring agency if the agency has temporary custody of the child;

(h) An intervenor who is granted intervention under ORS 419B.116. An intervenor under this paragraph is not a party to a proceeding under ORS 419B.500;

(i) A guardian ad litem appointed under subsection (2) of this section; and

(j) The tribe in cases subject to the Indian Child Welfare Act if the tribe has intervened pursuant to the Indian Child Welfare Act.

(2) When a court determines that a parent or guardian, due to mental or physical disability, cannot adequately act in the parent's or guardian's interests or give direction to the parent's or guardian's counsel on decisions the parent or guardian must make, the court shall appoint some suitable person to act as guardian ad litem for the parent or guardian.

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

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

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

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

(d) The right of appeal; and

(e) The right to request a hearing.

(4)(a) The court may grant rights of limited participation to persons who are not parties under subsection (1) of this section. A person seeking rights of limited participation must file a motion for limited participation and an affidavit. The affidavit must be served on all parties no later than two weeks before a proceeding in the case in which participation is sought. The affidavit must state:

(A) The reason the participation is sought;

(B) How the person's involvement is in the best interest of the child or the administration of justice;

(C) Why the parties cannot adequately present the case; and

(D) What specific relief is being sought.

(b) If the court grants the motion, the rights of limited participation are those specified in the court order.

(c) Persons moving for rights of limited participation are not entitled to court-appointed counsel but may appear with retained counsel.

(5) If a foster parent, preadoptive parent or relative is currently providing care for a child, the Department of Human Services shall give the foster parent, preadoptive parent or relative notice of a hearing concerning the child and the court shall give the person an opportunity to be heard. Except when allowed to intervene, the foster parent, preadoptive parent or relative providing care for the child is not considered a party to the juvenile court proceeding solely because of notice and an opportunity to be heard.

(6) When a legal grandparent of a child requests in writing and provides a mailing address, the Department of Human Services shall give the legal grandparent notice of a hearing concerning the child and the court shall give the legal grandparent an opportunity to be heard. Except when allowed to intervene, a legal grandparent is not considered a party to the juvenile court proceeding solely because of notice and an opportunity to be heard.

(7) Interpreters for parties and persons granted rights of limited participation shall be appointed in the manner specified by ORS 45.275 and 45.285. [Formerly 419B.115]

Note: The amendments to 419B.875 (formerly 419B.115) by section 83, chapter 962, Oregon Laws 2001, become operative October 1, 2003. See section 15, chapter 962, Oregon Laws 2001. The text that is operative on and after October 1, 2003, is set forth for the user's convenience.

419B.875. (1) Parties to proceedings in the juvenile court under ORS 419B.100 and, except as provided in paragraph (h) of this subsection, under ORS 419B.500 are:

(a) The minor child;

(b) The legal parents or guardian of the child;

(c) A putative father of the child if he has provided or offered to provide for the physical, emotional, custodial or financial needs of the child in the previous six months or was prevented from doing so by the mother of the child;

(d) The state;

(e) The juvenile department;

(f) A court appointed special advocate, if appointed;

(g) The Department of Human Services or other child-caring agency if the agency has temporary custody of the child;

(h) An intervenor who is granted intervention under ORS 419B.116. An intervenor under this paragraph is not a party to a proceeding under ORS 419B.500;

(i) A guardian ad litem appointed under subsection (2) of this section; and

(j) The tribe in cases subject to the Indian Child Welfare Act if the tribe has intervened pursuant to the Indian Child Welfare Act.

(2) When a court determines that a parent or guardian, due to mental or physical disability, cannot adequately act in the parent's or guardian's interests or give direction to the parent's or guardian's counsel on decisions the parent or guardian must make, the court shall appoint some suitable person to act as guardian ad litem for the parent or guardian.

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

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

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

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

(d) The right of appeal; and

(e) The right to request a hearing.

(4)(a) The court may grant rights of limited participation to persons who are not parties under subsection (1) of this section. A person seeking rights of limited participation must file a motion for limited participation and an affidavit. The affidavit must be served on all parties no later than two weeks before a proceeding in the case in which participation is sought. The affidavit must state:

(A) The reason the participation is sought;

(B) How the person's involvement is in the best interest of the child or the administration of justice;

(C) Why the parties cannot adequately present the case; and

(D) What specific relief is being sought.

(b) If the court grants the motion, the rights of limited participation are those specified in the court order.

(c) Persons moving for rights of limited participation are not entitled to appointed counsel but may appear with retained counsel.

(5) If a foster parent, preadoptive parent or relative is currently providing care for a child, the Department of Human Services shall give the foster parent, preadoptive parent or relative notice of a hearing concerning the child and the court shall give the person an opportunity to be heard. Except when allowed to intervene, the foster parent, preadoptive parent or relative providing care for the child is not considered a party to the juvenile court proceeding solely because of notice and an opportunity to be heard.

(6) When a legal grandparent of a child requests in writing and provides a mailing address, the Department of Human Services shall give the legal grandparent notice of a hearing concerning the child and the court shall give the legal grandparent an opportunity to be heard. Except when allowed to intervene, a legal grandparent is not considered a party to the juvenile court proceeding solely because of notice and an opportunity to be heard.

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

419B.878 Applicability of Indian Child Welfare Act. When a court conducts a hearing, the court shall inquire whether a child is an Indian child subject to the Indian Child Welfare Act. If the court knows or has reason to know that an Indian child is involved, the court shall enter an order requiring the Department of Human Services to notify the Indian child's tribe of the pending proceedings and of the tribe's right to intervene and shall enter an order that the case be treated as an Indian Child Welfare Act case until such time as the court determines that the case is not an Indian Child Welfare Act case. [2001 c.622 §22]

419B.881 Disclosure; scope; when required; exceptions. (1) In all proceedings brought under ORS 419B.100 or 419B.500, each party, including the state, shall disclose to each other party the following information and material within the possession or under the control of the party:

(a) The names and addresses of all persons the party intends to call as witnesses at any stage of the hearing, together with any relevant written or recorded statements or memoranda of any oral statements of such persons;

(b) Any written or recorded statements or memoranda of any oral statements made either by the parent or by the child to any other party or agent for any other party;

(c) Any reports or statements of experts who will be called as witnesses, including the results of any physical or mental examinations and of comparisons or experiments that the party intends to offer in evidence at the hearing; and

(d) Any books, papers, documents or photographs that the party intends to offer in evidence at the hearing, or that were obtained from or belong to any other party.

(2)(a) Disclosure shall be made as soon as practicable following the filing of a petition and no later than:

(A) Thirty days after a petition alleging jurisdiction has been filed.

(B) Three days before any review hearing, except for information received or discovered less than three days prior to the hearing.

(C) Ten days before a termination trial, except for information received or discovered less than 10 days prior to the trial.

(b) The court may supervise the exercise of discovery to the extent necessary to insure that it proceeds properly and expeditiously.

(3) The obligation to disclose is an ongoing obligation and if a party finds, either before or during the hearing, additional material or information that is subject to disclosure, the information or material shall be promptly disclosed.

(4) The following material and information need not be disclosed:

(a) Attorney work product; and

(b) Transcripts, recordings or memoranda of testimony of witnesses before the grand jury, except transcripts or recordings of testimony of a party to the current juvenile court proceeding.

(5) Upon a showing of good cause, the court may at any time order that specified disclosure be denied, restricted or deferred or make such other order as is appropriate.

(6) Upon request of a party, the court may permit a showing of good cause for denial or regulation of disclosure by the parties or the contents of subpoenaed materials, or portion of the showing, to be made in camera. A record shall be made of the proceeding.

(7) If the court enters an order following an in camera showing, the entire record of the showing shall be sealed and preserved in the records of the court, to be made available to the appellate court in the event of an appeal. The trial court may, after disposition, unseal the record.

(8) When some parts of certain material are subject to disclosure and other parts are not, as much of the material as is subject to disclosure shall be disclosed.

(9) Upon being notified of any breach of a duty to disclose material or information, the court may:

(a) Order the violating party to permit inspection of the material;

(b) Grant a continuance;

(c) Refuse to permit the witness to testify;

(d) Refuse to receive in evidence the material that was not disclosed; or

(e) Enter such other order as the court considers appropriate. [Formerly 419B.300]

419B.884 Depositions; procedure. (1) After the commencement of a proceeding under ORS 419B.100 or 419B.500, a party may move the court for an order allowing a deposition to be taken to perpetuate the testimony of a witness who is:

(a) Outside the jurisdiction of, or otherwise not subject to the process of, the court; or

(b) Unable to attend because of age, sickness, infirmity, imprisonment or undue hardship.

(2) The affidavit in support of the motion to take a deposition to perpetuate testimony, in addition to setting forth the reasons described in subsection (1)(a) and (b) of this section, shall also set forth:

(a) The reasons why the testimony of the witness sought to be deposed cannot be taken by telephone at the time of the hearing;

(b) Where the deposition is to be taken;

(c) The manner of recording the deposition; and

(d) A brief statement of the substance of the testimony that the witness is expected to give.

(3) If the court finds that taking a deposition will best promote the just, speedy and inexpensive resolution of one or more issues in the proceeding or that taking a deposition is necessary to meet the requirements of due process, the court shall grant the motion.

(4) If the motion is granted, the court may, in its discretion, set conditions regarding the time, place and method of taking the deposition. [Formerly 419B.315]

419B.887 Objections at depositions; effect of failure to make timely objection. (1) As used in this section, "deposition" means a deposition taken under ORS 419B.884.

(2) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of a deposition unless the ground for the objection is one that might have been obviated or removed if presented before or during the taking of the deposition.

(3) Unless seasonable objection is made at the time the deposition is taken, the following are waived:

(a) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation or in the conduct of the parties; and

(b) Errors of any kind that might be obviated, removed or cured if promptly presented.

(4) Unless a motion to suppress the deposition or some part of the deposition is made with reasonable promptness after the error or irregularity is, or with due diligence might have been, ascertained, errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, indorsed, transmitted and filed are waived. [2001 c.622 §23]

419B.890 Dismissal of petition at end of petitioner's case. (1) After the proponent of the petition has completed the presentation of evidence, any other party, without waiving the right to offer evidence in the event the motion is not granted, may move for dismissal of any or all of the allegations of the petition on the ground that upon the facts and the law the proponent of the petition has failed to prove the allegations or, if proven, the allegations do not constitute a legal basis for the relief sought by the petition. The court may order dismissal of the petition or one or more of the allegations of the petition, or the court may decline to render any order until the close of all the evidence.

(2) Unless the court in its judgment of dismissal otherwise specifies, a dismissal under this section operates as an adjudication without prejudice.

(3) At any time at the request of a party or upon the court's own motion, the court may order a settlement conference or, if funds are available for a mediator, mediation. [2001 c.622 §24]

419B.893 Subpoenas generally. (1) A subpoena is a writ or an order directed to a person and may require the attendance of the person at a particular time and place to testify as a witness on behalf of a particular party mentioned in the subpoena or may require the person to produce books, papers, documents or tangible things and permit inspection of them at a particular time and place. A subpoena may be for a trial, a hearing of any kind or a deposition under ORS 419B.884. A subpoena requiring attendance to testify as a witness requires that the witness remain until the testimony is closed unless sooner discharged, but at the end of each day's attendance a witness may demand of the party, or the party's attorney, the payment of legal witness fees for the next following day and if not then paid, the witness is not obliged to remain longer in attendance. Every subpoena must state the name of the court and the title of the action.

(2) Any party may have compulsory attendance of witnesses or the compulsory production of records. [2001 c.622 §25]

419B.896 Subpoena for production of books, papers, documents and tangible things. A subpoena may command the person to whom it is directed to produce and permit inspection and copying, at the time and place specified in the subpoena, of designated books, papers, documents or tangible things in the possession, custody or control of the person. A command to produce books, papers, documents or tangible things and permit inspection of them may be joined with a command to appear at trial or hearing or, if the books, papers, documents or tangible things are to be produced before trial, the command may be issued separately. A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things but not commanded to also appear for deposition under ORS 419B.884, hearing or trial may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve

upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials. If objection is made, the party serving the subpoena may not inspect and copy the materials except pursuant to an order of the court in whose name the subpoena was issued. If objection has been made, the party serving the subpoena, upon notice to the person commanded to produce, may move for an order to compel production. When a subpoena commands production of books, papers, documents or tangible things, the court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance with the subpoena, may:

(1) Quash or modify the subpoena if it is unreasonable and oppressive; or

(2) Condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents or tangible things. [2001 c.622 §26]

419B.899 Issuance of subpoena. (1) A subpoena may be issued:

(a) To require attendance before a court, at the trial of an issue in a court or, if separate from a subpoena commanding the attendance of a person, to produce and permit inspection of books, papers, documents or tangible things. A subpoena may be issued under this paragraph:

(A) In blank by the clerk of the court in which the action is pending or, if there is no clerk, by a judge or justice of the court; or

(B) By an attorney of record of the party to the action in whose behalf the witness is required to appear, subscribed by the signature of the attorney.

(b) To require attendance at a deposition authorized under ORS 419B.884.

(c) To require attendance out of court in cases not provided for in paragraph (a) of this subsection, before a judge, justice or other officer authorized to administer oaths or take testimony in any matter under the laws of this state. A subpoena may be issued under this paragraph by the judge, justice or other officer before whom the attendance is required.

(2) Upon the request of a party or attorney, any subpoena issued by a clerk of court may be issued in blank and delivered to the party or attorney requesting it, who must fill it in before service.

(3) A subpoena to produce and permit inspection of records of a person who is not a party to the action must be served on the person and, if the person is represented, the person's attorney at least 10 days before the subpoena is served on the keeper or custodian of the records. [2001 c.622 §27]

419B.902 Service of subpoena. (1) Except as provided in subsection (2) of this section, a subpoena may be served by the party or any other person 18 years of age or older. Except as provided in subsections (3) and (4) of this section, the service must be made by delivering a copy to the witness personally. The service must be made so as to allow the witness a reasonable time for preparation and travel to the place of attendance. If the subpoena is not accompanied by a command to appear at trial, hearing or deposition under ORS 419B.884, whether the subpoena is served personally or by mail, copies of a subpoena commanding production and inspection of books, papers, documents or tangible things before trial must be served on each party at least seven days before the subpoena is served on the person required to produce and permit inspection, unless the court orders a shorter period.

(2)(a) A law enforcement agency shall designate an individual upon whom service of a subpoena may be made. A designated individual must be available during normal business hours. In the absence of a designated individual, service of a subpoena under paragraph (b) of this subsection may be made upon the officer in charge of the law enforcement agency.

(b) If a peace officer's attendance at trial is required as a result of employment as a peace officer, a subpoena may be served on the officer by delivering a copy personally to the officer or to an individual designated by the agency that employs the officer no later than 10 days prior to the date attendance is sought. A subpoena may be served in this manner only if the officer is currently employed as a peace officer and is present within the state at the time of service.

(c) When a subpoena has been served as provided in paragraph (b) of this subsection, the law enforcement agency shall make a good faith effort to give actual notice to the officer whose attendance is sought of the date, time and location of the court appearance. If the officer cannot be notified, the law enforcement agency shall promptly notify the court and a postponement or continuance may be granted to allow the officer to be personally served.

(d) As used in this subsection, "law enforcement agency" means the Oregon State Police, a county sheriff's department or a municipal police department.

(3) Under the following circumstances, service of a subpoena to a witness by mail has the same legal force and effect as personal service:

(a) The attorney mailing the subpoena certifies in connection with or upon the return of service that the attorney, or the attorney's agent, has had personal or telephone contact with the witness and the witness indicated a willingness to appear at trial if subpoenaed; or

(b) The subpoena was mailed to the witness more than five days before trial by certified mail or some other designation of mail that provides a receipt for the mail signed by the recipient and the attorney received a return receipt signed by the witness prior to trial.

(4) Service of subpoena by mail may be used for a subpoena commanding production of books, papers, documents or tangible things that is not accompanied by a command to appear at trial or hearing or at a deposition under ORS 419B.884.

(5) Proof of service of a subpoena is made in the same manner as proof of service of a summons except that the server is not required to certify that the server is not a party in the action or an attorney for a party in the action. [2001 c.622 §28]

419B.905 Subpoena of incarcerated witness. If a witness is confined in a prison or jail in this state, a subpoena may be served on the witness and attendance of the witness may be compelled. The subpoena and court order must be served upon the custodian of the witness. The court may order:

(1) Temporary removal and production of the witness for the purpose of giving testimony;

(2) That the witness be allowed to testify by telephone or closed circuit television; or

(3) That the testimony of the witness be taken by deposition under ORS 419B.884 at the place of confinement. [2001 c.622 §29]

419B.908 Witness fees; payment. Witnesses subpoenaed to give testimony shall receive the same fees as are paid in criminal cases. Except as provided by this section, responsibility for the per diem and mileage fees of any witness, and travel expenses if so ordered by the court, shall be borne by the party who subpoenas the witness or requests the court to subpoena the witness. If the witness was subpoenaed by more than one party, the witness shall be paid by the party who first subpoenas the witness. The court may then, thereafter, order that the costs be distributed equally among all parties who subpoenaed the witness and that the original payor of the costs be reimbursed accordingly. When the witness has been subpoenaed on behalf of an indigent party who is represented by court-appointed counsel, the fees and costs allowed for that witness shall be paid pursuant to ORS 135.055. [Formerly 419B.320]

Note: The amendments to 419B.908 (formerly 419B.320) by section 48, chapter 962, Oregon Laws 2001, become operative October 1, 2003. See section 15, chapter 962, Oregon Laws 2001. The text that is operative on and after October 1, 2003, is set forth for the user's convenience.

419B.908. Witnesses subpoenaed to give testimony shall receive the same fees as are paid in criminal cases. Except as provided by this section, responsibility for the per diem and mileage fees of any witness, and travel expenses if so ordered by the court, shall be borne by the party who subpoenas the witness or requests the court to subpoena the witness. If the witness was subpoenaed by more than one party, the witness shall be paid by the party who first subpoenas the witness. The court may then, thereafter, order that the costs be distributed equally among all parties who subpoenaed the witness and that the original payor of the costs be reimbursed accordingly. When the witness has been subpoenaed on behalf of a party who is represented by appointed counsel, the fees and costs allowed for that witness shall be paid pursuant to ORS 135.055.

419B.911 Failure to obey subpoena. Disobedience to a subpoena or a refusal to be sworn or answer as a witness is punishable as contempt by the court before whom the action is pending or by the judge or justice issuing the subpoena. [2001 c.622 §30]

419B.914 Proceeding when person entitled to service is not summoned and is not before court. If the child is before the court, the court has the power to proceed with the case without service upon those entitled to service under ORS 419B.812 to 419B.839 if diligent efforts have failed to reveal the identity or the whereabouts of the person, except that:

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

(2) No order for support as provided in ORS 419B.400, 419B.402, 419B.404 and 419B.406 may be entered against a person unless that person is served as provided in ORS 419B.812 to 419B.839. [Formerly 419B.285]

419B.917 Proceeding when summoned person fails to appear. (1) If a child is before the court and a person who is required to be summoned has been summoned and has failed to appear for any dates, including but not limited to trial dates for which the person has been summoned, and the petitioner is ready to proceed, the court may proceed with the case in the person's absence. If the summoned party seeks a change of the date for which the party is summoned, the party must appear at the time the request to change the date is made to receive service of summons for a new date or must authorize the party's attorney to accept service of summons for the new date.

(2) Except by express permission of the court, for a jurisdictional or termination of parental rights trial or related mandatory court appearances, summoned parties may not waive appearance or appear through counsel. [2001 c.622 §31]

419B.920 New hearings. If it appears to the court that a person required to be summoned under ORS 419B.812 to 419B.839 was not served as required by ORS 419B.812 to 419B.839 or was served on such short notice that the person did not have a reasonable opportunity to appear at the time fixed, upon motion of the person, the court shall reopen the case for full consideration. A motion for a new hearing must be made not later than 10 days after entry of the order for which a new hearing is sought. [2001 c.622 §32]

419B.923 Modifying or setting aside order or judgment. (1) Except as otherwise provided in this section, on motion and such notice and hearing as the court may direct, the court may modify or set aside any order or judgment made by it. Reasons for modifying or setting aside an order or judgment include, but are not limited to:

(a) Clerical mistakes in judgments, orders or other parts of the record and errors in the order or judgment arising from oversight or omission. These mistakes and errors may be corrected by the court at any time on its own motion or on the motion

of a party and after notice as the court orders to all parties who have appeared. During the pendency of an appeal, an order or judgment may be corrected as provided in subsection (7) of this section.

(b) Excusable neglect.

(c) Newly discovered evidence that by due diligence could not have been discovered in time to present it at the hearing from which the order or judgment issued.

(2) A motion to modify or set aside an order or judgment or request a new hearing must be accompanied by an affidavit that states with reasonable particularity the facts and legal basis for the motion.

(3) A motion to modify or set aside an order or judgment must be made within a reasonable time except no order or judgment pursuant to ORS 419B.527 may be set aside or modified during the pendency of a proceeding for the adoption of the child, nor after a petition for adoption has been granted.

(4) Except as provided in subsection (6) of this section, notice and a hearing as provided in ORS 419B.195, 419B.198, 419B.201, 419B.205, 419B.208, 419B.310, 419B.325 and 419B.893 must be provided in any case when the effect of modifying or setting aside the order or judgment will or may be to deprive a parent of the legal custody of the child, to place the child in an institution or agency or to transfer the child from one institution or agency to another. The provisions of this subsection do not apply to a parent whose rights have been terminated under ORS 419B.500 to 419B.524 or whose child has been permanently committed by order or judgment of the court unless an appeal from the order or judgment is pending.

(5) When an Indian child is involved, notice must be provided as required under the Indian Child Welfare Act.

(6) Except when the child is an Indian child, notice and a hearing are not required when the effect of modifying or setting aside the order or judgment will be to transfer the child from one foster home to another.

(7) A motion under subsection (1) of this section may be filed with and decided by the trial court during the time an appeal from a judgment is pending before an appellate court. The moving party shall serve a copy of the motion on the appellate court. The moving party shall file a copy of the trial court's order or judgment in the appellate court within seven days of the date of the trial court order or judgment. Any necessary modification of the appeal required by the court order or judgment must be pursuant to rule of the appellate court.

(8) This section does not limit the inherent power of a court to modify an order or judgment within a reasonable time or the power of a court to set aside an order or judgment for fraud upon the court. [2001 c.622 §33]

419B.926 Stay of order or judgment pending appeal. (1) On its own motion or on the motion of a party, the court may stay the effect of any order or judgment made by it pending appeal as provided in ORS 19.335, 19.340 and 19.350 or other provision of law.

(2) This section does not limit the right of a party to a stay otherwise provided for by law. [2001 c.622 §34]

419B.929 Enforcement of certain orders and judgments. A court may enforce an order or judgment directing a party to perform a specific act by punishing the party refusing or neglecting to comply with the order or judgment, as for a contempt as provided in ORS 33.015 to 33.155. [2001 c.622 §35]

MISCELLANEOUS

419B.950 Educational program regarding federal and state adoption and child welfare laws; establishment; purpose. The State Court Administrator shall establish a statewide program to educate judges who hear dependency cases under ORS chapter 419B about federal and state adoption and child welfare laws. The program shall include continuing legal education concerning changes in federal and state laws. The purpose of the program is to ensure that judges are knowledgeable about current adoption and child welfare laws, so that they may make decisions as to the best interests of a child. To that end, the State Court Administrator shall:

(1) Establish a program administering continuing legal education for judges who hear dependency cases under ORS chapter 419B.

(2) Conduct seminars for judges who hear dependency cases under ORS chapter 419B.

(3) Identify family law resources in the public and private sectors to administer continuing legal education on current adoption and child welfare laws. [1997 c.593 §1]

Note: 419B.950 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 419B or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.